

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (“Agreement”) is entered into as of the “Effective Date,” defined in the final paragraph below, by and among the Texas Attorney General (the “Attorney General,” or the “State”) and FanDuel, Inc. (“FanDuel”). The State and FanDuel are collectively referred to as the “Parties.”

II. PREAMBLE

A. FanDuel advertises and provides a variety of contests to individuals located in Texas, including daily fantasy sports contests that both require payment to enter and award a prize of value to one or more entrants. All such activities are referred to as the “Covered Conduct” to the extent occurring either (i) prior to the Effective Date or (ii) on the Effective Date, on May 1, 2016, or between such dates, in a manner substantially similar to the manner in which they occurred prior to the Effective Date.

B. The Attorney General issued Opinion No. KP-0057 dated January 19, 2016 (the “Opinion”) and has otherwise suggested that the Covered Conduct gives rise to liability on the part of FanDuel and is unlawful, including under Section 47.02 of the Texas Penal Code, but FanDuel believes the Opinion contains an incorrect interpretation of Texas law, that the Covered Conduct is lawful and gives rise to no liability on its part, and that FanDuel has engaged in no misconduct; accordingly, FanDuel has considered commencing a declaratory judgment action against the State to validate FanDuel’s view of the legality of the Covered Conduct in court (collectively, the “Dispute”).

C. For the purpose of this Settlement Agreement and Release, Settled Claims (“Settled Claims”) shall be defined to mean any and all allegations arising under or related to the Texas

Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41, et seq., Chapter 47 of the TEXAS PENAL CODE and any other law or claim that references or incorporates these statutes or otherwise attempts to prohibit, regulate or authorize gambling, lotteries, contests of skill or games of chance.

D. This Agreement is the result of a compromise of disputed issues of law and fact and is neither an admission of facts, liability or wrongdoing by either Party nor a concession by either Party that the other's claims are not well founded.

E. As a result of a mutual desire to settle the Dispute and all of the Settled Claims, and to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of the Dispute, the Parties have voluntarily reached a full and final settlement of the Dispute, as set forth in this Agreement.

F. The State has concluded that this settlement is in the public interest.

G. The Parties have concluded that this settlement is fair, adequate, and reasonable.

III. AGREEMENT

NOW, THEREFORE, 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:

1. FanDuel agrees not to bring a declaratory judgment action, or any other action, against the State or any State officials, State agents, or State entities in relation to the Dispute. FanDuel further agrees not to support or assist any other entity who brings a declaratory judgment action, or any other action, against the State or any State

officials, State agents, or State entities in relation to the Dispute, except to the extent necessary to respond to third party discovery.

2. The Attorney General (on behalf of itself and its past and present officers, agents, entities, divisions, and departments) fully and finally, and to the greatest extent allowed by law, releases FanDuel and (i) its past and present holding companies, predecessors, successors, parents, subsidiaries, entities and divisions (“FanDuel Direct Entities”); (ii) all past and present officers, directors, members, partners and/or limited partners, principals, assigns, representatives, employees, agents, servants, shareholders and in-house attorneys of FanDuel and those identified in sub-clause (i); (iii) all heirs, executors, administrators, spouses, agents and assigns of those identified in sub-clauses (i) and (ii); and (iv) any insurers and reinsurers of FanDuel and those identified in sub-clauses (i), (ii) and (iii) (collectively, the “FanDuel Released Parties”) from any criminal, civil or administrative claim, action, suit or proceeding (including attorneys’ fees, penalties, costs, and expenses of every kind and however denominated) the State have or may have or could assert in the future under any source of law against any of the FanDuel Released Parties related to the Dispute or arising from the Settled Claims. In addition, the Parties agree that this Agreement discharges FanDuel from any obligation to the State to pay restitution, damages, penalties or fines to the State for the Covered Conduct at issue in the Dispute or arising from the Settled Claims. In addition, the Office of the Attorney General agrees that it shall not initiate, support, assist (unless required by law), or prosecute litigation or any other criminal, civil or administrative action, including by way of example and not limitation, civil investigative demands, against the FanDuel Released Parties, related to the Covered

Conduct at issue in the Dispute or the Settled Claims, on behalf of itself or any other entity, provided that FanDuel complies with this Agreement. If FanDuel Direct Entities commence a declaratory judgment action, or any other action, against the State or any State officials, State agents, or State entities in relation to the Dispute, the Attorney General is discharged from his obligations under this Agreement.

3. Beginning no later than May 2, 2016:
 - a. FanDuel will include Texas on the list of states on its website where contestants may not deposit funds or enter paid contests while physically located in the state; and
 - b. FanDuel will block people located in Texas (based on geoblocking and/or IP address) from entering FanDuel's contests which both charge an entry fee and offer a prize of value, using the same platform FanDuel uses for IP intelligence for blocking users from other prohibited states. This Agreement does not restrict FanDuel's provision of any service (including any paid contest that awards a prize of value) to any Texan while such Texan is physically located outside Texas.
4. FanDuel shall process requests for users who have an address associated with the State of Texas to withdraw their account balances within seven (7) days of receiving such requests. FanDuel may not place any obstacles or delays 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). FanDuel shall not try to sell any additional products or services to customers who have requested withdrawals before processing such withdrawals.

5. Nothing in this Agreement shall prevent FanDuel from offering daily fantasy sports leagues or other contests that offer prizes of value to entrants in Texas or elsewhere, provided that entrants are not required to pay consideration to enter those contests.
6. Nothing in this Agreement shall prevent FanDuel from offering daily fantasy sports leagues or other contests in Texas at a future date (including, for example, a paid contest that offers a prize of value) if (1) Texas passes a new law or revises existing law in a way that permits the contest (including, for example, any form of fantasy sports, regardless of whether the law mentions fantasy sports specifically), and FanDuel complies with that law; or (2) a court or other governmental body with jurisdiction in Texas rules favorably on the legality of any form of paid fantasy sports, regardless of whether the ruling mentions FanDuel or fantasy sports specifically, and FanDuel complies with that ruling (provided that ruling is not stayed). A new Attorney General Opinion may, depending on its content, be deemed such a ruling for purposes of the preceding sentence. If FanDuel intends to resume Covered Conduct pursuant to this section, it will notify the Attorney General in writing 3 business days before resuming Covered Conduct.
7. If the State of Texas or its Attorney General reaches any agreement with DraftKings Inc. or any of its successors or affiliated companies (collectively and individually, “DraftKings”), or if the State issues a no-action letter, case closing letter, or similar writing indicating a decision to refrain from taking action against DraftKings

regarding DraftKing's advertising, offering or provision of daily fantasy sports or other contests or services, then (i) FanDuel may advertise, offer or provide daily fantasy sports or other contests or services to the same extent permitted by such agreement or writing, in addition to the extent permitted by this Agreement and (ii) the State will publicly announce or promptly provide FanDuel with a copy of such agreement or writing.

8. No Third Party Beneficiaries Intended: This Agreement is not intended to confer upon any person other than the State and the FanDuel Released Parties any rights or remedies, including rights as a third party beneficiary. This Agreement is not intended to create a private right of action on the part of any person or entity other than the State and the FanDuel Released Parties.
9. Nothing herein is intended to prevent any individual, in his or her individual capacity, from bringing any claim related to the Dispute against FanDuel, but the State agrees not to represent any such individual in such a claim and not to bring any such claim on such individual's behalf or for such individual's benefit.
10. This Agreement, and any and all negotiations, documents and discussions associated with this Agreement, shall be without prejudice to the rights of any Party, 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 the FanDuel Released Parties or of the truth or the infirmity of any of the claims or allegations of either Party, and evidence thereof shall not be discoverable or used directly or indirectly by the State in any way (except that the provisions of this Agreement may be used by the Parties to enforce its terms), whether in Texas or in any other forum. The State agrees it will not urge or seek to

admit this Agreement as evidence of any fault or liability of the FanDuel Released 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 state court, federal court, or arbitration panel but may use this Agreement to enforce its terms.

11. The parties agree that in issuing Opinion No. KP-0057 dated January 19, 2016, the Attorney General provided its interpretation of existing Texas law pursuant to its statutory and Constitutional authority. The Office of Attorney General agrees to continue to refrain from advocating against legislation regarding the type of activity described by “Covered Conduct.” Nothing herein shall restrict the Office of Attorney General from fulfilling its required statutory duty to provide representation or legal advice to external state entities, namely state agencies, the Legislature, individual legislators, or legislative bodies. Further, nothing herein shall be interpreted to restrict the Office of the Attorney General from defending the constitutionality of existing laws.
12. The State represents to FanDuel that no interest in any claim herein released has been assigned to any third party.
13. Any Party shall be entitled to enforce the terms of this Agreement in the District Courts of Travis County, Texas, which shall have exclusive jurisdiction and venue over any such action.
14. This Agreement, including all exhibits, constitutes the complete agreement between the Parties with regard to the settlement of the Covered Conduct and Settled Claims as defined herein. This Agreement may not be amended except by a writing signed by all Parties.

15. Each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
16. This Agreement shall be governed by the laws of the State of Texas.
17. This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the State's claims and allegations against FanDuel in connection with the Covered Conduct arising from or related to the Settled Claims and to arrange for the cessation of paid play for prizes in Texas (unless there is a change in the law or an intervening ruling covered by paragraph 6 of this Agreement).
18. None of the Parties to this Agreement shall be considered the drafter of this Agreement or of any included provision for any purpose that would or might cause any provision to be construed against the drafter.
19. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress whatsoever.
20. 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. State, for all purposes:

OFFICE OF THE ATTORNEY GENERAL
Brantley Starr, Deputy Attorney General for Legal Counsel
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

- b. FanDuel, for all purposes:

Marc J. Zwillinger
ZwillGen PLLC
1900 M Street NW, Suite 250
Washington, D.C. 20036

21. The Parties have read this Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. The individual signing this Agreement on behalf of FanDuel represents and warrants that he is authorized by FanDuel to execute this Agreement. The undersigned State signatory represents that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement and to compromise the claims of the State.
22. The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits.
23. 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.
24. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.
25. 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.
26. The Parties understand, acknowledge, and agree that (i) they have each performed an independent investigation of the facts and law surrounding this matter, and (ii) they each may hereafter discover facts in addition to, or different from, those that they now know or believe to be true. Nevertheless it is the Parties' intention to resolve this

matter pursuant to the terms of this Settlement Agreement, which shall remain in full force and effect notwithstanding the discovery of additional facts or law, or changes in the law, and the Settlement Agreement shall not be subject to rescission or modification by reason of any such discovery.

27. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement.

IT IS SO AGREED TO BY THE PARTIES:

Dated: March 4, 2016

THE STATE OF TEXAS


By: 

Name: Brantley Starr

Title: Deputy Attorney General for Legal Counsel

Dated: March __, 2016

FANDUEL INC.

By: 

Christian Genetski, General Counsel