STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

JENNIFER WHITE, KATHERINE WEST, CHARLOTTE WELLINS and ANNE REMINGTON,

Plaintiffs,

-against-

HON. ANDREW CUOMO, as Governor of the State of New York, and the NEW YORK STATE GAMING COMMISSION,

Defendants.

AFFIRMATION
Index No. 5861-16
(Hon. Gerald Connolly)

CORNELIUS D. MURRAY, an attorney duly admitted to practice before the courts of this State, affirms under penalties of perjury as follows:

1. This Affirmation is respectfully submitted in support of Plaintiffs' Motion for Summary Judgment.

2. Annexed hereto as Exhibit "A" is a true and correct copy of Chapter 572 of the Laws of 1895, amending Section 351 of the Penal Code.

3. Attached hereto as Exhibit "B" is a copy of the Settlement Agreement entered into by the Office of the Attorney General of the State of New York with FanDuel, Inc., entered into in October 2016.

4. Annexed hereto as Exhibit "C" is a true and correct copy of the Settlement Agreement entered into by the Office of the Attorney General of the State of New York with DraftKings, Inc. in October 2016.

5. Annexed hereto as Exhibit "D" is a true and correct copy of the crossword puzzle that appeared in the New York *Times* Sunday edition on December 31, 2017 as

well as the solution to said puzzle, which appeared in the Sunday, January 7, 2018 edition of the New York *Times.*

6. Attached hereto as Exhibit "E" is a true and correct copy of the Annual Report of the New York Gaming Commission for calendar year 2016.

DATED: January 29, 2018
Albany, New York

O'CONNELL AND ARONOWITZ
By: Cornelius D. Murray
Cornelius D. Murray, Esq.
Attorneys for Plaintiffs
Office and P.O. Address
54 State Street
Albany NY 12207-2501

EXHIBIT "A"

Chapter 572 of the Laws of 1895

LAWS OF NEW YORK.

CHAPTER 572, LAWS OF 1895.

AN ACT to amend section three hundred and fifty-one of the penal code of the State of New York, relating to pool-selling, bookmaking, bets and wagers.

BECAME a law May 9, 1895, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section three hundred and fifty-one of the penal code of the State of New York is hereby amended so as to read as follows:

§ 351. POOL-SELLING, BOOK-MAKING, BETS AND WAGERS, ET CETERA.—Any person who engages in pool-selling, or book-making at any time or place; or any person who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel, or any part thereof, or who occupies any place, or stand of any kind, upon any public or private grounds, within this State, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, and any person who records or registers bets or wagers, or sells pools upon the result of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or any person who receives, registers, records or forwards, or purports or pretends to receive, register, record or forward, in any manner whatsoever, any money, thing or consideration of value,

Pool selling, book making, &c., a felony.

bet or wagered, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools upon any such result; or any person who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth or building, float or vessel, or part therof, or of any grounds within this State, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depositary for gain, hire or reward, of any money, property or thing of value, staked, wagered or pledged, or to be wagered or pledged or to be wagered or pledged upon any such result; or any person who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden, is guilty of a felony, except when another penalty is provided by law, and upon conviction is punishable by imprisonment in the State prison for a period not more than two years, or by a fine not exceeding two thousand dollars. When an exclusive penalty is provided by law for an act hereby prohibited, the permitting of the use of premises for the doing of the act in such case shall not be deemed a violation hereof, or of section three hundred and forty-three of this code. (As amended by Chapter 636, Laws of 1901.)

§ 2. This act shall take effect immediately.

EXHIBIT "B"

Settlement Agreement
N.Y. Attorney General / FanDuel, Inc.
October 2016

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INTERNET & TECHNOLOGY

In the Matter of
FANDUEL INC.

SETTLEMENT AGREEMENT

The Office of the Attorney General of the State of New York ("OAG") conducted an investigation, pursuant to New York State Executive Law § 63(12) and General Business Law §§ 349-50, of the practices of FanDuel, Inc. ("FanDuel"), a provider of Daily Fantasy Sports ("DFS") games. On November 10, 2015, the OAG issued a cease and desist letter informing FanDuel that its paid contests violated the law in New York State and that it must stop accepting entry fees from users within New York State. The letter also served as formal pre-litigation notice, indicating that the OAG would commence an enforcement action if FanDuel failed to abide by the law. On November 13, 2015, FanDuel filed a lawsuit against the OAG in Supreme Court, New York County ("Supreme Court") (Mendez, J.) seeking a declaratory judgment that its paid contests are legal under New York law and a temporary restraining order and preliminary injunction enjoining the OAG from taking any enforcement action against FanDuel. On November 16, 2015, the Supreme Court denied FanDuel's application for a temporary restraining order. The OAG filed its own action against FanDuel on November 17, 2015, alleging violations of Executive Law § 63(12), GBL §§ 349-50, and BCL § 1303 (the "Litigation"), and seeking a preliminary injunction enjoining FanDuel from accepting entry fees in New York.

On November 25, 2015, the Supreme Court heard argument on FanDuel's and the OAG's competing requests for a preliminary injunction. On December 11, 2015, the Supreme Court granted the OAG's motion for a preliminary injunction, enjoining FanDuel from accepting entry fees in New York, and denying FanDuel's competing motion to enjoin the OAG from taking any enforcement action against FanDuel. That same day, FanDuel filed an emergency application for interim relief and moved for a stay pending appeal. The Appellate Division, First Department granted an interim stay. The OAG filed an Amended Complaint on December 31, 2015.

On March 21, 2016, the OAG reached a partial provisional settlement with FanDuel ("Provisional Agreement") wherein FanDuel agreed to stop accepting entry fees in New York unless and until New York State expressly legalized paid DFS contests. In the event of express legalization, the OAG agreed to dismiss all but its false and deceptive advertising claims against FanDuel. On June 18, 2016, the New York State Legislature passed legislation to legalize and regulate DFS contests. The Governor signed the legislation on August 3, 2016.

This Settlement Agreement ("Agreement") resolves all remaining claims (the false and deceptive advertising claims) in the Litigation, and sets forth relief agreed to by the OAG and FanDuel (together, the "Parties").

OAG'S FINDINGS

Background

1. FanDuel is a leading provider of DFS games. FanDuel's DFS games enable players to pay upwards of $10,000 per entry for a chance to win jackpots of more than $1 million.

2. Founded in 2009, FanDuel existed for several years as a largely niche alternative to season-long fantasy sports. That changed in 2015, when FanDuel dramatically increased its spending on advertising and marketing. By late 2015, with the advertising campaign in full swing, FanDuel had over a quarter-million registered users in New York State.

3. In various television, radio, and digital marketing campaigns, including on its website, FanDuel misled consumers about key aspects of its games, including the advantages professional players had over others; the likelihood and ease of winning money playing its games; its "Welcome Bonus" program; and the addictive nature of its games.

FanDuel Misled Consumers About the Substantial Advantages High-Volume and Professional Players Had Over Other Players

4. Overall, FanDuel's advertising led viewers to believe everyone had the same chance of winning, with minimal investment of time, money or special tools. In reality, a small percentage of professional and high-volume players – making up the majority of winners – used research, software, and large bankrolls to win a disproportionate share of DFS jackpots.

5. For example, high-volume and professional players often scoured the Internet for the latest data on athletes, match-ups, and game conditions, using computer programs to automate this process, aggregate the data, and compile it into statistical models. These players used specialized computer programs and sophisticated hedging strategies to set their lineups, which often numbered in the hundreds. They also employed strategies that depended on having access to sufficient capital to enter numerous lineups into a single contest or across a series of contests.

6. Moreover, FanDuel disclosed to investors—but not consumers, who were left with a very different impression of the performance of an average player— that only 10% of all players on average won money. All other players lost money on the site. As an acknowledgement of this reality, FanDuel also disclosed privately to investors—but not consumers—that users were more likely to win if they played at high volumes (i.e. entered many lineups).

7. The advantages enjoyed by high-volume and professional players were not disclosed in FanDuel's advertising. These advantages were not easily attainable by novice or casual players, and gave DFS players able to use them a distinct edge in DFS contests.

FanDuel Advertisements Gave False and Misleading Statistics About the Likelihood That Players Will Win

8. The fine print in certain FanDuel commercials also further deceived consumers about the chances that an average player will win money in its contests.

9. A disclaimer or legend on certain FanDuel advertisements provided a number purporting to reflect "average" winnings in its contests.

10. Neither the average winnings number nor the surrounding text accounted for, netted out, or acknowledged the losses, fees, or other costs borne by the player.

11. By ignoring the losses and required fees, including the up to 14% rake retained by FanDuel, the "winnings" calculations gave a misleading impression of the average net financial *success* of a FanDuel user.

12. One disclaimer, for example, stated that "Average winnings are $22.43."

13. On average, FanDuel players were not net winners. They were net losers who spent more to enter contests than they recouped in contest winnings.

14. FanDuel made similarly misleading representations about the number of successful DFS players overall.

15. One television advertisement, for example, claimed that "over 1.1 million fans have won cash" playing FanDuel.

16. The number of players who "won cash" focused exclusively on wins — counting any player who won a prize of any dollar amount in a single contest, irrespective of his or her net performance in FanDuel contests over time.

17. This gave consumers an artificially inflated impression of the number of players who earned money by playing FanDuel.

FanDuel's Testimonial Advertisements Were Misleading

18. FanDuel based its appeal to consumers, in part, on testimonials of purportedly ordinary people who played for personal enjoyment and won large jackpots. In this way FanDuel underscored its message that anyone can win without special skills or a large investment of time or money.

19. Several FanDuel advertisements featured testimonials from purported "ordinary" or "casual" players who claimed to have won large jackpots with minimal effort and money. These testimonials were not representative of the performance of a casual or novice player, or indeed most players, and in fact falsely portrayed the featured winner as an unskilled or casual player.

20. One frequently aired commercial profiled a player named Scott Hanson, claiming "He's a personal trainer, and he turned $2 into over $2 million on FanDuel."

21. The advertisement failed to note that Hanson had worked professionally in the sports analytics industry. Nor did the advertisement explain that, by the time the ad aired, Hanson was a well-established professional DFS player.

22. Another testimonial advertisement profiled Chris Prince. In an infomercial-length version of the advertisement, Prince proclaimed: "I'm just a regular guy, who goes to work every day, like everybody else and a guy who loves fantasy sports." He continued "[a]nybody can win. It's not just a game for professionals." The Prince testimonial failed to mention that he is a DFS industry professional, who contributes expert content to two leading DFS websites, RotoGrinders and Rotoworld, and two leading DFS broadcast outlets, SiriusXMFantasy and GrindersLive.

FanDuel Deceptively Promised to Match a Player's Initial Deposit

23. From 2013 through at least the end of 2015, FanDuel marketed a "Welcome Bonus" promotion. In marketing on television, radio, the Internet, and through its affiliates, FanDuel depicted its "Welcome Bonus" promotion as affording new customers a chance to double or "match" initial deposits of up to $200 (in some instances FanDuel did not even qualify that the "match" only applied to the first $200 deposited, it simply advertised that it would "double" a player's deposit).

24. From 2013 through mid-2015, FanDuel television advertisements featured no disclaimers that specifically related to the "Welcome Bonus" promotion and any rules that might apply. FanDuel's radio and podcast advertisements for the "Welcome Bonus" often lacked any disclaimers about bonus terms or conditions whatsoever. Examples of FanDuel's "Welcome Bonus" marketing include:

i. "Try FanDuel today and we'll match your first deposit dollar for dollar up to 200 bucks.";
ii. "That's right, sign up today and FanDuel will double your deposit.";
iii. "Try Today $200 FREE."; and
iv. "UP TO $200 FREE! 100% MATCHED."

25. Based on these claims, a consumer would believe that enrolling in the "Welcome Bonus" promotion and depositing $200 in a FanDuel account would translate into $400 in immediately available funds, or that a deposit of any amount up to $200 would be doubled.

26. In practice, however, FanDuel did not double or match the initial cash deposits of new users at the time they deposited their funds. Rather, users accrued or "earned" four cents for every dollar they spent to enter FanDuel contests, and these bonuses could be used solely to enter future FanDuel contests. Thus, a new user who enrolled in the "Welcome Bonus" promotion, deposited $200, and spent $200 entering FanDuel contests would receive a credit of just $8. To receive the full $200 worth of bonuses, a user enrolled in the "Welcome Bonus" promotion would need to spend $5,000 in entry fees.

27. In three key respects, FanDuel administered the "Welcome Bonus" promotion in a manner inconsistent with its marketing claims and the expectations of consumers.

28. First, a new FanDuel user received no bonus or other benefit upon deposit; FanDuel would only credit a new user's account after the user put some or all of that deposit directly at risk by entering it in a FanDuel contest.

29. Second, FanDuel did not immediately match the full amount deposited or spent with bonus money. Contrary to the "up front" marketing claims FanDuel used to draw in new customers. FanDuel elsewhere described the "Welcome Bonus" promotion as offering a bonus equivalent to only 4% of entry fees:

> Deposit bonus is released as real cash at a rate of 4% of the entry fee of the contest you enter. For example, if you enter a $25 contest, $1 of deposit bonus will be released into your main funds account.

30. Third, the bonuses were not equivalent to cash on a dollar-for-dollar or any other basis. According to FanDuel's "Terms of Use," the credits could only be used to enter FanDuel contests, and FanDuel would claw them back in certain circumstances, including where a user attempted to withdraw them as cash without first using the credit to enter a contest, inconsistent with the representations described above in paragraph 29.

FanDuel Marketed its Games as Safe to Populations it Knew Were at Risk for Compulsive Behavior While Failing to Disclose Risks or Provide Safeguards

31. FanDuel identified and targeted users with a propensity for gambling and addiction, but failed to disclose the risks of playing its contests or provide adequate safeguards.

32. In a 2010 pitch to investors, FanDuel revealed the results of a survey of its users indicating that over half bet on sports online and nearly 20% self-identified as "a bit of an addict," while only 9% reported that they did not gamble. In that same pitch, FanDuel told investors its target market for DFS was male sports fans who "cannot gamble online legally."

33. While targeting a population at risk for addiction and compulsive behavior, FanDuel marketed its games as "safe" and as providing an "adrenaline rush" without the downside of gambling. Nonetheless, FanDuel had received complaints from customers with addiction and compulsive gameplay issues.

34. Despite targeting a vulnerable population and receiving complaints from customers, FanDuel never provided warnings about addiction or resources to help with compulsive behavior in any of its marketing.

35. Neither FanDuel's website nor its mobile applications provided players with resources to address problem gaming and addiction, or links to such resources hosted elsewhere.

VIOLATIONS

36. The OAG finds the foregoing conduct by FanDuel violated Executive Law § 63(12) and GBL §§ 349-50.

37. FanDuel neither admits nor denies the OAG's Findings 1–36 above.

38. FanDuel has agreed to this Agreement in settlement of the violations alleged above and in the Litigation.

39. The OAG finds the relief and obligations imposed by this Agreement appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Agreement pursuant to Executive Law § 63(12).

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties that:

PROSPECTIVE RELIEF

I. DEFINITIONS

40. For the purposes of this Agreement, the following definitions apply:

a. "Consumer" shall mean any actual or potential FanDuel user located in the State of New York.

b. "Consumer Protection Law" means New York Executive Law § 63(12), and General Business Law §§ 349 – 350.

c. "Clear and Conspicuous" or "Clearly and Conspicuously":

i. when referring to a written statement, disclosure, or any other information, means that such statement, disclosure, or other information, by whatever medium communicated, (a) is readily noticeable and readable (b) is in readily understandable language and syntax (c) is in a type size, font, appearance and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears, (d) is visually distinguished from the surrounding text, through techniques such as contrasting type, font or color to the surrounding text of the same size. If such statement, disclosure, or other information is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in Direct Proximity to the information it modifies in a manner that is readily noticeable and understandable.

ii. As to statements, disclosures, or any other information made or presented orally, "Clear and Conspicuous" or "Clearly and Conspicuously" shall mean that such statements, disclosures, or other information shall be delivered (a) in readily understandable language and syntax; (b) in a volume, audibility, and cadence sufficient for the consumer to hear, comprehend, and understand the entire statement, disclosure or such other information; and (c) at a speed equal to or slower than the representation to which the statement or disclosure relates.

iii. As to statements, disclosures, or any other information made or presented on the Internet or other web-based applications or services, in addition to the other requirements stated herein, "Clear and Conspicuous" or "Clearly and Conspicuously" shall mean that such statements, disclosures, or any other information shall be placed in locations on the same webpage if doing so allows for the statements, disclosures, or other information to be readily noticeable and understandable. Such statements, disclosures, or other information shall be (a) sufficiently prominent to be readily seen, (b) in text that can be easily read and understood by the reader, and (c) placed on the webpage in a position in Direct Proximity to the offer, term or limitation.

If the statements, disclosures, or other information cannot be readily noticeable and understandable by placing them on the same webpage, then such statements, disclosures, or other information shall be placed on a webpage which is no more than one hyperlink from the webpage where the offer, term or limitation to which it relates appears. In such a situation where a hyperlink is used to lead to a disclosure, the link shall be (a) sufficiently prominent and readily seen, (b) in text that can be easily read and understood by the reader, and (c) placed on the same webpage where the offer, term or limitation to which is relates appears, and in a position in Direct Proximity to the offer, term or limitation.

Statements or disclosures made or presented via a mobile device will follow similar requirements for "Clear and Conspicuous" or "Clearly and Conspicuously" displays. Where practicable, statements or disclosures will be made on the same screen as the representations to which they relate. On mobile devices, statements or disclosures may also be provided via a readily noticeable and understandable link or as a clearly identified menu item containing such statements or disclosures, provided that the Mobile application directs consumers to this menu item through a disclosure that is displayed to all users prior to contest entry. For the avoidance of doubt, such direction, links or menu items shall Clearly and Conspicuously describe the content to which the consumer is being directed.

A disclosure of information is not Clear and Conspicuous if, among other things, it is obscured by the background against which it appears, or the net impression of the statement, disclosure, or other information is inconsistent with, contrary to, or in mitigation of the disclosure itself. Statements of limitation must be set out in Direct Proximity with the benefits described such that they are readily noticeable, readable and understandable or with appropriate captions of such prominence that statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading.

d. "Direct Proximity" means that a term is disclosed immediately above, beneath or adjacent to the relevant contention.

e. "Endorsement" means any advertising message (including but not limited to verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

f. "Express Informed Consent" shall mean affirmative consent expressly indicated by a consumer to make a deposit or enter a contest after the Clear and Conspicuous disclosure of all material facts, terms and conditions of depositing money with FanDuel and/or entering a FanDuel contest (except that as to entering contests, all contest rules shall be disclosed in the normal prominent location for the posting of such rules and no separate independent express informed consent shall be required). A pre-checked box shall not be considered evidence of Express Informed Consent. In order to constitute Express Informed Consent, it shall also be required that the consumer performs additional affirmative actions as follows:

> For all written offers (including through the Internet or other web-based applications or services): the consumer must affirmatively sign, click a button or electronically sign in order for the consumer to deposit money with FanDuel. Immediately above such signature line, button or electronic signature, FanDuel shall Clearly and Conspicuously disclose material terms of any "Welcome Bonus" or similar program.

g. "Material fact(s)," "material term(s)," "material condition(s)," or any similar phrase or combination of words or phrases is any fact, condition or term that, if known and understood by a consumer, would have been important to that consumer's decision to deposit money or enter contests on FanDuel.

h. "Material limitation(s)" means a term or condition that necessarily affects a consumer's ability to obtain an offer as advertised.

II. INJUNCTIONS

41. FanDuel is permanently restrained and enjoined from falsely representing, expressly or by implication, the likelihood of success of a casual or novice player playing FanDuel's DFS games.

III. AFFIRMATIVE OBLIGATIONS

42. In connection with the marketing, promoting, advertising or offering of any promotion, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by FanDuel, or on any third-party website over which FanDuel has actual or constructive control that is engaged in marketing, promoting, advertising or offering any promotion, FanDuel shall:

i. Clearly and Conspicuously disclose material facts, terms and conditions of the promotion to consumers;
ii. Clearly and Conspicuously disclose to consumers material limitations to the promotion; and
iii. Obtain Express Informed Consent from any consumer who must deposit money to take advantage of the promotion.

43. In connection with marketing, promoting, advertising or offering its DFS games, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by FanDuel, or on any third-party website over which FanDuel has actual or constructive control that is engaged in marketing, promoting, advertising or offering its DFS games, FanDuel shall Clearly and Conspicuously disclose to consumers material facts concerning the performance of FanDuel's users

where the marketing, promotion, advertisement, or offering makes specific or general statements about such performance.

44. In connection with marketing, promoting, advertising or offering its DFS games, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by FanDuel, or on any third-party website over which FanDuel has actual or constructive control that is engaged in marketing, promoting, advertising or offering its DFS games, FanDuel shall Clearly and Conspicuously disclose to consumers material facts concerning any representations of past winnings, average winnings, or expected performance or outcomes when such representations are made.

45. FanDuel shall Clearly and Conspicuously make available to consumers on its site and its Mobile App information about responsible play, including resources for users experiencing or concerned about compulsive or addictive gameplay (e.g., hotline(s) for compulsive gaming; self-exclusion options; and links to addiction counseling resources). In connection with marketing, promoting, advertising, or offering its DFS games, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by FanDuel, or on any third-party website over which FanDuel has actual or constructive control that is engaged in marketing, promoting, advertising or offering its DFS games, FanDuel shall Clearly and Conspicuously display such resources or Clearly and Conspicuously direct consumers to the page on its site that provides such resources. The location of such resources shall be communicated in each advertisement, landing page (where an ad links to a page through which the promotion or advertised product may be accessed) or other location where a user could easily identify it.

46. FanDuel, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the marketing, promotion, advertising, or offering of its DFS games, by means of an Endorsement, shall follow all FTC rules on endorsements.

47. FanDuel shall maintain a webpage that provides information about relevant rates of success of users in its contest offerings, specifically including but not limited to the performance of novice users (those who have entered fewer than 50 contests). This webpage shall be accessible from the FanDuel homepage and through any page where a user can enter a contest. The webpage shall also include, but not be limited to:

i. The percentage of financial winnings of FanDuel contests that are won by the top 1%, 5% and 10% of FanDuel users (as defined by net profits) over a 1 month, 3 month and 6 month time period.

ii. Statistics about the percentage of FanDuel players who are net winners and net losers over relevant time periods, including at least over a 1 week and 1 month time period. This information can be conveyed with regard to specific sports.

48. The obligations set forth in paragraphs 42-47, above, shall take effect 60 days from the execution of this Agreement.

49. FanDuel shall maintain records of all television, radio, print, and digital advertisements for a period of four (4) years from the date the advertisement is last disseminated and shall make such records available to the OAG upon request. Records shall include the actual advertisement and

date(s) and location(s) on which the advertisement appeared. FanDuel's obligation to maintain such records shall begin on the date this Agreement is executed.

50. FanDuel shall maintain records sufficient to substantiate all representations made in all marketing, promotion, or advertising materials for a period of four (4) years from the date the material is last disseminated. FanDuel shall make such substantiation available to the OAG upon request. FanDuel's obligation to maintain such records shall begin on the date this Agreement is executed.

IV. REQUIRED PAYMENTS

51. FanDuel shall pay the State of New York a settlement amount of $6 million (the "Settlement Amount") in penalties and costs, by wire transfer, to the State of New York, and addressed to the New York State Attorney General's Office, Bureau of Internet & Technology, 120 Broadway, 3rd Floor, New York, NY 10271.

52. Payment of the Settlement Amount shall be made in four payments on the following schedule:

i. $1 million on or before November 24, 2016.
ii. $1 million on or before November 24, 2017.
iii. $1 million on or before November 24, 2018.
iv. $3 million on or before November 24, 2019.

53. FanDuel agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax, directly or indirectly, for any portion of the payments that it shall make pursuant to this Agreement.

54. Any payments and all correspondence related to this Agreement must reference Settlement Agreement No. 16-170.

55. FanDuel submitted a Corporate Financial Statement, dated October 25, 2016, to the OAG documenting and certifying its financial circumstances under penalty of perjury. These documents contain FanDuel's highly confidential financial information which, if disclosed, would cause substantial injury to the competitive position of FanDuel, and the parties believe should be subject to an exemption under FOIL to the extent permitted by law. In the event a FOIL request is made, OAG will notify FanDuel so that FanDuel will have the opportunity to contest any such request.

56. In reliance on the representations made by FanDuel in its Corporate Financial Statement to the OAG, the OAG has agreed to accept the Settlement Amount in lieu of a higher amount.

57. In the event that FanDuel defaults on the monetary obligations set forth herein or fails to timely and properly make payments as set forth in paragraph 52, the OAG shall provide FanDuel thirty (30) days written notice, by first class mail, to cure such default or failure, and upon the failure of FanDuel to cure such default or failure, the OAG shall impose a penalty, which shall accrue monthly, of 5% of the total amount not paid.

V. MISCELLANEOUS TERMS

58. The OAG has agreed to the terms of this Agreement based on, among other things, the representations made to the OAG by FanDuel and their counsel. To the extent that any material representations are later found to be inaccurate or misleading, this Agreement is voidable by the OAG in its sole discretion. The OAG shall notify FanDuel of its finding of any inaccurate or misleading material representations and FanDuel shall have ten (10) days to respond to such notice prior to the OAG voiding this Agreement.

59. If the Agreement is voided or breached, FanDuel agrees that any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto are tolled from and after the date of this Agreement. In the event the Agreement is voided or breached, FanDuel expressly agrees and acknowledges that this Agreement shall in no way bar or otherwise preclude the OAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Agreement, against FanDuel, or from using in any way any statements, documents, or other materials produced or provided by FanDuel prior to or after the date of this Agreement.

60. FanDuel will execute and deliver, at the time of the execution and delivery of this Agreement, the accompanying Affidavit of Judgment by Confession (attached hereto as Exhibit A).

61. Pursuant to CPLR 3218(b), FanDuel further agrees to execute and deliver, thirty (30) months after its execution of this Agreement, a second Affidavit for Judgment by Confession, less any payments made by FanDuel pursuant to this Settlement Agreement prior to executing the Second Affidavit for Judgment by Confession. The failure or refusal to execute and return the Second Affidavit for Judgment by Confession within thirty (30) days of its being mailed to FanDuel shall constitute a default under this Agreement, in which event the OAG may file the first Affidavit for Judgment by Confession referenced above and seek judgment for the amount confessed, less any payments made by FanDuel pursuant to this Agreement prior to default.

62. In the event that FanDuel materially misrepresented the financial disclosures in paragraph 56, the OAG shall notify FanDuel of its intent to file and enter the applicable Confession of Judgment. FanDuel shall have ten (10) days to respond to such notice prior to the OAG filing and entering the Confession of Judgment.

63. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by FanDuel in agreeing to this Agreement.

64. FanDuel represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized. FanDuel and its agents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this paragraph affects FanDuel's (i) testimonial obligations

or (ii) right to take any legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party, including positions inconsistent with the OAG's findings stated herein. This Agreement is not intended for use by any third party in any other civil or administrative proceeding, court, arbitration, or other tribunal.

65. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties to this Agreement.

66. Nothing in this agreement shall be read to limit, prejudice, or otherwise affect the rights of any consumer to seek and recover damages or obtain other redress for any alleged injury arising from the subject of OAG's investigation or any facts stated herein.

67. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the OAG.

68. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

69. To the extent not already provided under this Agreement, FanDuel shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Agreement.

70. All notices, reports, requests, and other communications to any party pursuant to this Agreement shall be in writing and shall be directed as follows:

If to the OAG to:

Kathleen McGee
Bureau Chief
Bureau of Internet & Technology
Office of the New York State Attorney General
120 Broadway, 3rd Floor
New York, NY 10271

If to FanDuel, to:

Marc J. Zwillinger
ZwillGen PLLC
1900 M Street, NW, Suite 250
Washington, D.C. 20036
(202) 706-5202
marc@zwillgen.com

And

Matthew L. Biben
Partner
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
212.909.6606
mbiben@debevoise.com

71. Acceptance of this Agreement by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and FanDuel shall make no representation to the contrary.

72. Notwithstanding anything in this Agreement, if compliance with any provision of this Agreement would render compliance with any existing or future provision of New York or federal laws or regulations relating to the same subject matter impossible, then compliance with such provision of state or federal law or regulation shall be deemed compliance with the relevant provision of this Agreement. FanDuel shall provide written notice to the OAG within fifteen (15) days of its determination that compliance with a provision of this Agreement is rendered impossible by state or federal law or regulation.

73. This Agreement constitutes the entire agreement between the OAG and FanDuel and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Agreement.

74. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Dated: October 25, 2016
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: _____
Kathleen McGee, Esq.
Chief of the Bureau of Internet & Technology

FanDuel, Inc.

Dated: October 25, 2016
New York, New York

By: _____
Nigel Eccles

This Agreement has been reviewed by counsel, who also certifies that the FanDuel signatory above, NIGEL ECCLES, is duly authorized by FanDuel, Inc. to execute the same, and that the signature above is true and authentic:

_____ Dated: October 25, 2016

Matthew L. Biben
Debevoise & Plimpton

EXHIBIT "C"

Settlement Agreement
N.Y. Attorney General/DraftKings, Inc.
October 2016

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INTERNET & TECHNOLOGY

In the Matter of
DraftKings, Inc.

SETTLEMENT AGREEMENT

The Office of the Attorney General of the State of New York ("OAG") conducted an investigation, pursuant to New York State Executive Law § 63(12) and General Business Law §§ 349-50, of the practices of DraftKings, Inc. ("DraftKings"), a provider of Daily Fantasy Sports ("DFS") games. On November 10, 2015, the OAG issued a cease and desist letter informing DraftKings that its paid contests violated the law in New York State and that it must stop accepting entry fees from users within New York State. The letter also served as formal pre-litigation notice, indicating that the OAG would commence an enforcement action if DraftKings failed to abide by the law. On November 13, 2015, DraftKings filed a lawsuit against the OAG in Supreme Court, New York County ("Supreme Court") (Mendez, J.) seeking a declaratory judgment that its paid contests are legal under New York law and a temporary restraining order and preliminary injunction enjoining the OAG from taking any enforcement action against DraftKings. On November 16, 2015, the Supreme Court denied DraftKings's application for a temporary restraining order. The OAG filed its own action against DraftKings on November 17, 2015, alleging violations of Executive Law § 63(12), GBL §§ 349-50, and BCL § 1303 (the "Litigation"), and seeking a preliminary injunction enjoining DraftKings from accepting entry fees in New York.

On November 25, 2015, the Supreme Court heard argument on DraftKings's and the OAG's competing requests for a preliminary injunction. On December 11, 2015, the Supreme Court granted the OAG's motion for a preliminary injunction, enjoining DraftKings from accepting entry fees in New York, and denying DraftKings's competing motion to enjoin the OAG from taking any enforcement action against DraftKings. That same day, DraftKings filed an emergency application for interim relief and moved for a stay pending appeal. The Appellate Division, First Department granted an interim stay. The OAG filed an Amended Complaint on December 31, 2015.

On March 21, 2016, the OAG reached a partial provisional settlement with DraftKings ("Provisional Agreement") wherein DraftKings agreed to stop accepting entry fees in New York unless and until New York State expressly legalized paid DFS contests. In the event of express legalization, the OAG agreed to dismiss all but its false and deceptive advertising claims against DraftKings. On June 18, 2016, the New York State Legislature passed legislation to legalize and regulate DFS contests. The Governor signed the legislation on August 3, 2016.

This Settlement Agreement ("Agreement") resolves all remaining claims (the false and deceptive advertising claims) in the Litigation, and sets forth relief agreed to by the OAG and DraftKings (together, the "Parties").

OAG'S FINDINGS

Background

1. DraftKings is a leading provider of DFS games. DraftKings's DFS games enable players to pay upwards of $10,000 per entry for a chance to win jackpots of more than $1 million.

2. Founded in 2012, DraftKings existed for several years as a largely niche alternative to season-long fantasy sports. That changed in 2015, when DraftKings dramatically increased its spending on advertising and marketing. By late 2015, with the advertising campaign in full swing, DraftKings had over a quarter-million registered users in New York State.

3. In various television, radio, and digital marketing, and on its website, DraftKings misled consumers about key aspects of its games, including the advantages professional players had over others; the likelihood and ease of winning money playing its games; the ability of users to enter million-dollar contests for free; its "Deposit Bonus" promotion; and the addictive nature of its games.

DraftKings Misled Consumers About the Substantial Advantages High-Volume and Professional Players Had Over Other Players

4. Overall, DraftKings's advertising led viewers to believe everyone had the same chance of winning, with minimal investment of time, money or special tools. In reality, a small percentage of professional and high-volume players – making up the majority of winners – used research, software, and large bankrolls to win a disproportionate share of DFS jackpots.

5. For example, high-volume and professional players often scoured the Internet for the latest data on athletes, match-ups, and game conditions, using computer programs to automate this process, aggregate the data, and compile it into statistical models. These players used specialized computer programs and sophisticated hedging strategies to set their lineups, which often numbered in the hundreds. They also employed strategies that depended on having access to sufficient capital to enter numerous lineups into a single contest or across a series of contests.

6. High-volume players accounted for a disproportionate share of revenue for DraftKings. Consequently, at times, DraftKings modified its rules and its platform to suit the preferences of high-volume players.

7. For example, certain high-volume players, including professional players, used automated scripts that allowed them to easily remove and replace an athlete across hundreds of individual lineups simultaneously. High-volume and professional players also used scripts to target novice or unsuccessful players in head-to-head games. In July 2015, in an effort to accommodate the easier use of scripts by certain players, DraftKings changed a longstanding

policy disfavoring the use of scripts, which had nonetheless long been used by high-volume and professional players.

8. A McKinsey & Company study found that, on average, the top 6.3% of players participating in DraftKings contests involving Major League Baseball had a positive "return on investment" during the first half of the 2015 season, while, on average, the bottom 80% lost money. The study also found that 91% of DFS profits were concentrated in the hands of just 1.3% of players.

9. Additionally, in contrast to the high-volume and professional players, in 2013 and 2014, 89.3% of players who played on DraftKings lost money.

10. The advantages enjoyed by high-volume and professional players were not disclosed in DraftKings's advertising. These advantages were not easily attainable by novice or casual players, and gave DFS players able to use them a distinct edge in DFS contests.

DraftKings's Advertisements Gave False and Misleading Statistics About the Likelihood That Players Will Win

11. The fine print in certain DraftKings commercials also further deceived consumers about the chances that an average player will win money in its contests.

12. A disclaimer or legend on certain DraftKings advertisements provided a number purporting to reflect "average" winnings in its contests.

13. Neither the average winnings number nor the surrounding text accounted for, netted out, or acknowledged the losses, fees, or other costs borne by the player.

14. By ignoring the losses and required fees, including the up to 14% rake retained by DraftKings, the "winnings" calculations gave a misleading impression of the average net financial *success* of a DraftKings user.

15. One disclaimer, for example, stated that the "average user's winnings for the last 12 months: $1,263."

16. On average, DraftKings players were not net winners. They were net losers who spent more to enter contests than they recouped in contest winnings.

DraftKings's Advertisements Used False and Misleading Player Profiles and Endorsements

17. DraftKings based its appeal to consumers, in part, on profiles of purportedly ordinary people who played for personal enjoyment and won large jackpots. In this way DraftKings underscored its message that the "average guy" can win without special skills or a large investment of time or money.

18. Several DraftKings advertisements referred to winners as "Real People." These profiles were not representative of the performance of a casual or novice player, or indeed most players, and in fact falsely portrayed the featured winner as an unskilled or casual player.

19. One frequently aired commercial profiled "Peter Jennings," claiming he "won over $2 million bucks playing fantasy sports on DraftKings.com."

20. The advertisement failed to note that Jennings was a high-volume player who had previously worked in sports analytics. Nor did the advertisement explain that Jennings's winnings largely resulted from a single DraftKings jackpot in 2014 and he lost considerable amounts both before and after winning that jackpot. In fact, in 2013 and 2014, Jennings netted closer to $500,000—or one-quarter of the $2 million figure quoted in the advertisement.

21. DraftKings also misleadingly promoted its contests using endorsers who had undisclosed financial relationships with DraftKings. The endorsers encouraged consumers to enter DraftKings contests (including contests pitting consumers against endorsers) and provided advice through the DraftKings website and other media channels. DraftKings failed to disclose that the endorsers received compensation, equity stakes in DraftKings, and commissions for their endorsements.

22. By masking its financial relationship with endorsers, DraftKings created the false impression the endorsers represented independent and unbiased opinions of DraftKings. Far from it, the endorsers were compensated spokespeople for DraftKings.

DraftKings Promoted "Free" Million-Dollar Contest Entries that Were Not Free and Did Not Make Players Eligible for Million-Dollar Prizes

23. DraftKings routinely promoted its contests by offering a chance to enter contests for "free." The advertisements often displayed a promotional code, which players could purportedly input to "try it free," gain "free entry," or "Play Free," leaving a reasonable consumer with the impression that new players could enter a contest for free.

24. In operation, the entry was neither free nor did it make a player eligible for a million-dollar prize. Instead, a new player had to "deposit" funds into a DraftKings account in order to play for "free."

25. Virtually all advertisements featuring the "free" play promotion did not include any disclaimer seeking to place conditions, limitations, or restrictions on the "free" entry.[1]

26. These advertisements also left a reasonable consumer with the impression that, using the "free" entry promo code, the player could enter a contest to compete for a million-dollar prize.

[1] Early on, in 2013, certain DraftKings advertisements did briefly incorporate a fine-print disclosure stating "Free entry requires deposit." This disclaimer flashed too quickly, in a font too small, and too subtle in comparison to the prominent and repeated promises of "FREE" play, to put a reasonable consumer on notice of the requirement to transfer funds to DraftKings. By the 2013 football season and thereafter, DraftKings appears to have abandoned the disclaimer altogether.

The advertisements did not disclose that the "free" entry would be limited to beginning contests, where the value of top prizes was much lower than for the million-dollar contests.

27. For example, in one DraftKings television advertisement, a voiceover urged "try it free" while, on screen, a DraftKings winner displayed a giant check for $1 million. A voiceover promised viewers could "get free entry with promo code 'DEAL' in our $10 million Millionaire Maker event."

DraftKings Deceptively Promised to Match a Player's Initial Deposit

28. DraftKings marketed a "Deposit Bonus" promotion, which it depicted as affording new customers a chance to double or "match" initial deposits of up to $600 (in some instances DraftKings did not even qualify that the "match" only applied to the first $600 deposited, it simply promoted that it would "double" a player's deposit).

29. Examples of DraftKings's "Deposit Bonus" marketing include:

i. "Get a 100% deposit match up to $600,"
ii. "EXCLUSIVE LIMITED-TIME OFFER... 100% ONE TIME DEPOSIT BONUS," and
iii. "Deposit Now and We'll Double Your Cash!"
iv. "SIGN UP TODAY TO LOCK IN YOUR BONUSES...100% bonus up to $600!"

30. Based on these claims, a consumer would believe that depositing $600 in a DraftKings account would translate into $1,200 in immediately available funds, or that a deposit of any amount up to $600 would be doubled.

31. In practice however, DraftKings did not double or match the initial cash deposits of new users at the time they deposited their funds. Rather, users accrued or "earned" four cents for every dollar they spent to enter DraftKings contests, and these bonuses could be used solely to enter future DraftKings contests. Thus, a new user who enrolled in the "Deposit Bonus" promotion, deposited $600, and spent $600 entering DraftKings contests would receive a credit of just $24. To receive the full $600 worth of bonuses, a user enrolled in the "Deposit Bonus" promotion would need to spend $15,000 in entry fees.

32. In three key respects, DraftKings administered the "Deposit Bonus" promotion in a manner inconsistent with its marketing claims and the expectations of consumers.

33. First, a new DraftKings user received no bonus or other benefit upon deposit; DraftKings would only credit a new user's account after the user put some or all of that deposit directly at risk by entering it in a DraftKings contest.

34. Second, DraftKings did not immediately match the full amount deposited or spent with bonus money. The fact that DraftKings matched only 4% of the amount deposited was in direct conflict with the marketing claims DraftKings used to draw in new customers, and only

disclosed the reality in its "Frequently Asked Questions" section of its website. There, DraftKings described the "Deposit Bonus" as offering a bonus equivalent to only 4% of entry fees:

> The deposit bonus releases in increments of $1 for every 100 Frequent Player Points (FPP's) you earn. FPP's are earned when joining any paid contest on the site.[2]

35. Third, the bonuses were not equivalent to cash on a dollar-for-dollar or any other basis. According to DraftKings's "Frequently Asked Questions," the bonus credits could only be used to enter DraftKings contests, and the credits would expire after just four months.

36. In addition, from 2013 through mid-2015, DraftKings television advertisements featured no disclaimers that specifically related to the "Deposit Bonus" promotion and any rules that might apply.[3] DraftKings's radio and podcast advertisements for the "Deposit Bonus" lacked any disclaimers or other indications of additional terms or conditions about the bonus.

DraftKings Falsely Depicted Its Contests as Entertainment and Failed to Disclose Serious and Known Addictions Risks

37. DraftKings identified and targeted users with a propensity for gambling and addiction, but failed to disclose the risks of playing its contests or provide adequate safeguards.

38. Shortly after founding DraftKings, its CEO, Jason Robins, explained in a Reddit forum online that DraftKings existed in the "gambling space," offered a "mash[-]up between poker and fantasy sports," and made money in a way "identical to a casino." Similarly, in documents prepared for potential investors, DraftKings placed itself in the gambling sector. Moreover, DraftKings sought out and entered sponsorship agreements with various concerns popular with gamblers, including the World Series of Poker and the Belmont Stakes.

39. While targeting a population at risk for addiction and compulsive behavior, DraftKings marketed its games as commitment-free. One DraftKings advertisement, for example, offered "one day games so you're not locked in." DraftKings also routinely marketed its games as for "entertainment purposes."

40. For many players struggling with compulsive gaming disorders, DraftKings was neither commitment-free nor merely for entertainment purposes.

41. DraftKings routinely fielded requests and complaints from customers with addiction and compulsive gameplay issues who asked that their accounts be shut down. DraftKings's records show customer service inquiries from players featuring subjects such as: "Gambling Addict do

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[2] While the number of FPP's DraftKings assigned to entering a particular contest varied based on several factors, including the dollar amount of the wager and the contest type, the number of FPPs assigned equated roughly to a bonus of no more than 4% per wager.

[3] Later, DraftKings's television advertisements flashed insufficient, fine-print disclaimers across the footer that failed to put consumers on notice that the "Deposit Bonus" could be substantially less lucrative than advertised.

not reopen;" "Please cancel account. I have a gambling problem;" and "Gambling Addiction needing disabled account."

42. Despite targeting a vulnerable population and receiving complaints from customers, DraftKings never provided warnings about addiction or resources to help with compulsive behavior in any of its marketing.

43. Neither DraftKings's website nor its mobile applications provided players with resources to address problem gaming and addiction, or links to such resources hosted elsewhere.

VIOLATIONS

44. The OAG finds the foregoing conduct by DraftKings violated Executive Law § 63(12) and GBL §§ 349-50.

45. DraftKings neither admits nor denies the OAG's Findings 1–43 above.

46. DraftKings has agreed to this Agreement in settlement of the violations alleged above and in the Litigation.

47. The OAG finds the relief and obligations imposed by this Agreement appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Agreement pursuant to Executive Law § 63(12).

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties that:

PROSPECTIVE RELIEF

I. DEFINITIONS

48. For the purposes of this Agreement, the following definitions apply:

a. "Consumer" shall mean any actual or potential DraftKings user located in the State of New York.

b. "Consumer Protection Law" means New York Executive Law § 63(12), and General Business Law §§ 349 – 350.

c. "Clear and Conspicuous" or "Clearly and Conspicuously":

i. when referring to a written statement, disclosure, or any other information, means that such statement, disclosure, or other information, by whatever medium communicated, (a) is readily noticeable and readable (b) is in readily understandable language and syntax (c) is in a type size, font, appearance and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears, (d) is visually distinguished from the surrounding text, through techniques such as contrasting type,

font or color to the surrounding text of the same size. If such statement, disclosure, or other information is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in Direct Proximity to the information it modifies in a manner that is readily noticeable and understandable.

ii. As to statements, disclosures, or any other information made or presented orally, "Clear and Conspicuous" or "Clearly and Conspicuously" shall mean that such statements, disclosures, or other information shall be delivered (a) in readily understandable language and syntax; (b) in a volume, audibility, and cadence sufficient for the consumer to hear, comprehend, and understand the entire statement, disclosure or such other information; and (c) at a speed equal to or slower than the representation to which the statement or disclosure relates.

iii. As to statements, disclosures, or any other information made or presented on the Internet or other web-based applications or services, in addition to the other requirements stated herein, "Clear and Conspicuous" or "Clearly and Conspicuously" shall mean that such statements, disclosures, or any other information shall be placed in locations on the same webpage if doing so allows for the statements, disclosures, or other information to be readily noticeable and understandable. Such statements, disclosures, or other information shall be (a) sufficiently prominent to be readily seen, (b) in text that can be easily read and understood by the reader, and (c) placed on the webpage in a position in Direct Proximity to the offer, term or limitation.

If the statements, disclosures, or other information cannot be readily noticeable and understandable by placing them on the same webpage, then such statements, disclosures, or other information shall be placed on a webpage which is no more than one hyperlink from the webpage where the offer, term or limitation to which it relates appears. In such a situation where a hyperlink is used to lead to a disclosure, the link shall be (a) sufficiently prominent and readily seen, (b) in text that can be easily read and understood by the reader, and (c) placed on the same webpage where the offer, term or limitation to which is relates appears, and in a position in Direct Proximity to the offer, term or limitation.

Statements or disclosures made or presented via a mobile device will follow similar requirements for "Clear and Conspicuous" or "Clearly and Conspicuously" displays. Where practicable, statements or disclosures will be made on the same screen as the representations to which they relate. On mobile devices, statements or disclosures may also be provided via a readily noticeable and understandable link or as a clearly identified menu item containing such statements or disclosures, provided that the Mobile application directs consumers to this menu item through a disclosure that is displayed to all users prior to contest entry. For the avoidance of doubt, such direction, links or menu items shall Clearly and Conspicuously describe the content to which the consumer is being directed.

A disclosure of information is not Clear and Conspicuous if, among other things, it is obscured by the background against which it appears, or the net impression of the statement, disclosure, or other information is inconsistent with, contrary to, or in mitigation of the disclosure itself. Statements of limitation must be set out in Direct Proximity with the benefits described such that they are readily noticeable, readable and understandable or with appropriate

captions of such prominence that statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading.

d. "Direct Proximity" means that a term is disclosed immediately above, beneath or adjacent to the relevant contention.

e. "Endorsement" means any advertising message (including but not limited to verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

f. "Express Informed Consent" shall mean affirmative consent expressly indicated by a consumer to make a deposit or enter a contest after the Clear and Conspicuous disclosure of all material facts, terms and conditions of depositing money with DraftKings and/or entering a DraftKings contest (except that as to entering contests, all contest rules shall be disclosed in the normal prominent location for the posting of such rules and no separate independent express informed consent shall be required). A pre-checked box shall not be considered evidence of Express Informed Consent. In order to constitute Express Informed Consent, it shall also be required that the consumer performs additional affirmative actions as follows:

> For all written offers (including through the Internet or other web-based applications or services): the consumer must affirmatively sign, click a button or electronically sign in order for the consumer to deposit money with DraftKings. Immediately above such signature line, button or electronic signature, DraftKings shall Clearly and Conspicuously disclose material terms of any "Welcome Bonus" or similar program.

g. "Material fact(s)," "material term(s)," "material condition(s)," or any similar phrase or combination of words or phrases is any fact, condition or term that, if known and understood by a consumer, would have been important to that consumer's decision to deposit money or enter contests on DraftKings.

h. "Material limitation(s)" means a term or condition that necessarily affects a consumer's ability to obtain an offer as advertised.

II. INJUNCTIONS

49. DraftKings is permanently restrained and enjoined from falsely representing, expressly or by implication, the likelihood of success of a casual or novice player playing DraftKings's DFS games.

III. AFFIRMATIVE OBLIGATIONS

50. In connection with the marketing, promoting, advertising or offering of any promotion, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by DraftKings, or on any third-party website over which DraftKings has actual or constructive control that is engaged in marketing, promoting, advertising or offering any promotion, DraftKings shall:

i. Clearly and Conspicuously disclose material facts, terms and conditions of the promotion to consumers;
ii. Clearly and Conspicuously disclose to consumers material limitations to the promotion; and
iii. Obtain Express Informed Consent from any consumer who must deposit money to take advantage of the promotion.

51. In connection with marketing, promoting, advertising or offering its DFS games, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by DraftKings, or on any third-party website over which DraftKings has actual or constructive control that is engaged in marketing, promoting, advertising or offering its DFS games, DraftKings shall Clearly and Conspicuously disclose to consumers material facts concerning the performance of DraftKings' users where the marketing, promotion, advertisement, or offering makes specific or general statements about such performance.

52. In connection with marketing, promoting, advertising or offering its DFS games, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by DraftKings, or on any third-party website over which DraftKings has actual or constructive control that is engaged in marketing, promoting, advertising or offering its DFS games, DraftKings shall Clearly and Conspicuously disclose to consumers material facts concerning any representations of past winnings, average winnings, or expected performance or outcomes when such representations are made.

53. DraftKings shall Clearly and Conspicuously make available to consumers on its site and its Mobile App information about responsible play, including resources for users experiencing or concerned about compulsive or addictive gameplay (e.g., hotline(s) for compulsive gaming; self-exclusion options; and links to addiction counseling resources). In connection with marketing, promoting, advertising, or offering its DFS games, and/or displaying or offering of the same on any website that is owned, operated, and/or controlled by DraftKings, or on any third-party website over which DraftKings has actual or constructive control that is engaged in marketing, promoting, advertising or offering its DFS games, DraftKings shall Clearly and Conspicuously display such resources or Clearly and Conspicuously direct consumers to the page on its site that provides such resources. The location of such resources shall be communicated in each advertisement, landing page (where an ad links to a page through which the promotion or advertised product may be accessed) or other location where a user could easily identify it.

54. DraftKings, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the marketing, promotion, advertising, or offering of its DFS games, by means of an Endorsement, shall follow all FTC rules on endorsements.

55. DraftKings shall maintain a webpage that provides information about relevant rates of success of users in its contest offerings, specifically including but not limited to the performance of novice users (those who have entered fewer than 50 contests). This webpage shall be accessible from the DraftKings homepage and through any page where a user can enter a contest. The webpage shall also include, but not be limited to:

i. The percentage of financial winnings of DraftKings contests that are won by the top 1%, 5% and 10% of DraftKings users (as defined by net profits) over a 1 month, 3 month and 6 month time period.

ii. Statistics about the percentage of DraftKings players who are net winners and net losers over relevant time periods, including at least over a 1 week and 1 month time period. This information can be conveyed with regard to specific sports.

56. The obligations set forth in paragraphs 50-55, above, shall take effect 60 days from the execution of this Agreement.

57. DraftKings shall maintain records of all television, radio, print, and digital advertisements for a period of four (4) years from the date the advertisement is last disseminated and shall make such records available to the OAG upon request. Records shall include the actual advertisement and date(s) and location(s) on which the advertisement appeared. DraftKings' obligation to maintain such records shall begin on the date this Agreement is executed.

58. DraftKings shall maintain records sufficient to substantiate all representations made in all marketing, promotion, or advertising materials for a period of four (4) years from the date the material is last disseminated. DraftKings shall make such substantiation available to the OAG upon request. DraftKings' obligation to maintain such records shall begin on the date this Agreement is executed.

IV. REQUIRED PAYMENTS

59. DraftKings shall pay the State of New York a settlement amount of $6 million (the "Settlement Amount") in penalties and costs, by wire transfer, to the State of New York, and addressed to the New York State Attorney General's Office, Bureau of Internet & Technology, 120 Broadway, 3rd Floor, New York, NY 10271.

60. Payment of the Settlement Amount shall be made in four payments on the following schedule:

i. $1 million on or before November 24, 2016.
ii. $1 million on or before November 24, 2017.
iii. $1 million on or before November 24, 2018.
iv. $3 million on or before November 24, 2019.

61. DraftKings agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax, directly or indirectly, for any portion of the payments that it shall make pursuant to this Agreement.

62. Any payments and all correspondence related to this Agreement must reference Settlement Agreement No. 16-169.

63. DraftKings submitted a Corporate Financial Statement, dated October, 25, 2016, to the OAG documenting and certifying its financial circumstances under penalty of perjury. These documents contain DraftKings' highly confidential financial information which, if disclosed, would cause substantial injury to the competitive position of DraftKings, and the parties believe should be subject to an exemption under FOIL to the extent permitted by law. In the event a FOIL request is made, OAG will notify DraftKings so that DraftKings will have the opportunity to contest any such request.

64. In reliance on the representations made by DraftKings in its Corporate Financial Statement to the OAG, the OAG has agreed to accept the Settlement Amount in lieu of a higher amount.

65. In the event that DraftKings defaults on the monetary obligations set forth herein or fails to timely and properly make payments as set forth in paragraph 60, the OAG shall provide DraftKings thirty (30) days written notice, by first class mail, to cure such default or failure, and upon the failure of DraftKings to cure such default or failure, the OAG shall impose a penalty, which shall accrue monthly, of 5% of the total amount not paid.

V. MISCELLANEOUS TERMS

66. The OAG has agreed to the terms of this Agreement based on, among other things, the representations made to the OAG by DraftKings and their counsel. To the extent that any material representations are later found to be inaccurate or misleading, this Agreement is voidable by the OAG in its sole discretion. The OAG shall notify DraftKings of its finding of any inaccurate or misleading material representations and DraftKings shall have ten (10) days to respond to such notice prior to the OAG voiding this Agreement

67. If the Agreement is voided or breached, DraftKings agrees that any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto are tolled from and after the date of this Agreement. In the event the Agreement is voided or breached, DraftKings expressly agrees and acknowledges that this Agreement shall in no way bar or otherwise preclude the OAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Agreement, against DraftKings, or from using in any way any statements, documents, or other materials produced or provided by DraftKings prior to or after the date of this Agreement.

68. DraftKings will execute and deliver, at the time of the execution and delivery of this Agreement, the accompanying Affidavit of Judgment by Confession (attached hereto as Exhibit A).

69. Pursuant to CPLR 3218(b), DraftKings further agrees to execute and deliver, thirty (30) months after its execution of this Agreement, a second Affidavit for Judgment by Confession, less any payments made by DraftKings pursuant to this Settlement Agreement prior to executing the Second Affidavit for Judgment by Confession. The failure or refusal to execute and return the Second Affidavit for Judgment by Confession within thirty (30) days of its being mailed to DraftKings shall constitute a default under this Agreement, in which event the OAG may file the first Affidavit for Judgment by Confession referenced above and seek judgment for the amount confessed, less any payments made by DraftKings pursuant to this Agreement prior to default.

70. In the event that DraftKings materially misrepresented the financial disclosures in paragraph 63, the OAG shall notify DraftKings of its intent to file and enter the applicable Confession of Judgment. DraftKings shall have ten (10) days to respond to such notice prior to the OAG filing and entering the Confession of Judgment.

71. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by DraftKings in agreeing to this Agreement.

72. DraftKings represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized. DraftKings and its agents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this paragraph affects DraftKings's (i) testimonial obligations or (ii) right to take any legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party, including positions inconsistent with the OAG's findings stated herein. This Agreement is not intended for use by any third party in any other civil or administrative proceeding, court, arbitration, or other tribunal.

73. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties to this Agreement.

74. Nothing in this agreement shall be read to limit, prejudice, or otherwise affect the rights of any consumer to seek and recover damages or obtain other redress for any alleged injury arising from the subject of OAG's investigation or any facts stated herein.

75. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the OAG.

76. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of

the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

77. To the extent not already provided under this Agreement, DraftKings shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Agreement.

78. All notices, reports, requests, and other communications to any party pursuant to this Agreement shall be in writing and shall be directed as follows:

If to the OAG to:

Kathleen McGee
Bureau Chief
Bureau of Internet & Technology
Office of the New York State Attorney General
120 Broadway, 3rd Floor
New York, NY 10271

If to DraftKings, to:

Joshua Schiller
Boies Schiller & Flexner
575 Lexington Avenue
New York, NY 10022
JiSchiller@BSFLLP.com

79. Acceptance of this Agreement by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and DraftKings shall make no representation to the contrary.

80. Notwithstanding anything in this Agreement, if compliance with any provision of this Agreement would render compliance with any existing or future provision of New York or federal laws or regulations relating to the same subject matter impossible, then compliance with such provision of state or federal law or regulation shall be deemed compliance with the relevant provision of this Agreement. DraftKings shall provide written notice to the OAG within fifteen (15) days of its determination that compliance with a provision of this Agreement is rendered impossible by state or federal law or regulation.

81. This Agreement constitutes the entire agreement between the OAG and DraftKings and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Agreement.

82. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Dated: October 25, 2016
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: _____
Kathleen McGee, Esq.
Chief of the Bureau of Internet & Technology

DraftKings, Inc.

Dated: October 25, 2016
New York, New York

By: _____

This Agreement has been reviewed by counsel, who also certifies that the DraftKings signatory above, Jason Robins, is duly authorized by DraftKings, Inc. to execute the same, and that the signature above is true and authentic:

_____
Joshua Schiller
Boies, Schiller & Flexner LLP

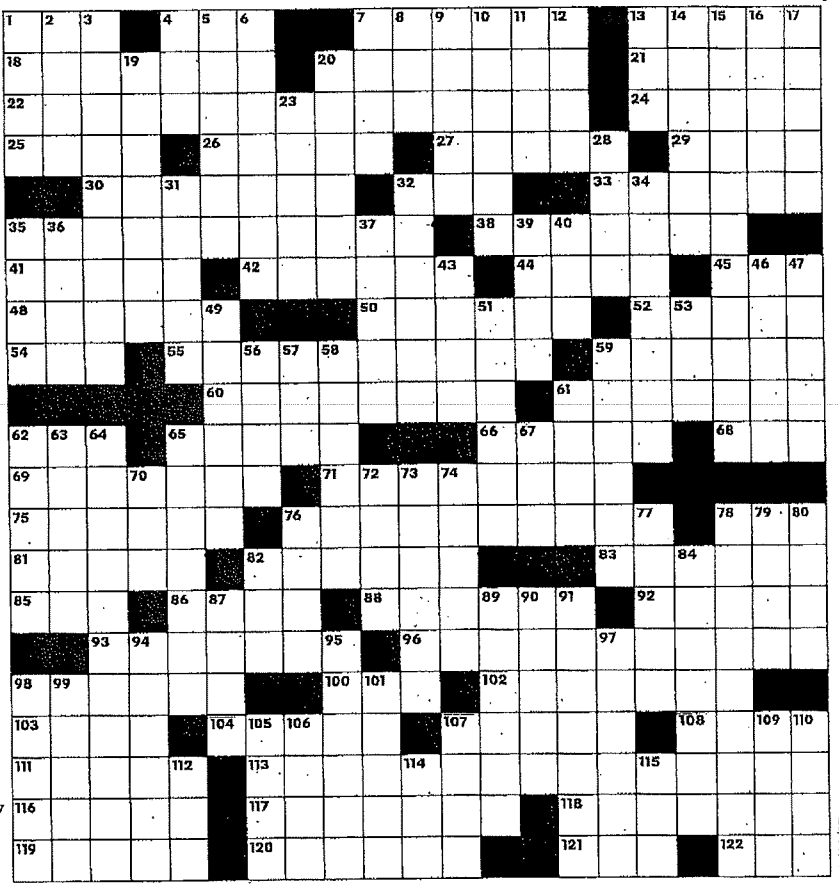
Dated: October 25, 2016

EXHIBIT "D"

New York *Times* Crossword
December 31, 2017

RING OUT THE OLD, RING IN THE NEW

By John Lampkin



12/31/17

ACROSS

1 Have
4 New Deal org.
7 Motley
13 "Dukes"
18 V.I.P. list
20 Lamborghini rival
21 Arctic people
22 *Result of a French powdered-drink shortage?*
24 1959 Ritchie Valens hit, with "La"
25 Hook's right hand
26 Hägar the Horrible's hound
27 Short rows
29 Nincompoop
30 Secures at sea
32 Fig. checked during re-tire-ment?
33 Legends in the automotive world
35 *List of things said by Siri?*
38 1920s-'30s Yankees nickname
41 Deceive
42 Sights at charging stations
44 Thingamajig
45 Softhead
48 What an infielder might field a ball on
50 "Reckon so"
52 "Savvy?"
54 ___ Conference
55 *Washington, D.C.?*
59 Was beaten by
60 Neighbors of Egyptians
61 Attribute to, in a way
62 Three-foot 1980s sitcom character
65 Grammy winner ___ Elliott
66 Cobbler, at times
68 Cowboy Rogers
69 Giant
71 Not just focused
75 Butting heads
76 *Struggling sci-fi writer's plea for recognition?*
78 Blade runner?
81 Hip-hop's Shakur
82 Attend without a date
83 Country that Menorca is part of
85 If you have it, you might know what this answer is without reading the clue
86 Middle of a simile
88 Quenched
92 "Give me ___"
93 Some 1960s radicals
96 *Treat that gives a glowing complexion?*
98 Chap
100 Work as a branch manager?
102 Flag
103 Scott of "Happy Days"
104 Nasser's successor as Egypt's leader
107 "What's Opera, Doc?" antagonist
108 Film director ___ C. Kenton
111 Canon competitor
113 *Weeklong Irish vacation?*
116 Gross
117 Like some turns
118 Chose to take part
119 What if, informally
120 ___ performance
121 Book before Esther: Abbr.
122 Neuron's ends?

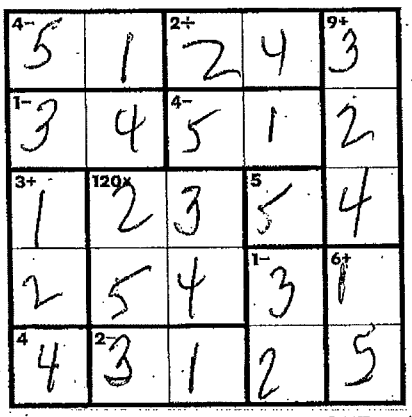
DOWN

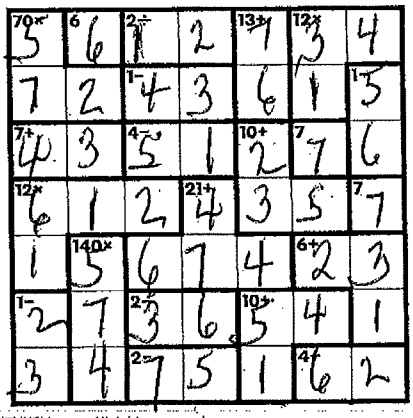
1 "Wise" sorts
2 "Pow!"
3 Result of a haymaker, maybe
4 1/20 of a ton: Abbr.
5 Pure
6 Couple
7 Torn
8 Dadaist Jean
9 Wimbledon surface
10 Archaeological treasure trove
11 "Nessun dorma," for one
12 Drift
13 Statement made while crossing the fingers, maybe
14 Like the three men of the "Rub-a-dub-dub" nursery rhyme
15 *One having trouble with basic arithmetic?*
16 Neighbor of the talus
17 Much of a sports recap
19 Good hunting skill
20 Some Guinness Book records
23 Lamp polisher's surprise?
28 "Quién ___?"
31 Batch of Brownies?
32 Harass incessantly
34 *Photog's bagful?*
35 Feature of Devonshire cream
36 Article in Der Spiegel
37 "March comes in like ___ ..."
39 Cottonmouth's warning
40 Targets in "Men in Black," informally
43 Stars
46 Childish retort
47 Indiana's state flower
49 Puts forth
51 Historic Mesopotamian city
53 Wand material in the Harry Potter books
56 Thick and green
57 Merchandise: Abbr.
58 Artificial silks
59 Grow feathers
61 Like the French sky
62 Colorful quartz
63 ___ position
64 *Some loose dancing?*
65 *Godfather after being double-crossed?*
67 Kyrgyz city
70 Panhandle state: Abbr.
72 Action in FanDuel and DraftKings
73 Close tightly
74 "King Lear" role
76 "The Last Days of Pompeii" heroine
77 ___ bin Laden
78 Legitimate business practices
79 Last Stuart queen
80 Kind of alphabet
82 Moo goo ___ pan
84 "Sh," "th" or "ou"
87 1974 C.I.A. spoof
89 Big name in test prep
90 Opposite side
91 Makes a meal of
94 Apple app for viewing reading material
95 Polish, e.g.
97 Green
98 Heeds
99 Eagerly accept
101 County in New Mexico or Colorado
105 Court legend Arthur
106 Eldest member of an organization
107 Falco of "The Sopranos"
109 The Eagles' "___ Eyes"
110 Forever and ever
112 December 31: Abbr.
114 D.C.-based media giant
115 1st, 2nd, 3rd ... ___

Puzzles Online: Today's puzzle and more than 9,000 past puzzles, nytimes.com/crosswords ($39.95 a year). For the daily puzzle commentary: nytimes.com/wordplay.

KENKEN

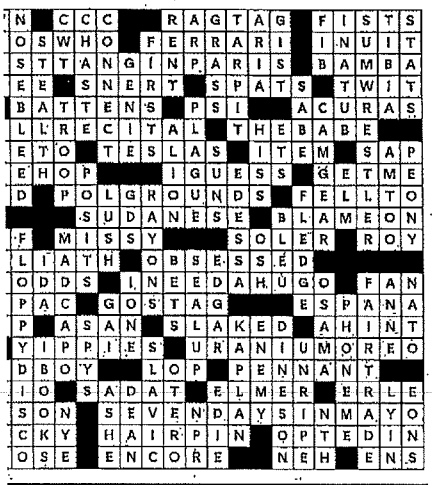
Fill the grid with digits so as not to repeat a digit in any row or column, and so that the digits within each heavily outlined box will produce the target number shown, by using addition, subtraction, multiplication or division, as indicated in the box. A 5x5 grid will use the digits 1–5. A 7x7 grid will use 1–7.



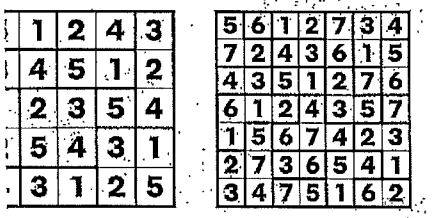


wers to puzzles of 12.31.17

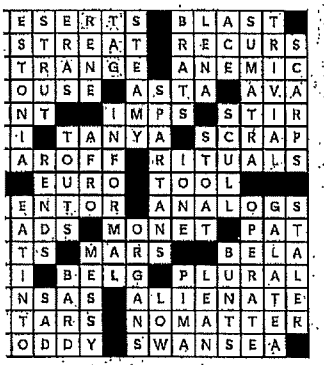
OUT THE OLD, RING IN THE NEW



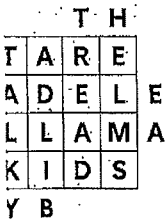
KEN



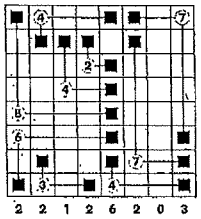
S AND ANAGRAMS



JECTORS



ELBOW ROOM



ers to puzzle on Page 54

LING BEE

imactic, claimant (3 points each). Also: Acclaim, nac, animal, calman, clalm, climactic, climatic, :al, lamina, limit, llama, mallman, maintain, mamma, mal, mammalian, manla, maniac, maniacal, :, manila, manna, manta, mantilla, militant, militia, man, mimic, minicam, minim, minima, minimal; ıl. If you found other legitimate dictionary words in eehive, feel free to include them in your score.

Subway

(Continued from Page 53)

you can see it: a brightly lit, newly renovated transit hub, providing the density needed for retail stores, office space and government and academic institutions, bringing new economic energy to the neighborhood and — while we're imagining things — a much better subway for the people who live in East New York.

The revitalized blocks around Broadway Junction — desirable to people with more money, affordable to people with less — would reduce spatial inequality and provide current residents new jobs. And with a faster, more reliable subway, those same residents could also commute more quickly not just to Manhattan but to hospitals, nursing homes, health care clinics and community colleges in the outer boroughs, the source of a lot of the city's more recent job growth. In New York, transit dictates opportunities.

The case for the subway is the case for mobility: physical mobility, economic mobility, social mobility. The business leaders, politicians and engineers who made the subway all those years ago understood that promise, and it remains the most profound message of the system even in its decline: The city *can* be built, and the people *can* come, and they *can* thrive — millions of them, then millions more.

That revelation has sustained us for more than a century, and some among us still see within our broken subway the stubborn glimmers of genius. When Max Diamond was a preschooler in Park Slope in the late 1990s, he turned his wooden train set into an exact replica of his local line, complete with all four tracks and the accurate location of each switch. By the time he was 8, he could identify and describe in detail all the different types of cars in the subway system. By the time he was 11, he knew the track layout of the entire system, not just the different stops on the different lines, but the hundreds of places where the tracks connect and the precise locations of the multitude of switches and signals. In the eighth grade, he started his own YouTube channel, where his subway videos, which he posts under the handle Dj Hammers, made him something of a celebrity among subway buffs.

In 2016, Diamond was hired by the M.T.A. as a paid intern, and at 21, he now crunches numbers in its performance-analysis unit while he works toward an economics degree at the City College of New York. We met one fall afternoon at the Fulton Street station in Manhattan, just a short walk from the M.T.A.'s headquarters, and boarded a Brooklyn-bound J train — an R42, he said, dating to 1969. We got on the first car, moving quickly to the large picture window at the front of the train, as has been Diamond's custom since he was a toddler, and wended our way through the tunnels beneath Lower Manhattan before emerging into the fading sunlight on the elevated tracks across the Williamsburg Bridge.

Like most regular riders, I tend to think of the subway as a necessary evil, the least worst way to get where I'm going, which made it a little disorienting to spend time with someone who rides the subway for fun. But in its early years, hundreds of thousands of people did just that every Sunday. According to the historian Clifton Hood, it was called "doing the subway." Diamond calls it "railfanning."

The subway is a very different sort of marvel today. What's miraculous at this point is that it still works at all. The fact that it does, that even after decades of neglect it is still somehow managing to carry New York's economy on its back, may be the best argument for giving it everything it needs, and then a whole lot more.

And what is the alternative?

Here's one possible scenario: New York won't die, but it will become a different place. It will happen slowly, almost imperceptibly, for years, obscured by the prosperity of the segment of the population that can consistently avoid mass transit. But gradually, an unpleasant and unreliable subway will have a cascading effect on New Yorkers' relationship with their city. Increasingly, we will retreat; the infinite possibilities of New York will shrink as the distances between neighborhoods seem to grow. In time, businesses will choose to move elsewhere, to cities where public transit is better and housing is cheaper. This will depress real estate values, which will make housing more affordable in the short term. But it will also slow growth and development, which will curtail job prospects and deplete New York's tax base, limiting its ability to provide for citizens who rely on its public institutions for opportunity. The gap between rich and poor will widen. As the city's density dissipates, so too will its economic energy. Innovation will happen elsewhere. New York City will be just some city.

That doesn't have to happen. The subway still exists, and the people who operate it still bring a kind of subtle genius to their work. As we rode deeper into Brooklyn, Diamond told me about something he had seen the night before. He had been monitoring the Yankees' playoff game on the internet, not because he cares about baseball but because the heavy crowds during the postseason often spur rare service patterns.

His instinct was right. "Trains started at Yankee Stadium and went down the D line to 36th Street, then switched over to the M line to Coney Island, then continued through the Coney Island terminal, before switching to the Q line to Brighton Beach," Diamond told me. This sort of move wouldn't be possible in most other cities, where subway lines operate independently, but in New York they overlap and intersect, making a single, cohesive, interchangeable whole. "It was actually pretty brilliant," he said in a reverent tone, as the blue sky in front of us began to darken. ◆

EXHIBIT "E"

2016 Annual Report of N.Y. Gaming Commission

Office of Interactive Fantasy Sports - 2016 Annual Report

Calculation of NYS Resident Percentage:	
Total Entry Fees from NYS Locations	$147,146,185
Total Entry Fees from all Players	$1,497,313,561
NYS Resident Percentage	9.8%

Gross Revenue:	
Total Entry Fees from all Players	$1,497,313,561
Total Winnings Paid Out to all Players	$1,344,233,021
Gross Revenue	$153,080,540
Gross Revenue after NYS Resident Percentage (subject to tax)	$15,125,955

Tax & Other Adjustments:	
Tax on NYS Gross Revenue [1]	$2,271,820
NYS Additional Tax [2]	$66,787
Total Monthly and Additional Tax	$2,338,607
Forfeited Prizes	$0
Adjustments (Errors, Penalty, Interest, Audit)	$0
Total Tax and Other Adjustments	$2,338,607

Player Account Information:	
Number of registrants reporting	9
Number of Accounts Held by Authorized Players	14,964,725
Number of Accounts Held by Highly Experienced Players	242,989
Number of New Accounts Established in the Preceding Year	1,494,333
Number of Accounts Permanently Closed in the Preceding Year	112,918
Total Players that Requested to Exclude Themselves from Contests	392

1. Gross revenue totals represent entry fees from all players less winnings paid out to players. In the event that a registr (winnings paid out exceed entry fees collected) the monthly tax is zero. Positive monthly gross revenue is taxed at 15%.

2. The NYS Additional Tax of 0.5% has an annual cap of $50,000 which was prorated for FY 2016/17 due to the August

3. The Commission first authorized entities to conduct fantasy sports on 8/22/16, therefore figures shown are for the peri

4. Data is shown in aggreggate for all 9 registrants, however not all 9 registrants reported for the entire period.

5. All figures reported by the registrants are unaudited and subject to change.