THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Nigel John Eccles, Lesley Jayne Ross Eccles, Thomas Gordon Griffiths, Robat Jones, Chris Stafford, Ashek Ahmed, Andrew Allan, Alexandra Amos as personal representative of the Estate of Jay Amos, James Andrews, Jeannice Angela, Ken Berman, Alex Bird, Duncan Blair, Cameron Boal, Ehi Borha, Jesse Boskoff, Geoff Bough, Michael Branchini, Daniel Brown, Kelli Buchan, Charlene Burns, William Carroll, Dave Cavino, Shree Chowkwale, Hugh Cole-Baker, Coral House Services Limited, Chris Corbellini, Jim Croft, Cyrus David, Davidson Family Revocable Trust, Robert Del Papa, James Doig, Ryan Doner, Kevin Dorren, Payom Dousti, Carl Ekman, F Residual LLC, Ryan Faber, Jason Faria, Victoria Farquhar, Rory Fitzpatrick, Adriana Estrada Genao, Mitchell Gillespie, Alan Goldsher, Will Green, Melanie Grier, Justin Hanke, Ryan Hansen, Neil Harris, Peter Henderson, Matthew Hevia, Andrew Heywood, Steven Holmes, Justin M. Hume, Greg Humphreys, Tim Jackson, Cory Jez, Thanyaluk Jirapech-umpai, Devashish Kandpal, Michael Kane, Alan Karamehmedovic, Marcus Kelman, David Kerr, Galina Kho, Dylan Kidder, Sarah Killarney-Ryan, Allan Kilpatrick, Ali King, Steven King, David Knapp, Mike Kuchera, Angela Romano Kuo, Jesse Lambert, Diomira Lawrence, John Lightbody, Frank LoCascio, Andy Love, Kristen Lu, Gary Ma, Kevin MacPherson, Max Manders, John Mangan, Sunjay Mathews, Caroline McDowall, Julie McElrath (Anderson), Kevin McFlynn, Eileen McLaren, Martin McNickle, Dan Melinger, Andrew Mellicker, Rayna Mengel, Matt Millen, Josh Moelis, Vince Monical, Jen Mordue, Eilidh Morrison, Simon Murdoch, Anders Murphy, Eoin Murphy, Andrew Murray, Matthew Musico, James Newbery, Owen O'Donnell, Xavier Oliver-Duocastella, Mark Peters, Michael Peterson, Jeremy Pippin, Richard Melmon Trust, Thomas Richards, Shawn Rinkenbaugh, Ian Ritchie, Justine Sacco, Martin Scott, Nicholas Sharp, Scott Shay, Jake Silver, Thomas Smythe, Drew Spencer, Dan Spiegel, Keith Sterling, David Stess, Varun Sudhakar, John Sutherland, Warrick Taylor, Stuart Tonner, John Venizelos, Kyle Wachtel, Lynne Wallace, Walleye Investments LLC, Brendan Waters, Skye Welch, Michael Williams and Phyllis L. Jones, as	Index No. 651223/2020 IAS Part 48 Justice Andrea Masley **SECOND AMENDED COMPLAINT**

Personal Representatives of the Estate of Mark Williams, Ross Wilson, Pawel Witek, Brett Woltz, Kristian Woodsend, Kris Young, and Alexander Zelvin,

Plaintiffs,

v.

Shamrock Capital Advisors, LLC, Shamrock Capital Growth Fund III, LP, Shamrock FanDuel Co-Invest LLC, Shamrock FanDuel Co-Invest II, LP, KKR & Co., Inc., Fan Investor Limited, Fan Investors L.P., Michael LaSalle, Edward Oberwager, Andrew Cleland, Matthew King, Carl Vogel, David Nathanson, Fastball Holdings LLC, Fastball Parent 1 Inc., Fastball Parent 2 Inc., PandaCo, Inc., FanDuel Inc., and FanDuel Group, Inc.,

Defendants.

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INTRODUCTION

1. Plaintiffs are the founders, employees, and early investors who built FanDuel Ltd. from an obscure Scottish company into one of the preeminent brands in sports gaming in the United States. Each owned common shares and options in FanDuel.

2. Immediately following a landmark decision from the United States Supreme Court that cleared the way for states to legalize sports gambling, FanDuel entered into a merger with a European sports betting company known as Paddy Power Betfair. FanDuel, a market leader in daily fantasy sports, had millions of registered users in the United States and a brand name as recognizable as sports media giant ESPN. Paddy Power Betfair had extensive experience in bookmaking and managing sports gambling in Europe, Australia, and elsewhere. Combined, the two companies were perfectly poised to capitalize on the Supreme Court's decision and the burgeoning market for sports gambling in the United States. The enormous value created by the merger should have been shared by all of FanDuel's shareholders.

3. The merger was not structured as a cash deal where FanDuel's shareholders would receive an immediate payout. Instead, it was a stock transaction where FanDuel and its shareholders would receive an approximate 40% ownership interest in a new merged company. Consequently, the true value of what FanDuel's shareholders received in the merger lay in the on-going investment it represented—an investment in a company that was perfectly situated to capture share in a nascent market conservatively estimated by FanDuel itself to be worth billions.

4. Defendants are, variously, late-stage institutional investors in FanDuel (with the power to appoint board members), FanDuel directors beholden to those institutions, and the entities those institutional investors and directors created to effectuate their scheme.

5. Through a series of wrongful acts set forth more fully below in the detailed allegations of this Complaint, Defendants secured for themselves and other preferred shareholders

100% of FanDuel's equity in the new merged company along with the massive return it represented. In turn, Defendants completely wiped out FanDuel common shareholders' interests in the company that they had built into a billion-dollar enterprise, and excluded FanDuel's founders, employees, and early investors from any on-going investment in the newly merged company.

6. Defendants principally conspired to assign an artificially low value to the 40% equity interest in the merged company that FanDuel and its shareholders received in the merger. The number Defendants put on FanDuel's 40% interest was not based on any arms-length negotiation, independent appraisal, or even *any* actual valuation of the merged company itself. Had FanDuel's board of directors fairly acknowledged the enormous value of the shares in the newly merged company that FanDuel received, FanDuel's common shareholders (like Plaintiffs) would have gotten shares in the newly merged company and shared in the upside of the U.S. sports gambling market alongside the Defendants.

7. In furtherance of this scheme, and among other things described in greater detail in this Complaint, Defendants:

- Created in others and themselves undisclosed conflicts of interest upon which they acted;
- Entered into side deals and secret compensation arrangements designed to secure cooperation from directors, FanDuel employees, third parties and other shareholders who otherwise would have had an economic incentive to demand a fair and accurate valuation of FanDuel's interest in the new merged entity;
- Instructed the investment bank working on behalf of FanDuel specifically *not* to conduct a valuation of the consideration FanDuel received in the merger or render a fairness opinion, either of which would have unveiled the artificial and fraudulent valuation that was central to Defendants' scheme;
- Ignored financial models, projections, analyses and other data that Defendants themselves created and refined that showed that the number put on FanDuel's 40% interest in the new merged company

by its board of directors was a lie, and that FanDuel's interest was worth billions;

- Placed a self-serving number on FanDuel's 40% interest in the new merged company that was equivalent to the priority and entitlements of one class of shareholders when distributing the merger proceeds, in order to benefit themselves and FanDuel's other preferred shareholders at the expense of FanDuel's common shareholders;

- Arranged for self-interested preferred shareholders and their representatives to control the negotiations with Paddy Power Betfair and thereby insert agreements and provisions in transaction documents that disguised the non-arms-length nature of the "share price" used to justify the artificially low value Defendants ascribed to the merger proceeds;

- Modified FanDuel's Articles of Association to further Defendants' scheme and expand Defendants' power and control over the merger transaction without authority to do so, or satisfying the requirements of the Articles to make such changes;

- Created shell corporations to enter into non-arm's length transactions designed to shield Defendants' ill-gotten gains from FanDuel's common shareholders, the obligations set forth in FanDuel's Articles, and the fiduciary obligations that accompanied them.

8. Under the laws of New York and Scotland, this conduct is wrongful and actionable in a number of ways, including through breaches of fiduciary duties owed to FanDuel's common shareholders, oppression of FanDuel's minority shareholders, unlawful means conspiracy, knowingly assisting and/or aiding and abetting breaches of fiduciary duty, knowingly and unjustly receiving the proceeds of those breaches, breaches of contract, fraud, and the issuance of secret commissions or bribes.

9. As a result of Defendants' wrongful conduct, common shareholders in FanDuel—including the people who founded it, key employees who built it, and early-stage investors who supported it—received nothing for their investments in the Company. Meanwhile, Defendants took more than $4 billion, with some individual directors personally pocketing more than $100 million.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this dispute under the New York Constitution, N.Y. Const. Art. 6, § 7(a), Judiciary Law, N.Y. Jud. Law § 140-b, and the Uniform Civil Rules for the Supreme and the County Court, § 202.70. The principal claims in this action involve breaches of fiduciary duty and statutory or common law violations arising out of business dealings for which the amount in dispute, exclusive of punitive damages, interests, costs, disbursements, and counsel fees, is greater than $500,000.

11. This Court has personal jurisdiction over Defendants under Civil Practice Law and Rules ("CPLR") §§ 301 and 302. As explained in detail below, many of the Defendants reside in New York or, in the case of the corporate Defendants, are authorized to transact business in this state. Defendants not domiciled in New York engaged in transactions within the state that gave rise to this action. *See* N.Y. Bus. Corp. § 1314(b), CPLR § 302(a).

12. Venue is proper in this Court under CPLR § 503 because, as described below, at least one of the parties resides in New York County. In addition, a substantial part of the events giving rise to the claims occurred in New York County. Defendants negotiated, executed, and celebrated the Paddy Power Betfair merger in New York. And, on information and belief, nearly all discussions by and among Defendants on the exercise of KKR and Shamrock's drag along right (discussed below), the value of the FanDuel shareholders' 40% interest in the new merged company, and the distribution of that interest under FanDuel's Articles of Association, occurred either in New York or on phone calls with New York participants.

13. Moreover, New York is the most convenient venue for this dispute. A majority of the Defendants reside and/or conduct business in the state. Although FanDuel was incorporated in Scotland, its headquarters has been in New York since 2011. Most of FanDuel's staff and executive team were located in New York. Board meetings were held in New York throughout 2017 and 2018,

and teleconference board meetings, of which there were approximately eight a year, typically included at least one New York participant. New York was where the officers and directors of FanDuel directed, coordinated, and controlled the Company's activities.

14. FanDuel's business also had a strong nexus to New York. Approximately 97% of FanDuel's revenue was derived from the United States, with New York customers accounting for 10-15% of the Company's total revenue. Indeed, by 2015, FanDuel had over 250,000 New York customers. In terms of operations, FanDuel maintained its bank accounts in the U.S. and operated its website and mobile applications on U.S. servers. And FanDuel has acknowledged its strong nexus to New York by designating New York law as controlling its terms of service.

THE PARTIES

I. Plaintiffs

15. Plaintiff Nigel John Eccles resides in Mamaroneck, New York. He is a co-founder of FanDuel and was the Company's Chief Executive Officer and a Director until his departure in November 2017. At the time of FanDuel's merger with Paddy Power Betfair, Nigel Eccles owned 282,842 FanDuel common shares.

16. Plaintiff Lesley Jayne Ross Eccles resides in Mamaroneck, New York. She is a co-founder of FanDuel and was the Company's Executive Vice President of Marketing until June 2016. She then served as a Director of FanDuel until August 2017. At the time of FanDuel's merger with Paddy Power Betfair, Lesley Eccles owned 72,734 FanDuel common shares.

17. Plaintiff Thomas Gordon Griffiths resides in Carlsbad, California. Griffiths is a co-founder of FanDuel and was the Chief Product Officer of the Company until his departure in December 2017. Griffiths was also a Director of FanDuel until his resignation from the Company's board in August 2017. At the time of FanDuel's merger with Paddy Power Betfair, Griffiths owned 154,980 FanDuel common shares.

18. Plaintiff Robat Jones resides in North Berwick, Scotland. Jones is a co-founder of FanDuel and was Executive Vice President of Design until his departure in December 2017. At the time of FanDuel's merger with Paddy Power Betfair, Jones owned 72,566 FanDuel common shares.

19. Plaintiff Chris Stafford resides in Edinburgh, Scotland. Stafford is a co-founder of FanDuel and was the Company's Head of Technology before his departure in 2016. At the time of FanDuel's merger with Paddy Power Betfair, Stafford owned 72,566 FanDuel common shares.

20. Plaintiffs Ashek Ahmed, Jeannice Angela, Ehi Borha, Daniel Brown, Dave Cavino, Chris Corbellini, Cyrus David, Jason Faria, Adriana Estrada Genao, Will Green, Matthew Hevia, Devashish Kandpal, Alan Karamehmedovic, Galina Kho, Dylan Kidder, Mike Kuchera, Angela Romano Kuo, Frank LoCascio, Gary Ma, Sunjay Mathews, Dan Melinger, Rayna Mengel, Shawn Rinkenbaugh, Jake Silver, Dan Spiegel, David Stess, and Varun Sudhakar are former employees or agents of FanDuel who owned FanDuel common shares, vested options to purchase FanDuel common shares, or both, at the time of FanDuel's merger with Paddy Power Betfair and who reside in New York State.

21. Plaintiffs Alexandra Amos as personal representative of the estate of Jay Amos (Fort Lauderdale, Florida), James Andrews (Glasgow, United Kingdom), Ken Berman (Brookline, Massachusetts), Alex Bird (Edinburgh, United Kingdom), Duncan Blair (Edinburgh, United Kingdom), Cameron Boal (Glasgow, United Kingdom), Jesse Boskoff (Austin, Texas), Geoff Bough (King of Prussia, Pennsylvania), Michael Branchini (Montvale, New Jersey), Kelli Buchan (Edinburgh, United Kingdom), Charlene Burns (London, United Kingdom), William Carroll (Indianapolis, Indiana), Shree Chowkwale (San Diego, California), Hugh Cole-Baker (Edinburgh, United Kingdom), Coral House Services Limited (Glasgow, United Kingdom), Jim Croft (Musselburgh, United Kingdom), Robert Del Papa (Bakersfield, California), James Doig (Edinburgh, Scotland), Ryan Doner (Hoboken, New Jersey), Payom Dousti (Kenmore, Washington), Carl

Ekman (East Saltoun, United Kingdom), Ryan Faber (Westport, Connecticut), Victoria Farquhar (Edinburgh, United Kingdom), Rory Fitzpatrick (Edinburgh, United Kingdom), Mitchell Gillespie (Austin, Texas), Alan Goldsher (Chicago, Illinois), Melanie Grier (Edinburgh, United Kingdom), Justin Hanke (Knoxville, Tennessee), Ryan Hansen (Tinton, New Jersey), Neil Harris (San Diego, California), Peter Henderson (Edinburgh, United Kingdom), Andrew Heywood (Edinburgh, United Kingdom), Steven Holmes (Edinburgh, United Kingdom), Justin M. Hume (Austin, Texas), Greg Humphreys (Charlottesville, Virginia), Cory Jez (Salt Lake City, Utah), Thanyaluk Jirapech-umpai (Edinburgh, United Kingdom), Michael Kane (Hoboken, New Jersey), Marcus Kelman (Dalgety Bay, United Kingdom), David Kerr (Falkirk, United Kingdom), Sarah Killarney-Ryan (Edinburgh, United Kingdom), Allan Kilpatrick (Larbert, United Kingdom), Ali King (Edinburgh, United Kingdom), Steven King (Edinburgh, United Kingdom), David Knapp (Rutherford, New Jersey), Jesse Lambert (Philadelphia, Pennsylvania), Diomira Lawrence (Las Vegas, Nevada), John Lightbody (Glasgow, United Kingdom), Andy Love (Dunfermline, United Kingdom), Kristen Lu (Culver City, California), Kevin MacPherson (Jersey City, New Jersey), Max Manders (Musselburgh, United Kingdom), John Mangan (San Diego, California), Caroline McDowall (Glasgow, United Kingdom), Julie McElrath (Anderson) (Edinburgh, United Kingdom), Kevin McFlynn (Glasgow, United Kingdom), Eileen McLaren (Edinburgh, United Kingdom), Martin McNickle (Edinburgh, United Kingdom), Andrew Mellicker (Sauk Rapids, Minnesota), Matt Millen (Red Bank, New Jersey), Josh Moelis (Marina Del Rey, California), Jen Mordue (Edinburgh, United Kingdom), Eilidh Morrison (Edinburgh, United Kingdom), Anders Murphy (Edinburgh, United Kingdom), Eoin Murphy (Dundee, United Kingdom), Andrew Murray (Edinburgh, United Kingdom), Matthew Musico (Fairfield, Connecticut), James Newbery (Edinburgh, United Kingdom), Owen O'Donnell (Glasgow, United Kingdom), Xavier Oliver-Duocastella (Edinburgh, United Kingdom), Michael Peterson (Marina Del Rey, California), Jeremy Pippin (Rutherford, New Jersey), Thomas Richards

(Norwalk, Connecticut), Justine Sacco (Los Angeles, California), Martin Scott (Edinburgh, United Kingdom), Nicholas Sharp (Austin, Texas), Scott Shay (Austin, Texas), Thomas Smythe (Wakefield, Massachusetts), Drew Spencer (Glasgow, United Kingdom), Keith Sterling (Kinghorn, United Kingdom), John Sutherland (Eskbank, United Kingdom), Warrick Taylor (Belmont, California), Stuart Tonner (Edinburgh, United Kingdom), John Venizelos (Tempe, Arizona), Kyle Wachtel (Hoboken, New Jersey), Lynne Wallace (Edinburgh, United Kingdom), Brendan Waters (Glasgow, United Kingdom), Skye Welch (Edinburgh, United Kingdom), Michael Williams and Phyllis L. Jones, as Personal Representatives of the Estate of Mark Williams (Lake Worth, Florida), Ross Wilson (Inverness, United Kingdom), Pawel Witek (Glasgow, United Kingdom), Brett Woltz (Hoboken, New Jersey), Kristian Woodsend (Haddington, United Kingdom), Kris Young (Glasgow, United Kingdom) and Alexander Zelvin (Monroe Township, New Jersey) are former employees or agents of FanDuel who owned FanDuel common shares, vested options to purchase FanDuel common shares, or both, at the time of FanDuel's merger with Paddy Power Betfair.

22. Plaintiffs Andrew Allan (Glasgow, United Kingdom), Davidson Family Revocable Trust (Atherton, California), Kevin Dorren (Edinburgh, United Kingdom), F Residual LLC (Delaware) Tim Jackson (London, United Kingdom), Vince Monical (Piedmont, California), Simon Murdoch (Hindhead, United Kingdom), Mark Peters (San Francisco, California), Richard Melmon Trust (Redwood City, California), Ian Ritchie (Edinburgh, United Kingdom), and Walleye Investments LLC (New York, New York) are various early investors in FanDuel who owned FanDuel common shares, options to purchase FanDuel common shares, or both, at the time of FanDuel's merger with Paddy Power Betfair.

23. Among Plaintiffs are five former members of FanDuel's board of directors, including its former Chairman. Plaintiffs collectively owned in excess of 945,000 shares of FanDuel common shares and options to purchase FanDuel common shares. Plaintiffs' shares totaled

approximately 10% of the total outstanding common shares at the time of the merger, over 90% of the common shares held by FanDuel's former employees and founders, and over 80% of the common shares held by non-conflicted shareholders.

II. Defendants

24. Michael LaSalle is a resident of California. LaSalle was a director of FanDuel at the time of the Company's merger with Paddy Power Betfair. LaSalle was appointed to the FanDuel board in 2014 by Defendant Shamrock Capital Advisors, LLC, where he has worked since 2001 and is currently a partner.

25. Edward Oberwager is a resident of New York. Oberwager was a director of FanDuel at the time of the Company's merger with Paddy Power Betfair. Oberwager was appointed to the FanDuel board in 2015 by Defendant KKR & Co., Inc., where he has worked since 2008 and currently serves as a director and a member of the Technology, Media and Telecommunications Growth equity investments team within KKR's Private Equity platform.

26. Andrew Cleland is a resident of New York. Cleland was a director of FanDuel at the time of the Company's merger with Paddy Power Betfair. Cleland was appointed to the FanDuel board in 2012 by Comcast Ventures, where he has worked since 2011 and currently serves as a managing director. At the time of the merger, Comcast, the telecommunications conglomerate that owns Comcast Ventures, held at least a 14.14% interest in FanDuel A Preference Shares.

27. Matt King is a resident of New York. King was a director and the CEO of FanDuel at the time of the Company's merger with Paddy Power Betfair. King was appointed to these positions upon Nigel Eccles' departure in November 2017. King previously served as a director of Defendant KKR & Co., Inc., where he worked for 11 years. King owned FanDuel A Preference Shares and received, or is set to receive, payments and benefits in connection with the Paddy Power Betfair merger in excess of $100 million.

28. Carl Vogel is a resident of Colorado. Vogel was a director of FanDuel at the time of the Company's merger with Paddy Power Betfair. Vogel was appointed to the FanDuel board in 2017. On information and belief, Vogel was appointed based on his close relationship with Defendant KKR & Co., Inc., where he serves as a senior industry advisor. On information and belief, despite being present on the board for only a matter of months, Vogel stood to gain a sizable management carve-out upon completion of the merger transaction.

29. David Nathanson is a resident of California. Nathanson was a director of FanDuel at the time of the Company's merger with Paddy Power Betfair. Nathanson was appointed to the FanDuel board in November 2017. On information and belief, Nathanson was appointed based on his close relationship with Defendant Shamrock Capital Advisors, LLC. Nathanson is the chairman of Falcon Waterfree Technologies. On information and belief, despite being present on the board for only a matter of months, Nathanson stood to gain a sizable management carve-out upon completion of the Company's merger with Paddy Power Betfair.

30. KKR & Co., Inc.; Fan Investor Limited; and Fan Investors L.P. (collectively "KKR"), is an investment firm that manages multiple alternative asset classes, including private equity and venture capital investments. KKR & Co., Inc. is incorporated in Delaware and headquartered in New York, New York. KKR has over $200 billion in assets under management. KKR invested in FanDuel in 2014 and 2015, holding its shares in two nominating companies, Fan Investor Limited and Fan Investors L.P. At the time of FanDuel's merger with Paddy Power Betfair, KKR held approximately 21% of the A Preference Shares of the Company. Under the Articles of Association of FanDuel applicable at the time of the merger, KKR was designated a "Dragging Shareholder," meaning that it, along with the other Dragging Shareholder, had the right to force all shareholders to accept a qualifying offer to sell their shares in the Company. KKR exercised this Drag Along Right on June 30, 2018, when it accepted the offer for all shares of FanDuel made by

PandaCo, Inc., as part of the merger. KKR employees were directly involved in the negotiations, diligence, and execution of FanDuel's merger with Paddy Power Betfair. Those employees included, among others, Edward Oberwager, Richard Sarnoff, Allan Jean-Baptiste, and Mike Saeks.

31. Shamrock Capital Advisors, LLC; Shamrock Capital Growth Fund III, LP; Shamrock FanDuel Co-Invest LLC; and Shamrock FanDuel Co-Invest II, LP (collectively "Shamrock"), is an investment firm with a history of investing in the media, entertainment, and communications sectors. Shamrock has over $1.5 billion in assets under management. Shamrock invested in FanDuel in 2014, holding its shares in a nominating company, Shamrock Capital Growth Fund III, LP. At the time of FanDuel's merger with Paddy Power Betfair, Shamrock held approximately 15% of FanDuel A Preference Shares. Under the FanDuel Articles of Association applicable at the time of the merger, Shamrock was designated a "Dragging Shareholder." Shamrock exercised this drag along right on June 30, 2018, when it accepted PandaCo, Inc.'s offer for all shares of FanDuel made as part of the merger. Shamrock employees were directly involved in the negotiations, diligence, and execution of FanDuel's merger with Paddy Power Betfair. Those employees included, among others, Michael LaSalle, Megan Wallach, and Kate Armstrong.

32. PandaCo, Inc. ("PandaCo") is a Delaware corporation established on May 18, 2018, registered to transact business in the County of New York, New York. PandaCo was formed as a wholly owned subsidiary of TSE Holdings Ltd.—which in turn is a wholly owned subsidiary of Paddy Power Betfair—to effectuate the merger between Paddy Power Betfair and FanDuel. On June 30, 2018, PandaCo made the offer to acquire all the shares of FanDuel in exchange for an approximately 40% equity interest in PandaCo.

33. FanDuel Group, Inc. and FanDuel Inc. ("FanDuel Group") are Delaware corporations headquartered in New York, New York. FanDuel Group runs a number of websites and phone applications, including FanDuel Sportsbook, The Duel, numberFire, DRAFT, TVG,

Betfair Casino, FanDuel Sportsbook WV, and FanDuel Sportsbook PA. On information and belief, FanDuel Group is the operating corporate form of PandaCo, Inc.

34. Fastball Holdings LLC, Fastball Parent 1 Inc., and Fastball Parent 2 Inc. (collectively "Fastball Holdings") is a Delaware limited liability company formed on May 23, 2018, with a principal place of business in New York, New York. Fastball Holdings was formed by its "Initial Members," which included King, Oberwager, and LaSalle, in their roles as representatives of the FanDuel Dragging Shareholders KKR and Shamrock and the former preferred shareholders of FanDuel. On information and belief, Fastball Holdings was formed for the sole purpose of participating in the transaction between FanDuel and Paddy Power Betfair and is referenced in the transaction documents as "FD Holdings." On information and belief, the current board of managers of Fastball Holdings includes three managers: one appointed by KKR, one appointed by Shamrock, and one appointed by Comcast Ventures. On information and belief, the board of Fastball Holdings consists of three of the Defendant Directors of FanDuel. Fastball Holdings holds an aggregate number of 3,914,298 shares of PandaCo.

III. Relevant Third-Parties

35. FanDuel Ltd. ("FanDuel" or the "Company") is a Scottish private limited company formed on November 12, 2007, by Plaintiffs Nigel Eccles, Lesley Eccles, Griffiths, Jones, and Stafford. FanDuel ran the online fantasy sports contest platform www.fanduel.com in the United States through its U.S. subsidiary, FanDuel Inc., a Delaware corporation with headquarters in New York, New York. The Company was effectively dissolved after the Paddy Power Betfair merger.

36. Flutter Entertainment plc ("Flutter"), formerly known as Paddy Power Betfair plc ("PPB"), is a bookmaking business created by the 2015 merger of Paddy Power and Betfair and is listed on the London Stock Exchange. Flutter operates under a number of different brands,

including Paddy Power, Betfair, and TVG. At the relevant time, Paddy Power Betfair was the parent company of TSE Holdings Ltd. and Betfair Interactive US LLC.

37. Betfair Interactive US LLC ("BIU") is a Delaware limited liability company formed in 2013. BIU is a subsidiary of Paddy Power Betfair that held, either itself or through its U.S. subsidiaries, the U.S. assets and operations of Paddy Power Betfair, namely horse racing cable networks TVG Network and TVG2, as well as their related online betting networks.

38. TSE Holdings Ltd. ("TSE Holdings") is a U.K. private limited company, subsidiary of Paddy Power Betfair, and, at the relevant time, owner of BIU. TSE Holdings—through BIU and its U.S. subsidiaries—was engaged in the business of providing an online gaming platform in the U.S. In order to effectuate the merger between FanDuel and Paddy Power Betfair, TSE Holdings formed PandaCo and contributed the equity of BIU together with approximately $145 million in cash (in excess of any of BIU's cash on hand at the time of closing).

39. Comcast Corporation, Comcast Ventures LP, NBC Universal Media LLC, and NBC Sports Ventures LLC (collectively "Comcast") are corporations, limited liability companies, and limited partnerships that owned shares in FanDuel Ltd. Collectively these entities appointed and maintained in office one director of the FanDuel board of directors. These entities also appointed and maintained in office one director of Fastball Holdings.

40. Boyd Gaming Corporation ("Boyd Gaming") is a casino entertainment company headquartered in Nevada. Boyd Gaming operates gaming properties in ten states including Nevada, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, Ohio, and Pennsylvania. Boyd Gaming entered a strategic partnership with FanDuel Group in August 2018 to pursue sports betting and online gaming opportunities in the United States.

FACTUAL BACKGROUND

I. The Early Years

41. FanDuel was founded by Plaintiffs Nigel Eccles, Lesley Jayne Ross Eccles, Tom Griffiths, Rob Jones, and Chris Stafford on November 12, 2007, as Hubdub Ltd.

A. Hubdub

42. Hubdub initially operated as a news-prediction site, which allowed users to place wagers on current events such as "Who will be the next President?" and "Which organization will be the first to deploy a manned mission to Mars?"

43. The FanDuel founders successfully raised money to support Hubdub around Edinburgh. Whether enamored with the idea of a news prediction site or not, investors were drawn to Hubdub because of their confidence in the team the company had assembled.

44. FanDuel's founders possessed an eclectic and complementary mix of skills and ambition:

- Nigel Eccles was an experienced management consultant who had previously worked in sports gambling with Betfair.
- Tom Griffiths was a computer scientist with a Masters in artificial intelligence.
- Lesley Eccles was an experienced management consultant with a background in marketing.
- Rob Jones was an experienced graphic and product designer focused on web development and branding.
- Chris Stafford was a computer programmer with a Masters in artificial intelligence.

45. Despite its early funding successes and heavy user engagement, Hubdub's growth stalled. The founders traveled to South by Southwest in Austin, Texas to figure out how to move the business forward. Since one of Hubdub's most active areas of engagement was sports, and fantasy sports in general was a significant market, the founders refocused on improving fantasy sports games and making them more mobile friendly. They branded the new enterprise, FanDuel. "It was a classic pivot."[1]



B. FanDuel Creates Daily Fantasy Sports

46. When FanDuel entered the U.S. fantasy sports market, fantasy sports involved a group of players (usually friends) forming a league to compete over the course of a sports season in either head-to-head or multi-player contests. The players put together fantasy teams by picking sports stars from the NFL, NBA, MLB, or NHL, among others. As the season progressed, each fantasy team scored points based on the on-field performance of the sports stars on its virtual roster. Each player typically paid an entry fee, which was then pooled with other players and would be paid back as prize money based on how well a respective player's team performed.

47. Fantasy sports were popular in 2009 but the pace of play was slow, opportunities to engage with other sports fans around the country were limited, and the mobile experience was poor. FanDuel's main competitors were ESPN, Yahoo, and CBS, each of which had millions of users

[1] https://venturebeat.com/games/how-fanduel-grew-from-humble-scottish-startup-into-an-american-fantasy-sports-giant/

participating in fantasy sports leagues hosted on their respective websites. The competitive landscape was dense and filled with large, highly capitalized media conglomerates.

48. FanDuel's founders recognized that the only way to compete was to innovate. They created a new fantasy sports product and, in the process, launched what has become a multibillion-dollar industry—daily fantasy sports. Instead of players competing over the course of an entire sports season, FanDuel collapsed the game into a single day and allowed users to play against much larger groups. FanDuel also automated league management by taking entry fees and paying out prizes. And unlike the dated U.S. fantasy sports platforms that existed at the time, FanDuel designed its product so that players could manage the games entirely through their phones. With these innovations, FanDuel created a market for a new fantasy sports product that was highly profitable.

49. FanDuel grew rapidly from the summer of 2011. Over the following years, it moved its headquarters to New York to better serve its target market of U.S. fantasy sports enthusiasts. The company headcount expanded from 12 to 400. And FanDuel's user base grew to almost two million.

50. FanDuel redefined fantasy sports and became the leader in the U.S. daily fantasy sports market in just five years. FanDuel's products and success garnered many awards, including TechCrunch's Best Entertainment, Sport or Leisure Startup Award (2010), Mashable Sports' Innovation Index Award (2012), and the Fantasy Sports Trade Association's Best Fantasy Contest (2013) and Best Daily Fantasy Product (2014) awards. FanDuel was the 2015 People's Choice Webby Award Winner. Business Insider named the Company a Silicon Alley 100 Company (2014), Deloitte named it a Technology Fast50 Company (2015), and Scotland IS named it the Company of the Year (2012).

51. FanDuel's success also drew others into the market. By 2015, FanDuel's main competitor was DraftKings. Fresh off raising more than $500 million at valuations north of $1

billion, DraftKings started a marketing war to draw users away from FanDuel and other less established daily fantasy sports websites.

52. To compete with this advertising blitz, FanDuel raised $275 million in the summer of 2015. The raise was led by Defendant KKR, among other investors, and solidified FanDuel's unicorn status—a moniker given to a startup valued at more than $1 billion. And while FanDuel's advertising campaign required a significant capital outlay, it paid off—solidifying the company's user base, brand, and reputation among U.S. daily fantasy sports consumers.

C. FanDuel's Brand Becomes Ubiquitous

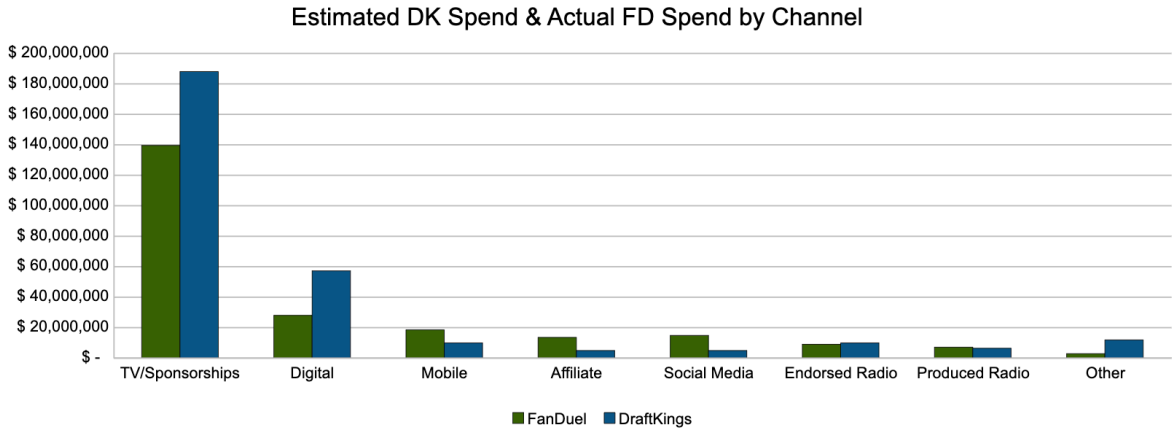
53. By the end of the 2015 football season, "FanDuel" was a household name. FanDuel was operating in 44 states and had grown its user base to over six million registered users. FanDuel's users were active and engaged, with more than 90% viewing live scoring on the app and more than 2.4 million paying entry fees on a regular basis. Consumer research suggested that more than 83% of market participants recognized the brand, and approximately 70% identified it as a "Brand I Trust."

54. The company achieved that success in a far more efficient and profitable fashion than DraftKings. As shown in the following brand analysis study from 2016, FanDuel had spent less on advertising, gained more first-time depositors (FTD's), and had a lower cost per acquisition (CPF) for users than its closest competitor.

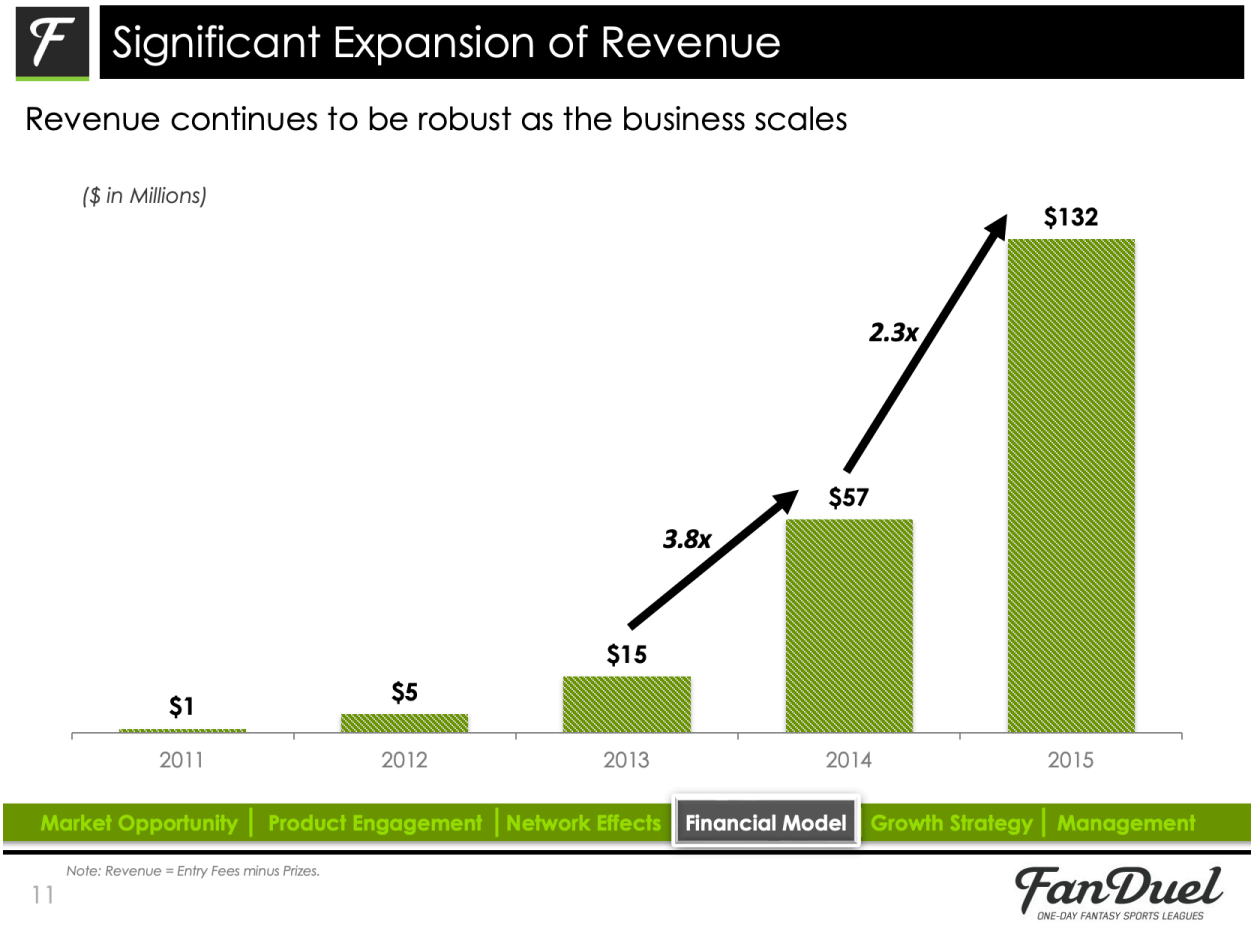
H2 2015 Competitive Performance

	FanDuel	DraftKings	Δ
Ad Spend ($m)	$234.0	$293.9	1.3
FTDs (000)	1,474	1,307	0.9
CPF	$159	$225	1.4

- DK spent (e) 26% more than us in H2, delivered less FTDs, and had a 42% higher CPF (our retention is better too)
- TV = largest portion of spend, 64% of total ad spend vs. our 60% TV spend
- Digital 2x our spend Yahoo, ESPN, NFL.com
- DK did get smarter
  - Bought media to mirror our historic curves
  - More ESPN media than us – ads more DR
  - 'Free' offer likely appealed to wider audience



55. Although FanDuel was in a capital-intensive battle for market share with DraftKings, FanDuel's founders and early employees were executing their business strategy at the highest level and maximizing the return on each dollar invested in the company. And FanDuel's investment in growth through marketing and other customer acquisition strategies paid off. The company's year-over-year revenue quickly began to look like a hockey stick—growing from $1 million in 2011 to over $130 million in 2015, as shown in the following chart.



56. FanDuel's brand was more than just users and name recognition. Its brand was built on credibility and instilling trust throughout, including within the company itself. FanDuel hired employees for "cultural fit" and made culture "a thing." The foundation of FanDuel's culture was the belief that all employees should be owners. And they were. All employees received options to acquire common shares in the company. The success of the company meant success for everyone whose blood, sweat, and tears made it happen.

D. The Relationship Between Shareholder Classes

57. FanDuel's emphasis on employee ownership as a bedrock of its culture meant that investors seeking to participate in the company's growth had to accept that they were co-investing and partnering with employee-owners of the company. Likewise, the founders and common shareholders had to make their own concessions to attract the amount of money that was needed to

fund FanDuel's strategic objective of disrupting the sports entertainment industry and making sports more exciting and interactive for fans.

58. Those who participated in the company's Series D and E fundraising rounds, like Defendants KKR & Shamrock, invested with the understanding that FanDuel was pursuing a strategy focused on long-term growth, not short-term profitability. FanDuel was committed to spending resources on marketing and customer acquisition to capture and maintain market share in the newly created and rapidly expanding daily fantasy sports market. Although FanDuel's strategy was capital-intensive, the reward for capturing a significant share of the daily fantasy sports market was sustainable long-term profitability built on customer loyalty and economies of scale. Later stage investors not only understood FanDuel's strategies, they invested to support them.

59. To achieve the balance between FanDuel's objectives of employee ownership and attracting funding, the company issued preferred shares to investors. Preferred stock is a form of equity that has a higher claim or priority on certain distributions (e.g., a realization event such as an acquisition), but does not have, or has more limited, voting rights in corporate governance. Issuing preferred shares along with some common shares to investors enabled the company to give investors priority on returns at lower valuations of the company in the event of a sale while avoiding dilution of employees' interest in the company's success, as common shareholder returns were tied to higher company valuations.

60. FanDuel's Articles of Association set out the various aspects of these compromises. Notably, the Articles limited the entitlement of preferred shareholders on "any winding up" of the company to the price at which their shares were issued. Sobel Aff. Ex. 1. This limitation was central to balancing the interests of preferred and common shareholders. Preferred shares got paid back first for their investment. Common shares, on the other hand, participated in any value FanDuel created beyond a straight return of the money investors had put into the company. Put differently, in

exchange for receiving first-dollars out, preferred shares gave up any entitlement to the upside of what was always expected in the long term to be a highly valuable company.

61. Investors also had a "Drag Along Right," which allowed them to require all shareholders to accept certain offers for the company. But the Drag Along Right under the Articles was always limited: Offers subject to the Drag Along Right had to be on bona fide arm's length terms; the Drag Along Right was only exercisable by a defined majority of investors; and common shareholders had a right to dispute the terms and conditions of any offer upon which the Drag Along Right was being exercised, including the ability to require the appointment of an independent expert to evaluate the fairness of such terms.

62. As a result, those who invested in FanDuel understood from the very beginning that the company's successes would be shared by all: the founders who created the company, the employees who built it, and the investors who provided capital to help fund it.

II. Growing Pains

63. During the second half of 2015, FanDuel faced mounting legal challenges, regulatory hurdles, and cash constraints due to its ongoing advertising war with DraftKings and the significant seasonality of the business. These industry headwinds led FanDuel and DraftKings to discuss a potential merger between the two companies.

A. A Merger of Equals

64. In May 2016, FanDuel and Draft Kings signed a letter of intent relating to a potential merger. The combination, which was formally agreed to in November 2016, was to be a "merger of equals" with each company's shareholders receiving 50% of the equity (*i.e.*, stock) of the combined company. Because the deal was a stock-for-stock deal, as opposed to a cash payout, all FanDuel shareholders—preferred and common alike—would have participated in the upside of the new business combination.

65. Defendants Oberwager and LaSalle, as directors of FanDuel, negotiated the DraftKings merger agreement as part of the FanDuel negotiating committee. In so doing, they and the rest of the FanDuel board (including Defendant Cleland) determined that FanDuel and DraftKings were of broadly equivalent value.

66. To effectuate the merger, FanDuel's capital structure had to be simplified into a single class of common shares. FanDuel's various funding rounds had resulted in a complex equity structure that included many (eight) preferred share classes. To reorganize each class of preferred shares that then existed into a single class of shares, the company ran a "simulated waterfall" based on Article 83 of the FanDuel Articles of Association. Article 83 was commonly referred to as the "waterfall" provision because it described the cascading structure by which returns would be distributed to shareholders when certain realization events occurred.

67. Members of the FanDuel negotiation committee agreed to an implied fully diluted equity valuation for the company of $1.2 billion. That number was not plucked from thin air. It was the result of an analysis of FanDuel's and DraftKings' respective brands, financial conditions, business growth opportunities, and the expected overhead cost reduction and other business synergies that would occur with the combination.

68. Defendants Oberwager and LaSalle, as representatives of KKR and Shamrock on FanDuel's board, led these extensive negotiations. The representatives of other preferred shareholders, including Defendant Cleland who represented Comcast, agreed with the $1.2 billion number. The majority of the FanDuel shareholders also adopted the provisions and valuation under their agreement to go forward with the DraftKings merger.

B. Antitrust Concerns Block the FanDuel-DraftKings Combination

69. In June 2017, the Federal Trade Commission challenged FanDuel's proposed merger with DraftKings.[2] The FTC claimed that FanDuel and DraftKings were each the other's most significant competitor, together controlling more than 90% of the U.S. market for paid daily fantasy sports. According to the FTC, "consumers of paid daily fantasy sports are unlikely to view season-long fantasy sports contests as a meaningful substitute for paid daily fantasy sports, due to the length of season-long contests, the limitations on number of entrants and several other issues."

70. The FTC's decision to challenge the FanDuel-DraftKings merger had several impacts. It set an administrative trial for November 2017, and it authorized the FTC staff to seek a temporary restraining order and preliminary injunction in federal court, the Complaint for which was filed on June 19, 2017, in the U.S. District Court for the District of Columbia.

71. Facing the possibility of immediate litigation, as well as the uncertainty of whether the merger would ultimately succeed, FanDuel and DraftKings decided to abandon their proposed merger in July 2017.

C. Murphy v. National Collegiate Athletic Association

72. At the same time FanDuel's potential merger with DraftKings was falling apart, a new opportunity began to emerge—sports betting—that had the potential to dramatically change the future of the company.

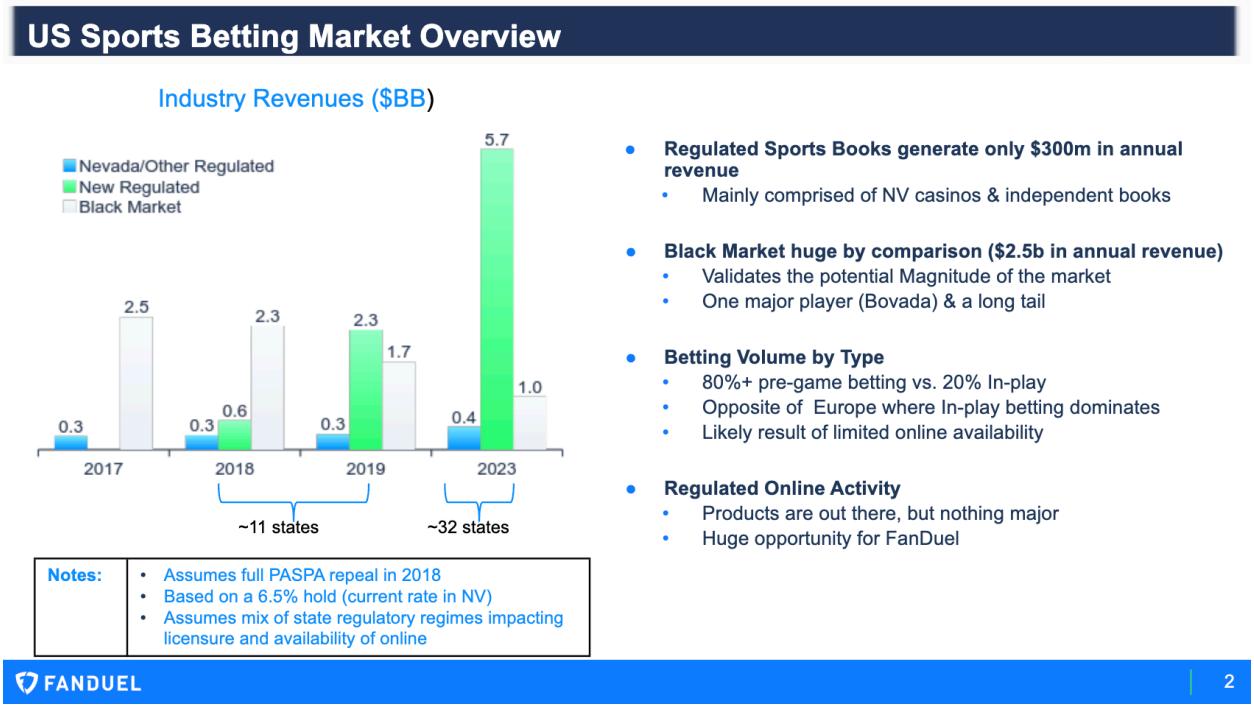
73. Sports betting in the United States has had a long and checkered history, with the reputations of several professional and amateur sports having been jeopardized by notorious events. Reacting to these scandals, Congress passed the Professional and Amateur Sports Protection Act ("PASPA") in 1992. Among other things, PASPA barred any state that had not already done so

[2] https://www.ftc.gov/news-events/news/press-releases/2017/06/ftc-two-state-attorneys-general-challenge-proposed-merger-two-largest-daily-fantasy-sports-sites

from legalizing sports betting. This effectively blocked every state from legalizing sports gambling except for Nevada.

74. In 2014, New Jersey enacted a law authorizing regulated sports wagering at New Jersey casinos and racetracks. Five sports leagues sued under PASPA to enjoin the New Jersey law, which the state defended by arguing that PASPA was unconstitutional. The district and appellate courts granted summary judgment in favor of the leagues, holding that PASPA was constitutional and issuing an injunction against the New Jersey governor and other state agencies.

75. On June 28, 2017, the U.S. Supreme Court decided to hear the case, effectively putting the constitutionality of PASPA into jeopardy. The Court's decision to hear the case also created the very real possibility that sports gambling would be broadly legalized in the United States. That opportunity had profound implications for FanDuel's existing and potential future business. Sports gambling represented a completely untapped, and likely very large, market for FanDuel. The illicit sports gambling market alone was estimated by the company in 2017 at over $2.5 billion in annual revenue, as shown in the following overview prepared internally at FanDuel. It was reasonable to expect that the legal sports gambling market, if allowed, would be much larger.



D. Tensions Between Common and Preferred Shareholders Rise

76. After abandoning the DraftKings merger, FanDuel collapsed its existing capital structure into fewer classes of shares. The simplification was part of an extensively negotiated agreement between preferred and common shareholders and documented in a set of "Transaction Termination Arrangements." The Transaction Termination Arrangements were supported by the FanDuel board of directors, key preferred shareholders, including Defendants KKR and Shamrock, and approved by the majority of FanDuel common shareholders.

1. Simplification of FanDuel's Capital Structure

77. Under the Transaction Termination Arrangements, the capital structure of FanDuel was simplified into two classes of shares: FanDuel A Preference Shares ("preferred shares") and FanDuel New Ordinary Shares ("common shares"). The FanDuel board (including Defendants Oberwager, LaSalle, and Cleland, along with Plaintiffs Nigel Eccles and Tom Griffiths) again used the same $1.2 billion valuation for this reorganization.

78. The Transaction Termination Arrangements and FanDuel's Articles of Association also defined the rights that attached to the newly minted preferred shares. Preferred shares would be entitled to priority only up to their Subscription Price. The Subscription Price is the price at which each preference share was issued and serves as the maximum redeemable value of the share. Accordingly, the "rights to income" of FanDuel's preference shares was limited in the company's Articles to their Subscription Price, whether that was in the issuance of dividends or other distributions paid by the company. In other words, regardless of how valuable FanDuel became, the total value of FanDuel's preference shares would never be worth more than the sum total of their Subscription Price.

79. The value of FanDuel above the Subscription Price belonged entirely to the common shareholders of the company. As the Transaction Termination Arrangements explained: "once the FanDuel A Preference Shares have participated in any income or capital return (as set out above), the FanDuel New Ordinary Shareholders will share such remaining amount *pro rata* according to the number of FanDuel New Ordinary Shares held by each FanDuel New Ordinary Shareholder." This reflected and effected the original compromise embedded in the stock structure of the company: Preferred shareholders received a defined return of their investment first, but once the value received for the company hit that mark any additional value that had been generated would be shared by the common shareholders, including the founders, employees and early equity investors.

80. At the end of 2017, the aggregate Subscription Price of FanDuel's preference shares was approximately $559 million. That meant FanDuel's common shareholders were entitled to any consideration FanDuel received above $559 million if a realization event, including a merger, were to occur.

81. The Transaction Termination Arrangements also modified the Drag Along Rights of preferred shareholders. Rather than requiring the approval of 70% or more preferred shareholders, Defendants KKR & Shamrock (the two largest preferred shareholders) would jointly hold the right going forward. As described in the FanDuel Articles, the Drag Along Right gave KKR & Shamrock a right to "instruct and require" all FanDuel shareholders, common and preferred, to accept a change-in-control offer without obtaining approval through a full shareholder vote.

82. The ability to institute the Drag Along Right was a shared right between KKR and Shamrock. KKR or Shamrock acting alone could not force FanDuel to enter a transaction through the Drag Along process. Instead, the two investors could only exercise their Drag Along Right if they jointly agreed to do so.

2. The FanDuel Articles Protect the Common Shareholders

83. The Drag Along Right KKR and Shamrock obtained in the Transaction Termination Arrangements was not without limitation. KKR & Shamrock could only invoke the right if FanDuel received a capital "O" offer, meaning an offer that (among other things) was made "on bona fide arm's length terms," "for the entire issued and to be issued share capital" of the company, under either Article 77 or 78.

84. Moreover, the Articles required that any consideration received by the company in a transaction accepted via KKR's & Shamrock's Drag Along Right be given to shareholders "in accordance with the rights attaching to their respective shares." Notably, Article 78.9 required that the "aggregate consideration payable … as a result of such Offer … be[] distributed by the company in accordance with the provisions of article 83."

85. Shareholders who did not possess the Drag Along Right, such as the common shareholders, maintained the right to dispute the terms and conditions of any Offer (as defined)

upon which the Drag Along Right was being exercised. This included a process to resolve disputes regarding the fairness of such terms (Article 78.10), and the calculation of the consideration received or shareholders' respective entitlements to it (Article 77.5). In the event of any such dispute (however it was raised), FanDuel's Articles required the company's directors to refer the dispute to an independent expert to evaluate and resolve the matter.

86. Article 83, in turn, describes the order of priority for the distribution of assets of the company as part of "any winding up" or "reduction of capital" of FanDuel. As outlined above, Article 83 provides that preferred shareholders would receive no more than the Subscription Price of their shares. Common shareholders would receive all consideration valued above that amount on a *pro rata* basis:

> [F]irst, an aggregate amount equal to the Subscription Price of each A Preference Share less any amount previously paid on such A Preference Share (whether pursuant to article 82.1.1, this article 83.1.1 or otherwise) shall be paid on each such share. If the amount of any particular distribution pursuant to this article 83.1.1 is insufficient to satisfy such entitlements in full, then the A Preference Shareholders shall participate in such distribution in the proportions that their respective entitlements bear to one another. For the avoidance of doubt, the aggregate amount payable on each A Preference Share (whether pursuant to article 82.1.1, this article 83.1.1 or otherwise) shall not exceed the Subscription Price of such A preference Share and, once an aggregate amount equal to the Subscription Price of such A Preference Share has been paid, such share's entitlement shall have been satisfied in full and such A Preference Share shall automatically convert into a Deferred Share; and second, subject to article 91.3, any balance remaining shall be shared among the holders of Ordinary Shares, pro rata according to the numbers of such shares held by them respectively.

E. KKR & Shamrock Quelch Dissent and Put Their People in Place

87. After the DraftKings merger break and Transaction Termination Arrangements, tensions continued to mount between FanDuel's preferred and common shareholders. In July 2017, Nigel Eccles (then CEO) approached the FanDuel board about equity-based compensation for employees. Employee equity remained a concern because, even though the

board had run a "simulated waterfall" at $1.2 billion, uncertainty remained about what value an arm's length buyer would offer if and when an actual realization event occurred.

88. By this point in time, Nigel Eccles was the only founder of the company who remained on the board. Other board members included Defendants Oberwager (KKR), LaSalle (Shamrock), Cleland (Comcast), and third party Andrin Bachmann (Piton Capital).

89. Eccles' belief was that for FanDuel to be successful, the company needed to retain, motivate, and reward the people who built the company into what it had become. Providing employees a stake in the upside of the company was a critical part of motivating them and a core part of how FanDuel compensated employees for their hard work and dedication. Those tenets had been in place from the beginning. The Board disagreed, instructing Eccles not to "discuss equity with employees for a period"—a directive that handcuffed Eccles' ability to be "fair and transparent" with the common shareholders of the company who had placed their trust in him, the founders, and the company over many years.

90. Eccles was not the only founder to voice these concerns. Tom Griffiths, then the Chief Product Officer, expressed the same concerns.

91. The board did not share the founders' concerns. Hindsight demonstrates that the FanDuel board did not misunderstand the importance of equity compensation to employees. Instead, it was the beginning of a scheme hatched by the Defendants to cut the common shareholders out of the upside of the company they had built.

1. The Board Fires the Founders

92. On November 9, 2017, the FanDuel board, led by Defendants Oberwager, LaSalle, and Cleland, gave Nigel Eccles, a founder and the company's only CEO to date, notice of his termination.

93. The timing of his termination raised red flags. Eccles was fired on the heels of a months-long process where he worked "tirelessly" to find an "equity-based compensation [plan] for employees." Sobel Aff. Ex. 2, KKR0035411. Having finally come to a solution "that was fair" to FanDuel's employees, Eccles was "shocked" to receive the news the Board of Directors was terminating him. *Id.* He expressed his concern to FanDuel's Board of Directors that they take seriously their duty to treat the employees—who were common shareholders in the company—with transparency and fairness to ensure the future success of the company.

94. Defendants Oberwager, LaSalle, Cleland, KKR, and Shamrock had other plans. Those plans included removing another founder, Tom Griffiths, from the company to allow them to further consolidate their control over FanDuel.

95. Defendants Oberwager, LaSalle, and Cleland expressed concern with the "founder ousted narrative" created by their attempt to wrest control of FanDuel away from the individuals who had built the company. As Defendant Cleland said at the time: "we don't want [Griffiths' termination] to be coincident with Nigel leaving because we don't want it to look like the investors are beheading the two founders. Nor do we have a ready replacement." Sobel Aff. Ex. 3, KKR0035402. Despite the narrative it created and their lack of a succession plan, Defendants Oberwager, LaSalle, and Cleland terminated Griffiths.

96. The final founder of FanDuel, Rob Jones, left the company in December 2017. His departure occurred after a short discussion with the company's new CEO, Matt King.

2. The Board Hires Former KKR Director, Matt King, and Incentivizes Senior Management to Find a Deal

97. Towards the end of 2017, Defendants Oberwager, LaSalle, and Cleland finalized negotiations with Defendant Matt King around replacing Eccles as CEO of FanDuel. King's appointment included a base compensation of $425,000 per year and stock options in "ordinary shares equal to 3.00% of FanDuel UK's fully-diluted shares as of the date of the grant." Sobel

Aff. Ex. 4, SROCK00022566. In addition, King was given up to $11.5 million in a "Management Carve-Out ("MCO")" bonus, under which a "bonus pool will be created" if a certain change-in-control transaction were to occur. *Id.*

98. Defendant King was no stranger to KKR. He worked at Defendant KKR for 11 years, as an associate, principal, and finally a director. In that role, King oversaw KKR's initial investment in the company along with Defendant Oberwager. Following KKR's investment in FanDuel, King was installed as the Chief Financial Officer, a role he held from the fall of 2014 until the end of 2016.

99. Placing King into the role of CEO allowed KKR to consolidate its control over FanDuel. This was particularly important to Defendants KKR & Shamrock given the potential legalization of sports gambling in the U.S.—the issue before the Supreme Court at that time.

100. Along with making King CEO, Defendants Oberwager, LaSalle, and Cleland negotiated MCO bonuses for four existing members of the senior management team, including David VanEgmond (Vice President of Strategy) and Christian Genetsky (General Counsel). Under the terms of those agreements, Mr. Genetsky would receive an MCO bonus of up to $5.75 million and Mr. VanEgmond would receive an MCO Bonus of up to $2.5 million in the event of a change-in-control transaction.

3. The Board Creates Two New Seats and Installs Directors with Close Ties to KKR & Shamrock

101. At the same time (the end of 2017), Defendants Oberwager, LaSalle, and Cleland—directors who represented the interests of Defendants KKR & Shamrock and third-party Comcast—began recruiting Defendants Carl Vogel and David Nathanson to join the FanDuel board.

102. Vogel previously served as the Vice-Chairman and President of DISH Network Corp., a satellite broadcast company. At the time of his appointment, he served as a director at

various public companies focused on media distribution and technologies relevant to "FanDuel's current and future business opportunities." Perhaps more importantly, however, Vogel was a longtime industry advisor to Defendant KKR, maintaining the email address: carl.vogel@advisor.kkr.com.

103. Defendant Oberwager was sensitive about the potential public reaction to Vogel's KKR ties, especially taken together with King becoming CEO. In communications around public statements from the company, it was noted that "because Carl Vogel currently has KKR as his most recent employment on his LinkedIn, and Matt King is also KKR - there is a possibility that some reporters put those together and draw a conclusion that KKR drove this." Sobel Aff. Ex. 5, KKR0035370.

104. For his part, Nathanson formerly worked at 21st Century FOX in various roles, including as General Manager & Chief Operations Officer of FS1. Nathanson was also the former president of TVG, a horse racing network owned at the time by European gambling company, Paddy Power Betfair, as well as the head of business operations of Fox Sports Media.

105. But like Vogel, Nathanson had ties to FanDuel board members and preferred shareholders. Nathanson was also a long-time neighbor and friend of Defendant LaSalle, and had, according to LaSalle, deep "personal relationships at Shamrock."

106. The close relationship between Nathanson and Shamrock was apparent from his initial discussions about joining FanDuel. Nathanson signed a non-disclosure agreement *with Shamrock* that allowed them to privately share information about FanDuel. A key part of those discussions focused on sports gambling and the potential impact of legalization on FanDuel.

107. On November 17, 2017, the FanDuel board—at the time, comprising Defendants Oberwager, LaSalle, and Cleland, as well as Andrin Bachmann, convened to "approve certain matters in connection with the appointment and resignation of certain

Directors." The board approved the creation of two new directors to accommodate the appointment of Vogel and Nathanson. The board also approved the appointment of Matt King as CEO, which gave him a seat on the board, and the "resignation" of Nigel Eccles. The effect of these acts was to create a board whose own interests, affiliations, and ties largely aligned with Defendants KKR, Shamrock and other preferred investors.

108. While their appointments had a public veneer of independence, the reality was that Vogel and Nathanson were appointed to FanDuel's Board of Directors precisely because of their deep personal and professional entanglements with KKR and Shamrock.

F. The U.S. Supreme Court Hears Oral Argument in *Murphy*

109. The timing of the restructuring of FanDuel's board and creation of an MCO bonus pool for senior management is far from curious. As stated by Defendant Nathanson during his recruitment: "It's clear that KKR, Comcast and Shamrock are very much aligned on the direction the company needs to take." Sobel Aff. Ex. 6, KKR0034476.

110. On December 4, 2017, the U.S. Supreme Court heard oral argument in *Murphy*. While questioning at oral argument is not definitive, reports indicated that the Court was skeptical of the constitutionality of PASPA and the federal restrictions on sports gambling.

111. Defendants became increasingly optimistic that the legalization of sports gambling in the United States was a question of "when," not a question of "if." At a minimum, Defendants knew that the issue would be decided by the end of the Court's 2017-2018 term, resulting in an opinion before July 2018. The anticipated legalization of sports gambling in the United States would be transformative for the company. FanDuel's ubiquitous and trusted brand, large and active user base across the country, and award-winning mobile platform put it in the pole position to capture the nascent United States sports gambling market.

III. FanDuel Looks for a Joint-Venture to Capitalize on Sports Gambling

112. As it had done several times before, FanDuel began a process in early 2018 to raise additional capital. The need to periodically raise operating capital is common for start-up companies, particularly those, like FanDuel, that face fierce competition for market share. FanDuel's fundraising process was conducted in close coordination with KKR, Shamrock, the Director Defendants, and key FanDuel executives, including David VanEgmond and Varun Sudhakar.

113. The goal of the 2018 fundraising process was to fund FanDuel's operations and continue to grow its business. It was not for FanDuel's shareholders to exit their investment in the company. Both FanDuel and its key preferred shareholders, KKR and Shamrock, had a lot of optimism about the company's potential to capitalize on the legalization of sports gambling in the United States. To that end, the Director Defendants, KKR, and Shamrock prioritized finding a solution that would maximize the long-term equity value of the company.

A. Shamrock Urges FanDuel to Hire Moelis & Co.

114. During a prior capital raise in the summer of 2017, FanDuel worked with investment bankers at Goldman Sachs to advise the company. As part of that process, Goldman Sachs informed FanDuel—including Defendant Directors Oberwager, Cleland, and LaSalle—that the company was worth up to $800 million as a standalone daily fantasy sports business. Legalization of sports gambling and the continued improvement in FanDuel's daily fantasy sports business would only drive the value of the company up from there.

115. For its capital raise in 2018, however, FanDuel engaged Moelis & Company. FanDuel found Moelis through Carlos Jimenez, one of Moelis's managing directors. Jimenez was a "long time friend and advisor to Shamrock," which led Defendant LaSalle to urge FanDuel to retain Moelis. Sobel Aff. Ex. 7, SROCK00014917. By ensuring FanDuel retained an advisor with a close-knit relationship to Shamrock, KKR and Shamrock gave themselves greater control over the entire

process. Moelis's cozy relationship with the preferred shareholders was apparent throughout its engagement with FanDuel. Moelis prioritized the interests of Defendants KKR and Shamrock over those of FanDuel and its common shareholders.

B. Moelis Highlights Sports Gambling as FanDuel's Major Opportunity

116. In December 2017, as part of its initial pitch to FanDuel, Moelis provided FanDuel an analysis of the potential size of the United States sports gambling market. Moelis made no effort to hide the fact that the potential legalization of sports gambling was a game-changing moment for FanDuel that should factor heavily into its valuation and consequently its strategy to raise capital.

117. Moelis's analysis was critical to understanding the true value of FanDuel because sports gambling would be a natural new market for FanDuel above-and-beyond its established daily fantasy sports business. Ultimately the substance of Moelis's December 2017 analysis was shared with the Director Defendants, KKR, and Shamrock. As shown below, Moelis estimated that the U.S. sports gambling market would process over $240 billion dollars in bets on an annual basis. Sobel Aff. Ex. 8, FanDuel_Def_000104863.

STRICTLY CONFIDENTIAL

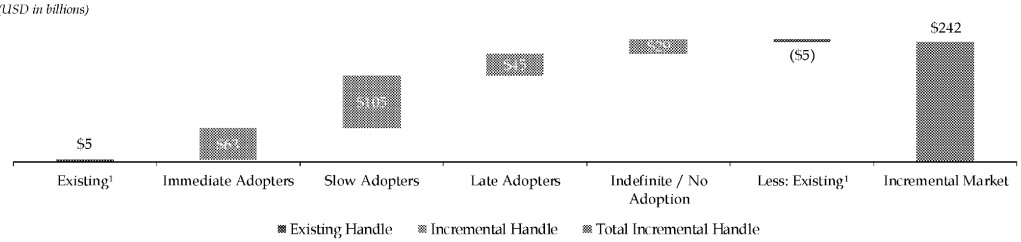
Estimated Timing of Current & Pending Legalization

MOELIS & COMPANY

Analysis below highlights the estimated adoption timeline of U.S. states potentially legalizing sports betting

HANDLE CONTRIBUTION

(USD in billions)



COMMENTARY

- Incremental handle from a legalized sports betting market in the United States is estimated to be up to **$242 billion** annually
- State-level estimates for legalized sports betting handle per Eilers & Krejcik Gaming, assuming land-based and online access to sports betting
- States expected to regulate sports betting in distinct waves:

IMMEDIATE ADOPTERS		SLOW ADOPTERS		LATE ADOPTERS	
Colorado	Montana	Arizona	Maryland	Alabama	New Hampshire
Connecticut	New Jersey	District of Columbia	Missouri	Arkansas	New Mexico
Delaware	Ohio	California	New York	Florida	Oregon
Indiana	Nevada	Idaho	North Carolina	Georgia	Rhode Island
Massachusetts	Pennsylvania	Illinois	North Dakota	Minnesota	South Dakota
Michigan	Virginia	Iowa	Oklahoma	Nebraska	Wisconsin
Mississippi	West Virginia	Kansas	Vermont		
		Kentucky	Washington		
		Louisiana	Wyoming		
		Maine			

INDEFINITE/NO ADOPTION		
Alaska	South Carolina	Texas
Hawaii	Tennessee	Utah

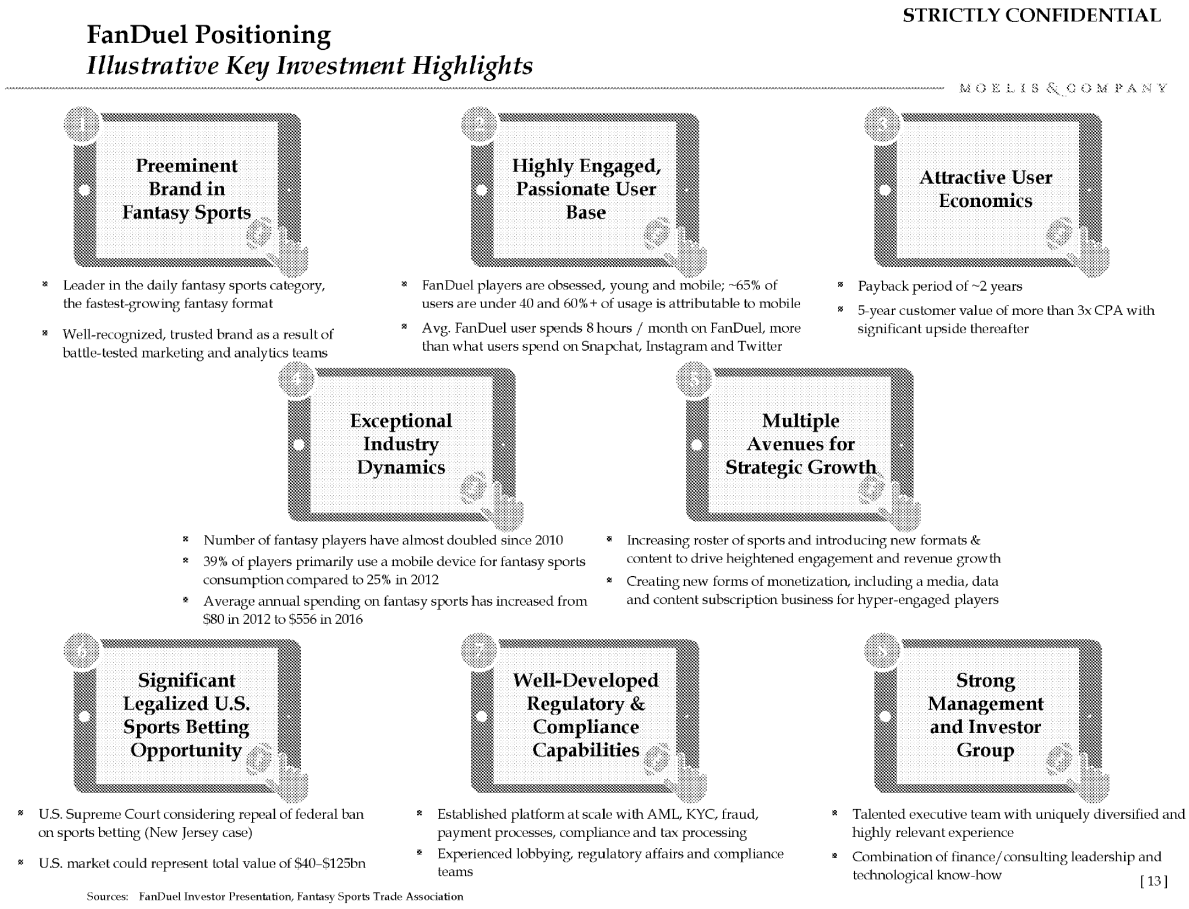
Sources: Eilers & Krejcik Gaming
1. Represents handle in jurisdictions where legal sports betting is currently available (Delaware, Montana and Nevada)

[22]

CONFIDENTIAL FanDuel_Def_000104885

118. In the same presentation, Moelis informed FanDuel that the sports gambling opportunity "could create ~$40bn to ~$125bn of total [enterprise] value" for companies participating in sports gambling. *Id.* By capturing even 5% of the sports gambling market, Moelis's analysis indicated that FanDuel could increase its value by up to six times the value Goldman Sachs had put on the standalone daily fantasy sports business just months earlier. That meant FanDuel was expected to go from a market value of around $800 million to a market value of close to $5 billion. A leap of the size Moelis projected was not common, even for a relatively young company like FanDuel; rather, it signaled the sea-change that was coming with the opening of a nascent market teeming with opportunity.

119. Of course, FanDuel was no ordinary company trying to enter the sports gambling arena. As Moelis highlighted, FanDuel had critical strengths in its brand name, userbase, leadership team, and technology that made FanDuel primed to succeed. *Id.*



C. It's All About the "Long Term Value"

120. Given that the "U.S. sports betting market opportunity is large," Moelis prioritized finding "a U.S. Joint Venture with the right partner(s)" to create a "growth vehicle well-positioned to capitalize on sportsbook and online gaming opportunities." Sobel Aff. Ex. 8, FanDuel_Def_000104863. Put differently, from the outset of its process, FanDuel's advisors were focused on identifying a joint venture partner to help unlock the anticipated enormous value of sports gambling. Defendants targeted a joint venture transaction precisely because of the potential sports gambling upside it could create, and the value (and returns) it would generate in the long term for those who held the equity in the joint venture. The goal was not a cash-out transaction, but

rather one where FanDuel's share value would be substantially higher because of the long-term prospects for growth.

121. FanDuel received significant interest from January to mid-April 2018 from potential joint venture partners and other traditional and not-so traditional investors, such as a special purpose acquisition company ("SPAC") that intended to take FanDuel public. Interested parties included companies ranging from large media conglomerates to European sports gambling companies to the leading U.S.-based casino operators.

122. Moelis engaged dozens of potential partners on behalf of FanDuel. In these conversations, Moelis was clear that FanDuel was focused on "creating and maximizing long-term value" rather than striking a deal with a company that put the highest possible valuation on FanDuel's underlying daily fantasy sports business. Sobel Aff. Ex. 9, FanDuel_Def_000006521. Moelis bluntly informed one potential partner that FanDuel was "open to [negotiating] value" in exchange for FanDuel obtaining a favorable share of the equity in any go-forward joint venture. *Id.* This was a not-so-subtle way of communicating that the Defendants were willing to gerrymander the numbers to justify the division of equity in the future company.

D. KKR & Shamrock Control the Moelis Process

123. Both KKR and Shamrock were deeply involved in FanDuel's efforts at finding a joint venture partner, beyond selecting FanDuel's advisors. Defendant Oberwager worked with KKR & Co. employees Allan Jean-Baptiste and Mike Saeks to provide regular updates to the KKR & Co. investment committee on FanDuel's efforts. Ultimately, Defendant Oberwager would seek approval from the KKR & Co. investment committee before voting on any transaction the company entered. At various points, KKR & Co. employees, such as Richard Sarnoff, held direct discussions with FanDuel's advisors and potential investors without the inclusion of anyone at FanDuel.

124. Similarly, Defendant LaSalle worked with Shamrock Capital employees Megan Wallach and Katie Armstrong to provide regular updates to the Shamrock Capital investment committee. Like Oberwager with KKR, Defendant LaSalle would also seek approval from the Shamrock investment committee before casting his vote for (or against) any deal.

125. Defendants KKR & Co. and Shamrock Capital each exercised control and influence over the decision making of Defendants Oberwager and LaSalle respectively, including how they ultimately discharged their obligations as board members of FanDuel. Likewise, KKR and Shamrock leveraged their ties to Defendants King, Vogel, and Nathanson to dictate how they voted as members of FanDuel's board. The result of the influence and leverage exerted on these board members was that the Director Defendants ignored their fiduciary responsibilities to FanDuel and its shareholders in favor of advancing the interests of Defendants KKR and Shamrock.

IV. FanDuel's Business Rebuilds Momentum

126. Entering 2018, FanDuel was looking to re-focus its attention on growing its daily fantasy sports business. FanDuel faced significant distractions in 2016 and 2017 between its failed merger with DraftKings and the on-going regulatory investigations into the legality of daily fantasy sports. Those external distractions slowed the growth of FanDuel's business by diverting its attention from customer acquisition and brand growth.

127. With those distractions in the rearview mirror by early 2018, FanDuel was back to focusing on its core daily fantasy sports business. The results were immediate. As reflected in Defendant King's update to the Director Defendants, in the first four months of 2018 FanDuel was growing its revenue, beating EBITDA projections, and improving customer engagement. Sobel Aff. Ex. 10, KKR0020894.

From: "Matt King" <matt.king@fanduel.com>
Sent: Tue, 10 Apr 2018 18:32:02 -0400 (EDT)
To: boardmembers@fanduel.com
Cc: "Andy Giancamilli" <andy.giancamilli@fanduel.com>; "David Vanegmond" <david.vanegmond@fanduel.com>; "Christian Genetski" <christian@fanduel.com>; "Robin Spira" <robin@fanduel.com>; "Mike Raffensperger" <mike.raffensperger@fanduel.com>
Subject: Recent performance
Attachments: Fastball - Recent Performance Update_vFF.pdf

Hi all,

I know that you receive the weekly performance updates from Willy but I thought I would share the attached document that shows the performance trends over the last few months. We prepared this for several potential investors to demonstrate the momentum in the business.

A couple of headlines
- 25+% revenue growth turnaround (down 15+% to up 10+% in April)
- 50+% improvement in active user count trends
- 150-200% improvement in registrations
- $4.5 million beat on EBITDA (Feb - April)

This is a testament to the focus and hard work done by the entire team. We have a lot more to do but I am very proud of the amazing progress so far.

Please let us know if you have questions

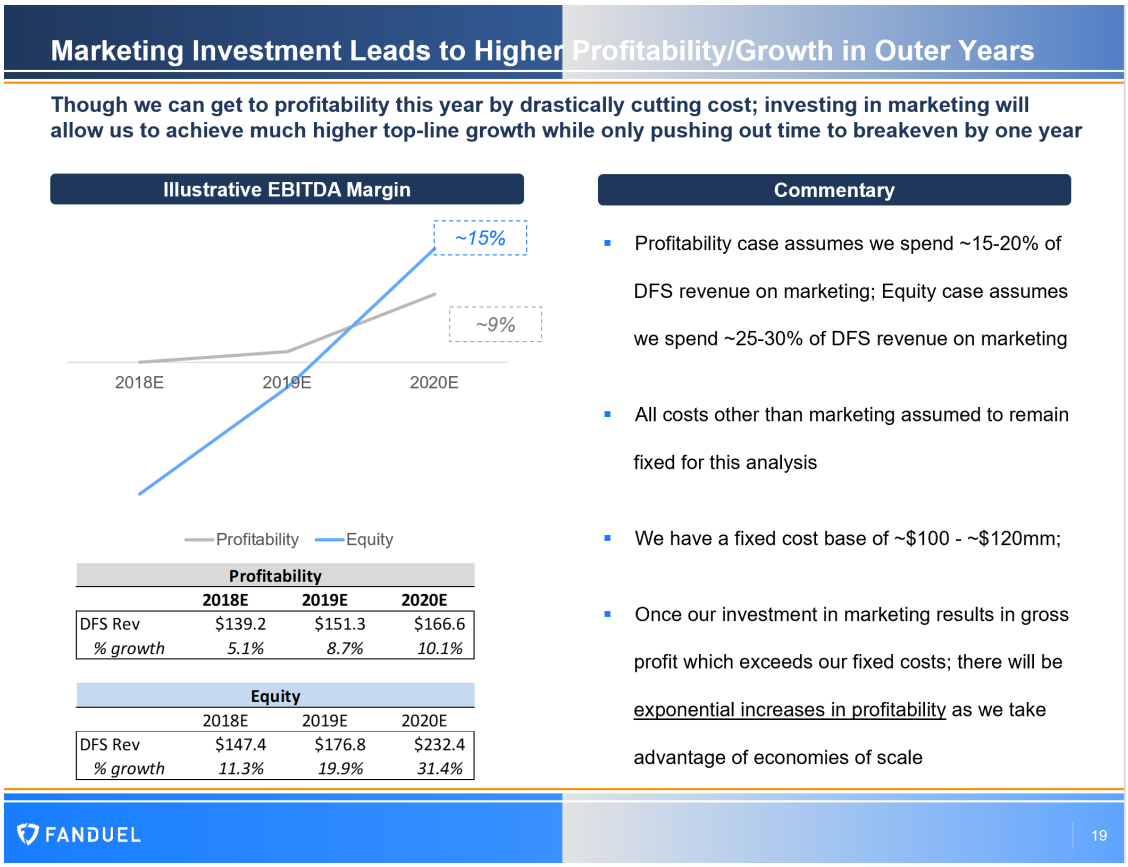
Matt

128. News of FanDuel's "amazing progress" was shared internally within KKR by Defendant Oberwager. Sobel Aff. Ex. 11, KKR0020913. Richard Sarnoff, a senior KKR executive, recognized FanDuel's "[t]ruly impressive" results in an email sent to Defendant King. *Id.*

129. FanDuel's improved performance during the first quarter of 2018 had important implications for its fundraising efforts. Beyond demonstrating to investors that the daily fantasy business was viable long term, FanDuel was able to extend its runway of operating capital. FanDuel did not need to rush to raise new capital. This was particularly important in spring 2018 because the Supreme Court's decision in *Murphy* was looming. Defendants understood that a favorable ruling in *Murphy* would "improve meaningfully" the value of FanDuel to potential investors. Sobel Aff. Ex. 12, KKR0022591.

130. FanDuel was not in dire financial condition in the spring of 2018. As Defendants detailed to potential investors, FanDuel had a clear path towards long-term profitability with a plan

to increase daily fantasy sports revenue by nearly $100 million over the next 18 months. The company was close to a turning point where "economies of scale" in the daily fantasy sports business would allow FanDuel to increase its profitability exponentially. Sobel Aff. Ex. 13, FanDuel_Def_000303336.



131. These were not just projections on a page. FanDuel was making real investments in its business to achieve these goals. As just one example, Defendant King reported to the Defendant Directors in March 2018 that FanDuel had a plan in place to grow its work force by over 15% in 2018. Sobel Aff. Ex. 14, FanDuel_Def_000037965.

132. The prospects for FanDuel's core daily fantasy business in the first half of 2018 were bright. Defendants were well-aware of these circumstances—they received detailed financial updates about FanDuel as its business was improving, they oversaw investments FanDuel was making in its

platform and personnel, and they carefully assessed the market opportunity presented by sports gambling with the *Murphy* decision looming.

V. FanDuel Prepares for the Legalization of Sports Gambling

133. At the same time FanDuel was exploring options to raise fresh operating capital in early 2018, it was also preparing for what Defendant King called the "inevitable" legalization of sports gambling in the United States. Sobel Aff. Ex. 15, FanDuel_Def_000107882.

134. FanDuel performed analyses to understand the size of the sports gambling opportunity for the company, evaluated partnership models to build out a sports gambling business, engaged potential commercial partners to begin building a sports gambling infrastructure, and evaluated FanDuel's brand, userbase, employee experience, and technology in the context of sports gambling. These analyses were shared with the Defendant Directors, KKR, Shamrock, and potential investors. The conclusion was clear—FanDuel was in a prime position to capitalize on the enormous opportunity presented. Legalization of sports gambling in the U.S. would add billions in value to FanDuel's already thriving daily fantasy sports business.

A. FanDuel's Internal Analyses Project Billions in Sports Gambling Revenue

135. Starting in January 2018, the strategy and corporate development group within FanDuel began modeling the sports gambling market in the United States. Unlike models looking generically at the size of the potential gambling market, FanDuel focused on analyzing the additional revenue that FanDuel itself might generate if the Supreme Court legalized sports gambling—a question the company knew would be answered by July 2018. FanDuel's early 2018 model projected the company generating upwards of $450 million per year in additional revenue based on the highly conservative assumption that it captured only 4% of the sports gambling market. Sobel Aff. Ex. 16, KKR0025026.

US Sports Betting Market Opportunity Summary

($ in millions)

% of States Online (Taking into Account Ramp)									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
5.0%	21.5%	38.5%	60.5%	75.6%	91.0%	94.7%	98.4%	99.2%	100.0%

Industry Handle									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$8,822	$37,742	$67,684	$106,364	$132,949	$159,982	$166,426	$172,965	$174,447	$175,829

Industry Revenue @ LT Win Rate of 6.5%									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$573	$2,453	$4,399	$6,914	$8,642	$10,399	$10,818	$11,243	$11,339	$11,429

Industry EBITDA @ LT Target of 30%									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$172	$736	$1,320	$2,074	$2,593	$3,120	$3,245	$3,373	$3,402	$3,429

FanDuel Sports Betting - Illustrative Market Share									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
3.9%	3.8%	3.8%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%

FanDuel Sports Betting Revenue									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$22	**$94**	**$168**	**$277**	**$346**	**$416**	**$433**	**$450**	**$454**	**$457**

FanDuel Sports Betting EBITDA @ LT Margin									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$7	$28	$51	$83	$104	$125	$130	$135	$136	$137

136. FanDuel's real world market share at present is closer to 40% than to 4%, underscoring the highly conservative nature of this model. Nonetheless, FanDuel's January 2018 analysis clearly demonstrated that the value of FanDuel would soar if the company captured even a modest share of the legal sports gambling market given the overall size of the revenue opportunity.

137. This was not just an internal company model. FanDuel shared this model with interested investors. Sobel Aff. Ex. 17, KKR0025023. FanDuel's Executive Vice President of Corporate Development & Finance, David VanEgmond, shared the presentation with employees from KKR & Co. and Shamrock Capital, including Allan Jean-Baptiste, Mike Saeks, Kate Armstrong, and Megan Wallach. *Id.* Those employees used FanDuel's sports gambling model to inform KKR & Co.'s and Shamrock Capital's respective investment committees on the true value and likely upside from FanDuel's proposed merger with Paddy Power Betfair.

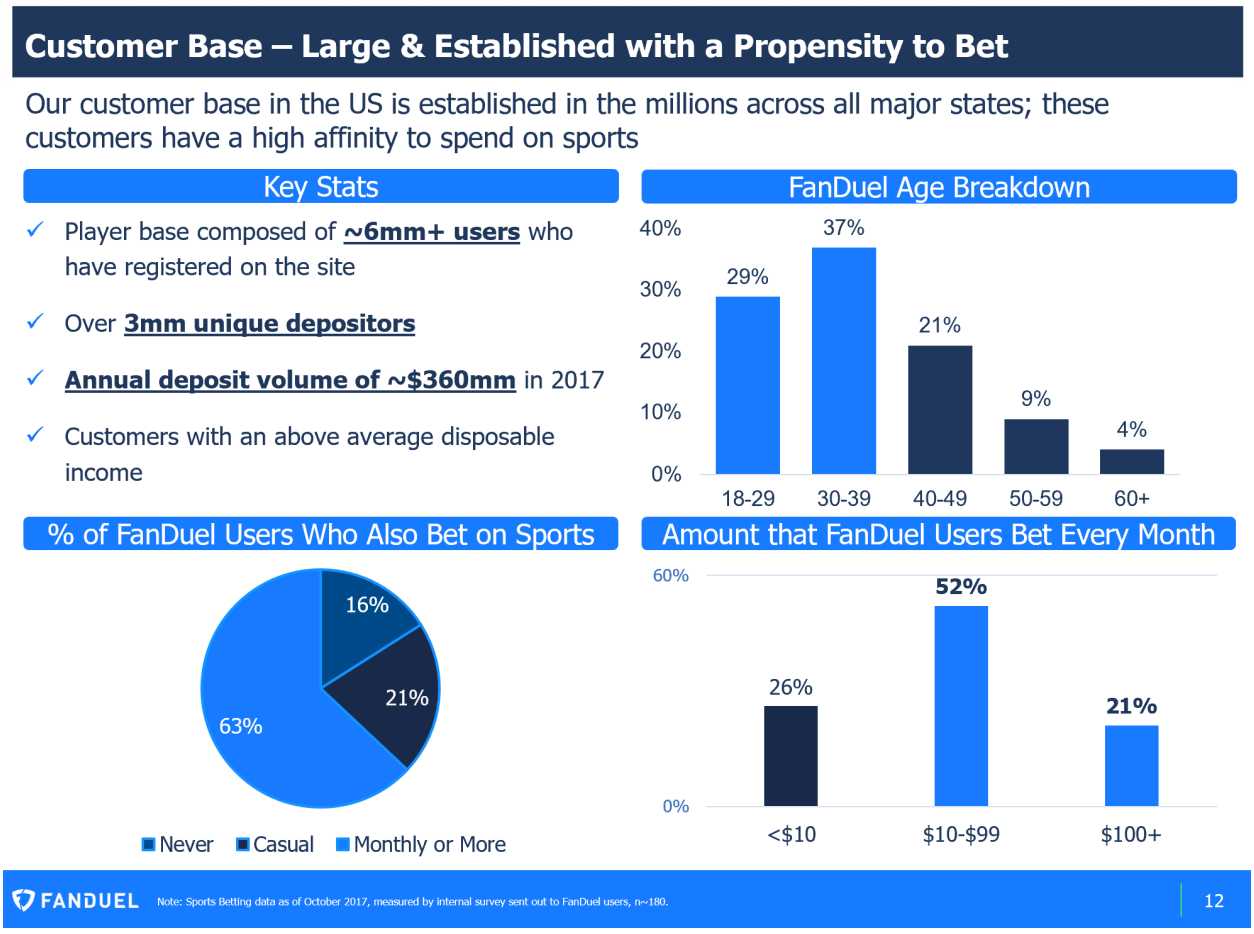
B. FanDuel's Userbase and Brand are Unique Sports Gambling Assets

138. FanDuel also analyzed how its business assets would contribute to its success once sports gambling was legalized. As reflected in the slide below from a January 2018 presentation entitled "Building a Winning Sports Betting Business," FanDuel identified its brand, customer base, technology, and partnerships with sports and content providers (all created and developed as part of FanDuel's core daily fantasy business) as "key building blocks" to succeed in the sports gambling market. Sobel Aff. Ex. 18, FanDuel_Def_000105121.

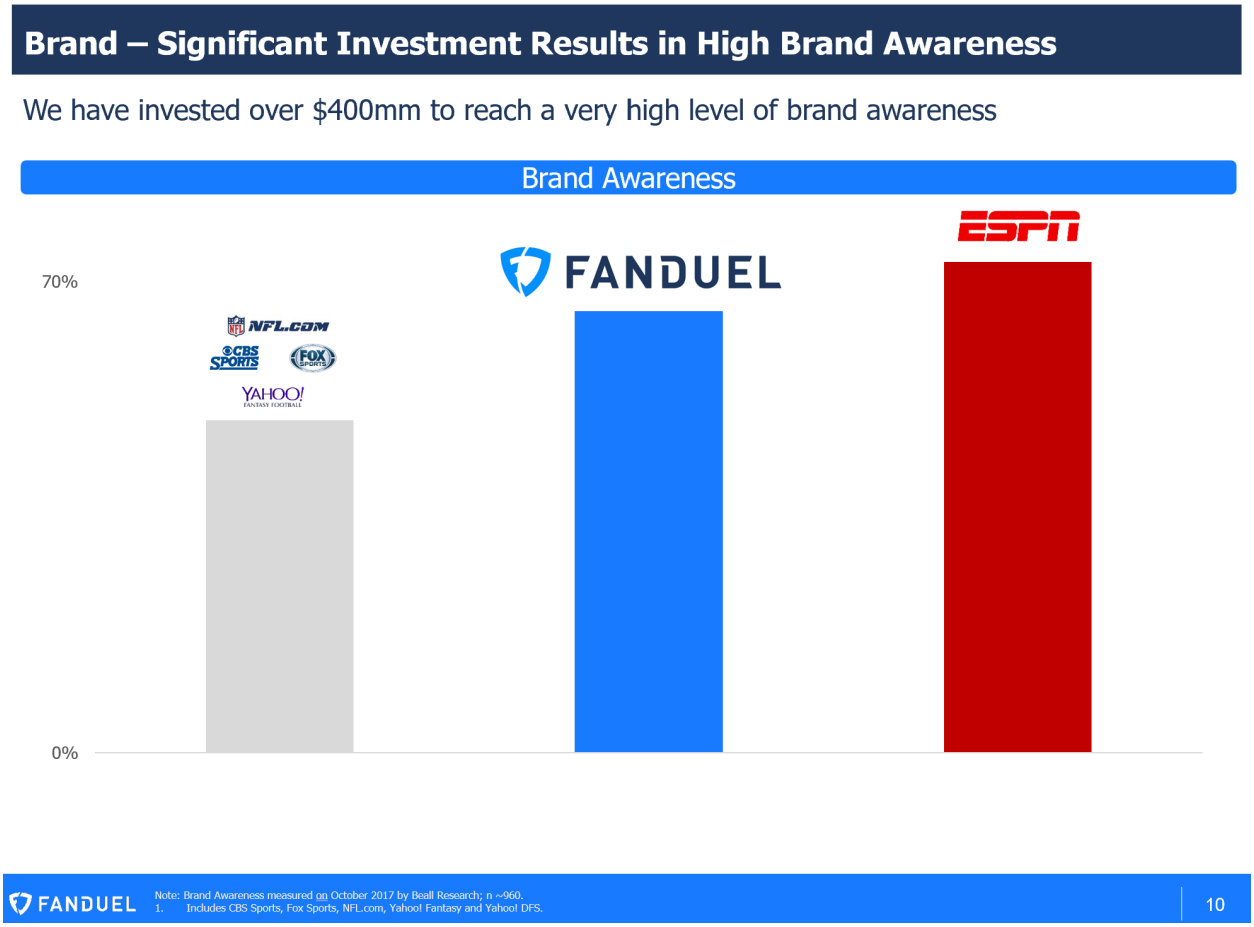


139. Just focusing on FanDuel's customer base alone makes it easy to see why the company had an enormous advantage when it came to building a sports gambling business. *First*, FanDuel had a large existing customer base of over six million users. *Second*, FanDuel's customers were predominantly in the 18–39-year-old age category that is the target demographic for sports

gambling. *Third*, FanDuel's customers already had a habit of making real money deposits with the company, registering over $360 million in annual deposits. And *fourth*, nearly 80% of FanDuel's customers were already betting on sports. FanDuel's customer database was a sports gambling goldmine and the Defendant Directors, KKR, and Shamrock were aware of that fact throughout the negotiation and execution of the Paddy Power Betfair merger. *Id.*

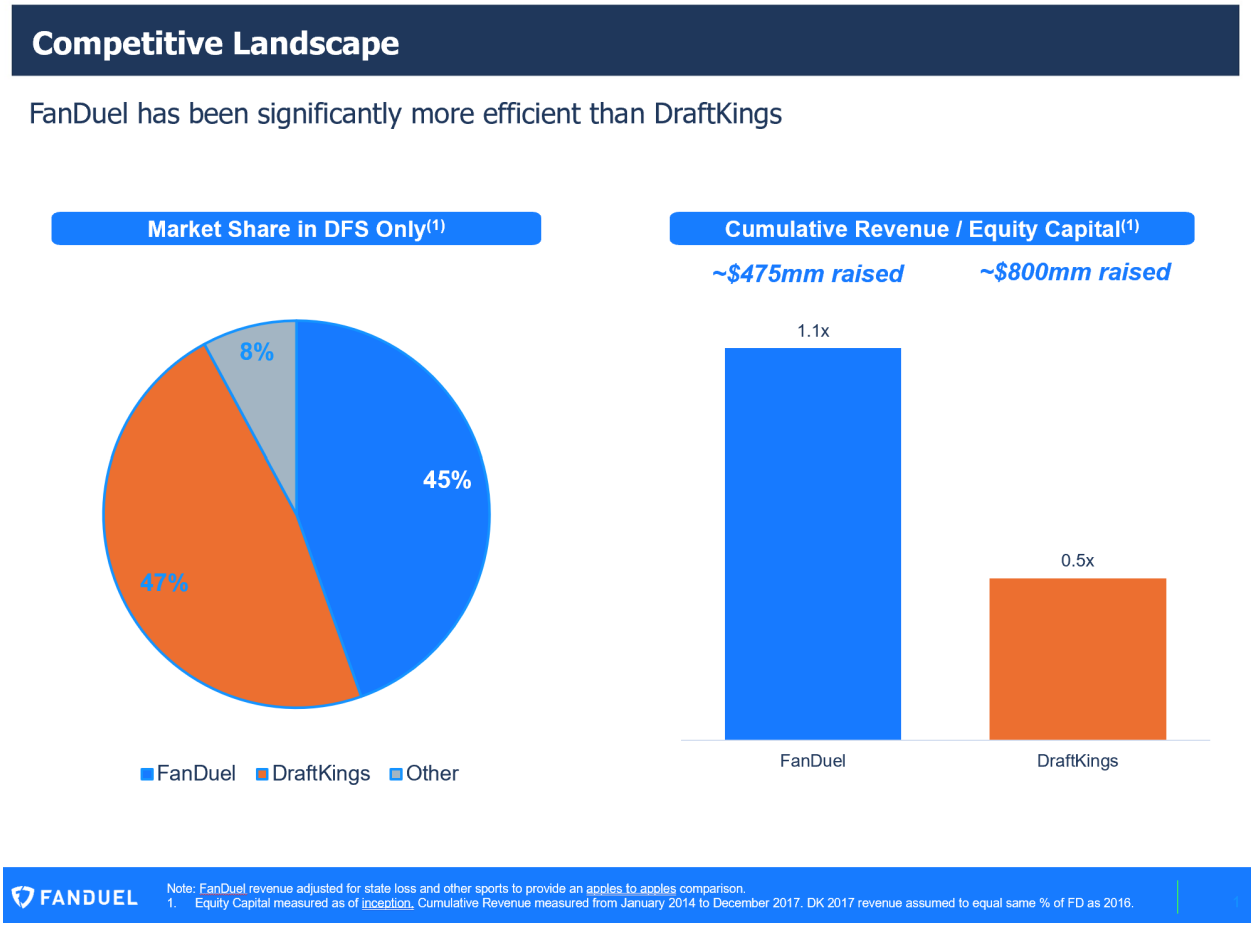


140. Likewise, Defendants acknowledged that FanDuel's marketing spend was a critical investment in its business. As FanDuel emphasized to potential investors, the money spent on advertising was a "significant investment" in FanDuel's brand that resulted in "high brand awareness" that rivaled sports giants, like ESPN. *Id.*



141. The cost of building FanDuel's brand was significant. Over the years, FanDuel "invested over $400 million" to cultivate its brand.

142. FanDuel's founders and early employees did not, however, spend haphazardly. They carefully deployed the capital they raised to maximize the returns to the company and grow the business, both in terms of market share and brand awareness. Their success was apparent from the fact that FanDuel's market share was essentially equivalent to DraftKings despite DraftKings raising almost twice as much money as FanDuel. FanDuel's brand was the product of efficient and careful stewardship by its founders and employees over a decade. Sobel Aff. Ex. 19, FanDuel_Def_000003476.



143. Beyond developing a widely recognized brand name, FanDuel's founders and early employees were careful to cultivate a brand that would resonate with potential sports gamblers. FanDuel spent significant time over the years analyzing the key attributes of its brand. That research confirmed that FanDuel's brand was associated "with many important emotional attributes like enhancing the sports experience, trust, and innovation" that would support the company's growth as it moved into the anticipated sports gambling market. Sobel Aff. Ex. 20, FanDuel_Def_000357272. FanDuel's brand was also associated with a "high degree of user satisfaction." *Id.* In short, FanDuel's analysis showed that the strength of the brand and customer base sat at the heart of the company's ability to compete and win in the sports gambling market.

144. The value of FanDuel's brand has been repeatedly reinforced by Paddy Power Betfair over the years. Paddy Power Betfair has often referred to the marketing investment made by

FanDuel's founders and early employees as a key asset of the business. Based on Paddy Power Betfair's analysis, FanDuel not only built a business with "high brand awareness," it built a business that customers associated with "key attributes" like being "secure," "legitimate," "easy to use," and providing "value for money."

C. FanDuel Identifies Key Service Providers to Build a Standalone Sports Gambling Business

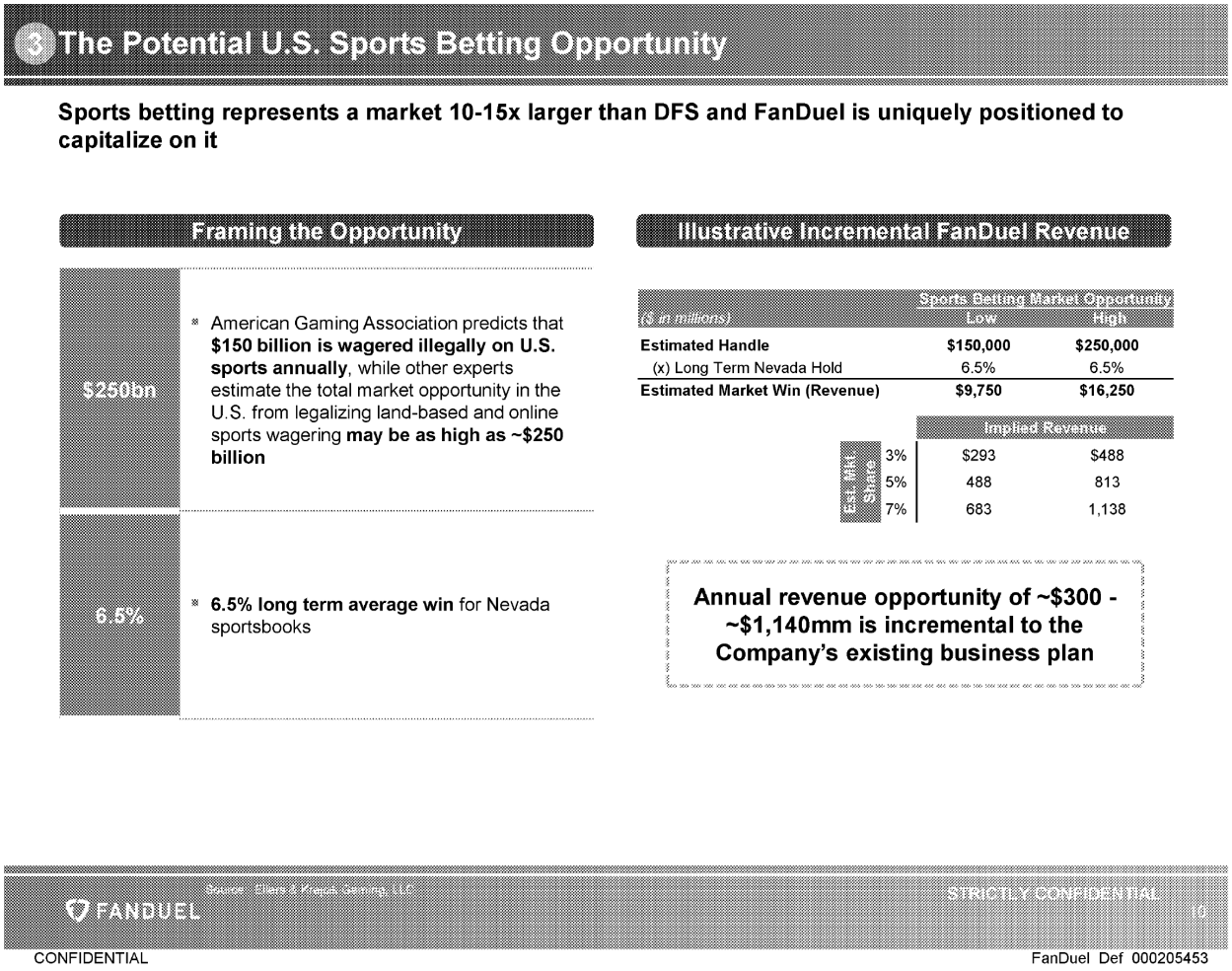
145. In addition to analyzing the assets the company could bring to sports gambling, in early 2018 FanDuel also explored commercial partnerships with various data and service providers in the sports betting space. FanDuel's analyses showed that there were a range of available providers that would enable FanDuel to create a highly profitable standalone mobile gaming business even under ultra-conservative assumptions about FanDuel's market share. Sobel Aff. Ex. 21, FanDuel_Def_000357554.

146. On the government regulations front, FanDuel was also actively positioning itself to launch a standalone sports gambling business in the first states projected to legalize sports gambling. Based on his view that the legalization of sports gambling was "inevitable," Defendant King explained to investors that the "entire company [was] putting the pieces in place to be ready for legalized sports betting" in the spring of 2018. Sobel Aff. Ex. 15, FanDuel_Def_000107882. This included "[h]aving meetings with all the big casino groups" to discuss possible joint ventures and "engaging with [the] states" likely to be "first out of the gate" in legalizing sports betting. *Id.*

147. Put simply, FanDuel did not need to merge with an established gaming company to capitalize on sports gambling. FanDuel had the customer base, brand name, technology, and commercial partnership opportunities to create a profitable standalone gambling business. And FanDuel was already actively engaging key stakeholders that would define the space. The Director Defendants, KKR, and Shamrock were all aware of FanDuel's ability to succeed in sports gambling on its own before the Supreme Court's decision in *Murphy*.

D. Defendants Knew Sports Gambling Would Dramatically Increase the Value of FanDuel

148. In April 2018, FanDuel updated a "valuation framework" to assess the potential impact of sports gambling on the company with the help of Moelis. Conservatively assuming that FanDuel was able to capture between 3% and 7% of the US sports gambling market, FanDuel estimated that sports gambling reflected an "annual revenue opportunity of ~$300[mm] - ~$1,140mm" that is "incremental to the Company's existing business plan." Sobel Aff. Ex. 22, FanDuel_Def_000205443. The sports gambling opportunity was 10-15 times larger than FanDuel's existing daily fantasy sports business, and FanDuel recognized that it was "uniquely positioned to capitalize on it":



149. All of the work FanDuel did in the spring of 2018 to prepare for the assumed legalization of sports gambling supported a few key conclusions. *First*, the potential sports gambling market in the United States was enormous, creating billions in new revenue opportunities. *Second*, FanDuel's customer base, brand, and platform made it uniquely positioned to succeed in the sports gambling market. *Third*, winning even a modest share of the sports gambling market would dramatically increase the value of FanDuel given the potential revenue at stake. These analyses were shared with the Director Defendants, KKR, and Shamrock at the highest levels.

VI. Paddy Power Betfair & FanDuel Negotiate a Preliminary Term Sheet

150. The first two-and-half months of FanDuel's capital raising efforts in 2018 generated substantial interest among investors. Moelis was simultaneously working on different potential transactions that would infuse capital into FanDuel, merge the company with another market player, or take FanDuel public. Potential partners flocked to FanDuel from all corners of the media, entertainment, gambling, and hospitality markets. FanDuel's focus began to narrow in mid-March 2018 when a British gaming company called Paddy Power Betfair began to express interest in a potential partnership.

A. Talks Begin

151. From the outset, FanDuel and Paddy Power Betfair focused their discussions on the possibility of merging for the purpose of jointly tackling sports gambling in the United States. After the parties held an initial discussion, they exchanged information on their respective businesses. FanDuel provided an overview of both its existing business, as well as what FanDuel saw as its "assets for the US sports betting market opportunity." Sobel Aff. Ex. 23, FanDuel_Def_000006351.

From: David Vanegmond [mailto:david.vanegmond@fanduel.com]
Sent: 21 March 2018 12:21
To: John Hartnett <John.Hartnett@paddypowerbetfair.com>
Cc: Matt King <matt.king@fanduel.com>; Tom Bowry <Tom.Bowry@paddypowerbetfair.com>; ramy.ibrahim@moelis.com; Aberg, Alan <alan.aberg@moelis.com>; Burke, Jeremy <Jeremy.Burke@moelis.com>; Capshew, Andrew <Andrew.Capshew@moelis.com>
Subject: Re: PaddyPowerBetfair

Johnny / Tom,

Thank you very much for sharing. Please find a business overview presentation on FanDuel with an overview on what we view as our assets for the US sports betting market opportunity.

As a next step, it'd be great to schedule a call to walk through this and answer any questions. We'd be happy to do this and then could have a more in-depth conversation at an in-person meeting in early April when you're in town.

Please also note, I've CCed some other members of the Moelis team who can provide additional background and diligence materials if helpful.

Best,
Dave

152. In response, Paddy Power Betfair confirmed that it viewed the U.S. sports gambling opportunity the same way as FanDuel and saw an opportunity for the companies to form a "very powerful combination in the US market." *Id.*

From: Tom Bowry [mailto:Tom.Bowry@paddypowerbetfair.com]
Sent: Friday, March 23, 2018 4:36 PM
To: David Vanegmond
Cc: Matt King; Project_Fastball_Ext; Ibrahim, Ramy; John Hartnett; John Griffin
Subject: [EXT] RE: PaddyPowerBetfair

Hi Matt, Dave, Moelis,

Many thanks for sending through the overview deck on your business, it was very interesting. As mentioned the other day, it seems like both view the US opportunity in the same way and have assets and skill-sets that could be a very powerful combination in the US market. We are keen to increase our knowledge of the business and develop our investment thesis, and to this end we have compiled a short request list (attached) of info.

153. Paddy Power Betfair and FanDuel immediately recognized the enormous potential for a combined company to capture the sports gambling market. For its part, Paddy Power Betfair was the "world's largest publicly traded online gaming" company with operations in the United Kingdom, Ireland, and Australia in addition to the United States. Notwithstanding its size internationally, Paddy Power Betfair's footprint and brand in the United States were both relatively small, including (1) a fledgling daily fantasy sports start-up called DRAFT, (2) a horseracing TV and online wagering network known as TVG, and (3) two small gambling operations in New Jersey. Sobel Aff. Ex. 24, FanDuel_Def_000120354.

154. FanDuel, by contrast, had one of the most recognizable brands in sports, a userbase of six million people in the prime demographic for sports gambling, and an award-winning mobile platform. Combining the gambling know-how of Paddy Power Betfair with the ubiquitous brand of FanDuel created a company destined to dominate the sports gambling market. That market dwarfed the daily fantasy sports market upon which FanDuel's previous valuations had been based (including the $1.2 billion valuation from the company's unconsummated merger with DraftKings).

B. "What Matters Here Is Relative Valuation"

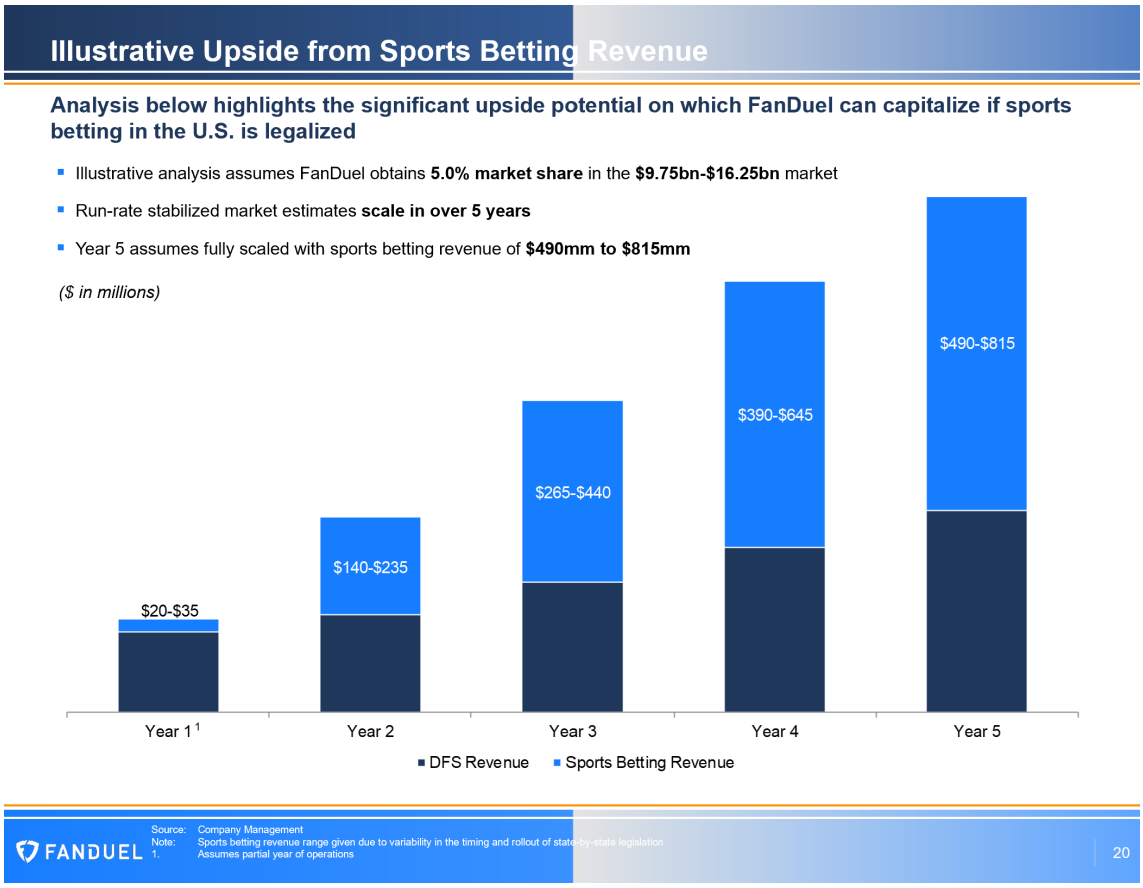
155. As Paddy Power Betfair and FanDuel worked on scheduling an in-person diligence meeting in early April 2018, Defendants conferred with Moelis on their negotiating strategy. Consistent with their earlier discussions, Moelis advised FanDuel to focus on how much equity it might receive in a joint venture, rather than the actual value of FanDuel's existing business. As Moelis explained to Defendant King and David VanEgmond, "what matters here is 'relative valuation' (not absolute valuation) in which case we can argue that we could both be valued at [a] much lower number and still get to the same place (51%/49%)." Sobel Aff. Ex. 25, FanDuel_Def_000006413. In other words, so long as a joint venture partner like Paddy Power

Betfair agreed to a favorable split of the ownership in the resulting joint venture, it did not matter what value was nominally placed on the assets each side contributed.

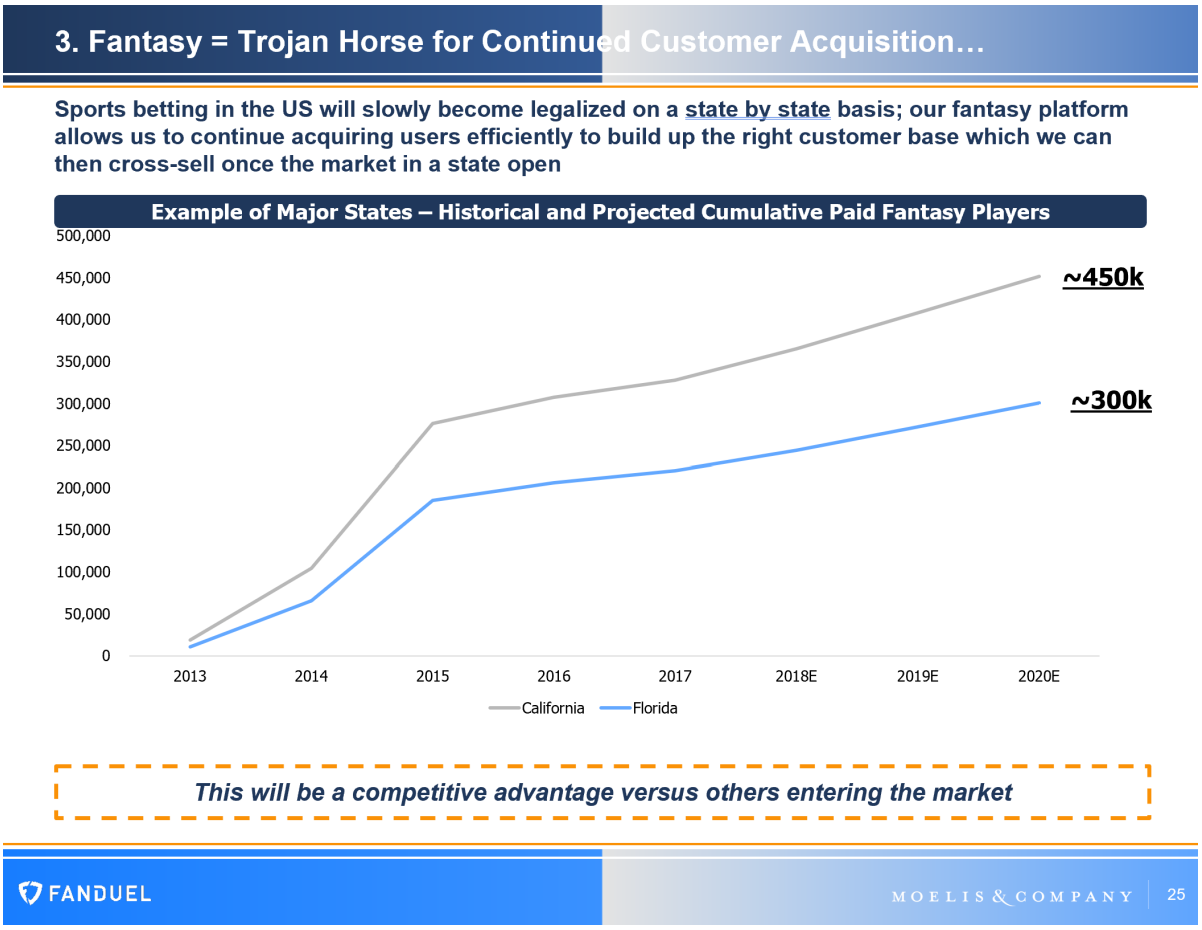
156. This is one of the reasons why none of the term sheets negotiated by FanDuel and Moelis—including the Paddy Power Betfair term sheet—reflect an accurate assessment of FanDuel's value as a standalone daily fantasy sports business. Defendants were not focused on accurately ascertaining, much less maximizing, the "value" attributed to the assets FanDuel contributed. Instead, their focus was on ensuring a greater ownership stake in any merged company.

C. Paddy Power Betfair and FanDuel Discuss the Sports Gambling Opportunity

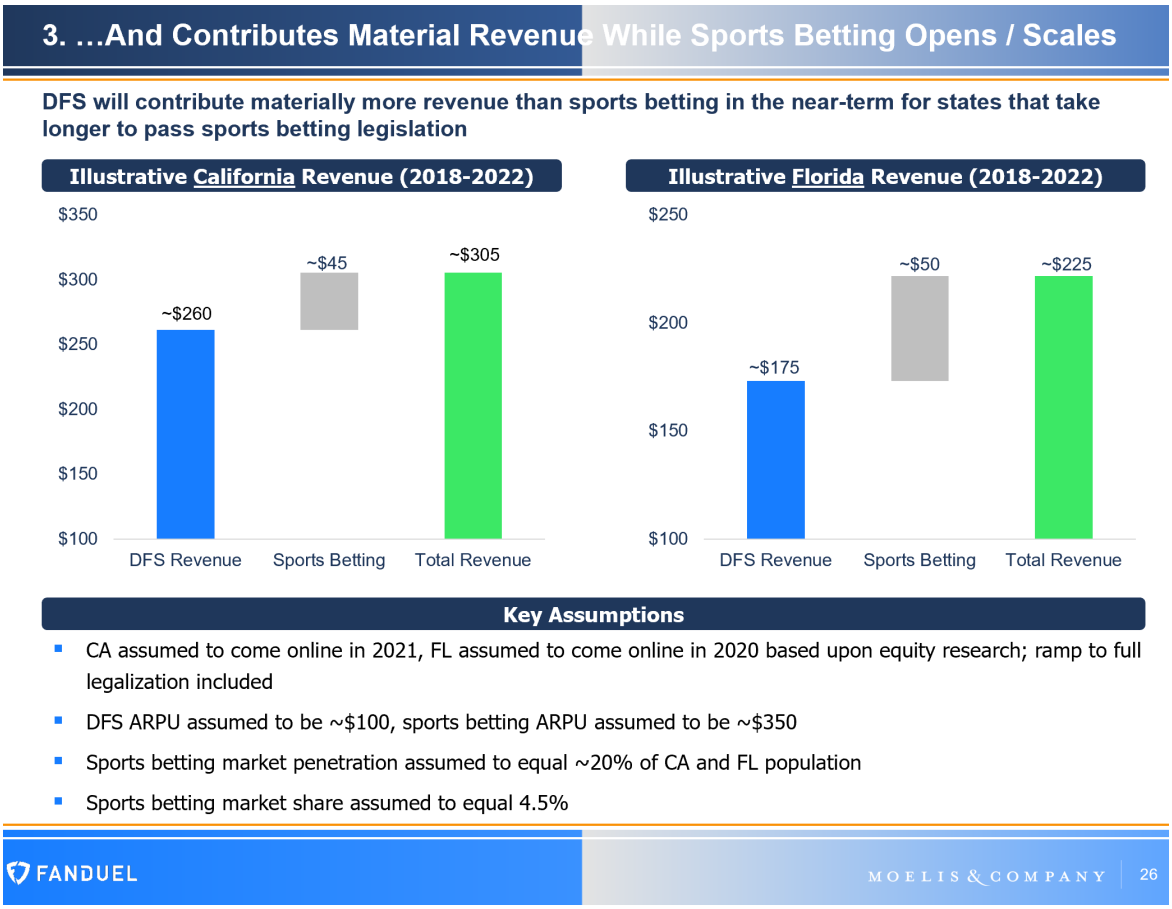
157. With the clock ticking for the Supreme Court to issue its opinion in *Murphy*, FanDuel met with Paddy Power Betfair in-person on April 4, 2018 in New York. The parties dedicated a substantial portion of their time to discussing how a merged company could tackle the expected sports gambling opportunity in the United States. Sobel Aff. Ex. 26, FanDuel_Def_000006389. FanDuel made a presentation to Paddy Power Betfair to make the case for merging the companies into a sports gambling behemoth. Sobel Aff. Ex. 13, FanDuel_Def_000303336. FanDuel included a projection of its potential standalone sports gambling revenues over the first five years post-legalization. Even assuming FanDuel only captured 5% of the market, conservative by any measure, the company estimated it would earn upwards of $800 million in additional annual revenue from sports gambling by year five. *Id.*



158. FanDuel also highlighted some of the unique assets the company brought to the table for sports gambling. For instance, because daily fantasy sports were broadly legal across the United States, and because the vast majority of daily fantasy sports users were projected to be sports gamblers, FanDuel had the ability to enter markets that had not yet legalized sports gambling and begin building a customer base. Using California and Florida as examples, FanDuel showed Paddy Power Betfair the competitive first-mover advantage it had gained over other companies by being in a position to build a customer base of hundreds of thousands before sports gambling was even legalized. *Id.*



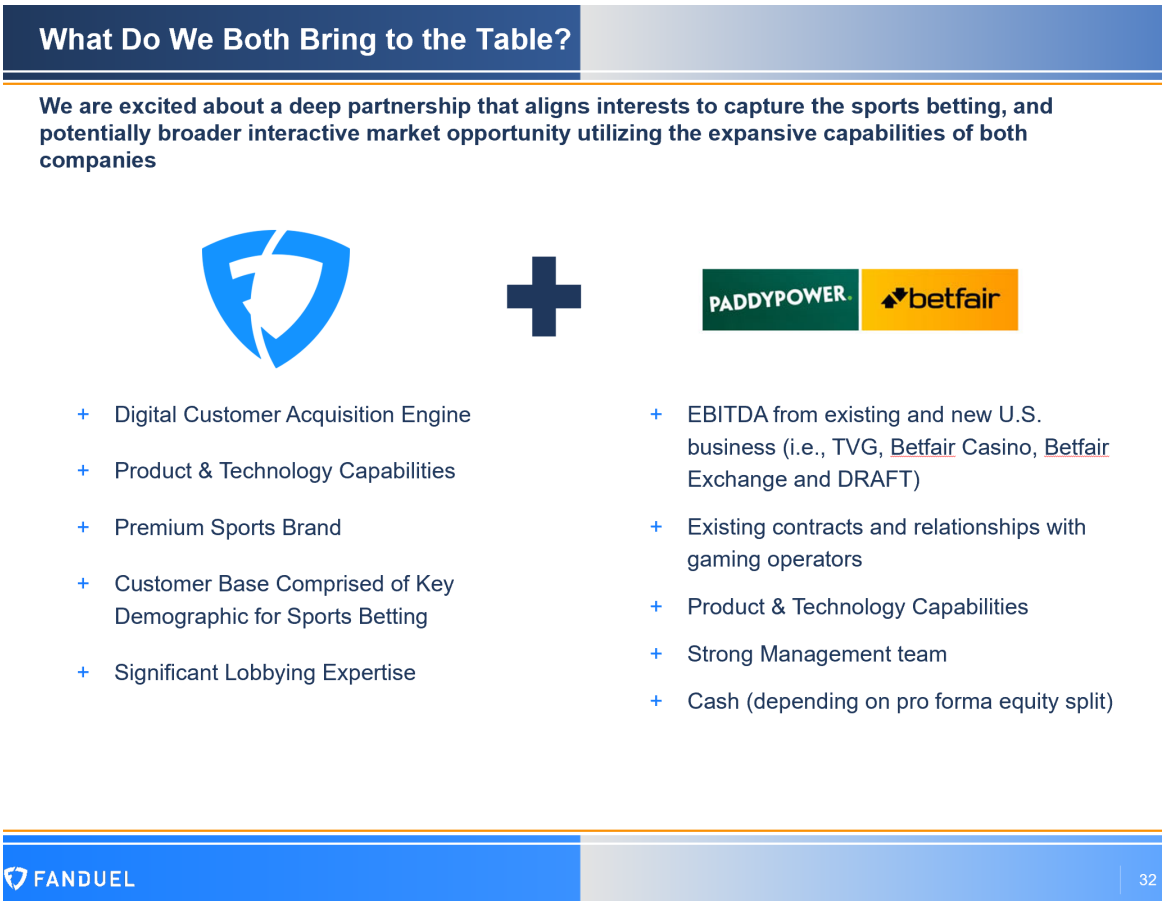
159. FanDuel referred to its ability to sneak into new markets before sports gambling was officially legalized as its "Trojan Horse" strategy. Partnering with FanDuel would allow Paddy Power Betfair to establish a foothold in markets well-before sports gambling was officially allowed. What is more, the "Trojan Horse" strategy had the added benefit of allowing FanDuel to generate "material revenue" from key states—like Florida and California—before the legalization of sports gambling. *Id.*



160. FanDuel's workforce was also a strategic advantage. FanDuel had a large product and engineering team that was versed in *both* fantasy sports in the United States *and* sports betting in Europe. Several key FanDuel employees had prior work experience with major sports gambling operators, including Paddy Power and Betfair, the respective gambling enterprises that merged to create Paddy Power Betfair. *Id.*



161. The overarching focus in FanDuel's April 4 presentation was not the existing business of FanDuel or the standalone value of its daily fantasy sports franchise. This was consistent with the parties' discussions throughout the negotiations, which focused on the opportunity in the sports betting market. While Paddy Power Betfair and FanDuel could each be potent competitors in the anticipated sports gambling market on their own, together they would form an unstoppable force. FanDuel thus highlighted the unique set of skills, knowledge, platform, brand, and customer base created by joining the companies together. *Id.*



D. The Parties Begin to Exchange Term Sheets

162. Following the first set of diligence meetings, the parties started exchanging term sheets for a potential merger. From the outset, the term sheets contemplated a stock-for-stock merger in which FanDuel's shareholders would own equity in a newly created company. This structure matched Moelis's advice to the Defendants on how to best capture the upside of sports gambling.

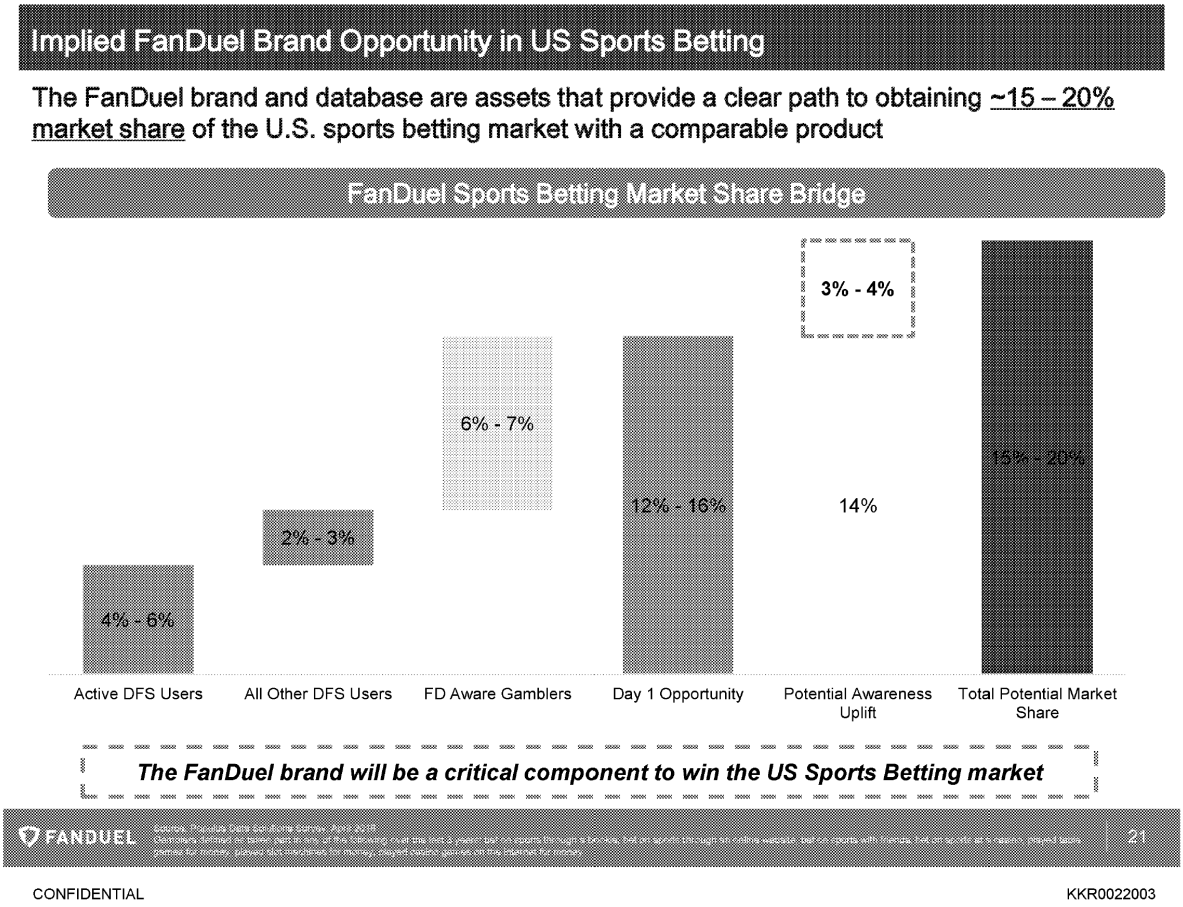
163. In addition, Defendants KKR and Shamrock were also concerned about their ability to control when and how they could exit their investments. Paddy Power Betfair's initial term sheet included a "Call Option," whereby Paddy Power Betfair could require KKR, Shamrock, and the other FanDuel shareholders to sell their shares in the newly merged company. Sobel Aff. Ex. 27, FanDuel_Def_000116926. FanDuel responded by inserting a "Put Option" that gave the FanDuel

shareholders the right to force Paddy Power Betfair to buy their interest in the newly merged company. Sobel Aff. Ex. 28, FanDuel_Def_000117120. Securing this "Put Option" was critical to preferred investors like KKR and Shamrock, because it gave them certainty and control over their ability to cash-in on their investment on their own timeline.

E. More Diligence

164. FanDuel and Paddy Power Betfair held a second set of meetings in New York in late April. Sobel Aff. Ex. 29, KKR0021802. The meetings included sessions on each company's existing businesses, as well as topics that covered necessary preparations to integrate the businesses. Members of FanDuel's board, including Defendants Oberwager, LaSalle, and Vogel attended the meetings.

165. At the request of Paddy Power Betfair, FanDuel provided a detailed analysis of the value of its brand in the sports gambling market. The analysis concluded that "the FanDuel brand and database are assets that provide a clear path to obtaining ~15-20% market share of the U.S. sports betting market with a comparable product." Sobel Aff. Ex. 30, KKR0021983.



166. The implications of a "clear path" to 15-20% market share for sports gambling were profound. Earlier estimates of the revenue opportunity for FanDuel from sports gambling were based on conservatively assuming the company captured a 3% to 7% market share. More than doubling FanDuel's share of the sports gambling market would similarly impact its projected revenue. Instead of FanDuel projecting to generate $800 million in annual sports gambling revenue by year five, a "clear path" to a 15-20% market share would imply that FanDuel would earn closer to $2 billion in annual sports gambling revenue. This is revenue above-and-beyond what FanDuel expected to generate from its already existing daily fantasy sports business by several orders of magnitude. Sobel Aff. Ex. 31, KKR0022225.

167. As FanDuel's projected gambling revenue grows, so does the value of the company. FanDuel shared this updated analysis of its brand value with Defendants Oberwager, King, Cleland,

and LaSalle, as well as employees of both KKR & Co. (including Allan Jean-Baptiste and Mike Saeks) and Shamrock Capital (including Megan Wallach).

168. The Defendant Directors recognized the potential value created by combining FanDuel and Paddy Power Betfair. As Defendant Oberwager explained to his fellow directors on April 26: "It seemed to me that this [merger with Paddy Power Betfair] would dramatically improve our position in sports betting. In the event of PASPA repeal, felt like we would leapfrog after a combination with Paddy – tech, know-how, market access, product, data etc."

F. KKR & Shamrock Exert Control

169. KKR & Co. and Shamrock Capital exerted control in FanDuel's negotiations with Paddy Power Betfair. Moelis openly recognized KKR and Shamrock as the true "principals" in the negotiations that had authority over the final decision on the merger. Sobel Aff. Ex. 32, KKR0021801. KKR and Shamrock would receive regular updates from Moelis on the merger negotiations and diligence, often without any employee of FanDuel involved. *Id.*; Sobel Aff. Ex. 33, SROCK00017394. Many times, these discussions focused on broad strategic questions—such as whether FanDuel should go public or stay private—that would have a significant impact on the future of the company. While KKR and Shamrock had direct access to, and influence over, Moelis, FanDuel's common shareholders—the true owners of the company—were shut out of the process entirely.

170. KKR and Shamrock did not just control the big picture strategic questions around which deals FanDuel should entertain. They also controlled the nuts-and-bolts of the diligence process. FanDuel instructed Moelis to include KKR & Co. employees Allan Jean-Baptiste and Mike Saeks and Shamrock Capital employees Megan Wallach and Kate Armstrong on all diligence related to the deal. For KKR, FanDuel went even further, directing Moelis to share "all the modeling" and

"valuation analysis" related to the merger for KKR & Co. to evaluate. Sobel Aff. Ex. 34, FanDuel_Def_000117507.

171. KKR and Shamrock oversaw the details of FanDuel's negotiations with Paddy Power Betfair. For example, when it came time to review the term sheet proposed by Paddy Power Betfair, KKR & Co. and Shamrock Capital received advance copies before any other preferred shareholders or the FanDuel board. Sobel Aff. Ex. 35, KKR0021000. And when major events occurred that would impact the parties' negotiations, like the *Murphy* decision, KKR and Shamrock engaged directly with Paddy Power Betfair without anyone from FanDuel involved. Sobel Aff. Ex. 36, KKR0024712.

G. Paddy Power Betfair and FanDuel Sign a Preliminary, Non-Binding Term Sheet

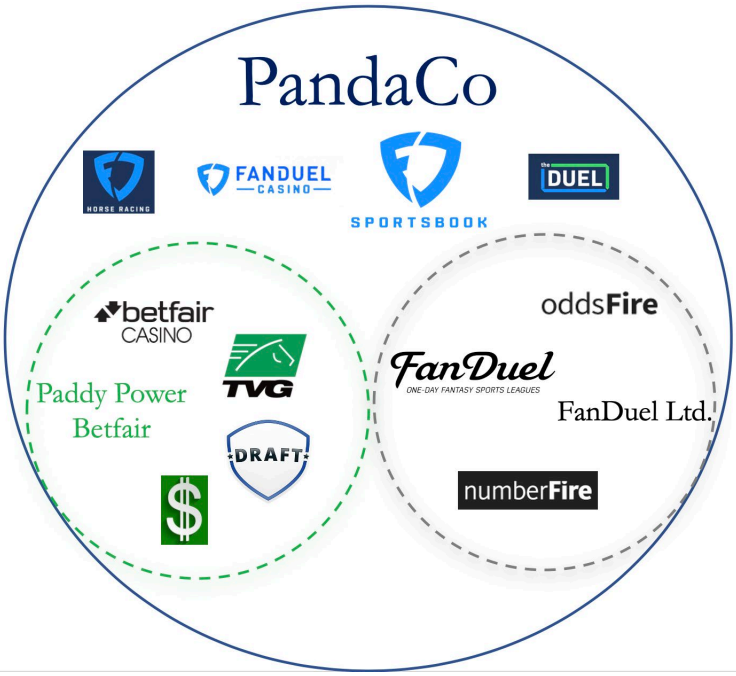
172. After less than two months of negotiations, FanDuel and Paddy Power Betfair signed a term sheet on April 28, 2018. The structure of the transaction was a "stock-for-stock" merger in which both FanDuel and Paddy Power Betfair would own equity in a newly merged company, initially called PandaCo.

173. Paddy Power Betfair laid plain the logic behind the proposed merger in their letter to FanDuel. Paddy Power Betfair was motivated to merge with FanDuel based on the belief "that the US has the potential to become a very substantial sports-betting and iGaming market." Sobel Aff. Ex. 37, FanDuel_Def_000020842. Paddy Power Betfair considered that "MergerCo, through a combination of complimentary best-in-class assets and personnel, [would] be the best placed operator to capitali[z]e from regulatory loosening in the US gaming market." *Id.* Consistent with the parties' negotiations, the clear rationale for the merger was to create a sports gambling juggernaut, the value of which would eclipse the standalone value of either company's existing business.

174. A new company, PandaCo, would be created to facilitate the proposed merger. Paddy Power Betfair would contribute its U.S. assets and cash to PandaCo in exchange for PandaCo

stock. FanDuel would contribute its share capital and assets to PandaCo in exchange for PandaCo stock. The result would be a company jointly owned by Paddy Power Betfair and FanDuel.

175. The consideration FanDuel would receive in the merger was shares in PandaCo (now called FanDuel Group). The plan for PandaCo was not only to continue to operate the legacy businesses of Paddy Power Betfair (in the green circle) and FanDuel (in the black circle) but to launch entirely new businesses to take advantage of the expected legalization of sports gambling. The opportunity to build these new businesses—now known by names like FanDuel Sports Book and FanDuel Casino—was the driving rationale behind the merger.



176. The parties' non-binding April 2018 term sheet did not purport to value PandaCo, including all of its new and existing businesses. Instead, the non-binding April 2018 term sheet included a "relative value exercise" engineered by the parties to justify how the parties would divide PandaCo's equity between them—40% to FanDuel and 60% to Paddy Power Betfair.

177. The half-page bare-bones table included in the term sheet demonstrates that this "relative valuation exercise" was nothing more than an attempt to reverse engineer numbers to reach

a predetermined 40-60 split. As depicted below, the apparent manipulation of the "valuation multiple type," applied "multiple," and treatment of "start-up costs" makes this reverse engineering exercise clear:

($ in millions)	FanDuel	PaddyPower U.S.
Valuation Multiple Type	**Revenue**	**EBITDA**
Metric	$139.9	$29.7
(x) Multiple	4.0x	18.0x
Enterprise Valuation	**$559.4**	**$534.1**
(-) Hercules Debt[2]	(21.8)	-
(-) 2017 Convertible Note[3]	(47.1)	-
Equity Value (Pre-Cash Contribution)	$490.5	$534.1
(+) Cash Contribution	-	145.0
Equity Value (Post-Cash Contribution)	**$490.5**	**$679.1**
Equity Ownership	*41.9%*	*58.1%*
50% Conversion of 2017 Convertible Note to Equity	23.6	-
Equity Value (Post Conversion)	$514.1	$679.1
Equity Ownership	*43.1%*	*56.9%*

Different inputs used for calculating FanDuel versus Paddy Power enterprise valuation numbers

Start-up costs from Paddy Power businesses excluded

Different multiples applied to FanDuel versus Paddy Power businesses

Enterprise value set at exactly FanDuel A Preference Shares Subscription Price

No value included from projected sports betting revenue or synergies created by business combination

178. Defendants' intention to use the potential merger as a scheme to cut out FanDuel's common shareholders is clear from the so-called "Enterprise Valuation" assigned to FanDuel. KKR, Shamrock, and King brazenly assigned a value of $559.4 million to FanDuel as a standalone business, which was *precisely* the amount of the aggregate Subscription Price of FanDuel A Preference Shares, otherwise known as the "preference stack" owned by the preferred shareholders. From the outset of the preliminary term sheet, these Defendants were laying the groundwork to steal the value of FanDuel away from its founders, early employees, and initial investors.

179. The gerrymandered nature of the preliminary term sheet was reinforced by FanDuel's Executive Vice President and Head of Strategy, David VanEgmond, just days after it was signed. Facing questions from Comcast about the value of Paddy Power Betfair's U.S. businesses, VanEgmond responded by sending Comcast a series of analyst research reports that "offer[ed] valuation perspectives about [Paddy Power Betfair's] US business." Sobel Aff. Ex. 38,

FanDuel_Def_000119110. Those reports indicated "a wide value range" from $300 million to over $800 million depending on the analysis. *Id.* Notably, VanEgmond did not offer Comcast any explanation for how the parties wound-up with the $534 million "enterprise value" included in the term sheet, nor did he defend the accuracy of that "enterprise value" to Comcast. Instead, the range of values demonstrated a basic fact about the preliminary term sheet—the "enterprise values" based on different forms of calculations were used to justify the parties' split in the equity in the newly merged company, not to provide an earnest and objective assessment of the businesses' actual values.

180. An even greater omission than the parties' failure to accurately value the underlying businesses each contributed to the merger is the fact that the preliminary term sheet contains no attempt to value the U.S. sports gambling opportunity which was the driving purpose behind the merger. The true enterprise value of the newly merged company, then-called PandaCo, was several times larger than the combined enterprise values attributed to FanDuel and Paddy Power Betfair. Defendants were all well-aware of this fact based on analyses from analysts, FanDuel, and Moelis.

181. In negotiating the preliminary term sheet, Paddy Power Betfair and FanDuel were sensitive to the fact that FanDuel would distribute the PandaCo shares it received in the transaction to its shareholders. In turn, the parties made clear that "internal waterfall of, and allocation of proceeds among, FanDuel stockholders remains subject to discussion." Sobel Aff. Ex. 37, FanDuel_Def_000020842.

182. The preliminary term sheet did not dictate the way in which the FanDuel board had to run the Article 83 waterfall. Not only do the express terms of the parties' preliminary agreement explicitly state this, but it would also have been impossible to legitimately run the Article 83 waterfall based on the term sheet because it did not place a value on the newly merged company and

therefore did not place a value on the consideration (shares in the newly merged company) that was delivered to FanDuel.

183. The structure of the Paddy Power Betfair merger set out in the preliminary term sheet satisfied the objectives that FanDuel's preferred shareholders and Moelis discussed at the start of 2018. FanDuel received equity in the newly merged company such that shareholders could reap the upside of the anticipated sports gambling market. This merger was a continuation of FanDuel's shareholders' investment in the company with a planned exit several years into the future. It was not a sale of the business. All of FanDuel's shareholders—preferred and common alike—were entitled to participate in PandaCo's successes.

H. The Term Sheet Ends the Moelis Process

184. Moelis began to wind down the fundraising process for FanDuel in mid-April 2018—a month before the *Murphy* decision. This was not the result of a lack of interest in FanDuel. To the contrary, Moelis continued to receive interest in FanDuel from numerous potential partners and other investors through the close of the Paddy Power Betfair merger. Instead, FanDuel directed Moelis to slow down its capital raising efforts in mid-2018 because FanDuel was in serious discussions with Paddy Power Betfair and did not have the "bandwidth" to simultaneously pursue other partners. Sobel Aff. Ex. 39, FanDuel_Def-000006597.

185. The Moelis process came to a formal halt in late April. FanDuel agreed to an exclusivity period with Paddy Power Betfair as part of the preliminary term sheet the parties signed on April 28, 2018. The parties signed a definitive agreement to merge before the exclusivity period ended. As such, Moelis never re-engaged the process of soliciting investors for FanDuel after the Supreme Court's decision in *Murphy*.

186. While FanDuel fielded many offers between January and mid-April 2018, Defendants knew those offers did not reflect the full value of FanDuel in a world where PASPA was

repealed. As Defendant Oberwager explained to the senior leadership of KKR & Co. just two weeks before the Supreme Court's *Murphy* decision, many potential investors in FanDuel were "taking a wait and see approach" on sports gambling. Sobel Aff. Ex. 12, KKR0022591. Defendant Oberwager proclaimed that "[i]f PASPA is repealed, I think valuations [for FanDuel] will improve meaningfully" above the offers received in the Moelis process to date. *Id.* Defendant Oberwager's prediction was consistent with Moelis's analysis that indicated FanDuel's value would skyrocket if sports gambling was legalized in the United States.

VII. Common & Preferred Shareholder Tensions Escalate

187. At the same time FanDuel was signing the preliminary non-binding term sheet to merge with Paddy Power Betfair, the company's preferred shareholders began to scheme about how to maximize their ownership in the new merged company, PandaCo.

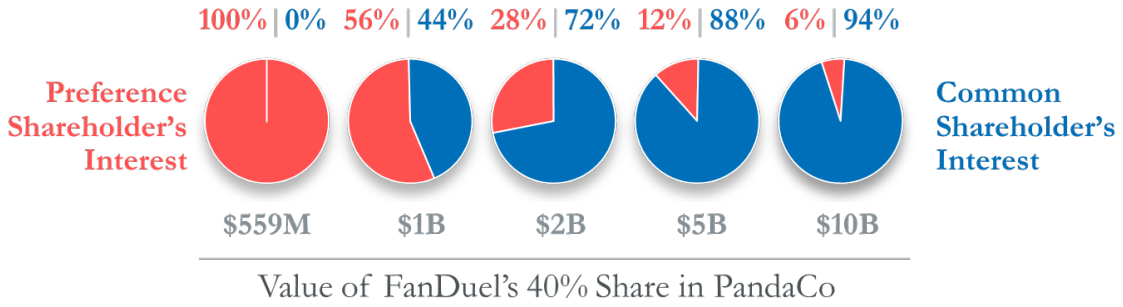
A. Article 83 Waterfall Dynamics

188. FanDuel had to distribute the consideration it received as a result of the merger under the waterfall provision of the company's Articles. As described above, Article 83 capped the amount preferred shareholders could receive to the "aggregate amount payable on each A Preference Share," which Defendants understood was approximately $559 million. All consideration above that $559 million mark had to be shared *pro rata* among FanDuel's common shareholders.

189. In any cash sale, where the amount of consideration FanDuel received was unambiguous, the interests of the preferred and common shareholders were easily aligned. If FanDuel sold for $2 billion, for example, preferred shareholders would share $559 million and common shareholders would share $1.441 billion. Because many shareholders held both preferred and common shares, the incentive existed to get as much cash in return for the company as possible.

190. The incentives were more complicated in circumstances where FanDuel received shares in a non-publicly traded company, instead of cash. Both preferred and common shareholders

had an interest in owning the maximum number of shares they could. This created a conflict that presented as a zero-sum game. The absolute number of shares preferred shareholders received in the new merged company decreased as the value of each individual share increased. Simply put and as illustrated below, the higher the nominal value of the "aggregate consideration" FanDuel received, the lower the number of shares in the new merged company the preferred shareholders would be entitled to keep for themselves.



B. Two Potential Paths

191. Discretion existed as to when the waterfall had to be run because the "aggregate consideration" the company was set to receive in the Paddy Power Betfair deal was non-transferrable non-public shares in a company yet to be created. FanDuel could run the waterfall immediately upon closing the transaction or wait until realization of one of the defined exit points (*e.g.*, the "Put Option") built into the merger transaction.

192. Whenever FanDuel opted to run the waterfall, it had to value the shares in PandaCo that it received. Without determining the actual "value" for the shares in PandaCo that FanDuel received, there was no way to define the "aggregate consideration" for purpose of running the waterfall, and consequently there was no way to determine how many shares to distribute to preferred versus common shareholders.

193. FanDuel opted to run the waterfall in May 2018. But it could have waited to run the waterfall at a later point in time when more certainty existed as to the value of the "aggregate

consideration" the company had received. The board could have run the waterfall, for example, at the three-year or five-year anniversaries of the deal, given that the merger terms provided for certain "Exit/Liquidity" events—the actual payment of a fair market value for the shares in the new merged company—for the FanDuel shareholders at those times.

194. Article 84 governs shareholders' "Rights on exit." It has provisions that apply when the consideration received as part of an Offer under Article 78.9 is "deferred or contingent" in some way. Article 84 provides that when there is certainty around the value of the consideration received by the company—for instance, when FanDuel's shareholders get cash at the third and fifth anniversary of the merger—the merger proceeds shall then be distributed to the shareholders pursuant to the "order of priority in article 83." In turn, FanDuel's Articles not only contemplated that the waterfall might be run well after a change-in-control transaction is completed, they provide express instructions for how to do so under those circumstances.

195. There are a number of reasons why running the waterfall at a later point in time made sense given the structure of the FanDuel-Paddy Power Betfair deal. First, doing so would have allowed for a fair market value of the aggregate consideration the company received to have been performed without potentially jeopardizing the closing date. Second, because the "aggregate consideration" was shares in the new merged company and not cash, delaying the waterfall would have ensured that the upside of legalized sports gambling and other revenue opportunities afforded the newly merged company were properly accounted for. And lastly, the term sheet for the merger provided for payment events only at the three-year and five-year anniversaries of the deal, so FanDuel shareholders could not accelerate a "cash out" event before those future dates anyway. In short, there was no rush to run the waterfall.

196. Regardless of when FanDuel chose to run the Article 83 waterfall, if any dispute existed as to the value of the shares FanDuel received in the merger or whether the terms and

conditions offered to some shareholders were less favorable than those offered to others, then FanDuel's board had to "refer the matter to an Independent Expert." The Independent Expert then had to determine and certify his or her findings to the FanDuel board. This process existed regardless of the form of the "Offer" received. If the offer was a Mandatory Offer, Article 77.5 required the input of an independent expert. If the offer was otherwise "on bona fide arm's length terms"—the second form of "Offer" that could trigger KKR & Shamrock's Drag Along Right—Article 78.10 required the same.

C. KKR Decides to Run the Waterfall

197. All Defendants, as well as the company, understood the two options for when to run the waterfall. Even before the term sheet was signed, FanDuel's preferred shareholders wanted to understand how the timing of the waterfall would impact their ownership in the new company. On April 27, 2018, the Chairman of the board, Defendant KKR advisor Carl Vogel, asked senior management at FanDuel for a "pro forma ownership table assuming the merger is completed."

198. David VanEgmond responded within the hour, attaching "an illustrative summary output of the ownership." According to VanEgmond, "this analysis would be based on running the waterfall; note, ownership could fluctuate at exit if the FD shareholder ownership is structured in another manner that maintains the waterfall and subsequent upside potential for common shareholders." VanEgmond then concludes his email by stating "[w]ith those caveats in mind, I hope that this summary helps and we'll certainly provide a more finalized version once those details have been ironed out." Sobel Aff. Ex. 40, FanDuel_Def_000118418.

Summary Shareholder Ownership

	FanDuel - Current			Merger @ $560mm Value (~44% Equity of PF)	
	% of Convertible	% of A Preference	% of Common Original	% of FanDuel Value	% PF Ownership
KKR	24.4%	21.1%	14.2%	20.5%	**9.0%**
Comcast (CV+NBCU)	20.8%	14.3%	11.8%	14.2%	**6.3%**
Shamrock	3.8%	15.0%	12.2%	13.3%	**5.9%**
Capital G	12.3%	10.6%	7.2%	10.3%	**4.6%**
Richard Koch	7.8%	6.7%	5.8%	6.5%	**2.9%**
Piton Capital	4.0%	3.5%	4.5%	3.4%	**1.5%**
NBA	0.0%	2.9%	3.0%	2.5%	**1.1%**
Compound Ventures	4.7%	2.4%	0.3%	2.5%	**1.1%**
Pentech Ventures	5.8%	2.3%	4.5%	2.5%	**1.1%**
Tusk Ventures	0.0%	2.9%	1.0%	2.5%	**1.1%**
Verizon Ventures	7.5%	1.7%	0.9%	2.2%	**1.0%**
Time Warner	0.0%	2.2%	1.4%	1.9%	**0.8%**
Bullpen Capital	2.1%	1.8%	2.1%	1.8%	**0.8%**
Scottish Enterprise	0.0%	2.0%	4.2%	1.7%	**0.7%**
KEC Ventures	0.0%	1.9%	0.5%	1.6%	**0.7%**
AT&T (DTV)	0.0%	1.8%	1.3%	1.5%	**0.7%**
Evolution Media Capital (CAA)	0.0%	1.6%	1.0%	1.4%	**0.6%**
Other	6.9%	5.3%	24.1%	5.2%	**2.3%**
MCO				4.5%	**2.0%**
Total				**100.0%**	**44.2%**

FANDUEL Note: For simplicity, assumes full conversion of convertible note. Term sheet contemplates 50% but does not specify shareholders
Note: Analysis does not incorporate the NBA secondary sale. Analysis assumes cash on balance sheet covers transaction fees and expenses
Note: Analysis assumes full MCO rollover, which is still TBD 1

199. VanEgmond's illustrative summary demonstrates that Defendants KKR & Shamrock, as well as other large, preferred shareholders like third-party Comcast, each owned a greater percentage of preferred shares than common shares. KKR, for example, owned 21.1% of the preferred shares, but only 14.2% of the common. Shamrock owned 15.0% of the preferred shares, but only 12.2% of the common. As a result, each of these preferred shareholders would be better off if the merged company's shares were allocated exclusively among the preferred shareholders (for which they owned a larger portion) and excluded common shareholders entirely. Under those circumstances, KKR, Shamrock, and Comcast would each wind up with a greater "pro forma ownership," i.e., ownership in the newly merged company, PandaCo.

200. VanEgmond's email response highlights this point when he notes that the preferred shareholders' ownership in the new merged company could fluctuate if the waterfall was

"maintained," *i.e.*, deferred until an exit event. Under that scenario, the "subsequent upside potential for common shareholders" would be preserved, meaning that common shareholders would likely own a portion of the newly merged company. By comparison, running the waterfall earlier using an artificially low valuation eliminated the "upside potential for common shareholders."

201. Defendant KKR & Co. had come to the same conclusion internally. On Saturday, April 28, 2018, KKR & Co. employees Allan Jean-Baptiste and Mike Saeks emailed Defendant Oberwager asking him for some time to discuss their "last updates to the model" to "align on our underlying assumptions." Defendant Oberwager's response is blunt. He asks whether Jean-Baptiste and Saeks are "going to be able to review impact from collapsing vs not collapsing waterfall?" He then makes the underlying assumption clear: "We are overweight pref, so I would imagine not collapsing is a problem for us." Sobel Aff. Ex. 41, KKR0022690.

From: "Ted Oberwager" <Ted.Oberwager@kkr.com>
Sent: Sat, 28 Apr 2018 13:56:18 -0400 (EDT)
To: "Allan Jean-Baptiste" <Allan.Jean-Baptiste@kkr.com>
Cc: "Mike Saeks" <Mike.Saeks@kkr.com>
Subject: Re: Sync Today

Are you guys going to be able to review impact from collapsing vs not collapsing waterfall? Shamrock is largely indifferent. 0.2% between pref ownership and common. We are overweight pref, so I would imagine not collapsing is a problem for us.

202. "Collapsing the waterfall" referred to distributing the consideration FanDuel received in the transaction in the order of preference set out in Article 83. Instead of common and preferred shareholders maintaining shares in the company, each would own whatever portion of the consideration each was entitled to under FanDuel's Articles.

203. Subsequent emails between the KKR & Co. employees, along with changes to the underlying model they were discussing, confirmed that KKR's position was that they should "collapse the waterfall" based on a valuation that was artificially below the $559 million level at which preferred shareholders alone would receive a distribution. In venture capital parlance, the

valuation would not "clear the preferred stack," freezing the common shareholders out and giving preferred shareholders a greater ownership stake. KKR's Jean-Baptiste explained this in response to Oberwager, writing that "[g]iven the current valuation doesn't clear the pref stack, we would therefore have a greater ownership collapsing now." Without mentioning his fiduciary obligations as a member of the FanDuel board, Defendant Oberwager quipped back: "[t]hat's my instinct too." Sobel Aff. Ex. 41, KKR0022690.

204. With Defendant KKR & Co. firm in its positioning, Defendant Oberwager reached out to FanDuel's CEO, his former colleague at KKR, and the company's senior management. On Tuesday, May 1, 2018, Oberwager wrote that "as of today, we remain in the collapse waterfall position," he announced, instructing FanDuel's management to run the waterfall based on a pre-*Murphy* valuation of FanDuel as a stand-alone company of approximately $559 million total enterprise value. This "valuation" was apparently based on the nominal value that was attributed to FanDuel solely for purposes of determining the relative split of ownership in the merged company between FanDuel and Paddy Power Betfair. It did not value PandaCo. Sobel Aff. Ex. 42, FanDuel_Def_000414746.

205. Defendant Oberwager's instruction to the company was not part of any action by FanDuel's board of directors. Instead, it was the first of many side deals and payoffs he would have to orchestrate to get other board members to "fall into line" and approve a distribution scheme that froze out common shareholders entirely. Defendant Oberwager barked at KKR & Co. employees to "keep an eye on" any potential unrest from shareholders with "questions about the waterfall collapse." He also made sure that senior management at the company knew KKR & Co.'s talking points, if asked. "Just to arm you as you have the discussions, but we confirmed this type of transaction would be deemed a CoC, and technically the waterfall runs," he said. *Id.* In actuality, the company's Articles did not require ("technically" or otherwise) that the company immediately run

the waterfall. Nevertheless, FanDuel's senior management dutifully responded: "Yes, thank you Ted. Those are the facts that I articulated and will stick to that and direct further questions to the Board which is handling this item." *Id.*

206. Other shareholders did, in fact, have serious concerns with what Defendants Oberwager and KKR & Co. had planned, even before the U.S. Supreme Court legalized sports gambling. According to VanEgmond, Mark Moens at Pentech—an investment fund that had a greater interest in common shares than preferred—"had questions about the waterfall … [and] mentioned that collapsing at $560mm seemed low." *Id.* VanEgmond added that "I'll imagine he will have the same issues that Andrin has." *Id.* Andrin Bachmann was a FanDuel board member whose investment fund, Piton Capital, also had a greater interest in common shares than preferred.

207. Lest there be any doubt, the concerns flagged by Moens and Bachmann in early May 2018 were vociferously raised to the FanDuel board two weeks later when the *Murphy* decision came down. Indeed, Plaintiff Nigel Eccles immediately emailed Bachmann and asked for a call "to get some comfort that someone is negotiating on behalf of the ordinaries" (*i.e.*, the common shareholders). Bachman forwarded the email to the rest of the board, who after passing it around, sent it on to the company's law firms. Defendants have used claims of attorney-client privilege to withhold information about their discussions regarding the common shareholder concerns from that point forward. Sobel Aff. Ex. 43, KKR0044031.

208. The common shareholders' dispute about whether to run the waterfall and, if so, at what valuation, was heard inside KKR & Co. After Eccles' discussion with Bachmann, KKR & Co. employee Jean-Baptiste reported to Defendant Oberwager that the company was "[c]urrently discussing needing formalized valuation work from Moelis (why I flagged a few days ago) to insulate from common shareholder concerns." Sobel Aff. Ex. 44, KKR0045023. Jean-Baptiste reiterated that

aside from Bachmann, two other board members, Defendants Cleland and Vogel, "would like it … given price was set pre PASPA." *Id.*

From: "Allan Jean-Baptiste" <Allan.Jean-Baptiste@kkr.com>
Sent: Fri, 18 May 2018 12:01:32 -0400 (EDT)
To: "Ted Oberwager" <Ted.Oberwager@kkr.com>
Subject: RE: Project Fastball Board Discussion Materials

FYI – Currently discussing needing formalized valuation work from Moelis (why I flagged a few days ago) to insulate from common shareholder concerns. May be able to do it post signing pre offer docs are issued. Andrew would like it, Carl would too given price was set pre PASPA. I think they should provide the valuation work and that was my understanding of what we wanted anyways? Do you agree?

209. Jean-Baptiste's May 18, 2018 email confirms two important facts. *First*, Defendants were aware the only way to come up with a valuation of FanDuel that was lower than $559 million was to ignore sports gambling (*i.e.*, to use something "set pre PASPA"). Whether in the context of a joint venture or a standalone operation, post-*Murphy* FanDuel was worth billions. *Second*, Defendants Cleland and Vogel understood the impact on the common shareholders of running the Article 83 waterfall without valuing PandaCo and nonetheless joined in Defendant KKR & Co's scheme.

D. Comcast Gets on Board

210. Hours after Defendant Oberwager decreed that the company was "in the collapse waterfall position," FanDuel's senior management reached out to other preferred shareholders who had seats on the board. VanEgmond emailed Defendants Cleland and LaSalle a "scenario analysis" attached to an email the subject line of which read simply, "Waterfall." Sobel Aff. Ex. 45, FanDuel_Def_000118911.

211. Cleland represented the "Comcast/NBC Investor," a combination of NBC Sports Ventures and Comcast Ventures' various investments, the combined total of which were overweight in preferred shares. As shown below, the "scenario analysis" depicted two scenarios, one in which the "status quo, *i.e.* waterfall stays in tact" and one in which the "waterfall collapse[s]." The analysis

shows that the total returns for NBC Sports Ventures was better at various exit points if the waterfall was run at the time of the deal, *i.e.* collapsed using the artificially low value assigned to FanDuel's assets (not shares in PandaCo). It also clearly showed that the difference between the two scenarios was more pronounced at higher exit valuations. For example, at a $1 billion exit valuation, NBC's return was 3.00x if the waterfall was collapsed immediately using an arbitrary price, instead of 2.67x if the waterfall was collapsed later in time. The analysis also made clear the substantial present and future advertising spend that the company had made with NBC, presumably to demonstrate the additional value that NBC had already received (albeit indirectly) in connection with its investment. Sobel Aff. Ex. 46, FanDuel_Def_000118912.

NBC Equity Value Analysis @ Exit

Status Quo (i.e. waterfall stays in tact)

	FD Shareholder Value @ Exit					
($ in millions)	$500	$600	$700	$800	$900	$1,000
PF w/ New Issuance	$60.64	$73.17	$83.16	$90.49	$97.82	$105.15
PF Return on Invested Capital	**1.14x**	**1.38x**	**1.56x**	**1.70x**	**1.84x**	**1.98x**
Return (excluding issuance)	0.93x	1.11x	1.26x	1.40x	1.54x	1.68x
Ad Spend - Already Spent	$26.75	$26.75	$26.75	$26.75	$26.75	$26.75
Ad Spend - Proposed Commitment Balance	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Total NBC Return	**1.83x**	**2.07x**	**2.25x**	**2.39x**	**2.53x**	**2.67x**
General Shareholder Return	*0.99x*	*1.21x*	*1.42x*	*1.63x*	*1.85x*	*2.06x*

Waterfall Collapse

	Value @ Exit (Waterfall Collapsed at Deal Value)					
($ in millions)						
Total Company Value	$1,160	$1,392	$1,624	$1,856	$2,088	$2,320
FD Shareholder Value	$500	$600	$700	$800	$900	$1,000
PF Ownership % w/ New Issuance	12.3%	12.3%	12.3%	12.3%	12.3%	12.3%
$ Value	$61.36	$73.63	$85.90	$98.17	$110.44	$122.71
PF Return on Invested Capital	**1.15x**	**1.38x**	**1.61x**	**1.85x**	**2.08x**	**2.31x**
Return (excluding issuance)	0.96x	1.15x	1.35x	1.54x	1.73x	1.92x
Ad Spend - Already Spent	$26.75	$26.75	$26.75	$26.75	$26.75	$26.75
Ad Spend - Commitment Balance	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Total Return	**1.84x**	**2.07x**	**2.31x**	**2.54x**	**2.77x**	**3.00x**

Note: Invested Capital based on $ in only.

Note: Return excluding issuance is all equity issued as a substituion for ad spend commitment.

212. VanEgmond's email made clear to Defendants Cleland and LaSalle that their respective institutions' returns would benefit from running the waterfall at the time of the merger. This was exactly the message Defendant Oberwager and KKR wanted to send.

E. Shamrock Extracts a Change in Terms

213. Inside Defendant Shamrock Capital Advisors, a separate discussion was already ongoing about the waterfall provision in FanDuel's Articles. The discussion was focused on whether Shamrock would be better off financially running the waterfall at the time of the merger (the

"waterfall collapse" scenario) or keeping the waterfall in place ("no waterfall collapse") and running it later. On April 27, 2018, before the board's decision on whether to formally sign the term sheet, Defendant LaSalle remarked to two Shamrock Capital employees via Slack that "Ted wants to confirm is waterfall collapse or no waterfall collapse. I need to know that the numbers are working before I take a side."

214. The conversation between Shamrock Capital employees Megan Wallach and Defendant LaSalle moved away from Slack and onto email when the financial model was circulated. Several things are apparent from this early discussion. To begin, the "numbers" that Defendant LaSalle was concerned about were the proceeds Shamrock would receive when the shares in the new merged company were ultimately sold. He did not consider what FanDuel's Articles required or whether FanDuel's members—its common shareholders—were treated fairly in the transaction.

215. Second, Shamrock Capital was struggling to get their financial model to operate correctly. And as a result, when LaSalle initially viewed the transaction returns, it appeared that Shamrock Capital would do better if the waterfall was not collapsed, even at large exit valuations such as approximately $2.4 billion. LaSalle complained and questioned these results, stating "on the surface [Shamrock Capital] only shouldn't be going up and it is. I cannot figure out why?"

216. Third, Shamrock Capital's focus was on Shamrock Capital's returns. Defendant Shamrock had other limited partners and co-investors whose money in FanDuel they managed, including funds called Pantheon and RCP Advisors. When viewed as a "Shamrock combined" investment, as the company viewed it on its consolidated capital table, Defendant Shamrock owned significantly more preferred shares than common. Indeed, approximately 3% more. The difference was smaller, however, if only Shamrock Capital's interest was considered. The smaller difference between Shamrock Capital's ownership of preferred and common shares meant that there were scenarios in which deal details about how notes were paid off and management team members were

compensated that altered Shamrock Capital's willingness to run the waterfall as KKR & Co. was demanding.

217. These factors led Defendant LaSalle to have a conversation with Defendant Oberwager on May 3, 2018. LaSalle said that he was facing an "issue." The below "illustrative structure" presented in a "FanDuel Update" within Shamrock Capital demonstrates that the returns for Shamrock Capital ("SCA") were better "holding the waterfall in place," even though returns for the "Shamrock Combined" investments—which included investments by Pantheon and RCP—were better if the "Waterfall Collapses Today." The slide recognized that FanDuel's "common is completely wiped out" under a "collapse today" scenario, but does not present those mathematical calculations (likely, because there was nothing to compute). Sobel Aff. Ex. 47, SROCK00015660.

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SHAMROCK CAPITAL ADVISORS

Illustrative Structure – PPBF Economic Detail

PPBF Transaction Summary	
FanDuel Enterprise Valuation	559.4
Less: Hercules Debt	*(21.8)*
Less: Convertible Note Payback	*(23.6)*
FanDuel Equity Value	**514.1**
Paddy Power US Enterprise Valuation	534.1
Plus: Cash Contribution	*145.0*
Paddy Power US Equity Value	**679.1**
PF Equity Ownership Split:	
FanDuel Equity Value	514.1
Paddy Power US Equity Value	679.1
PF Equity Value	**1,193.1**
% FanDuel Ownership	*43.09%*
% Paddy Power Ownership	*56.91%*
NBA Secondary Sale	**13.7**
FanDuel Equity Value	500.4
Paddy Power US Equity Value	692.8
PF Equity Value	**1,193.1**
% FanDuel Ownership	*41.94%*
% Paddy Power Ownership	*58.06%*

- The team is still working through whether to collapse the waterfall today or hold the waterfall structure in place upon future exit
- Given SCGF III's security, nearly neutral in either case status quo; but given there would most likely need to be a management incentive pool ("MIP") put in place under a collapse today scenario as common is completely wiped out, prefer holding the waterfall in place
- Need the combined company to grow ~15% for 1.0x MoIC
- Analysis below does not reflect bridge financing put into place

	Assumes Waterfall Collapses Today ($500M Valuation)							Assumes Waterfall Stays in Place Post-Transaction						
Future Enterprise Value of PF Entity	**954.5**	**1,193.1**	**1,431.8**	**1,670.4**	**1,909.0**	**2,147.7**	**2,386.3**	**954.5**	**1,193.1**	**1,431.8**	**1,670.4**	**1,909.0**	**2,147.7**	**2,386.3**
(-) PF Cash to Balance Sheet (1)	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7	9.7
(-) Transaction Fees paid after close	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)	(8.0)
Future Equity Value of PF Entity	**956.2**	**1,194.8**	**1,433.4**	**1,672.1**	**1,910.7**	**2,149.3**	**2,387.9**	**956.2**	**1,194.8**	**1,433.4**	**1,672.1**	**1,910.7**	**2,149.3**	**2,387.9**
% EV Growth from EV at Transaction	*(20.0%)*	*0.0%*	*20.0%*	*40.0%*	*60.0%*	*80.0%*	*100.0%*	*(20.0%)*	*0.0%*	*20.0%*	*40.0%*	*60.0%*	*80.0%*	*100.0%*
% FanDuel Ownership	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*	*41.94%*
Implied FanDuel Equity Value to Existing Shareholders	**401.0**	**501.1**	**601.1**	**701.2**	**801.3**	**901.4**	**1,001.4**	**401.0**	**501.1**	**601.1**	**701.2**	**801.3**	**901.4**	**1,001.4**
Total Proceeds														
Shamrock Combined	57.5	71.7	85.8	100.0	114.1	128.3	142.4	57.0	71.7	86.2	98.9	111.5	124.1	136.7
SCA Only	**43.0**	**53.7**	**64.3**	**74.9**	**85.6**	**96.2**	**106.8**	**42.6**	**53.7**	**64.8**	**75.7**	**86.6**	**97.5**	**108.4**
RCP Only	7.4	9.2	11.1	12.9	14.7	16.6	18.4	7.3	9.2	11.1	12.3	13.5	14.6	15.8
Pantheon Only	7.1	8.8	10.5	12.1	13.8	15.5	17.1	7.1	8.8	10.4	10.9	11.4	11.9	12.5
MOIC														
Shamrock Combined	0.78x	0.98x	1.17x	1.36x	1.55x	1.75x	1.94x	0.78x	0.98x	1.17x	1.35x	1.52x	1.69x	1.86x
SCA Only	**0.72x**	**0.90x**	**1.07x**	**1.25x**	**1.43x**	**1.61x**	**1.78x**	**0.71x**	**0.90x**	**1.08x**	**1.26x**	**1.45x**	**1.63x**	**1.81x**
RCP Only	0.67x	0.83x	1.00x	1.17x	1.33x	1.50x	1.67x	0.66x	0.83x	1.01x	1.11x	1.22x	1.32x	1.43x
Pantheon Only	0.72x	0.88x	1.05x	1.22x	1.38x	1.55x	1.72x	0.72x	0.88x	1.04x	1.09x	1.15x	1.20x	1.25x

Note: Both scenarios assume $13.7M of secondary proceeds to pay out NBA.

Note: Does not reflect any bridge financing put into place.

Note: Waterfall collapsing today will wipe out common - will likely have to put a pool in place for employees. Not reflected in analysis

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218. To address the "issue I am facing," Defendant LaSalle requested that Defendant Oberwager look "to run different scenarios on how the note gets treated." The note described is the "Convertible Note" the company took out in 2017. Because Shamrock Capital held a very small amount of the Convertible Note, their percentage ownership of preferred shares in the company was diluted if the note converted. Converting the note to equity would generate new preferred shares in FanDuel thereby reducing the overall percentage of the preferred share pool owned by Shamrock Capital. This dilution had the effect of bringing Shamrock Capital's relative interest in preference shares below that of its common.

219. The term sheet FanDuel had signed with Paddy Power Betfair included a provision calling for a 50% conversion of the Convertible Note, thus creating the "issue" regarding collapsing the waterfall for Shamrock Capital. But if the Convertible Note was paid off in full before any conversion took place, Shamrock Capital's position would align with that of KKR & Co.

220. Defendant KKR thus had an incentive to accommodate Shamrock Capital's concerns, even if that meant changing the preliminary, non-binding term sheet. The plan had been for KKR & Shamrock to force through the transaction without a shareholder vote by using their Drag Along Rights. Those rights could only be executed, however, if both KKR and Shamrock mutually agreed to do so. Defendant Oberwager needed to get Shamrock's LaSalle on board.

221. KKR & Co's internal communications reflect that Defendants LaSalle and Oberwager discussed the Convertible Note issue in the first few days of May 2018. Defendant Oberwager told his KKR & Co. colleagues that he and "Mike [LaSalle]" have talked and they were both going to speak with other board members "tomorrow to say we are ready to drag and we are running this at 100% convert paydown + waterfall run." Sobel Aff. Ex. 48, KKR0024061.

222. Defendant Oberwager and LaSalle worked out a side-deal. KKR & Co., as the majority holder of the Convertible Note, agreed to a 100% paydown of the Convertible Note. That

meant Shamrock Capital would be protected from any preferred share dilution caused by converting the note to equity. In exchange, Defendant LaSalle agreed that Shamrock Capital would exercise their Drag Along Right and he—as a member of the FanDuel board—would vote to collapse the waterfall.

223. On information and belief, neither Oberwager nor LaSalle considered their fiduciary obligations, the company's Articles, or the interests of FanDuel's common shareholders in making this side deal and modifying the term sheet. Had they done so, the common shareholders' interests in the Company would not have been wiped out. Instead, the focus of Oberwager and LaSalle's discussion was on changes that were needed—whether agreed to in the term sheet or not—to maximize Defendants' KKR & Co. and Shamrock Capital returns.

VIII. The "Inevitable" Happens—Sports Gambling Is Legalized

224. On May 14, 2018, the Supreme Court issued its long-awaited decision in *Murphy* just over two weeks after FanDuel signed the term sheet. The Court's decision struck down PASPA. The path was now clear for individual states to legalize sports gambling in the United States.

A. *Murphy* Sparks a Celebration Among the Defendants

225. The importance of the *Murphy* decision was immediately apparent to the Defendant Directors, KKR, and Shamrock. Defendant Oberwager trumpeted the decision to senior KKR & Co. executives Joseph Bae (then co-President) and Richard Sarnoff (then Chairman, Media) the day *Murphy* came out. He shared that "[t]he ruling was the best possible outcome for sports betting in the US" and was a "real positive" for FanDuel that "makes the deal with Paddy Power even more attractive." Sobel Aff. Ex. 49, KKR0043408.

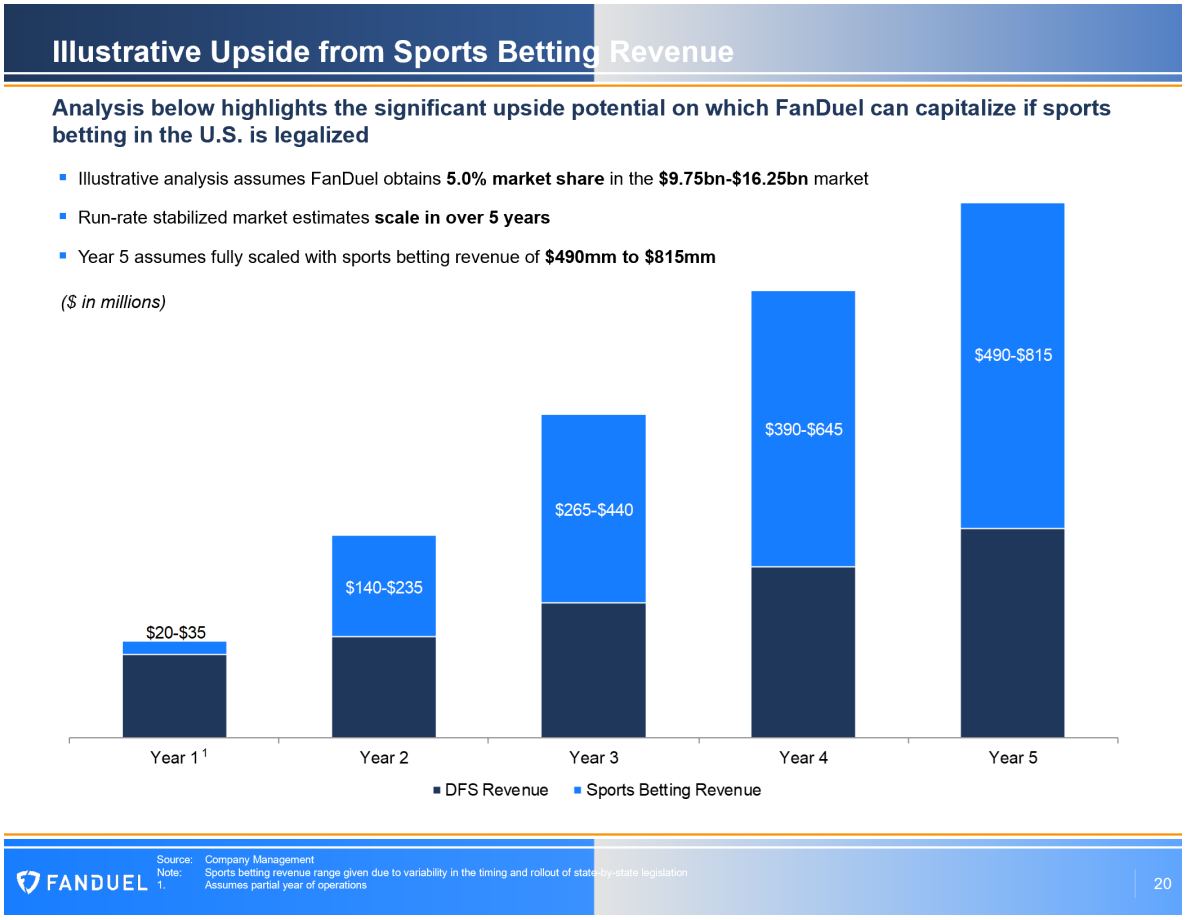
226. Later that same day, Jean-Baptiste spread the good news about the *Murphy* decision to the KKR & Co. investment committee. Jean-Baptiste described how the Supreme Court "struck down [PASPA] in full, clearing the way for states" to legalize sports gambling. Sobel Aff. Ex. 50,

KKR0043414. The decision caused a spike in the stock prices of gambling companies, including a *12.2% jump* in Paddy Power Betfair's stock price. *Id.* Stating the obvious, Jean-Baptiste reminded the investment committee that sports gambling "creates a new vector revenue growth" that is a "positive" for the value of FanDuel. *Id.*

227. The reaction was the same outside KKR. Defendant Nathanson fielded emails from all corners celebrating the *Murphy* decision. He described the decision as a "[b]ig win" for FanDuel. Sobel Aff. Ex. 51, FanDuel_Def_000395030. He also exchanged emails with Moelis describing how the *Murphy* decision would serve to reinforce FanDuel's commitment to closing the Paddy Power Betfair merger so the companies could tackle the sports gambling market together. Sobel Aff. Ex. 52, FanDuel_Def_000395031.

228. Defendant LaSalle similarly received messages from colleagues sharing in the excitement around the *Murphy* decision and how Shamrock was primed to "kill it!" on its FanDuel investment. Sobel Aff. Ex. 53, SROCK00015058. While Defendant LaSalle was celebrating, his colleagues were busy working on a pro forma model for the newly merged company. Ms. Wallach exclaimed to Ms. Armstrong to remind Shamrock's leadership that the model "doesn't include any of the findings from this weekend!"—a reference to the fact that none of the now-certain upside of *Murphy*'s legalization of sports gambling was included. Sobel Aff. Ex. 54, SROCK00017920.

229. The Defendant Directors, KKR, and Shamrock did not have to speculate about the impact of the *Murphy* decision on the value of FanDuel. Each of them had seen the internal modeling and analysis the company had performed. Each of these Defendants were aware that FanDuel had forecasted it would generate well over a billion dollars in additional revenue in the first five years after the legalization of sports gambling. Sobel Aff. Ex. 13, FanDuel_Def_000303336. The opportunity was now upon FanDuel.



B. Investors and Analysts View *Murphy* as a Sea Change for FanDuel

230. Public commentators quickly recognized the impact of the *Murphy* decision on daily fantasy sports companies, like FanDuel. The day after the decision, financial reports predicted that the valuations of FanDuel and DraftKings could top $3 billion each.[3] Similarly, industry commentator and FanDuel investor, Bradley Tusk of Tusk Ventures, commented to ESPN that the *Murphy* decision doubled the value of his company's equity stake in FanDuel with more to come:

[3] *See* Douglas A. McIntyre, *Valuations of DraftKings and FanDuel Could Top $3 Billion Each*, 24/7 WALL ST (May 15, 2018), https://247wallst.com/media/2018/05/15/valuations-of-draftkings-and-fanduel-could-top-3-billion-each/

"[O]nce states start legalizing sports betting and it becomes common practice, it could be more like five times."[4]

C. News of the Merger Leaks

231. Shortly after the *Murphy* decision was announced, news of FanDuel's merger with Paddy Power Betfair leaked publicly. The leak caused another jump in Paddy Power Betfair's stock price as the markets cheered the merger. The movement of Paddy Power Betfair's stock price was closely tracked by FanDuel, KKR, and Shamrock. Sobel Aff. Ex. 55, FanDuel_Def_000119944.

From: David Vanegmond <david.vanegmond@fanduel.com>
Sent: Wed, 16 May 2018 12:42:47 -0400 (EDT)
To: Ted Oberwager <ted.oberwager@kkr.com>; Allan Jean-Baptiste <Allan.Jean-Baptiste@kkr.com>; Mike LaSalle <MLaSalle@shamrockcap.com>; Megan Wallach <mwallach@shamrockcap.com>
Cc: Matt King <matt.king@fanduel.com>
Subject: Fwd: [EXT] Re: The $8.8 billion UK gambling giant that owns Paddy Power and Betfair is considering buying FanDuel

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FYI on PPB stock price movement today.

---------- Forwarded message ----------
From: **Burke, Jeremy** <Jeremy.Burke@moelis.com>
Date: Wed, May 16, 2018 at 12:40 PM
Subject: RE: [EXT] Re: The $8.8 billion UK gambling giant that owns Paddy Power and Betfair is considering buying FanDuel
To: David Vanegmond <david.vanegmond@fanduel.com>
Cc: "Ibrahim, Ramy" <ramy.ibrahim@moelis.com>, Project_Fastball_Ext <Project_Fastball_Ext@moelis.com>, "fdfastballinternal@fanduel.com" <fdfastballinternal@fanduel.com>

Up 6.3% - commentary below:

Shares of Paddy Power Betfair PLC PPB, +6.31% jumped 6.3% to top the FTSE 100 after the gambling company confirmed it's in talks about a potential merger of its U.S. business with FanDuel Inc. Paddy Power shares have surged 13% this week, boosted by U.S. Supreme Court ruling on Monday that could open for sports betting around the country.

[4] Polina Marinova, *What Legal Sports Betting Means For the Future of FanDuel and DraftKings*, FORTUNE (May 15, 2018), https://fortune.com/2018/05/15/sports-betting-fanduel-draftkings/.

232. The market's overwhelmingly positive reaction to the FanDuel-Paddy Power Betfair merger reinforced what the Defendants already knew—combined, the companies were an extremely powerful force in the sports gambling market. As Defendant Oberwager explained to a KKR & Co. colleague, the spike in Paddy Power Betfair's stock price meant the merger "just paid for itself" and that "there will be even more momentum around this now." Sobel Aff. Ex. 56, KKR0043763.

233. Investment analysts similarly shouted their approval of the potential deal. Shamrock Capital tracked the reactions of major investment banks and other analysts. They concluded that the analysts "applaud the combination, saying this [is] a smart way to establish a foothold in the US sports betting market." Sobel Aff. Ex. 57, FanDuel_Def_000119961.

---------- Forwarded message ----------
From: **Kate Armstrong** <KArmstrong@shamrockcap.com>
Date: Wed, May 16, 2018 at 1:20 PM
Subject: Equity Research Reports on PPB / FanDuel Combination
To: Mike LaSalle <MLaSalle@shamrockcap.com>
Cc: David Vanegmond <david.vanegmond@fanduel.com>, Megan Wallach <mwallach@shamrockcap.com>

Hi Mike,

I've attached a few research reports that were published today after PPB confirmed discussions of the transaction. Though the analysts obviously don't have insight on specific terms, both reports applaud the combination, saying this a smart way to establish a foothold in the US sports betting market. The DB analyst specifically mentions how valuable the existing FD shareholder register would be for the combined company, so I'm assuming continued shareholder interest will be received well with analysts at announcement.

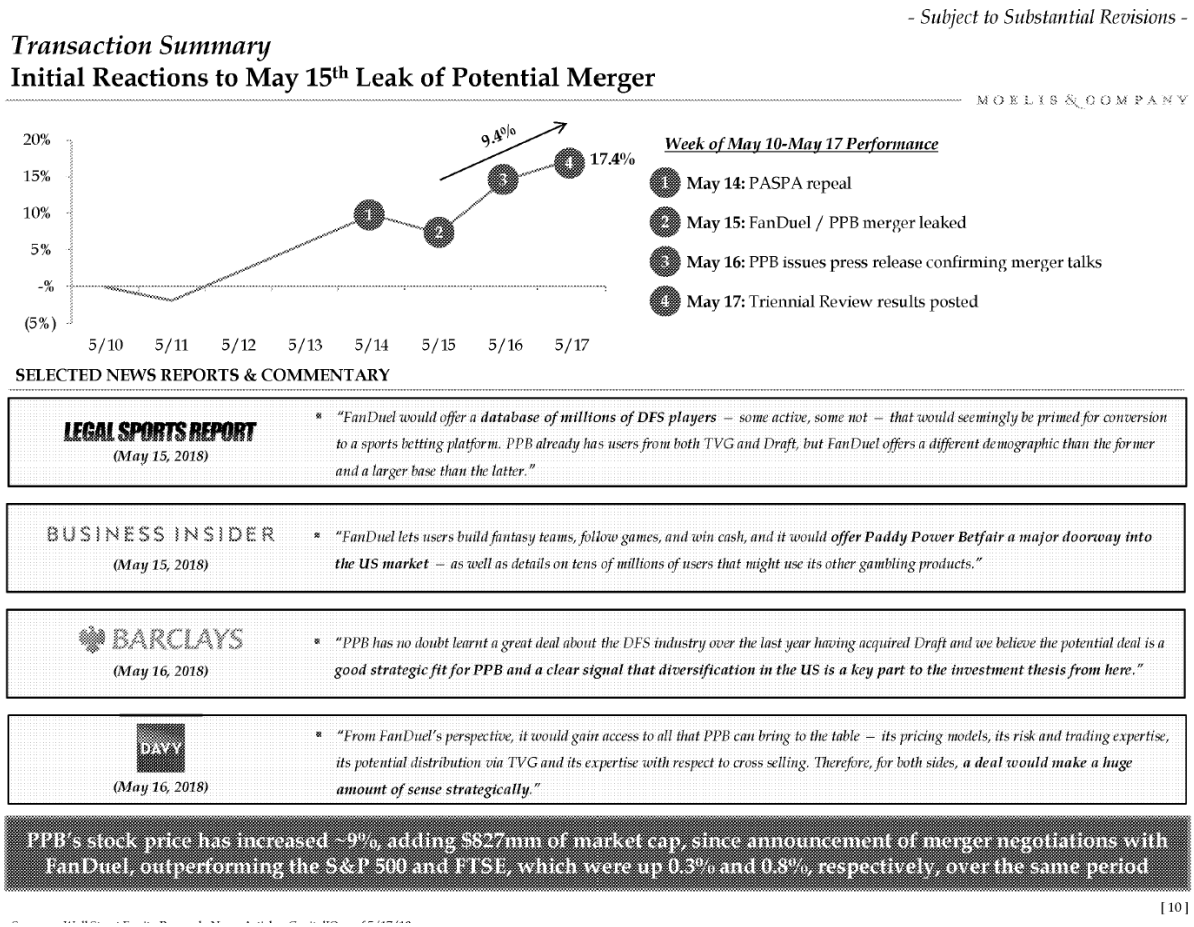
I've also attached an industry report from Monday about the Supreme Court decision and the future of US sports betting for reference.

Thanks,

Kate

234. The excitement from the public markets and analysts was shared with the Defendant Directors in FanDuel's May 18 board meeting. Moelis presented to the Defendant Directors a detailed overview of the reactions of investors and analysts to the deal. The potential merger was a

hit—Paddy Power Betfair's stock shot up 9% on the leaked news of the potential merger. Sobel Aff. Ex. 24, FanDuel_Def_000120354. Industry and investment analysts reinforced that the merger was a homerun—explaining that the merger created a "major doorway" for Paddy Power Betfair to enter the U.S. market and made "a huge amount" of strategic sense. *Id.*



235. It was obvious to all that the *Murphy* decision was a sea change moment for the value of FanDuel and its potential merger with Paddy Power Betfair.

D. Potential Investors Show Renewed Interest in FanDuel

236. Paddy Power Betfair was not the only company enthusiastic about working with FanDuel following the *Murphy* decision. FanDuel had been in negotiations with Global Eagle Acquisition about a potential SPAC transaction to take the company public prior to signing the preliminary term sheet with Paddy Power Betfair. After *Murphy*, Harry Sloan from Global Eagle

reached out to KKR & Co. to ask "is FanDuel locked up, or is there something to talk about?" Sobel Aff. Ex. 58, KRR0024576.

237. Sloan was anxious to re-engage FanDuel, so he followed-up the next day and sharpened his pitch. He emailed KKR & Co. again urging that "there's a very good chance the public markets will value this asset [*i.e.* FanDuel] much higher than private or strategic" investors like Paddy Power Betfair. Global Eagle's inquiry was shared directly with Defendant Oberwager over a week before FanDuel's Board voted on the Paddy Power Betfair transaction. Sobel Aff. Ex. 59, KKR0024794.

From: "Richard Sarnoff" <Richard.Sarnoff@kkr.com>
Sent: Tue, 15 May 2018 13:42:42 -0400 (EDT)
To: "Ted Oberwager" <Ted.Oberwager@kkr.com>
Subject: Fwd: SMB space

FYI inbound from Harry...

Content by Richard. Typos by IPhone.

Begin forwarded message:

From: Harry Sloan <hsloan@geacq.com>
Date: May 15, 2018 at 1:38:27 PM EDT
To: Richard Sarnoff <Richard.Sarnoff@kkr.com>
Subject: Re: SMB space

ps I think there's a very good chance the public markets will value this asset much higher than private or strategic, because the court decision removes any cloud over legality of fantasy sports itself, while we wait for the states to permit real gaming . Should we talk ?

Harry Evans Sloan
Chairman and CEO
Global Eagle Acquisition LLC
2121 Avenue Of The Stars Ste 2300
Los Angeles, CA 90067

238. Even FanDuel's Founders—who had since left the company—received inquiries about the company following *Murphy*. Tom Griffiths forwarded one such inquiry to Defendant King on May 16, 2018. Sobel Aff. Ex. 60, FDL_CMNS0019796. A prospective investor shared with

Griffiths that he believed he could put together a better offer for FanDuel than what Paddy Power Betfair had on the table.

239. These inquiries reflected the universal recognition that FanDuel was worth far more after the *Murphy* decision than it was before because of the clear path that *Murphy* created to the legalization of sports betting and a market that FanDuel was well-situated to capture. Each inquiry also carried with it the possibility that FanDuel could receive more than was provided by the merger with Paddy Power Betfair—a result that could benefit all of FanDuel's shareholders. But no inquiry provided KKR, Shamrock, and the other preferred shareholders the unique value that was embedded for them in the Paddy Power Betfair deal—the opportunity to "collapse the waterfall" based on an artificial valuation that delivered all the value in the transaction to the preferred shareholders and wiped out the common shareholders of the company entirely.

240. On information and belief, Defendants King and Oberwager never followed-up on these or any other inquiries from potential investors following the *Murphy* decision.

E. Defendants Push the Merger Forward

241. It was not just outside investors that wondered whether FanDuel should re-open its efforts to find investors in the business. CapitalG, another preferred investor in FanDuel, reached out to Defendants King and Oberwager to ask "[h]ow final are our merger terms at this point?!" Sobel Aff. Ex. 61, KKR0024583. And KKR & Co.'s investment committee members asked Defendant Oberwager directly whether FanDuel should look for a better deal than the one with Paddy Power Betfair.

242. Despite interest from outside investors and questions from current investors in FanDuel, the Director Defendants, KKR, and Shamrock held firm that going forward with the Paddy Power Betfair merger made sense. The reason was simple—FanDuel had struck a deal with Paddy Power Betfair that gave it equity in what was about to become the largest online sports

gambling company in the world. And time was of the essence. Defendants feared there would be a race to capture market share in the burgeoning sports gambling market, which encouraged them to take steps to close the transaction as quickly as possible. Afterall, the value of what FanDuel would receive in the transaction—shares in the newly merged company, PandaCo—had increased dramatically following the *Murphy* decision.

243. As Defendant Oberwager explained in response to questions from the KKR & Co. investment committee about whether to proceed with the Paddy Power Betfair merger, it was his view that "owning 40%" of the merged company would "give[] us the best chance for value creation in a post-PASPA world" given the complementary strengths of the two companies. Sobel Aff. Ex. 62, KKR0045309. The unique combination of FanDuel and Paddy Power Betfair was set to "leapfrog" the competition in sports gambling. Defendants' goal was to finish the deal and finalize their scheme—and fast.

IX. The Waterfall Vote

244. The *Murphy* decision had a profound impact on completion of the FanDuel-Paddy Power Betfair merger. *Murphy* was announced before the FanDuel board voted on whether to proceed with the merger or run the waterfall. Making these decisions should have required the FanDuel board to confront the central question presented in this case—what was the value of the 40% equity interest that FanDuel was set to receive in the new merged company worth following the legalization of sports gambling?

A. The Purposeful Decision to Not Value the PandaCo Shares

245. On May 16, 2018, two days after the *Murphy* decision, KKR asked the company this very question. In an email titled "Pro Forma Operating Model" where Pro Forma referred to the new merged company, Allan Jean-Baptiste wrote to David VanEgmond: "quick question – have we thought through the size of the potential sports betting market opportunity given Monday's ruling

and how that would be layered into our forecast?" Sobel Aff. Ex. 63, FanDuel_Def_000010756. In other words, Jean-Baptiste wanted to know if FanDuel had modeled the impact of the *Murphy* decision on the value of the new company that would be created by the merger.

246. VanEgmond's response was illuminating. He noted that the company had not "layer[ed] in a full sports betting P&L" to the models of the newly merged company and did not expect to do so "till after signing." This was remarkable given that the *Murphy* decision had just come down the day before and sports gambling was the motivating factor driving the deal. *Id.*

From: David Vanegmond <david.vanegmond@fanduel.com>
Sent: Wed, 16 May 2018 17:37:56 -0400 (EDT)
To: Allan Jean-Baptiste <Allan.Jean-Baptiste@kkr.com>
Cc: "Aberg, Alan" <Alan.Aberg@moelis.com>; Megan Wallach <mwallach@shamrockcap.com>; Kate Armstrong <KArmstrong@shamrockcap.com>; Varun Sudhakar <varun.sudhakar@fanduel.com>; "William Hess (william.hess@fanduel.com)" <william.hess@fanduel.com>; Project_Fastball_Working_Ext <Project_Fastball_Working_Ext@moelis.com>
Subject: Re: Project Fastball - Pro Forma Operating Model

Hey Allan,
We have a state by state Revenue opportunity model in the dataroom that we have been using throughout our process to talk about the rollout of sports betting and the potential market opportunity by state. It's based off slightly older Eilers research. Alan can share that with you.

In terms of layering in a full sports betting P&L, we have not done that yet (on either a standalone or merger basis) and we are actively discussing with PPB. We are meeting members of the sports betting team tomorrow and this will be an evolving discussion. We won't expect to have a fully refined P&L view with sports betting till after signing.

Please let us know if you have questions once Moelis provides the state by state model.

Thanks,
Dave

247. In lieu of a model that "layer[ed] in a full sports betting P&L," VanEgmond noted that the company did have a "revenue opportunity model" to understand the "potential market opportunity" of sports betting and directed Moelis to provide the model to KKR. *Id.* This was the same model that FanDuel created in January 2018, which showed the revenue opportunity for FanDuel as a standalone company—given a modest 4% market share assumption—was absolutely enormous!

248. Using that conservative market share assumption and valuing only its opportunity as a standalone business (as opposed to the value upon merging with Paddy Power Betfair), FanDuel

projected over $3.1 billion in sports betting revenue alone in the next ten years, equating to almost $1 billion in earnings.

FanDuel Sports Betting - Illustrative Market Share									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
3.9%	3.8%	3.8%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%

FanDuel Sports Betting Revenue									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$22	**$94**	**$168**	**$277**	**$346**	**$416**	**$433**	**$450**	**$454**	**$457**

FanDuel Sports Betting EBITDA @ LT Margin									
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
$7	$28	$51	$83	$104	$125	$130	$135	$136	$137

249. The opportunity for the newly merged company—with the unique combination of strengths and assets brought to the table by FanDuel and Paddy Power Betfair, respectively—would be even greater.

250. The next day, May 17, on a separate email thread, KKR & Co. employee Jean-Baptiste asked Moelis what material they planned to share with the FanDuel board at the upcoming meeting. Then, he specifically asked: "[w]ill you be covering valuation" of the merged entity? Moelis responded to Jean-Baptiste, informing him that they would "not be discussing valuation" because of "an extensive conversation with Matt [Defendant King] and senior management yesterday." Sobel Aff. Ex. 64, FanDuel_Def_000307507.

251. Minutes later, Moelis forwards the Jean-Baptiste email exchange to FanDuel's senior management. Moelis asks why KKR & Co. did not understand the plan. The "[c]ompany and Shamrock seem to be on the same page," Moelis notes. In no uncertain terms—"We were told no fairness opinion." *Id.*

From: Sasso, Augusto
Sent: Thursday, May 17, 2018 11:45 AM
To: Ibrahim, Ramy; David Vanegmond; Aberg, Alan; Jimenez, Carlos
Subject: RE: [EXT] Re: FW: Board Deck Friday

I'm confused. We were told no fairness opinion. So what are they asking from us with respect to valuation?

Augusto Sasso
Moelis & Company

252. A fairness opinion by an investment bank is standard ubiquitous in freezeout mergers like the FanDuel-Paddy Power Betfair deal where the result of the transaction is the elimination of a class of shareholders in the company. It functions as an outside assurance as to the fairness of the transaction to all existing shareholders. Yet, here, Moelis was expressly ordered by Defendants *not* to provide a fairness opinion in connection with either the proposed merger or the decision by the FanDuel board to run the waterfall based on a pre-*Murphy* statement of FanDuel's value (the result of which was to completely wipe out the common shareholders).

253. The absence of a fairness opinion in mergers & acquisitions above $100 million, like the transaction at issue, is virtually unheard of. A fairness opinion involves a comprehensive review of a transaction from a financial point of view and is typically provided by an independent financial advisor to the board of directors. The independent financial advisor, in preparing a fairness opinion, must look at pricing, terms, and consideration received in the context of the relevant market and then opine that the transaction is "fair" from the perspective of the minority shareholders. As a result, fairness opinions have become a hallmark that courts and the investing public look to as an indication that shareholder rights have been protected in the course of the transaction.

254. All Defendants had been involved in numerous deals involving fairness opinions before the FanDuel-Paddy Power Betfair merger. Each was aware of the function and importance of a fairness opinion when they directed Moelis not to provide one.

255. In addition to the absence of a fairness opinion, Defendant Directors did not retain an independent expert to evaluate the terms of the proposed merger or to determine the value of the consideration FanDuel was set to receive. Almost immediately upon signing the preliminary term sheet with Paddy Power Betfair, Defendants Oberwager, LaSalle, and King learned about common shareholder concerns over the terms of the agreement and the manner in which shares in the newly merged company would be distributed. Those concerns came from prominent common

shareholders, including Pentech, Piton Capital, and Eccles. As discussed above, under such circumstances, FanDuel's Articles mandated that the Defendant Directors engage an independent expert to evaluate the dispute. Defendant Directors never did so. Instead, they plowed ahead with the transaction at the direction of KKR & Co. and Shamrock in violation of their duties.

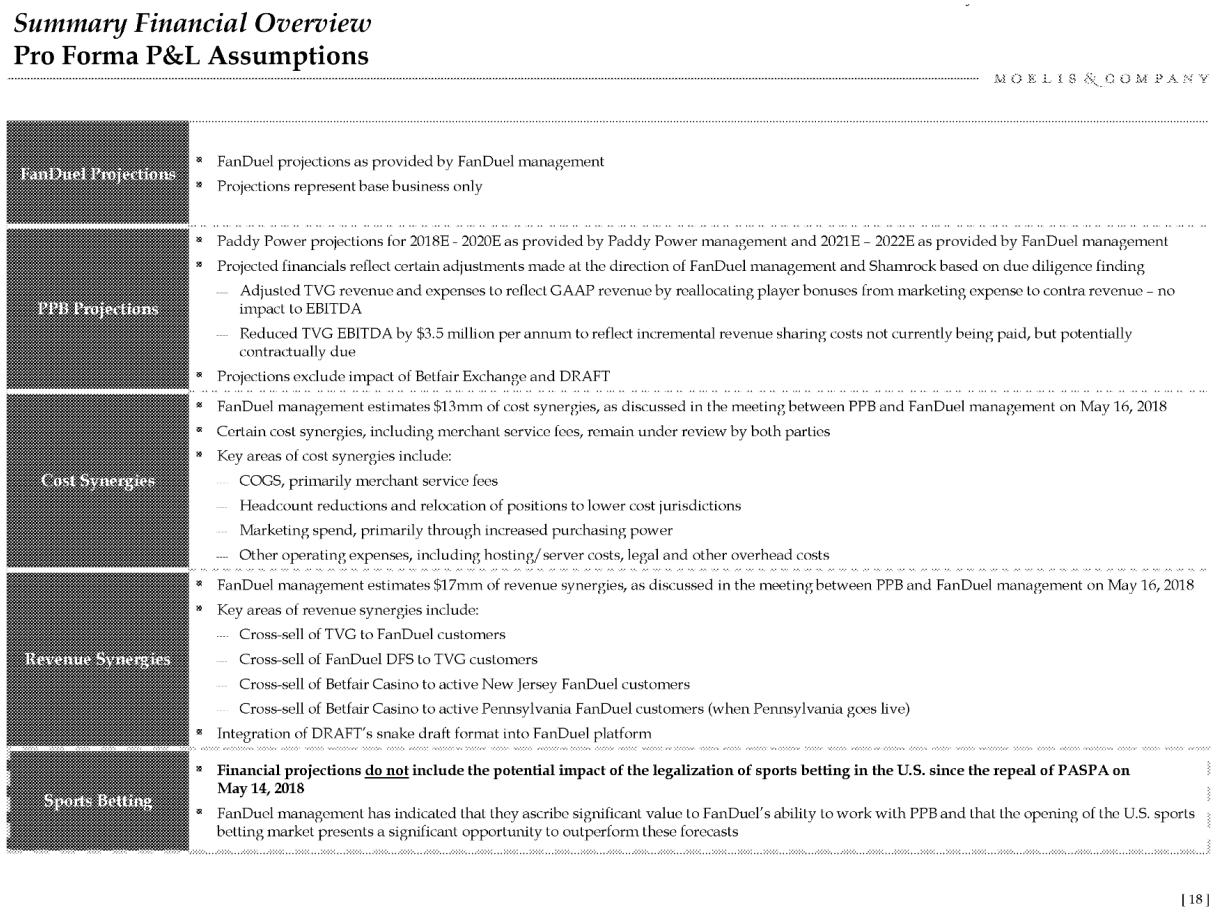
256. Failing to value the shares in the newly merged company was a clear abdication of the FanDuel board's responsibility to ensure that the "aggregate consideration" that was received—*i.e.*, the shares in the newly merged company, PandaCo—was distributed in accordance with the requirements of Article 83 of the company's Articles.

B. Defendants Understood the True Value of PandaCo

257. Despite, the lack of a formal "Pro Forma Operating Model" or a fairness opinion from an investment bank, FanDuel's board fully understood the enormous value of the newly merged company in the wake of *Murphy*. Consequently, they knew that the attributed value used to run the waterfall (the pre-*Murphy* statement of value used in the term sheet for purposes of splitting the value of the merged company between FanDuel and Paddy Power Betfair) vastly understated the value of the "aggregate consideration" received in the merger.

258. At the board meeting on May 18, Moelis highlighted that the transaction was a "stock-for-stock" deal in which "[p]ost transaction, FanDuel shareholders would own a 39.2% stake in the combined company ("MergerCo")." The "Summary Financial Overview: Pro Forma P&L Assumptions" presented explicitly stated, in bold, underlined, and highlighted text, that the financial projections "represent [the] base business only" and "do not include the potential impact of the legalization of sports betting in the U.S. since the repeal of PASPA on May 14, 2018." Moelis was careful to note on the same slide, however, that FanDuel's management "ascribe significant value to FanDuel's ability to work with PPB and that the opening of the U.S. sports betting market presents

a significant opportunity to outperform these forecasts." Sobel Aff. Ex. 24, FanDuel_Def_000120354.



Summary Financial Overview
Pro Forma P&L Assumptions

MOELIS & COMPANY

FanDuel Projections	* FanDuel projections as provided by FanDuel management * Projections represent base business only
PPB Projections	* Paddy Power projections for 2018E - 2020E as provided by Paddy Power management and 2021E – 2022E as provided by FanDuel management * Projected financials reflect certain adjustments made at the direction of FanDuel management and Shamrock based on due diligence finding – Adjusted TVG revenue and expenses to reflect GAAP revenue by reallocating player bonuses from marketing expense to contra revenue – no impact to EBITDA – Reduced TVG EBITDA by $3.5 million per annum to reflect incremental revenue sharing costs not currently being paid, but potentially contractually due * Projections exclude impact of Betfair Exchange and DRAFT
Cost Synergies	* FanDuel management estimates $13mm of cost synergies, as discussed in the meeting between PPB and FanDuel management on May 16, 2018 * Certain cost synergies, including merchant service fees, remain under review by both parties * Key areas of cost synergies include: – COGS, primarily merchant service fees – Headcount reductions and relocation of positions to lower cost jurisdictions – Marketing spend, primarily through increased purchasing power – Other operating expenses, including hosting/server costs, legal and other overhead costs
Revenue Synergies	* FanDuel management estimates $17mm of revenue synergies, as discussed in the meeting between PPB and FanDuel management on May 16, 2018 * Key areas of revenue synergies include: – Cross-sell of TVG to FanDuel customers – Cross-sell of FanDuel DFS to TVG customers – Cross-sell of Betfair Casino to active New Jersey FanDuel customers – Cross-sell of Betfair Casino to active Pennsylvania FanDuel customers (when Pennsylvania goes live) * Integration of DRAFT's snake draft format into FanDuel platform
Sports Betting	* **Financial projections do not include the potential impact of the legalization of sports betting in the U.S. since the repeal of PASPA on May 14, 2018** * FanDuel management has indicated that they ascribe significant value to FanDuel's ability to work with PPB and that the opening of the U.S. sports betting market presents a significant opportunity to outperform these forecasts

[18]

259. Conspicuously absent from Moelis's presentation to the FanDuel Board was any determination of the "significant value to FanDuel" that would be realized from the legalization of sports gambling. Moelis did not even present a back-of-the-envelope estimate.

260. Nonetheless, everyone participating in the meeting was fully aware of the value of sports gambling to the newly merged company. The Directors each had the benefit of FanDuel's January 2018 sports gambling model and the sports gambling projections shared with potential investors. Those documents showed that sports gambling would add billions in new revenue to the merged company starting immediately. And as described above, the FanDuel board also was provided a detailed overview of the reaction from investors and analysts to the potential merger.

261. The clear message to the Defendant Directors from Moelis's presentation was that the newly merged company was set to become a potent competitor in the sports gambling market, and the value of the combination (or certainty thereof) had increased substantially in recent days. Despite FanDuel's (and Moelis's) failure to incorporate sports gambling into the valuation models, all Defendants understood that the new company was worth billions of dollars given *Murphy*.

1. KKR Knows

262. In preparation for a KKR & Co. investment committee meeting, employee Allan Jean-Baptiste sent Defendant Oberwager two financial models: the model Moelis presented to the FanDuel board and the January 2018 sports betting opportunity model that the company had previously put together. In his short cover note, Jean-Baptiste reminded Defendant Oberwager no less than five times that the existing projections for the newly merged company "excludes potential sports betting revenues."

263. On May 21, 2018, the KKR & Co. investment committee met to discuss the FanDuel-Paddy Power Betfair transaction. Defendant Oberwager presented at that meeting, which also included KKR & Co. employees Allan Jean-Baptiste, Mike Saeks, and Richard Sarnoff. No employee of FanDuel was present. Nor was anyone from Moelis there. Sobel Aff. Ex. 65, KKR0045532.

264. A large portion of the discussions among the KKR & Co. investment committee centered around the "U.S. Sports Betting Opportunity." Defendant Oberwager highlighted time-and-time again that the way to maximize that opportunity for KKR & Co. was to not go back to seek new offers but instead to go forward with the FanDuel-Paddy Power Betfair merger as fast as possible. With *Murphy* having occurred a week earlier, Defendant Oberwager worried about a landgrab for market share in the sports gambling market. He was adamant that KKR & Co. should force FanDuel to close the merger so the company could "put up a billboard in New Jersey today."

265. Defendants Oberwager and KKR & Co. recognized that the real value of FanDuel and the soon-to-be-created merger entity lay in the value of the opportunity in the sports betting market—value that was *not* included when the FanDuel board ran the waterfall.

2. Shamrock Knows

266. Defendant Shamrock took a similar approach. In an April 2018 update to its own investment committee, Defendant LaSalle, along with other Shamrock employees presented a pro forma P&L of "PPBF US and FanDuel" legacy businesses. Those "status quo" projections included healthy figures for FanDuel's daily fantasy sports business, such as long-term revenue growth of approximately 20%, gross margin in excess of 85%, and EBITDA margins of 20-30%. But the point of FanDuel's proposed merger was to form a leading sports gambling company, not just to operate the companies' legacy business. As such, Defendant LaSalle was careful to remind the Shamrock investment committee that the models presented did not account for "any uplift for sports betting."

267. In the very same presentation, the "upside forecasts—post PASPA" were presented, which prominently illustrated the key takeaways from FanDuel's January 2018 sports gambling model.

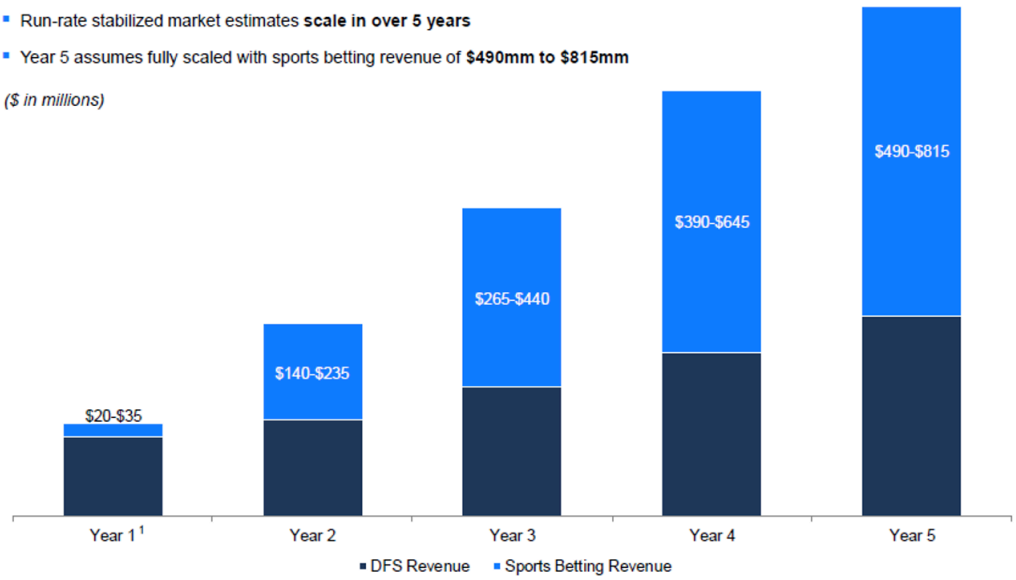
SHAMROCK CAPITAL ADVISORS

Upside Forecasts – Post PASPA

- The team has started to project the upside potential of which FanDuel (standalone) can capitalize if sports betting in the US is legalized
- Based on a recent brand study, it was confirmed FanDuel has the target audience/user base for sports betting as over 85% of database would be likely to bet and already exhibit a strong propensity for gambling
- After meeting with PPBF this past week, it became very clear that FanDuel will need a partner to succeed if sports betting is legalized in the US

- Illustrative analysis assumes FanDuel obtains **5.0% market share** in the **$9.75bn-$16.25bn** market
- Run-rate stabilized market estimates **scale in over 5 years**
- Year 5 assumes fully scaled with sports betting revenue of **$490mm to $815mm**

($ in millions)



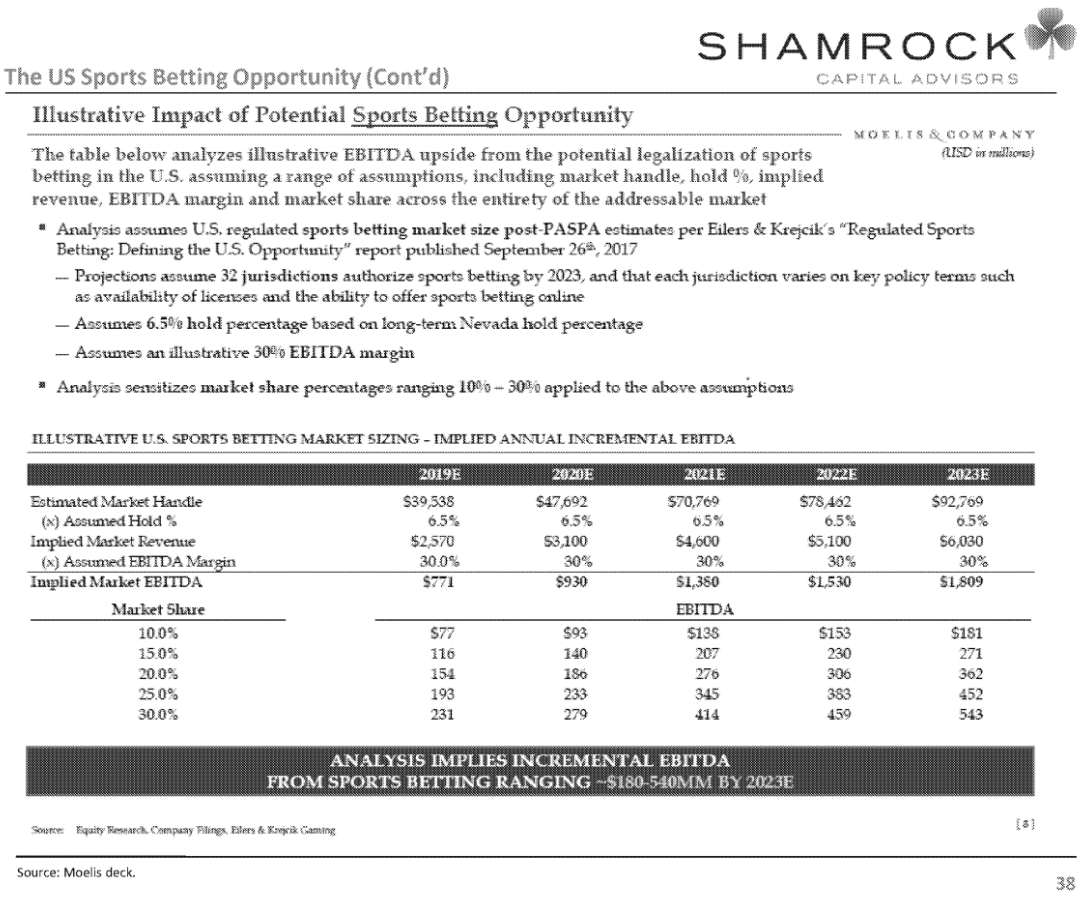
Source: PPB Management Presentation.
Note: Sports betting revenue range given due to variability in the timing and rollout of state-by-state legislation
1. Assumes partial year of operations

35

268. When Shamrock Capital's investment committee convened to discuss the Paddy Power Betfair merger again, it was shortly after the *Murphy* decision. Defendant LaSalle again presented a pro forma model of the newly merged company that excluded any synergies from the merger or "uplift for sports betting." Sobel Aff. Ex. 66, SROCK00022800.

269. But Defendant LaSalle did not allow the absence of firm numbers on the page to deter him from making clear what everyone in the room already knew. Shamrock's investment in FanDuel had hit! LaSalle reinforced the optimism that FanDuel's management, industry analysts, and investors had regarding the sports gambling potential of the newly merged company by presenting the same slides and analysis that Moelis provided to the FanDuel board. And then, to put

a finer point on the enormous potential opportunity of sports gambling, Defendant LaSalle presented the analysis set forth below reflecting the potential for FanDuel to realize hundreds of millions of dollars in earnings (not just revenue) in the near future.



SHAMROCK CAPITAL ADVISORS

The US Sports Betting Opportunity (Cont'd)

Illustrative Impact of Potential Sports Betting Opportunity

MOELIS & COMPANY

(USD in millions)

The table below analyzes illustrative EBITDA upside from the potential legalization of sports betting in the U.S. assuming a range of assumptions, including market handle, hold %, implied revenue, EBITDA margin and market share across the entirety of the addressable market

- Analysis assumes U.S. regulated sports betting market size post-PASPA estimates per Eilers & Krejcik's "Regulated Sports Betting: Defining the U.S. Opportunity" report published September 26th, 2017
  - Projections assume 32 jurisdictions authorize sports betting by 2023, and that each jurisdiction varies on key policy terms such as availability of licenses and the ability to offer sports betting online
  - Assumes 6.5% hold percentage based on long-term Nevada hold percentage
  - Assumes an illustrative 30% EBITDA margin
- Analysis sensitizes market share percentages ranging 10% – 30% applied to the above assumptions

ILLUSTRATIVE U.S. SPORTS BETTING MARKET SIZING – IMPLIED ANNUAL INCREMENTAL EBITDA

	2019E	2020E	2021E	2022E	2023E
Estimated Market Handle	$39,538	$47,692	$70,769	$78,462	$92,769
(x) Assumed Hold %	6.5%	6.5%	6.5%	6.5%	6.5%
Implied Market Revenue	$2,570	$3,100	$4,600	$5,100	$6,030
(x) Assumed EBITDA Margin	30.0%	30%	30%	30%	30%
Implied Market EBITDA	$771	$930	$1,380	$1,530	$1,809
Market Share			EBITDA		
10.0%	$77	$93	$138	$153	$181
15.0%	116	140	207	230	271
20.0%	154	186	276	306	362
25.0%	193	233	345	383	452
30.0%	231	279	414	459	543

ANALYSIS IMPLIES INCREMENTAL EBITDA FROM SPORTS BETTING RANGING ~$180-540MM BY 2023E

Source: Equity Research, Company Filings, Eilers & Krejcik Gaming

[8]

Source: Moelis deck.

38

270. Defendants LaSalle and Shamrock Capital recognized that the real value of FanDuel and the soon-be-created merger entity lay in the value of the opportunity in the sports betting market—value that was *not* included when the FanDuel board ran the waterfall.

3. The Two Spreadsheet Strategy

271. In sum, leading up to the critical board votes on entering the merger agreement and running the waterfall, Defendants had a clear plan. They would carefully avoid creating any formal valuation of the newly merged company that reflected the sports gambling opportunity because doing so would reveal the obvious truth of just how valuable FanDuel's 40% stake in the newly

merged company had become post-*Murphy*. Recognizing that fact would mean running the waterfall at a valuation that would not maximize the return for preferred shareholders. But to resolve any doubt that the deal was in fact a homerun, Defendants provided detailed standalone sports gambling models showing the newly merged company would soon share in a market generating billions in revenue on an annual basis.

272. Defendants had the hubris to believe they were entitled to ignore sports gambling in running the Article 83 waterfall because they modeled that market in a separate spreadsheet from the one in which they modeled the newly merged company's legacy businesses. The fact that the Defendants had to look at two models, instead of one, to understand the value of the newly merged company does not change that they were each well-aware the PandaCo shares were worth billions.

C. The Board Votes Twice

273. On May 22, 2018, FanDuel's board met to vote on finalizing the merger transaction and the way in which the company would distribute the proceeds from the deal. They did so eight days after *Murphy*. They did so without re-engaging other potential investors in the company. And they did so without having a financial model projecting the P&L of the newly combined company (much less one that included sports gambling). Moreover, the FanDuel board met on May 22, 2018, to vote without having a formal offer from Paddy Power Betfair, let alone one that satisfied the requirements of an Offer under the company's Articles.

274. The draft and final meeting minutes reflect that there were two votes—one to finalize the merger and one on how to run the waterfall.

275. The vote to finalize the merger was unanimous, subject to notifying Defendants Oberwager and LaSalle of any "material issues arising prior to signing." The minutes make clear what is evident from the correspondence—the "KKR Investor and Shamrock Investor," whom Defendants Oberwager and LaSalle represented on the FanDuel board, were the entities "engaged in

discussions with Poseidon [Paddy Power Betfair] regarding the terms of a potential offer by PandaCo Inc. ("MergerCo")."

276. The vote on how to run the waterfall was not unanimous. The draft minutes describing the meeting note that Defendant King "discussed the options for running the waterfall under the proposed transaction." Andrin Bachmann—the only board member whose interests aligned with the common shareholders—"then gave an update on discussions with ordinary shareholders." After additional discussion regarding the "implications of running the waterfall at different valuations," the FanDuel board voted to run the waterfall at the gerrymandered "deal valuation"—$559.4 million. Remarkably, $559.4 million was precisely the aggregate Subscription Price of FanDuel's preferred shares.

277. Andrin Bachmann abstained from the second vote.

278. Bachmann's abstention was a disappointment to the Defendants. In the run-up to the board meeting, Bachmann had urged FanDuel to seek a fair valuation of the newly merged company that included the upside of sports gambling. But the Defendants had refused. Instead, Defendants (as well as the law firms that represented the company) pressured Bachmann to vote in favor of running the waterfall below $559 million so that the vote would be unanimous. Defendants believed that unanimity would help them in any future litigation with common shareholders over the distribution of the PandaCo shares.

D. The Official Meeting Minutes Disguise Defendants' Scheme

279. The official meeting minutes disguise the fact that the board voted twice and that Bachmann abstained from the second vote. They also disguise the fact that the Defendant Directors voted to run the waterfall at the exact value of FanDuel's preference shares by stating that: "the value of the consideration to be run through such waterfall would be based on … the Term Sheet … worth an aggregate amount equal to $465.5 million (the "Company Equity Value)."

280. The official meeting minutes confirm, however, that "the consideration to be paid pursuant to the Offer would be paid via the issuance of MergerCo common shares" and that "the consideration to be offered pursuant to the Offer be ran through the capital waterfall of the Company contained in article 83 of the Articles." While the FanDuel board understood that the MergerCo shares had to be run through the waterfall, the Moelis presentation used during the May 22 Board meeting does not contain any valuation of MergerCo, or MergerCo's shares. Instead, the presentation discussed proposals that pre-dated *Murphy* and did not factor in the underlying rationale for the deal—the opportunity afforded MergerCo by the legalization of sports gambling in the U.S.

281. All Defendants understood that the MergerCo shares FanDuel's shareholders received in the deal were worth more than the "deal valuation" in the "Term Sheet," "$559.4 million." The value of the sports gambling opportunity alone dwarfed those numbers and was explicitly not "layered" into any of them.

282. The official meeting minutes omit the board's discussion about the "implications of running the waterfall at different valuations," which was reflected in the draft minutes. On information and belief, this omission was part of the Defendants' broader effort (that continues to this day) to make it appear as though the FanDuel board was somehow bound to run the waterfall using numbers from the preliminary non-binding term sheet with Paddy Power Betfair.

283. The record of events that transpired from the execution of the term sheet through closing the transaction, however, clearly belies the suggestion that the FanDuel board was (or even considered itself to be) so bound:

- *First*, the preliminary non-binding term sheet with Paddy Power Betfair expressly stated that it was not intended to dictate how FanDuel ran the waterfall. Paddy Power Betfair CEO, Peter Jackson, confirmed to Plaintiff Eccles shortly after the transaction that Paddy Power Betfair had no position on how FanDuel ran the waterfall.

- *Second*, Defendants were fully aware that the preliminary non-binding term sheet did not value the shares in the newly merged company that FanDuel received in the transaction. Defendants held extensive discussions about the fact that the sports gambling opportunity that motivated the merger was not incorporated into the so-called "enterprise valuations" included in the term sheet. As such, the preliminary non-binding term sheet could not have governed the Article 83 waterfall because it did not purport to value the "consideration received" by FanDuel in the transaction.

- *Third*, KKR & Shamrock openly discussed, internally and with each other, whether to run the Article 83 waterfall at closing or to wait until a later date. As discussed above, KKR & Shamrock decided to force FanDuel to run the waterfall using the artificial price in the preliminary term sheet because it benefited their interests.

- *Fourth*, FanDuel's board, in fact, held a discussion about the implication of running the waterfall at different valuations. The draft meeting minutes do not suggest that the board was bound in any way to run the waterfall based on the preliminary non-binding term sheet.

- *Fifth*, Bachmann presented to the FanDuel board regarding common shareholder concerns with the distribution of the merger consideration during the May 22, 2018 meeting. That discussion triggered the provisions in the Articles of Association requiring the board to retain an independent expert. Under the Articles, the conclusions of the never-retained independent expert—not a preliminary non-binding term sheet—should have governed the waterfall.

- *Sixth*, Bachmann pushed the FanDuel board to secure a valuation of the shares in the newly merged company that reflected the sports gambling opportunity. The Defendant Directors refused to get such a valuation because doing so would have been unfavorable to KKR and Shamrock. Bachmann was subsequently pressured by Defendants to vote in favor of the waterfall because of their concern about future litigation.

284. The final meeting minutes also include statements that are not in the draft minutes.

On information and belief, several of these were added in an effort to cleanse the board's decision.

- The final minutes state that the "Directors were reminded of their statutory duty to act in the way they consider, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to the factors set out in section 172(1) [Companies Act

2006]." The draft minutes do not indicate that such a reminder occurred.

- The final minutes indicate that the Defendant Directors "declared their interests" as required by the company's Articles and the Companies Act 2006. The draft minutes do not reflect that such a declaration occurred.

285. One thing that both the draft and final board minutes make clear is that FanDuel's board did not adopt any procedural safeguards to make sure that the process by which they accepted the PandaCo offer and valued the PandaCo shares received in the transaction was fair. The Defendant Directors did not exhaust financial options that would have preserved shareholder value, did not seek a fairness opinion from an independent financial advisor (in fact, they explicitly instructed Moelis *not* to provide such an opinion), did not condition entering the merger transaction on approval of a special committee that was independent and empowered to freely select its own advisors and reject the transaction, and did not seek approval of the majority of the common shareholders before proceeding with the transaction. Instead, the Defendant Directors proceeded to authorize the company to move forward with the merger and to run the waterfall using a sham price that did not reflect the value of PandaCo, despite being aware of common shareholder concerns and rampant conflicts among the directors themselves.

X. A Conflicted Board

286. At the time of the critical vote on the waterfall on May 22, 2018, three of FanDuel's seven board members had economic interests in conflict with the company's common shareholders. Defendants Oberwager, LaSalle, and Cleland represented Defendants KKR & Co., Shamrock Capital, and third-party Comcast's interests on the board, respectively. Under the company's Articles they were considered "Investor Directors." KKR & Co., Shamrock Capital, and Comcast each held a greater percentage of preferred shares in FanDuel than common shares. So each stood to receive a larger percentage of shares in the new merged company if FanDuel's board decided to both run the

waterfall when it did and run it at a number below the preference shareholders combined holding of approximately $559 million.

287. As discussed above, Defendants KKR & Co. and Shamrock Capital struck a series of side deals with three other board members to re-align their economic interests with FanDuel's preferred shareholders. These transactions created undisclosed and incurable conflicts of interests for Defendants King, Vogel, and Nathanson.

288. Ultimately, six of the seven members of FanDuel's board were conflicted at the time they ran the waterfall.

A. The Company's Articles & Conflicts of Interest

289. Section 175 of the Companies Act states that directors have a "[d]uty to avoid conflicts of interest" that "applies in particular to the exploitation of any property, information or opportunity."

290. FanDuel's Articles expressly authorized certain conflicts of interest for its Investor Directors. Notably, such directors were "authori[z]ed to have interests which arise from or are connected with such Investor Director having a relationship (as employee or otherwise) with, and acting as an appointed representative of, the shareholder (or shareholders) appointing such Investor Director." The authorization described in Article 19.8 for these "Fund-related interests" did not extend to other potential conflicts, such as those that may arise from "any investment or other interest" that an Investor Director may have "in his appointor." Nor did the authorization permit the Investor Director to favor the interests of the Investor above those of FanDuel or its common shareholders.

291. Article 19.8 did not apply to non-Investor Directors, such as Defendants King, Vogel, and Nathanson. Those directors were prohibited from being a "principal, partner, manager,

officer, director or employee" of another shareholder of the company, or from having "a material relationship with … any shareholder" under Article 86.

292. The company's directors had the power to authorize conflicts of interest as well. But that power was limited. They could not do so for conflicts "arising in relation to a transaction or arrangement with the company." And any authorization of a conflict of interest was "effective only if" (1) the matter was proposed in writing for consideration at a board meeting; (2) any requirement as to a quorum was met without counting the director in question (or any other interested director); and (3) the matter was agreed to without such director (or any other interested director) voting. Even if a conflict was authorized under this rubric, the director in question would not be authorized to favor their conflicted interests over those of FanDuel or its common shareholders.

293. On information and belief, the conflicts of interest that existed on FanDuel's board at the time of the board's vote on when and how the company would run the Article 83 waterfall were not declared in writing in advance of the May 22, 2018 board meeting, as required under Article 19.3.1. Regardless, the FanDuel board could not meet the quorum requirements for such a vote to take place under Article 19.3.2, let alone be agreed upon under Article 19.3.3, given that six of the seven directors had unauthorized conflicts of interest.

B. The Investor Directors' Unauthorized Conflicts

294. Defendants Oberwager, LaSalle, and Cleland each had conflicts of interest that extended beyond their "Fund-related interests," i.e., those permitted by FanDuel's Articles.

1. Oberwager

295. Defendant Oberwager was (and still is) employed by Defendant KKR & Co. and was appointed as a director of the company under Article 86.4. Defendant KKR & Co. had the ability to remove Oberwager from his seat on the board "and appoint another person in his place" at will.

296. Oberwager received compensation from Defendant KKR & Co. in numerous ways. First, he received a salary as an employee of KKR & Co. And second, he received compensation in the form of bonuses and promotions tied to the performance of KKR and Co.'s FanDuel investments that he oversaw.

297. Apart from his compensation as a KKR and Co. employee, on information and belief, Oberwager invested his own personal money in KKR & Co. funds and special purpose vehicles, including those that invested heavily in FanDuel's preferred shares.

298. On information and belief, Defendant Oberwager had a number of unauthorized conflicts-of-interest when he voted on May 22, 2018 to run the FanDuel waterfall at a valuation below $559 million. Oberwager had personally invested in KKR & Co. funds and special purpose vehicles that held a greater percentage of preferred shares than common in the company. Oberwager also received bonuses and promotions based on the outsized returns of Defendant KKR & Co.'s investments in FanDuel, which he oversaw and managed. And most importantly, Defendant KKR & Co.'s returns were "outsized" because in voting to run the waterfall when and how the company did, KKR & Co. received more shares in the new merged entity than they were otherwise entitled to.

2. LaSalle

299. Defendant LaSalle was (and still is) employed by Defendant Shamrock Capital Advisors and was appointed as a director of the company under Article 86.3. Defendant Shamrock Capital Advisors had the ability to remove LaSalle from his seat on the board "and appoint another person in his place" at will.

300. LaSalle received compensation from Defendant Shamrock Capital Advisors in numerous ways. First, he received a salary as an employee of Shamrock Capital Advisors. And second, he received compensation in the form of bonuses and promotions tied to the performance of Shamrock Capital's investments in FanDuel that he oversaw.

301. Apart from his compensation as a Shamrock Capital employee, on information and belief, LaSalle invested his own personal money in Shamrock funds and special purpose vehicles, including those that invested heavily in FanDuel's preferred shares.

302. On information and belief, Defendant LaSalle had a number of unauthorized conflicts of interest when he voted on May 22, 2018, to run the FanDuel waterfall at a valuation below $559 million. LaSalle had personally invested in Shamrock funds and special purpose vehicles that held a greater percentage of preferred shares than common in the company. LaSalle also received bonuses and promotions based on the outsized returns of Defendant Shamrock Capital Advisors' investments in FanDuel, which he oversaw and managed. And most importantly, Defendant Shamrock Capital Advisors' returns were "outsized" because in voting to run the waterfall when and how the company did, Shamrock Capital Advisors received more shares in the new merged entity than they were otherwise entitled to.

3. Cleland

303. Defendant Cleland was employed by third-party Comcast Ventures and was appointed as a director of the company under Article 86.1 by the "Comcast/NBC Investors," defined in the company's Articles as the combination of investments from Comcast Ventures LP and NBC Sports Ventures, LLC. The Comcast/NBC Investors had the ability to remove Cleland from his seat on the board "and appoint another person in his place" at will.

304. Cleland received compensation from Comcast Ventures in numerous ways. First, he received a salary as an employee of Comcast. And, second, he received compensation in the form of bonuses, promotions, and increased budgets for future investments that he received as a result of the performance of the Comcast/NBC Investors' investments in FanDuel that he oversaw.

305. Apart from his compensation as a Comcast Ventures employee, on information and belief, Cleland invested his own personal money in funds and special purpose vehicles in which Comcast Ventures, NBC Sports Ventures, and other Comcast/NBC entities were investing in.

306. On information and belief, Defendant Cleland had a number of unauthorized conflicts of interest when he voted on May 22, 2018, to run the FanDuel waterfall at a valuation below $559 million. Cleland had personally invested in Comcast/NBC funds and special purpose vehicles that held a greater percentage of preferred shares than common in the company. Cleland also received bonuses, promotions, and enhanced budgets for future investments based on the outsized returns Comcast/NBC's investments in FanDuel delivered. And most importantly, Comcast/NBC's returns were "outsized" because in voting to run the waterfall when and how the company did, Comcast/NBC received more shares in the new merged entity than they were otherwise entitled to.

C. Side Deals Create Conflicts for King, Vogel, and Nathanson

307. With Defendants KKR & Co. and Shamrock Capital in agreement on the waterfall, Oberwager and LaSalle began a campaign of making side deals and adjusting the incentives of other board members so they fell into line. On their list was the company's newly installed CEO and longtime KKR & Co. director, Matt King, as well as Defendants Vogel and Nathanson, the two directors appointed to FanDuel's board at Defendants KKR & Co. and Shamrock's request in 2017.

1. King

308. Defendant King's November 8, 2017, offer letter set forth the terms of his employment with the company. In addition to a salary and potential annual bonus, King was given stock options of "ordinary shares equal to 3.00% of FanDuel UK's fully-diluted shares." King's options largely vested upon any "change in control." Consequently, King's options were for common shares that would be worth 3% of any value above $559 million in a transaction like the

FanDuel-Paddy Power Betfair merger. Absent an arrangement that allowed him to participate otherwise, King's options would have aligned his economic incentives with FanDuel's common shareholders.

309. In addition, King was entitled to participate in a Management Carve Out program in which he could receive 1.835% of the purchase price of any change-in-control transaction up to a cap of $11.5 million. As with his stock options, the structure of the MCO initially aligned King's incentives with the common shareholders—a higher transaction price equaled a better outcome for King personally.

310. Based on his options and MCO, it would have been against King's interest to run the waterfall below $559 million. His common share options would have been wiped out (just like other common shareholders), and he would have received only a portion of the maximum MCO payment possible under his agreement.

311. Defendants KKR & Co. and Shamrock Capital were keenly aware of this problem. In an early May 2018 email, Defendant Oberwager wrote to KKR & Co. employee Jean-Baptiste that he "spoke to Matt [King] today" and concluded based on that conversation that "[w]e will need a real workstream around … redo mgmt comp." In context, this meant doing something to change the way King and others were paid out on a change-in-control transaction so their interests were aligned with KKR & Co., Shamrock Capital, and other preferred shareholders. Jean-Baptiste clearly understood that to be the import of Oberwager's email, as he responds by noting that "we should be able to structure something that keeps them whole." To which Defendant Oberwager responds: "Yep and options. There are some accelerated vesting that we need to reflect." Sobel Aff. Ex. 48, KKR0024061.

312. The import of this exchange is clear. Defendants needed to change the way key members of FanDuel management were compensated to ensure they would support both the

merger and the proposed mechanism for running the waterfall. In particular, Defendants needed to make members of management whole for aspects of their plan—like running the waterfall based on an artificially deflated valuation of the shares that FanDuel received in the merger—that would eliminate the value of the common stock (and options) held by King and others, the same way it eliminated the value of the common stock (and options) held by Plaintiffs.

313. In an email titled "Some thoughts on Incentives" to Paddy Power Betfair after the FanDuel board May 22 vote, Defendant LaSalle states unequivocally, with Defendant Oberwager copied: "Our deal with management was that we would make them materially economically indifferent." The "Our" in this statement is a reference to Defendants KKR & Co. and Shamrock Capital, as in the same email Defendant LaSalle distinguishes between the company, other shareholders, and "Shamrock and KKR," who are on the email chain. Sobel Aff. Ex. 67, SROCK00019980. Put simply, Defendant LaSalle was relaying to Paddy Power Betfair that KKR & Co. and Shamrock had reached an agreement with Defendant King to make him (and other members of senior management) whole for running the waterfall in a way that advantaged the preferred shareholders over the common shareholders. While the common shareholders were wiped out by KKR & Co's and Shamrock's scheme, KKR & Shamrock promised to protect King by making him whole in other ways.

314. Making Defendant King "materially economically indifferent" is exactly what Defendants KKR & Co. and Shamrock Capital did. In lieu of his common share options in FanDuel, King was provided "profits interest units" in Fastball Holdings LLC, an entity set up by Defendants Oberwager and LaSalle to hold FanDuel's interest in PandaCo upon completion of the deal. The profit interest units kicked in above a "threshold amount"—an amount roughly equivalent to the aggregate Subscription Price of FanDuel's preferred shares. And the allocation of profit

interest units on a fully diluted basis was equivalent to the fully vested common share options Defendant King possessed.

315. The recreation of King's options in FanDuel in a separate entity that he, Oberwager, and LaSalle set up was more than some corporate formality. King's focus shifted from creating long-term value for FanDuel's common shareholders to controlling when and how FanDuel's preferred shareholders (himself now included) liquidated their investments in the newly merged company, PandaCo. In 2020, King chose to sell his Fastball Holdings options for more than $100 million. Having cashed-out in a way no other common shareholder or option holder in FanDuel was able to, King left the Company a few months later.

316. Defendants KKR & Co. and Shamrock Capital also made King "materially economically indifferent" when it came to his MCO payment. They struck a new MCO agreement with King through which his MCO payment was tied to the value that Fastball Holdings would receive for its PandaCo shares at the three- and five-year exit points contemplated in the deal. Restructuring King's MCO agreement in this way to defer this calculation ensured he would receive the entirety of the $11.5 million bonus. Had they calculated King's MCO bonus based on the waterfall price, the bonus would have been significantly smaller.

317. In total, King made more than $120 million in his 40 odd months at the Company, averaging out to about $3 million a month for his time there. In contrast, the common shareholders—like the Founders—that actually built the Company through years of blood, sweat, and tears got nothing of the sort.

2. Vogel and Nathanson

318. At the outset, Defendants Vogel and Nathanson had similar financial incentives to King. When each was appointed to the FanDuel board in November 2017 as a "non-executive director," they were granted options to acquire "up to 10,945 Ordinary Shares" in the company, in

addition to an annual cash payment. Defendants Vogel's and Nathanson's options vested over a four-year period and vested completely upon any "change in control" transaction within four years of their appointment. Sobel Aff. Exs. 68 (FanDuel_Def_000170139) & 69 (FanDuel_Def_000278700).

319. Defendants Vogel and Nathanson were also included in the company's MCO pool, even though neither was considered "management." Under the version of the MCO agreement each signed in 2017, Vogel and Nathanson, like King, could receive a percentage of the purchase price of any change-in-control transaction up to a predetermined cap. This structure initially aligned Vogel's and Nathanson's incentives with the common shareholders—a higher transaction price equaled a better outcome for Vogel and Nathanson personally.

320. Like they did with King, Defendants KKR & Co. and Shamrock Capital made sure that Vogel and Nathanson did not suffer economically from going along with their plan to run the waterfall. They struck a new MCO agreement with each, through which their MCO payment was tied to the value that Fastball Holdings would receive for its PandaCo shares at the three- and five-year exit points contemplated in the deal. Restructuring Defendants Vogel's and Nathanson's MCO agreements in this way ensured each would receive the entirety of their MCO bonus. Had they calculated Vogel's and Nathanson's MCO bonus based on the waterfall price, their MCO bonus would have been significantly smaller.

3. The Resulting Impact

321. As described above, Defendants King, Vogel, and Nathanson originally had economic incentives aligned with FanDuel's common shareholders going into the merger. In turn, their interest—at least at first blush—would have been to vote against running the waterfall without a fair market post-*Murphy* valuation for the shares in PandaCo that FanDuel received.

322. Instead, through separate side deals, Defendants King, Vogel, and Nathanson were each given something that no other FanDuel common shareholder or common share option holder was given—upside in the new merged company and its enormous potential in the wake of the U.S. Supreme Court's *Murphy* decision. Such differential (and preferential) treatment created a conflict of interest for each of these directors.

D. Cleland and Comcast Ask for (and Receive) Even More

323. There was one other side-deal of note. With the prospects of a merger in place but before the critical May 22, 2018 board vote, Defendant Cleland began negotiating on behalf of Comcast/NBC for more upside: an ad deal and a larger interest in the new company.

324. The contours of the Comcast/NBC side deal were negotiated at the same time that Oberwager had renegotiated the Convertible Note pay down to secure LaSalle's vote in favor of collapsing the waterfall. On May 8, 2018, Defendant King—the CEO of the company—forwarded an email from Cleland to Defendant Oberwager at KKR regarding the "NBC Ad Commit." Defendant Oberwager responds, copying in Defendant LaSalle, asking about any "implications for the 11am tomorrow morning with Andrew [Cleland]" that he and LaSalle had arranged as part of their broader campaign. Oberwager goes on to say: "[h]opefully can get this resolved soon and take another thing off of our plate." Sobel Aff. Ex. 70, KKR0043105. Why Comcast believed it was entitled to seek additional compensation in exchange for supporting the proposed merger is unclear. What is clear, however, is that Defendants King, Oberwager, and LaSalle understood that Comcast presented a potential obstacle to their scheme that had to be "resolved" through yet another side agreement.

325. Among other things, the Comcast/NBC Investor had to approve the restructured compensation packages for Defendants King, Vogel, Nathanson, and the rest of FanDuel's senior management. In turn, they were in a unique position to extract extras out of preferred shareholders

relying on those arrangements to get the deal done the way they wanted. Ultimately, the hold-out worked. On July 10, 2018, the day the FanDuel-Paddy Power Betfair merger closed, the Comcast/NBC Investor signed the 280G authorizing the restructured compensation packages "[b]ased on the verbal acceptance of the … ad proposal and the acceptance of last draft you sent on the 'binding term sheet' that amends our commercial deal." Sobel Aff. Ex. 71, FanDuel_Def_000125866. In other words, the Comcast/NBC investor expressly tied their authorization of the compensation packages for management to themselves receiving additional ad revenue in their own "commercial deal."

326. The terms of the new commercial deal amounted to $20 million of extra benefits for Comcast/NBC. As laid out in a term sheet: (1) FanDuel was to pay NBC $2.2 million immediately; (2) FanDuel entered into a "binding agreement" with NBC to buy ads worth $2.8 million "immediately"; and (3) Fastball Holdings was to pay NBC an amount equal to $5 million in cash and shares. In addition, FanDuel agreed to purchase a minimum of $10 million in advertising from NBC over the next three years. Although the Comcast/NBC side deal was between three parties, Defendant King signed for both the company and Fastball Holdings LLC.

IN WITNESS WHEREOF the Parties have caused this Amendment No. 2 to be executed and delivered by their respective authorized signing officers, effective as of the Amendment No. 2 Effective Date.

NBCUNIVERSAL MEDIA, LLC

Authorized Signature:

Name: Richard Cordella

Title: EVP + Gm Digital Media, NBC Sports

Date: 7/10/2018

FANDUEL, INC.

Authorized Signature:

Name: Matt King

Title: CEO

Date: 7/10/18

Solely for purposes of Section 3:

FASTBALL HOLDINGS LLC

Authorized Signature:

Name: Matt King

Title: CEO

Date: 7/10/18

E. The Lone Unconflicted Board Member

327. Only one board member's economics aligned (and stayed aligned) with FanDuel's common shareholders—Andrin Bachmann. Under Article 86.2, Bachmann's seat on the board represented the interests of Pentech, Piton, and Scottish Enterprise Group, three early investors in the company. Each held more common shares in FanDuel than preferred. Thus, while Bachmann owed fiduciary obligations to the Company regardless of his affiliation, the financial interests of those investors he represented on the board aligned with the Company's common shareholders.

328. The chart below breaks out the financial interests of the entities represented by FanDuel's four Investor Directors, including the ownership each would receive in the newly merged

company if the waterfall were run at two separate valuations: $559 million and $4.2 billion (the ultimate value Defendants received when they cashed-in their shares in the new merged company). The differences in percentage ownership in the new merged company amount to meaningful economic differences. By running the waterfall at $559 million before selling their shares at $4.2 billion, Defendant KKR & Co. enriched itself by approximately $250 million and Defendant Shamrock enriched itself by approximately $100 million.

Shareholder	FanDuel Preferred Shares	FanDuel Common Shares	Fastball Holdings Ownership @$559M	Fastball Holdings Ownership @$4.2B
KKR	21.1%	14.2%	21.1%	15.1%
Shamrock	15.0%	12.2%	15.0%	12.6%
Comcast + NBC	14.3%	11.8%	14.3%	12.1%
Piton + Scottish Enterprise Group + Pentech	7.8%	13.2%	7.8%	12.5%

329. By contrast, the early investors that Andrin Bachmann represented lost almost $200 million. Bachmann did not accept a side deal to pit his interests against the common shareholders of the company. On information and belief, none was offered. KKR & Co. and Shamrock Capital already had the votes to wipe out the common shareholders without Bachmann's help.

XI. FanDuel Signs the Contribution Agreement

330. On May 23, 2018—nine days after the *Murphy* decision—FanDuel, by and through Defendant King, its CEO, signed a Contribution Agreement that outlined the terms of the merger.

331. The Contribution Agreement was nominally between three parties: FanDuel, Paddy Power Betfair (through a subsidiary called TSE Holdings, Ltd.), and PandaCo, Inc., a Delaware corporation set up as the new merged company referred to in the FanDuel board minutes as MergerCo. But several parties were involved in the negotiation of the Contribution Agreement beyond those that signed, including—by express reference in the agreement itself and acknowledgement in the May 22, 2018 FanDuel Board of Director's Meeting Minutes—Defendants

KKR & Co., Shamrock Capital, and Fastball Holdings. Absent from the negotiations was anyone representing the interests of the company or its common shareholders that was not beholden to KKR and Shamrock

A. The Timing of the Contribution Agreement

332. The timing of the Contribution Agreement is conspicuous at best. FanDuel only formally agreed to the merger *after* the Defendant Directors—at the direction of KKR & Co. and Shamrock Capital—had committed to running the waterfall in a way that would benefit the preferred shareholders and wipe out the common shareholders. The reason why goes beyond the straightforward economic incentives preferred shareholders had to maximize their shares in the new merged company.

333. As described above, Defendants KKR and Shamrock possessed a Drag Along Right under the company's Articles. "[T]he completion of the Offer would be supported by an exercise of the Drag Along Right," according to the final board minutes. The Drag Along Right allowed for the avoidance of a shareholder vote on the merger and facilitated the "transfer of the shares" from "Called Shareholders" (i.e., all shareholders that were not KKR and Shamrock) to the newly merged company. But the Drag Along Right did not guarantee, or in any way allow for Defendants KKR and Shamrock to directly control, how the company distributed the proceeds of the merger. That vote rested entirely with FanDuel's board of directors.

334. Nothing required FanDuel's board to vote on the waterfall before signing a definitive merger agreement, much less before receiving a formal offer from PandaCo to merge. The Articles of Association gave FanDuel's board the discretion to wait.

335. While FanDuel's board could wait to run the waterfall, KKR and Shamrock could not. They wanted certainty about how the proceeds from the merger would be distributed before

committing to use their Drag Along Rights. That made it imperative to KKR and Shamrock that FanDuel's board bind itself to running the waterfall in a way that maximized their interests first.

B. The Terms of the Contribution Agreement

336. Under the Contribution Agreement, Paddy Power Betfair was to contribute to PandaCo its U.S. assets, along with $145 million in cash, in exchange for 60% of the newly merged company (PandaCo). FanDuel would contribute its share capital in exchange for 40%. PandaCo, in turn, would issue shares to the Paddy Power Betfair and FanDuel shareholders in accordance with the agreed upon 60/40 split. Because the Paddy Power Betfair merger was a stock-for-stock transaction, the parties to the Contribution Agreement—FanDuel, PandaCo, and Paddy Power Betfair—did not need to select an absolute dollar value for the PandaCo shares that were issued. Nevertheless, the Contribution Agreement purported to do just that. It set a "Signing Date Share Price" for a single share of the newly merged company, PandaCo.

337. The Signing Date Share Price was not based on, and did not reflect, a fair valuation of PandaCo. Nor could it. In conjunction with KKR and Shamrock, FanDuel expressly instructed Moelis not to value the newly merged company prior to agreeing to the merger. Days after signing the Contribution Agreement, FanDuel admitted to its preferred shareholders that "no fair market valu[e]" of the newly merged company had been established. Sobel Aff. Ex. 72, FanDuel_Def_000284621.

338. On information and belief, Defendants (notably, King, LaSalle, Oberwager, KKR, Shamrock, and Fastball Holdings, who negotiated the terms) encouraged the inclusion of this Signing Date Share Price. Doing so provided an (illegitimate) basis for the Defendant Directors to understate the value of PandaCo shares when distributing them pursuant to the Article 83 waterfall. To wit, the Contribution Agreement states that for the purpose of distributing the PandaCo shares among FanDuel shareholders, the cash value of each share is equal to the Signing Date Share Price.

339. However, FanDuel's board did not use the Signing Date Share Price when running the Article 83 waterfall to distribute the PandaCo shares to FanDuel's shareholders. The Signing Date Share Price was not finalized until *after* the FanDuel board voted on the execution of the waterfall. As reflected in the final meeting minutes from May 22, 2018, at the time the board executed the waterfall they did not have information about the actual number of shares (as opposed to the ownership percentage) FanDuel was to receive in the transaction much less the nominal price associated with those shares. In fact, even the precise percentage of PandaCo that FanDuel's shareholders would ultimately receive was unknown at the time of the May 22 board meeting. As such, the meeting minutes show the waterfall was run using the gerrymandered "implied enterprise value of" FanDuel from the preliminary non-binding term sheet. Doing so ensured that the block of PandaCo shares that FanDuel would receive in the transaction (however many shares it ultimately got and whatever percentage of PandaCo it ultimately amounted to) would flow exclusively to FanDuel's preferred shareholders and wipe out the common shareholders entirely. The "implied enterprise value" was not a valuation of PandaCo (the company's shares that the FanDuel board was required to distribute) and did not take into account the *Murphy* decision legalizing sports gambling.

340. The Signing Date Share Price was not supported by any valuation of the newly merged company (much less one with sports gambling) or the opinion of any independent financial advisor.

341. The Signing Date Share price was not an arm's length negotiated term because both the Defendants and Paddy Power Betfair had an incentive to set an artificially low share price.

342. KKR, Shamrock, and the Defendant Directors benefited from an artificially low share price because it gave cover to run the Article 83 waterfall below $559 million. This would maximize KKR's and Shamrock's ownership over the newly merged company without having any impact on the actual value of their investment in the business.

343. For its part, Paddy Power Betfair benefited in two ways from an artificially low Signing Date Share Price. *First*, a lower share price reduced the cash payments Paddy Power Betfair had to make to preferred shareholders that were not permitted to own shares in a gambling company. *Second*, Paddy Power Betfair was able to avoid the time and expense associated with preparing a prospectus for the transaction because the Defendants ran the waterfall below $559 million. Had the waterfall been run based on the true value of the newly merged company, FanDuel's common shareholders, including option holders, would have been entitled to participate. Under those circumstances, Paddy Power Betfair would have been required to create a prospectus and get it approved by the relevant financial authorities to complete the transaction. This process would have delayed the transaction and, therefore, delayed Paddy Power Betfair's entry into the U.S. sports gambling market. Paddy Power Betfair was, therefore, incentivized to join the Defendants in artificially deflating the Signing Date Share Price.

344. Defendants had a fiduciary obligation to obtain a fair, independent valuation of the PandaCo shares for the purpose of distributing them to the FanDuel shareholders. That obligation was inherent in the operation of Article 83, which put a fixed limit on the value the preferred shareholders were entitled to receive as part of distributing the merger consideration. The obligation was also reflected in the express terms of Articles 77.5 and 78.10, which provided for the use of independent experts when, as here, there is a dispute over the value and distribution of the consideration received and the treatment of the dragging shareholders relative to others.

345. Instead of abiding by the requirements of FanDuel's Articles, the Defendants inserted language into the Contribution Agreement pretending to require the Director Defendants to distribute the shares in the newly merged company, PandaCo, using the Signing Date Share Price. These provisions are little more than a subterfuge concocted by the Defendants to serve their end goal of denying the common shareholders their proper share in the merger consideration. None of

the Defendants had the authority to enter into a contractual agreement with a third party (here Paddy Power Betfair and PandaCo) that obviated their fiduciary duties to FanDuel. Nonetheless, that is what they pretended to do. Defendants KKR, Shamrock, Fastball Holdings, and the individual directors negotiating the Contribution Agreement used the language of the agreement as cover for their plan to maximize their share of PandaCo to the detriment of FanDuel's common shareholders.

XII. Other Preferred Shareholders Learn the Truth

346. In the wake of executing the Contribution Agreement, Paddy Power Betfair issued a press release and investor presentation detailing the companies' planned merger. The publicity surrounding the transaction caused several of FanDuel's preferred shareholders who were otherwise uninvolved in the process to ask FanDuel a basic question—was their interest in the newly merged company, PandaCo, really only worth the $559 million implied by the parties' public statements? The company was quick to reassure its preferred shareholders that the newly merged company was worth far more than that, especially once sports gambling was taken into account.

347. These statements regarding the true value of the merged company (and the 40% share received by FanDuel) stand in stark contrast to Defendants' assertions that the value was far lower for purposes of running the waterfall and wiping out common shareholders' interests.

A. Private Admissions

348. Defendants King, Oberwager, and LaSalle started off by being proactive. They launched a communications campaign reaching out to investors such as CapitalG and Time Warner, saying "Things ended in a good place. On to the next phase." This was a not-so-subtle reminder that cash was not exchanged, and that preferred shareholders' investment in the company continued. Careful to avoid saying too much in writing, the Director Defendants also noted they were "happy

to discuss live as well." Sobel Aff. Ex. 73, SROCK00014637. Some of the preferred shareholders required more.

349. On May 23, Greg Bettinelli, a preferred shareholder, reached out to David VanEgmond—the FanDuel executive who worked on the Paddy Power Betfair merger. Bettinelli asked directly whether the newly merged company had a "$1.2B total enterprise" value. A $1.2 billion enterprise value for PandaCo would imply FanDuel's approximately 40% interest was worth just under $500 million. Sobel Aff. Ex. 74, FanDuel_Def_000010776. Shockingly, given the fact that this was the supposed enterprise value used by Defendants to run the waterfall, VanEgmond quickly responded that it did *not* reflect the true value: "[n]o, that's not entirely accurate." VanEgmond then candidly emphasized that any implied valuation for the newly merged company taken from public statements "does not account for sports betting upside," meaning that the true value would far exceed $1.2 billion.

From: David Vanegmond <david.vanegmond@fanduel.com>
Sent: Wed, 23 May 2018 17:31:34 -0400 (EDT)
To: Greg Bettinelli <greg@upfront.com>
Subject: Re: Great News

No, that's not entirely accurate. We own 39% of the combined after their cash contribution. The financials are now disclosed in the PPB investor pres (see their IR website) for reference to help frame the relative value negotiation.
Also, any implied valuation also does not account for sports betting upside. Happy to discuss in more detail though. I'm at [redacted]

350. It was not that VanEgmond was unwilling to discuss the value of PandaCo with Bettinelli or that he was unaware of the enormous sports gambling opportunity unfolding in front of him. In fact, he assured Bettinelli that he was "happy to discuss in more detail." Instead, VanEgmond's concern was discussing the value of PandaCo *in writing*. So VanEgmond invited Bettinelli to give him a call. VanEgmond's unwillingness to discuss the value of PandaCo in writing with Bettinelli is not surprising. After all, just one day earlier, VanEgmond had played a central role

in Defendants' scheme to run the waterfall using a supposed valuation that substantially understated the true value of the shares in the merged company that FanDuel received (a fact that VanEgmond and each of the Defendants *knew*).

351. Bettinelli was not the only preferred shareholder confused by the public commentary around FanDuel's merger with Paddy Power Betfair. Tara Eckert and her colleagues at Compound VC coordinated a series of limited partners that invested in FanDuel through special purpose vehicles. When news of the merger broke, Eckert and her colleagues faced questions from their limited partners about the valuation implied by Paddy Power Betfair's public statements. One such limited partner, Eric Linn, expressed that he was "pretty surprised that the institutional backers would let [FanDuel] go" at an implied valuation of roughly "$400MM-500MM." Sobel Aff. Ex. 75, FanDuel_Def_000283898.

352. Facing these tough questions, Eckert reached out to VanEgmond for clarification on June 5, 2018. VanEgmond first quashed the idea that the FanDuel's shareholders were cashing out of the business, reminding her that "we are not liquidating (i.e. we are not 'letting it go' now)." *Id.* Instead, FanDuel received shares in the newly merged company with the rights to sell those shares at fixed points in the future. Put simply, because FanDuel entered a stock-for-stock merger, they rolled the shareholders' investment in FanDuel into an investment in the merged company that any remaining shareholders (*i.e.*, only the preferred shareholders) would not exit for years.

353. VanEgmond again refused to provide a direct answer in writing about the value of the newly merged company, which would undermine the valuation Defendants adopted when collapsing the waterfall to eliminate the common shareholders' investment. He responded to Eckert's email by telling her "I'll call you as it's a nuanced answer." *Id.* (It is unclear what "nuance" was concerning VanEgmond other than his desire not to admit that 40% of the newly merged company was worth far more than $559 million.) Nonetheless, VanEgmond reassured Eckert on

paper that "the board believes [the merger] has the opportunity to be a very attractive exit" such that she and other preferred shareholders could look forward to a significant return on their investment.

From: David Vanegmond <david.vanegmond@fanduel.com>
Sent: Tue, 5 Jun 2018 14:13:16 -0400 (EDT)
To: Tara Eckert <teckert@compound.vc>
Cc: David Hirsch <david@compound.vc>; Helen Gibney <helen@compound.vc>
Subject: Re: FanDuel Merger Update

I'll call you as it's a nuanced answer. What's the best number to reach you? I won't free up till later this afternoon.
In the meantime and as I've mentioned, the value today would just be an internal mark as we are not liquidating (i.e. we are not "letting it go" now). This is not a sale, but a stock for stock deal with specific mechanics to liquidate three and five years from now via put / call. We can't opine on the value at those times when we ultimately exit, but I can obviously tell you that the board believes it has the opportunity to be a very attractive exit at that point.

Thanks

354. The next day, June 6, Compound VC's limited partner, Eric Linn, contacted VanEgmond directly about the value of the PandaCo shares that FanDuel received in its merger. VanEgmond was even more pointed in his exchange with Linn than he had been with Eckert. "There is no fair market valuation as of today," he said, thereby admitting that the $559 million "valuation" used to run the waterfall was not based on any fair market value of the shares in the merged company that FanDuel received. Sobel Aff. Ex. 72, FanDuel_Def_000284621. Addressing the implied valuation from the Paddy Power Betfair press release and investor presentation, VanEgmond explained that "the ownership percentage [in the newly merged company] was derived from a relative value exercise (assets, cash, etc.)" that does not attempt to value the merged company.

From: David Vanegmond [mailto:david.vanegmond@fanduel.com]
Sent: Monday, June 11, 2018 3:48 PM
To: Eric Linn
Cc: David Hirsch; Tara Eckert; Helen Gibney; Peter Lehman (Peter@granitecreek.com)
Subject: Re: FanDuel Merger Update

Eric,

I hope you are well. Please note that formal communications will be coming across late this week or next.

As part of the transaction, the convertible note that you participated in (2017) will be repaid in full with PIK interest and the 1.5x CoC multiplier. It's roughly a return of ~1.7x, but we will provide the exact numbers in the communication.

Please note, for all of the existing equity in the business, it rolls into this new US entity for which FanDuel will own 39%. There are put / call rights at the end of year 3 and year 5 for ultimate liquidation as this is not a sale today (but rather a stock-for-stock merger). Please note, there is no fair market valuation as of today and the ownership percentage was derived from a relative value exercise (assets, cash, etc.). You can see more details on this in the PPB press release and investor presentation.

If you have any additional questions, please let me know. We certainly appreciate your patience on the communications.

Thanks,
Dave

_____

David VanEgmond
Executive Vice President
Strategy, Corporate Development & Finance

355. In other words, the $559 million amount the conflicted board used as the "consideration received" for purposes of running the waterfall and wiping out common shareholder interests was *not* predicated on any valuation of the merged company or the 40% "ownership percentage" that FanDuel actually received as consideration for the merger and distributed by operation of the waterfall.

356. A company like PandaCo is worth far more than just the combined assets of the companies that merge to create it. The newly merged company would also derive value from the cost and revenue synergies of merging the entities together and, in the case of PandaCo, the new sports gambling business that motivated the combination in the first place. None of that was valued because FanDuel did not engage in a "sale" of its business. Rather, the deal was a "stock-for-stock merger" where the value of PandaCo would be assessed at fixed three- and five-year exit points.

357. Despite the Director Defendants voting at KKR's and Shamrock's direction to run the waterfall below $559 million just two weeks earlier, VanEgmond told other preferred shareholders the truth in a series of communications hidden from the common shareholders. There was in fact "no fair market valu[e]" for the shares in the newly merged company because the Defendants had not undertaken that exercise. Sobel Aff. Ex. 72, FanDuel_Def_000284621. The waterfall exercise undertaken by the Director Defendants on May 22 was a sham that Defendants each knew about and worked together to hide from the company's common shareholders.

358. This did not mean that the Defendants were unaware of the enormous value of PandaCo. To the contrary, while carefully avoiding any written representation, VanEgmond made certain to reassure the preferred shareholders with a wink and a nod that the Defendants were extremely optimistic about the prospects for the newly merged company. Defendants knew that the actual value of the shares in the merged company that FanDuel received were far more valuable than the contrived $559 million "value" that was used to run the waterfall and wipe out common shareholders' investment.

359. VanEgmond's optimism was well-founded. There were numerous lines of evidence—ranging from internal FanDuel analyses of the sports gambling opportunity to the market reaction to the merger announcement—that gave Defendants confidence that the shares in the newly merged company FanDuel received in the merger were worth billions of dollars.

B. "How Is This Even Legal?"

360. While FanDuel was reassuring preferred investors that the newly merged company was worth billions, the message it was delivering to the common shareholders was starkly different. At the direction of Defendants, FanDuel falsely told common shareholders that they "received no value in MergeCo" because the value of the consideration that was received in the Paddy Power Betfair transaction—shares in PandaCo—was too low. Sobel Aff. Ex. 76, FanDuel_Def_000217370.

361. Defendants knew those statements were false based on the modeling of the newly merged company, the market's reaction to the merger, and FanDuel's own analysis of the sports gambling opportunity. Nonetheless, at the insistence of Defendants, FanDuel misled the common shareholders by telling them their shares in FanDuel were worthless. This left the common shareholders to justifiably wonder aloud, "[h]ow is this even legal?" *Id.*

XIII. Defendants (Finally) Formally Value PandaCo Before the Deal Closes

362. With the Board's vote on the waterfall finalized, Defendants felt emboldened to finally put together a "pro forma" model that would give a window into the incredible value of PandaCo. These models were important to the Defendants' assessment of the merger. Although the parties signed the Contribution Agreement on May 23, 2018, the formal "Offer" that would trigger the merger was still weeks away.

363. FanDuel tasked key members of its strategic planning group (like Varun Sudhakar) with creating a model for PandaCo that would include all of PandaCo's potential lines of business—daily fantasy sports, horse racing, and, most importantly, sports gambling. Drawing on months of research and analysis conducted by FanDuel, Sudhakar created a model showing that the newly merged company could generate more than $800 million in annual EBIDTA by 2022. Based on those projections, FanDuel's interest in the newly merged company was worth billions of dollars.

364. These models were not just for internal purposes. In early June 2018, FanDuel was in discussions with Boyd Gaming about a potential partnership. Among other things, FanDuel and Paddy Power Betfair offered Boyd Gaming an interest in the newly merged company (PandaCo) in exchange for access to certain gaming licenses that Boyd Gaming held. This proposal required FanDuel and Paddy Power Betfair to put a numerical value on PandaCo to understand what they were offering to Boyd as part of the deal.

365. When it came to valuing the PandaCo shares for these purposes, Defendant King did not turn to the preliminary term sheet that FanDuel used to run the waterfall just two weeks before. Instead, Defendant King constructed an entirely new model of PandaCo that reflected all of its business opportunities, including sports gambling. Fourteen days after he led the Director Defendants in running the waterfall below $559 million, Defendant King circulated a model to VanEgmond and Paddy Power Betfair that put the value of FanDuel's 40% interest in PandaCo at well over $1.3 billion. Sobel Aff. Ex. 77, FanDuel_Def_000123128.

366. In turn, weeks before Defendants KKR and Shamrock formally exercised their Drag Along Rights and FanDuel closed its merger with Paddy Power Betfair, the Defendants prepared models showing that the value of the PandaCo shares the company received in the merger dwarfed the $559 million used in the Article 83 waterfall. This fact is a smoking gun.

XIV. Defendants Complete Their Illicit Scheme

367. The Defendant Directors needed help to complete their scheme. First, they needed to make changes to FanDuel's Articles of Association, provisions of which at the time presented obstacles to forcing through the Paddy Power merger as KKR and Shamrock wished. As with all other aspects of their scheme, the Defendant Directors largely accomplished the necessary changes by trampling on the rights of FanDuel's common shareholders and ignoring the protections afforded those shareholders under the Articles.

368. Second, the Defendant Directors needed assistance from KKR, Shamrock, PandaCo, and Fastball Holdings. Each provided substantial assistance to the Defendant Directors in a number of respects. Most notably, Defendants KKR & Shamrock negotiated self-serving terms in the merger agreement on "behalf of" the company; the PandaCo and Fastball Holdings Defendants provided the corporate form for insulating the shares in the newly merged company FanDuel had received from FanDuel's common shareholders, and then forced the close of the merger without

opportunity for FanDuel's common shareholders to even read the relevant documents. Defendants took these actions knowing—based on multiple lines of evidence—that the true value of FanDuel's shares in PandaCo were worth billions of dollars.

A. The Defendant Directors Improperly Expand KKR & Shamrock's Powers

369. At the time the Company entered into the Contribution Agreement on May 23, 2018, a major obstacle stood in the way of Defendants' scheme. FanDuel's Articles of Association did not allow for KKR and Shamrock to exercise their jointly held Drag Along Right to accept an "Offer" that did not extend to all of the *to be issued* share capital of the Company, *i.e.*, an offer that did not include FanDuel's outstanding options. The Articles defined Offer as "an offer on bona fide arm's length terms for the entire issued *and to be issued* share capital of the company."

370. The forthcoming PandaCo offer was exactly the type that the FanDuel Articles prohibited KKR & Shamrock to accept—an offer to "all shareholders of FanDuel as at the date hereof to acquire all of the issued share capital of FanDuel at the date hereof." In other words, PandaCo's forthcoming offer did not include FanDuel's "to be issued share capital."

371. KKR's and Shamrock's Drag Along Right was a tool that allowed Defendants to avoid a shareholder vote on any proposed transaction. As such, any change in the circumstances under which KKR and Shamrock could invoke their Drag Along Rights had a profound impact on the rights of FanDuel's other shareholders. Under Article 80.3, those rights could only be varied or abrogated either: "with the consent in writing" of a majority of FanDuel's common shareholders or by a resolution passed at "a separate general meeting of the holders of that class."

372. On June 11, 2018, the Company sent to common shareholders notice of a resolution proposing "certain amendments" to FanDuel's Articles. The amendments removed the phrase "and to be issued" from the definition of Offer, adding in its stead the parenthetical phrase "(and, but only if and to the extent that the Offeror so specifies in its offer, some or all of the to be issued)."

The amendments also inserted new article 78.8A, which provided that FanDuel's option holders had to transfer and relinquish their shares, even if they were not "called" to do so by the offer itself. Notably, Article 78.8A further stated that "[f]or the avoidance of doubt, it shall be no objection to a transfer of shares pursuant to this article that no consideration is payable to such person."

373. The Company did not provide all common shareholders with the notice. The founders of FanDuel, for example, did not receive it. Those who did, were given 28 days to vote. But the notice did not provide any further explanation for why the amendments were needed. In response to "a number of requests asking if we could provide a more 'plain English' explanation," the Company stated that "it can be difficult to avoid some level of legalese, but … in the interest of transparency … [the resolution's] purpose is procedural, and designed to facilitate a faster close on the PPB deal." The Company then erroneously stated that "[t]his procedural change does not change the substantive economics of the transaction for anyone."

374. One week later, on June 20, 2018, Defendant King signed the special resolution amending FanDuel's Articles. He did so in less than the 28 days provided to common shareholders to vote on the resolution. And he did so, on information and belief, without the necessary "consent in writing" of a majority of FanDuel's common shareholders.

375. The enlargement of Defendant KKR & Shamrock's rights to accept the PandaCo offer was far from a trivial "procedural change" that did not impact the "substantive economics of the transaction for anyone." The change stripped FanDuel's common shareholders and option holders of their ability to vote on the merger, and effectively forced both groups to forfeit their interests in the Company without just compensation in return. And the shortcut the Defendant Directors took to get there in light of their prior decision on how and when to run the Article 83 waterfall was itself conduct outside the powers afforded FanDuel's directors under its Articles.

376. Whether to facilitate a faster close of the Paddy Power Betfair transaction or not, the Defendant Directors had no power to modify and amend FanDuel's Articles to suit their own purposes (or those of the preferred shareholders who appointed and/or struck side deals with them). As discussed at various points above, more than ample opportunity existed for the Defendant Directors to close the Paddy Power Betfair merger without trampling the rights of FanDuel's common shareholders. Defendants chose not to do so because it did not benefit them to follow the Articles, the preexisting agreements between shareholders, and their resulting obligations.

B. KKR and Shamrock Prevent a Shareholder Vote

377. On June 30, 2018, FanDuel finally received an official offer from PandaCo. The PandaCo offer further provided that "the total consideration payable to all FanDuel Stockholders shall be an aggregate of 4,058,004 shares of common stock in [PandaCo]." The offer also contained a reference to the so-called Signing Date Share Price.

378. The terms of the PandaCo offer, and in particular the Signing Date Share Price included therein, was not the basis for the Director Defendants' vote on the Article 83 waterfall. The Director Defendants voted on how to run the Article 83 waterfall more than a month *before* PandaCo made its offer to FanDuel. And the Signing Date Share Price was derived from the sham number Defendants used to run the waterfall.

379. Upon receipt of the offer, Defendants KKR and Shamrock issued a "Drag Along Notice" that explained that the two Defendants were accepting the PandaCo offer on behalf of all FanDuel shareholders. The Notice was signed by Defendant Oberwager on behalf of KKR and Defendant LaSalle on behalf of Shamrock. It states, in relevant part:

> We, the undersigned, constitute Dragging Shareholders for the purposes of the articles of association of FanDuel Limited (the ***Articles***) and confirm that we have irrevocably accepted the Offer.
>
> ***

> Please note that while the terms of the Offer state that, subject to the terms thereof, the Offer shall remain open until August 1, 2018, ***our acceptance of the Offer and exercise of the Drag Along Right entitles us to require each FanDuel Stockholder to accept the Offer*** and permit Completion prior to such date. (Second emphasis added.)

380. As described more fully above, the FanDuel Articles of Association limit KKR and Shamrock's Drag Along Right. Article 78.1 gives Dragging Shareholders "the right to instruct and require all Called Shareholders to: (1) accept the Offer that the Dragging Shareholders wish to accept; and (2) sell and transfer all of their shares to the Offeror (or as the Offeror may direct) in acceptance of that Offer." But that offer must meet certain conditions. Under Article 1.1, the "Offer" had to be based on "bona fide arm's length terms."

381. At least three terms of the PandaCo offer did not meet this standard. *First*, the Contribution Agreement and the PandaCo offer purported to dictate the manner in which FanDuel's board of directors executed certain provisions of FanDuel's Articles of Association, *e.g.*, the Article 83 waterfall provision. *Second*, the so-called Signing Date Share Price did not reflect an actual, independent valuation of PandaCo as a going concern—either before or after the *Murphy* decision. And *third*, the PandaCo offer purported to require the FanDuel shareholders to give Fastball Holdings LLC a unilateral "Call Option" on the PandaCo shares issued to FanDuel. As described below, Fastball Holdings LLC was a company created out of whole cloth by Defendants, and thus did not stand at arm's length to the dragging shareholders.

382. More than mere formality, KKR and Shamrock's exercise of their Drag Along Right to accept the PandaCo offer prevented a vote of all FanDuel shareholders on the Paddy Power Betfair merger. Such a procedure was otherwise required by FanDuel's Articles of Association. The FanDuel shareholders were not even provided an opportunity to read the offer itself before it was accepted. The offer letter and the Drag Along Notice were delivered simultaneously. Indeed, the FanDuel shareholders were never even given a copy of the Contribution Agreement. The

communications from the Company to all shareholders regarding the merger conveniently left out this document, shielding from scrutiny the Defendants' decision to insert the self-serving Signing Date Share Price, and the allegedly compulsory use of it in the Article 83 waterfall.

C. Defendants Shield Their Ill-Gotten Gains

383. Upon acceptance of the PandaCo offer, FanDuel's PandaCo shares were transferred to Fastball Holdings. Fastball Holdings is an entity controlled by Defendants KKR and Shamrock and owned entirely by the former preferred shareholders of FanDuel. It was created by Defendants King, Oberwager (on behalf of KKR), and LaSalle (on behalf of Shamrock) for the exclusive purpose of holding FanDuel's stock in PandaCo in an entity outside the reach of FanDuel's Articles of Association and Defendants' fiduciary obligations to FanDuel and its common shareholders.

384. The role of Fastball Holdings was central to Defendants' scheme. Representatives of Fastball Holdings participated in the negotiation of the Contribution Agreement, which provided that Fastball Holdings would cause the transfer of all PandaCo shares owned by FanDuel shareholders to Fastball Holdings upon acceptance of the PandaCo offer by the Dragging Shareholders. The PandaCo offer to the FanDuel shareholders, in turn, provided that acceptance of that offer by KKR's and Shamrock's Drag Along Right would grant Fastball Holdings a call option for the FanDuel shareholders' PandaCo shares.

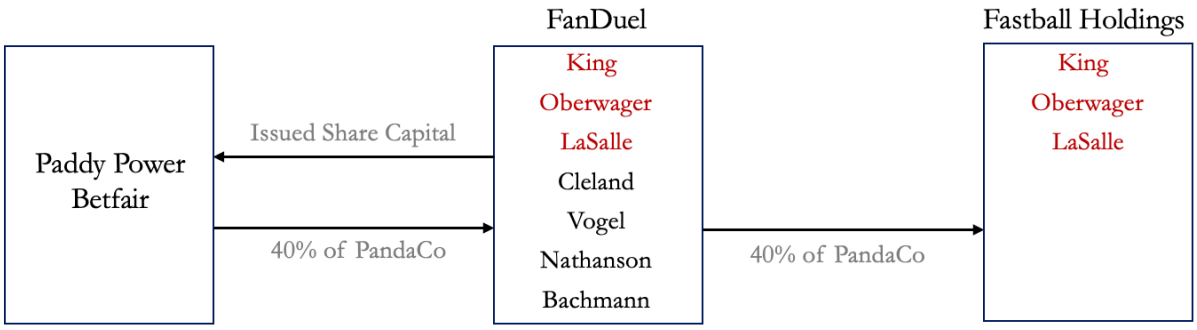
385. Defendants' use of Fastball Holdings was detrimental to Plaintiffs' interests in many ways. *First*, Defendants used the existence of the Fastball Holdings Call Option as a mechanism to force FanDuel to run the Article 83 waterfall in 2018. Nothing in the Articles required that FanDuel distribute the consideration from the merger to shareholders immediately. In fact, Article 84 provided a mechanism to hold the distribution of "contingent" consideration until FanDuel received cash years later. To effectuate the Call Option, it was necessary to know which shareholders owned PandaCo shares and, therefore, would be entitled to receive shares in Fastball Holdings.

386. *Second*, eliminating the common shareholders from FanDuel through Fastball Holdings freed KKR and Shamrock to maximize their returns. KKR and Shamrock negotiated the right to force Paddy Power Betfair to buy out FanDuel's interest in the newly merged company at year three and year five following the merger. This timing coincided with when Moelis, industry analysts, and FanDuel itself predicted that sports gambling revenues would dramatically increase. KKR and Shamrock knew that 40% of PandaCo would be worth billions at the negotiated exit points in the Contribution Agreement, which would require them to share the proceeds with common shareholders. By immediately eliminating the common shareholders through the false pretense that 40% of PandaCo was worth less than $559 million, KKR and Shamrock were free to negotiate for the highest possible value of their shares in PandaCo without having to share those proceeds with the common shareholders.

387. *Third*, KKR and Shamrock used Fastball Holdings as a mechanism to consolidate their control. Under the Fastball Holdings Operating Agreement, the power to manage and make decisions on behalf of Fastball Holdings was invested in a three-member board. Sobel Aff. Ex. 78, FanDuel_Def_000393799. KKR and Shamrock were each entitled to appoint a director, which gave them *de facto* control of the company. KKR and Shamrock also took steps to eliminate the fiduciary obligations of the Fastball Holdings board members to the maximum degree possible under the Operating Agreement. As such, KKR and Shamrock used the creation of Fastball Holdings to consolidate their control over FanDuel's interest in the newly merged company and to escape the fiduciary obligations that existed within FanDuel. This gave Defendants KKR and Shamrock complete control over when, how, and for how much they exited their FanDuel investment.

388. There was nothing arm's length about PandaCo's offer as it pertained to the Fastball Holdings "Call Option." As illustrated below, KKR (Oberwager), Shamrock (LaSalle), and Defendant King were the principal parties negotiating the Contribution Agreement on behalf of

FanDuel. At the same time, those same Defendants were the only members of Fastball Holdings. They orchestrated an agreement through which FanDuel was forced to provide a "Call Option" to Fastball Holdings that allowed KKR, Shamrock, and Defendant King to maximize their control over the disposition of the 40% interest in PandaCo that FanDuel received while shedding their fiduciary responsibilities to the Company. This "Call Option" was not created for the benefit of Paddy Power Betfair or PandaCo—the parties actually issuing the "offer" to FanDuel. Instead, it was created to advantage KKR, Shamrock, and Defendant King at the expense of FanDuel's common shareholders.



389. The Fastball Holdings "Call Option" cannot be considered an arm's length term because KKR, Shamrock, and Defendant King were effectively negotiating with themselves to enrich themselves.

D. The Founders Do Not Receive Notice of the Merger

390. On or about July 3, 2018, the Chief Legal Officer of FanDuel, Christian Genetski, emailed the FanDuel shareholders. The subject of the email was "Shareholder Materials re PPB Merger." This was the first formal communication about the merger sent to the FanDuel common shareholders, despite the fact that FanDuel had been engaged with the preferred shareholders about the transaction for weeks. The Company, however, did not send the communication to Plaintiffs Nigel Eccles, Lesley Eccles, Griffiths, and Jones, which deprived those Plaintiffs of the opportunity

to stop the conflicted directors from distributing the PandaCo shares without properly valuing them. Sobel Aff. Ex. 76, FanDuel_Def_000217370.

391. The Genetski email distributed a series of shareholder communications relating to the pending FanDuel merger with Paddy Power Betfair, including a transaction summary, the Drag Along Notice, and the PandaCo offer letter. The email also included a "280G" disclosure and request for consent concerning the tax treatment of benefit arrangements that would be provided to King and other FanDuel executives upon completion of the merger.

392. On information and belief, at no time did the Company, acting under the control of Defendant King and the other conflicted Defendant Directors, distribute a copy of the Contribution Agreement to any of the common shareholders. By failing to do so, Defendants denied them the opportunity to be fully informed of the terms of the merger and obscured the fact that the conflicted directors intended to run the Article 83 waterfall at a price untethered to the actual value of PandaCo.

393. The email also indicated that FanDuel shareholders would receive, either by mail or through an electronic copy, an individual shareholder letter. The individual shareholder letters would provide an overview of the Offer/Drag Along process through which the transaction was consummated, along with a table demonstrating the details of each individual shareholder's holdings and the consideration the shareholder would receive. For individual shareholders holding common shares, FanDuel falsely told them their common shares had "nil" value.

XV. The Scottish Action

A. The Petition

394. On July 9, 2018—the day before the deal closed—Plaintiffs Nigel Eccles, Lesley Eccles, Tom Griffiths, and Rob Jones filed a petition in Scotland's Court of Session (the "Scottish

Action"). The petition requested, in pertinent part, that FanDuel "refrain from effecting the transfer of ordinary shares" that was part of the mechanics of closing the Paddy Power Betfair merger.

395. The Scottish Action alleged that the FanDuel board had treated the company's common shareholders in an unfairly prejudicial manner under Section 994 of the Companies Act 2006, an act of the U.K. government that forms the primary source of U.K. company law. Section 994 allows "[a] member of a company" to pursue a legal action on the ground "that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members."

396. According to the petition: (1) the FanDuel board was not obliged to run the waterfall; (2) it elected to do so at an outdated valuation; (3) it considered and then chose not to update that valuation to account for the impact of the U.S. Supreme Court's decision to legalize sports gambling in the U.S.; and (4) it did so, with full knowledge that these acts would wipe out common shareholders and result in preferred shareholders "owning a greater percentage of the shares available in the new company" in violation of the board's fiduciary duties under Scots law.

B. Pre-Close Panic

397. A corporate partner at the law firm of Shepherd + Wedderburn—the firm tasked with handling the corporate formalities of the deal's closing—sent the petition to the FanDuel board the same day. Sobel Aff. Ex. 79, FanDuel_Def_000394957. The board's response was clear—close the deal. Defendant King emailed the group asking for a call "post close."

398. Rather than put a hold on closing the transaction, KKR & Shamrock focused on spinning-up their PR and communications machinery. Defendant LaSalle emailed Defendant Oberwager when he received the email from Shepherd + Wedderburn asking if he could "connect our PR/Comms with your team to make sure we are coordinated on FD." Defendant Oberwager responded, copying in the KKR PR team, and stated "As an FYI. We received notice that the

founders are contemplating a suit alleging the[y] were treated unfairly in the Paddy Power merger." Sobel Aff. Ex. 80, KKR0048436.

C. The Deal Closes

399. On July 10, 2018, the FanDuel-Paddy Power Betfair deal closed. At the same time the deal closed, Fastball Holdings exercised its call option, which forced the FanDuel shareholders to exchange their shares in the newly merged company for shares in Fastball Holdings.

400. Fastball Holdings' call option was signed by Matt King, who served as a board member of Fastball Holdings despite also acting as the Chief Executive Officer of FanDuel. Exercising the Fastball Holdings call option completed the process of eliminating the shareholdings of FanDuel's common shareholders.

401. The FanDuel board celebrated. Defendant LaSalle, writing to senior management at Shamrock, said: "Closed today. It is officially part of Paddy Power. Our investment continues, but a new chapter begins…thank you to [Shamrock employees] for their hustle, insight and contributions to get the deal done." Sobel Aff. Ex. 81, SROCK00001953. He received notes of congratulations from his partners at Shamrock expressing how they were "super excited for the next chapter" in the investment and calling the merger with Paddy Power Betfair "fantastic" and an "excellent outcome." Sobel Aff. Exs. 82 (SROCK00001950) & 83 (SROCK00001955). Defendant Oberwager, responding to congratulations from KKR's own management, said "Thank you much. Good to have this closing behind us. Will be an interesting equity to hold for the next 3-5 years." Sobel Aff. Ex. 84, KKR0048647.

402. Defendant King celebrated as well, writing to Paddy Power Betfair: "Beginning today, we will be one company: FanDuel Group … I hope everyone will pop some champagne tonight … we have an exciting road ahead. The first step: a kick ass soft launch of our Sportsbook at

the Meadowlands Racetrack on Saturday. It will be the first of many." Sobel Aff. Ex. 85, FanDuel_Def_000005402.

403. The deal closing had a different impact on the founders, former employees, and common shareholders of the company whose investment (unlike the investment by Shamrock and other preferred shareholders) was not going to "continue." The common shareholders were removed from the company's register. Their interest in the newly merged entity was wiped out. Because they were no longer "members" of the company holding shares, the former common shareholders of FanDuel no longer had "title" (as it is understood under Scots law) to maintain their Section 994 petition.

D. The Company Responds

404. On August 15, 2018, more than one month after the deal closed, the company responded to the Scottish Action through an informal letter. The letter noted that the Drag Along Right had been part of the company's Articles since 2008, with the main change being "who could exercise them." According to the letter, KKR & Shamrock jointly exercised the Drag Along Right on June 30, 2018. And "as a result, the Company was required under articles 78.9 and 84.2 of the Articles to operate the waterfall provisions contained in Article 83."

405. But contrary to this implausible interpretation of the Articles, the company did, in fact, have discretion as to whether to operate the waterfall in May 2018. Articles 78.9 and 84.2 concerned "what" had to be valued and "when" it had to be valued. Article 78.9 clearly states that it is the "aggregate consideration … as a result of such Offer … [or] from such Offer" that must be valued. Article 84.2 states that shareholders who "sell shares (irrespective of class) … shall share in the proceeds of such Sale as if the same had been distributed to those shareholders in the order of priority set out in article 83." Critically, Article 84.2 is "[s]ubject to articles 84.10 and 84.11," which concern realization events in which the amounts payable to shareholders occur later in time, *e.g.*, in

the form of "deferred or contingent consideration, earn-out or otherwise." In such circumstances, the Articles instruct that "directors shall refuse to register any transfer of shares … in relation to which the terms of article 84.10 have not been provided for." FanDuel's Articles expressly contemplated a scenario in which a change-of-control event would occur but the waterfall that governed the distribution of proceeds from that event would not occur until a later point in time.

406. The letter also asserted that the company "received no new or renewed expressions of interest from any third parties following the PASPA decision." As described above, that assertion is false. In the wake of the *Murphy* decision, both Defendants King and Oberwager were made aware of potential investors who believed they could make a better offer for FanDuel than what Paddy Power Betfair had on the table. Defendants chose not to pursue those opportunities.

407. FanDuel's formal answer to the Scottish Action in the Court of Sessions followed. That document reiterated that the "business combination completed on 10 July 2018. Fastball Holdings exercised its option following completion. PandaCo became the sole shareholder in FanDuel." And FanDuel's common shareholders "ceased to be members of FanDuel" and received "nil value for those shares."

408. As a result of their removal from the company's register as shareholders, the four founders who filed the Scottish Action moved to abandon it on November 7, 2019, without prejudice to filing a new case. FanDuel's founders no longer had standing to pursue a Section 994 claim under Scots law following the Fastball Call Option because they were no longer registered shareholders of the company. Importantly, the dismissal was not on the merits of the FanDuel founders' claims. Indeed, by removing the common shareholders from the company register, Defendants temporarily insulated their misconduct from a merits review by a court.

409. The company did not oppose the motion to abandon, or the fact that the relief it sought was without prejudice to filing a new case.

E. Documents Go Missing

410. Defendants reasonably anticipated litigation over the FanDuel board's decisions at least as of the time they received notice of the Scottish Action on July 9, 2018. Despite this, and despite a company policy to "maintain electronic data," the company did not take reasonable measures to preserve documents related to the subject events.

411. Prior to the 2018 merger, FanDuel used Google Suite for its employee email and document management system. FanDuel's IT team would then go in and "manually" download Google data and "store it on a physical network" or "other external hard disc drive." On July 18 and 19, 2018, the company transitioned from the Google ecosystem to Microsoft 365 as part of its larger integration plan. Google Suite accounts were suspended, and the data was left within them intact.

412. According to the company's lawyers, during the "tumult of the transition" from Google Suite to Microsoft 365, "data for some employees was not actually archived." And while the lawyers "do not know the specifics of how that occurred," they surmised that "the most likely explanation is human error." Regardless of reason, the result of the failure to archive this data is the same: no one is now able to locate the data. And much of the evidence surrounding Defendants' conduct is—conveniently—missing forever.

XVI. The Final Chapter

413. From the minute the FanDuel-Paddy Power Betfair merger closed, FanDuel Group has dominated the U.S. sports gambling market. Today, FanDuel is unquestionably the "online market leader" with "unrivalled online scale and market share." FanDuel leads the way in terms of overall revenue (over $3 billion/year), year-over-year growth (+67%), and market share (50%).[5]

[5] https://www.flutter.com/media/l05lf0ij/flutter-prelims-2022.pdf

414. FanDuel's successes are unsurprising. FanDuel is the only operator in the U.S. to offer products in sports gambling, daily fantasy sports, gaming, and horserace wagering. It has a presence in all 50 states and takes in "real-money play" in 41 of those, enabling it—as before—to monetize customers in states that have yet to legalize sports gambling in ways that its large casino operator competitors cannot.

A. The Built-In Exit Strategy

415. All along, the plan for KKR, Shamrock, and other major preferred shareholders was to sell their shares in the newly merged company (formerly PandaCo, now FanDuel Group) for cash at a fixed point in the future when they had taken full advantage of the upside of sports gambling.

416. KKR Co. and Shamrock were focused throughout the merger negotiations on when and how FanDuel shareholders would ultimately be able to exit their investment in PandaCo. The put and call rights in the Contribution Agreement were critical to KKR & Co. and Shamrock because those exit events represented an opportunity to realize a sizeable profit from their investments in FanDuel.

417. Control over Fastball Holdings was thus critical. On Saturday, May 19, 2018, in an email about the ownership structure of Fastball Holdings and concerns with the "ulterior motives" other preferred shareholders might have, Defendant Oberwager asks another KKR employee "what we would need to get to 51% of vote." He goes on to say: "It's a big governance driver. How much is kkr shamrock and google? And then what combos would we need to get it across line?" Sobel Aff. Ex. 86, KKR0025216. As described above, KKR and Shamrock ultimately secured control over Fastball Holdings by investing authority over the entity in a three-member board where KKR and Shamrock each had the power to appoint a director.

418. Article 8 of the PandaCo Stockholder Agreement describes the terms of the "Put Option and Call Option." Under that Agreement, the exercise period for the options was to occur

during the summer of 2021 and the summer of 2023, at the three-year and five-year anniversaries of the merger transaction.

419. Both the 2021 and 2023 options had a price cap of approximately $2.45 billion fair market value. Because of the amount and value of FanDuel shareholders' interest in PandaCo, the PandaCo Stockholder Agreement contemplated the potential of Fastball Holdings continuing to own shares after the exercise of each option. For example, if the shares held in Fastball Holdings were worth $10 billion in 2021, Paddy Power Betfair could only purchase (or be forced to buy) 24.5% of the shares. Paddy Power Betfair could pay for the shares either in cash or shares in Paddy Power Betfair that were "freely tradable on, both the London Stock Exchange plc's market for listed securities and the Main Securities Market of the Irish Stock Exchange plc."

420. Article 9 of the PandaCo Stockholder Agreement governed the determination of the "fair market value" of the PandaCo shares. According to the terms of the Agreement, the fair market value "shall be the fair value for such asset as between a willing buyer and a willing seller in an arm's length transaction occurring on the date of valuation." The fair market value needed to be approved by "at least one" director from Paddy Power Betfair and one from Fastball Holdings. If no agreement could be reached, an "Independent Appraiser" was required to provide a binding determination. Article 9.3 cabined the "valuation methods" that the independent appraiser could use. Notably, those methods "shall not give effect or take into account any 'minority discount' or 'liquidity discount,'" and "shall consider utilizing various valuation methodologies which determine the current market value of the Company based both on short term financial and other metrics, as well as the long-term value of the Company in light of the decisions underly the then existing results of operations."

B. The Defendants Cash In

421. Fastball Holdings sold its interest in FanDuel Group (PandaCo) in December 2020, six-months *before* the exercise period for the 2021 option and two and one-half years *before* the exercise period for the 2023 option.

422. The sale was to Paddy Power Betfair (by then known as Flutter Entertainment, plc.). As a result of the deal, Paddy Power Betfair's ownership in FanDuel Group increased to 95% and its exposure to the U.S. sports gambling market—the "most attractive sector opportunity"—dramatically increased.[6]

423. Commenting on the transaction, Peter Jackson, Flutter's CEO said:

> Flutter's initial acquisition of a controlling stake in FanDuel in 2018 has been transformational for the shape of the Group. Our number one position in the crucial US market is built on many of the assets we acquired through that transaction, supported by the broader Group's capabilities. Our intention has always been to increase our stake in the business and I'm delighted to be able to do so earlier than originally planned and at a discount to its closest peer.

424. Fastball Holdings sold its interest for approximately $4.2 billion. The transaction price implied an enterprise value of FanDuel Group of $11.2 billion. It also equated to a "discount of over 40%" to the "intrinsic fair value" and the $20.3 billion enterprise value of DraftKings Inc. at the time. A subsequent arbitration between Flutter and FOX Corporation confirmed that the true fair market value of FanDuel Group in December 2020 was approximately $20 billion.[7]

425. According to public statements released about the deal, the "discount reflects a number of factors, including Fastball's minority position in FanDuel, the provision of price certainty and liquidity to Fastball as well as allowing it to expedite the payment it receives for its full stake."

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[6] https://www.flutter.com/media/owjjql4i/fanduel-acquisition-announcement.pdf

[7] https://www.flutter.com/media/laodchzp/arbitrator-finds-in-favour-of-flutter-and-values-fanduel-at-20bn.pdf

426. The Flutter-Fastball deal is notable for more than just its size. It marked the first time FanDuel's preferred shareholders—Defendants here—accepted any cash in exchange for their investments and interest in FanDuel. Had FanDuel waited to distribute or run the waterfall, thereby allowing FanDuel's common shareholders to keep their rightful interests in the company, two things would have happened: (1) FanDuel's preferred shareholders would have still achieved extraordinary returns on their investments; and (2) FanDuel's common shareholders would have shared in the upside of the legalization of sports gambling in the U.S., as contemplated by the company's Articles. Instead of being wiped out completely, FanDuel's common shareholders would have received hundreds of millions of dollars for the blood, sweat, and tears they put in to building FanDuel into the sports gaming giant it is today.

SCOTS LAW

427. Scotland is part of the United Kingdom.

428. The law of Scotland is known as "Scots law."[8] Scots law is a mixed legal system, drawing significant influence from both civil law and the English common law. U.K. statutes govern Scots law and have for well over one hundred years. In addition to decisions from Scottish courts, decisions of English (and certain Commonwealth) courts are treated as persuasive authorities, especially at the appellate level.

429. Every wrong has a remedy under Scots law. In that regard, Scots law is said to be based on principle rather than precedent. This feature is salient, as the overall volume of cases

[8] Attached as Exhibit 1 is the affirmation of King's Counsel, David Thomson. Mr. Thomson is the Scottish Editor of the foremost publication on director disqualification law in Scotland. Prior to taking Silk in 2017, Mr. Thomson was the Standing Junior to the Advocate General for Scotland (2010 – 2017) and to the Scottish Government (2005 – 2010). At present, Mr. Thomson's practice focuses on company and insolvency law matters, for which he has conducted cases before the entire range of Courts of Scotland, including the Inner House of the Court of Session and the United Kingdom Supreme Court.

comprising the law of Scotland is small by comparison to other common law jurisdictions. The absence of a controlling case or statutory cause of action will not prevent Scots law from providing relief to deserving plaintiffs whose rights have been denied.

430. Many distinct and separate causes of actions can arise under Scots law from a given set of facts. In circumstances like those alleged above, those causes of action include claims under company law as well as other traditional economic delicts (*i.e.*, torts).

I. Company Law in Scotland

431. The principal piece of legislation concerning company law in Scotland is the Companies Act 2006. The Companies Act 2006 is a statute passed by the U.K. Parliament, which applies throughout the U.K., including in Scotland.

432. The Companies Act 2006 consolidated—but did not replace—the extensive common law that existed before its passage governing company law in Scotland. In turn, principles and cases articulated before the passage of the Companies Act 2006 remain good law and must be followed in Scotland, unless otherwise stated. A plaintiff that does not find a statutory remedy under the Companies Act 2006 may turn to common law causes of action to address a wrong. The Companies Act 2006 reinforces this arrangement in relation to the fiduciary obligation of directors of a company, stating: "The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties." Companies Act 2006, Section 170(4).

433. In addition to substantive company law, there are several procedural rules that can impact company law remedies in Scotland. The so-called "proper plaintiff" rule is one. It provides that the proper plaintiff to pursue wrongs done to a company is the company itself. The statutory "derivative action" under the Companies Act 2006 (Section 265) is an example of this rule in

practice, with the paradigmatic case being one where directors have acted in breach of a duty and caused loss to the company itself.

434. Exceptions exist to the proper plaintiff rule, however. Notably, minority shareholders may sue the directors of a company directly when the allegation is that the directors defrauded the company or used their position of power to prevent the minority shareholders from achieving redress through the company. Moreover, the proper plaintiff rule "has nothing whatever to do with a shareholder's right of action for direct loss caused to his own pocket as distinct from a loss caused to the coffers of a company in which he holds shares." *Heron International Ltd v Lord Grade* [1983] BCLC 244 (CA) at 263b, para 4.5.

435. A related concept is the "no reflective loss" principle. It holds that "where a wrongdoer acts in breach of duties owed separately to both a company and to a shareholder in the company, the shareholder cannot recover against the wrongdoer for any loss which is merely reflective of the loss suffered by the company." Joffe et al., Minority Shareholders: Law, Practice and Procedure, (6th Ed., 2018), paragraph 3.85.

436. Neither the "proper plaintiff" rule nor the "reflective loss" principle prevents an individual shareholder from pursuing a claim for loss suffered uniquely by the shareholder, as opposed to one suffered by the company. Here, Plaintiffs allege that they were uniquely harmed when their common shares and options in FanDuel were stripped away from them for no consideration so that the Defendants could enrich themselves and FanDuel's other preferred shareholders. That loss was not suffered by FanDuel as a company. Rather, it was a unique experience of FanDuel's common shareholders. Under these circumstances, Scots law recognizes that individual shareholders, like the Plaintiffs, have title to sue.

A. Fiduciary Duties

437. Generally, directors of a limited company owe fiduciary duties to the company under Scots law. These obligations arise from the status of directors' relationships with the company: directors are appointed to the board of the company and have the authority to act on the company's behalf. Section 172(1) of the Companies Act 2006 specifies that while a director is to act in the way he considers in good faith would be most likely to promote the success of the company, that duty is "for the benefit of its members as a whole." The members of a company are its shareholders. In turn, the company's shareholders are the true beneficiaries of directors' fiduciary duties in Scotland.

438. Fiduciary relationships can and do exist under Scots law beyond the status relationship between directors and a company. Trusteeship and agency are two examples of other well-established status relationships that create fiduciary obligations. The latter is particularly pertinent, given that the Defendant Directors were deemed "agents" of the ordinary shareholders of FanDuel under Article 78 of the Company's Articles. Where an agent acquires a benefit because of his fiduciary position, he is treated as having acquired the benefit on behalf of his or her principle. *Commonwealth Oil & Gas Ltd v Baxter* 2010 SC 156. And notably, a principle whose agent obtains a bribe or secret commission is able to hold them accountable for doing so under Scots law.

439. "The categories of fiduciary relationships are not closed" in Scotland. Fiduciary relationships are often premised on the facts of a given case "wherever one party is entrusted with powers for the benefit of another in circumstances giving rise to the principal's reasonable expectation that its interests will be given priority by the other party." Gloag and Henderson, para 3.04. Courts consider the nature of the power and discretion conferred on the fiduciary, as well as the principal's ability to effectively supervise the fiduciary, in evaluating whether the facts and circumstances support the existence of a fiduciary relationship.

1. Statutory Remedies Under the Companies Act 2006

440. Statutory remedies for "oppression" or "unfairly prejudicial" conduct by directors who owe fiduciary duties have existed for shareholders in Scotland since the late 1940s. At present, Section 994 of the Companies Act 2006 provides that: "A member of a company may apply to the court by petition … on the ground that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interest of members generally or some part of its members (including at least himself)." Section 996 of the Companies Act 2006 provides the potential remedy for Section 994 petitions. Under it, a court or tribunal has broad discretion to fashion a remedy for actions deemed unfairly prejudicial, including "make[ing] such order as it thinks fit for giving relief in respect of the matters complained of."

441. Petitions under Section 994 of the Companies Act 2006, and the relief afforded them under Section 996, are only available to "members of a company." Typically, a "member of the company" is one of its shareholders, a person whose name is entered in its register of members. Companies Act 2006, Section 112. That said, there are situations at common law in which a company and/or its directors may be sued not only by "members," but also by those who have not been able to become members of the company. For example, where a company's Articles confer discretion on directors to refuse to register transfers of shares, those powers must be exercised in good faith and not "capriciously, arbitrarily or corruptly." *Moir v Thomas Duff & Company Ltd* (1900) 2 F 1265; *Stewart v James Keiller & Sons Ltd* (1902) 4 F 657 at 657. Likewise, those who were registered as members but have been unjustifiably removed as shareholders from the company have title to complain about the wrongs done to them by raising common law claims outside the statutory remedies afforded under the Companies Act 2006.

442. Put simply, under Scots law, directors or controlling shareholders may not insulate themselves from claims related to their unfair or prejudicial conduct by cancelling the shares of the

affected shareholders (and thereby removing their status as "members" of a company), as Defendants are alleged to have done here. Instead, plaintiffs have title to pursue common law claims for such conduct outside of the Companies Act 2006 as set forth in more detail below.

2. Special Factual Circumstances Giving Rise to Fiduciary Obligations

443. The existence of fiduciary duties owed by directors "to the company" does not preclude the imposition of additional duties between directors and individual shareholders. Such duties may arise in "special factual circumstances" under Scots law. Special factual circumstances exist when events take place that "bring the directors [of a company] into direct and close contact with the shareholders in a manner capable of generating fiduciary obligations … for the benefit of the shareholders, and not to prefer and promote their own interests at the expense of the shareholders." *Peskin v Anderson* [2001] 1 BCLC 372 at [33]-[34] (CA).

444. That Scots law imposes fiduciary obligations on directors to individual shareholders in special factual circumstances reflects both that individual shareholders are (where appropriate) able to directly enforce the fiduciary duties directors owe to the company for the benefit of its members as a whole, and that the categories of fiduciary relationships are open-ended under Scots law. There is no "defined checklist" of circumstances that must exist to impose fiduciary obligations on directors to shareholders in Scotland. As stated in *Peskin v. Anderson*:

> The fiduciary duties owed to the company arise from the legal relationship between the directors and the company directed and controlled by them. The fiduciary duties owed to the shareholders do not arise from that legal relationship. They are dependent on establishing a special factual relationship between the directors and the shareholders in the particular case. …
>
> Those duties are, in general, attracted by and attached to a person who undertakes, or who, depending on all the circumstances, is treated as having assumed, responsibility to act on behalf of, or for the benefit of, another person … [Certain sets of circumstances] are capable of constituting special circumstances and of generating fiduciary obligations, especially in those cases in which the directors, for their own benefit, seek to use their position and special inside knowledge

> acquired by them to take improper or unfair advantage of the shareholders."

445. The Scots cases of *Pettie v Thomson Pettie Tube Products Ltd*, 2001 SC 431 at 439D-G, and *Parks of Hamilton (Holdings) Ltd v Campbell*, 2014 SC 726 at [39], are particularly instructive. In *Pettie*, the directors of a company chose to issue new shares without regard to the price of those shares or the impact of such an issuance on the existing value of a share in the company. In *Parks of Hamilton*, special factual circumstances were held to exist when the director of a company was appointed as agent of the shareholders for the purpose of concluding a takeover offer and did not disclose arrangements that included a price for his shares that was higher than that being offered to the ordinary shareholders of the company.

446. The discussion in *Stein v. Blake & Ors.* similarly highlights the special circumstances that potentially arise when directors act to advise, induce, or compel shareholders to accept a takeover bid that undervalues their shareholdings. [1998] BCC 316 at 319-320. Under such circumstances, the directors come into close contact with the shareholders. Moreover, to the degree the shareholders are induced or compelled to dispose of their shares for less than the full value of their shareholdings, it is the shareholders, not the company, that suffer an injury. *Id.* at 320 ("In such a case, no wrong is done to the company. Its assets are not depleted; its coffers remain unaffected."). Shareholders have title to sue for breach of fiduciary duty under such circumstances.

447. In turn, Scots law recognizes the creation of a fiduciary relationship between the directors of a company and individual shareholders when the directors are acting to determine the value, disposition, or rights afforded to an individual's shares—shares in which an individual shareholder has a property interest. Likewise, fiduciary duties will attach to the directors of a company when they are appointed as agents of the individual shareholders for the purpose of a particular transaction or series of actions. Both principles are relevant here, where the Defendant Directors were appointed as agents of the Called Shareholders for the purposes of facilitating the

Drag Along Rights and acted—albeit without authority—to determine the value of, and ultimate disposition of, the common shareholders' interests in FanDuel. Special factual circumstances are present here to support the Director Defendants' fiduciary obligations directly to the FanDuel's common shareholders, including Plaintiffs.

3. The Duties Themselves

448. Once special factual circumstances are found to exist under Scots law, the content of directors' fiduciary obligations are straightforward. Under Scots law, "[a] fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal." *Bristol and West Building Society v Mothew* [1998] Ch 1 at 18. Accordingly, "[a] fundamental principle applies to all fiduciary relationships: a fiduciary may not place himself in a position where his interest and his duty may possibly conflict, and if he does so he is obliged to account for any loss to his principal, or to make good any loss suffered by his principal." *Aberdeen Rly Co v Blaikie Bros* (1854) 4 Macq 461 at 471.

449. In accordance with the Companies Act 2006, directors who owe fiduciary duties (regardless of to whom such duties are said to be owed) must act within the company's constitution (Section 171(a)) and must exercise those powers for the purposes for which they are conferred (Section 171(b)). Directors of a company also have a duty to exercise independent judgment (Section 173), to act with reasonable care, skill and diligence (Section 174), including as between members of the company (Section 172(f)), to avoid conflicts of interest (Section 175), not to accept benefits from third parties (Section 176), and to declare any interest in proposed transactions or arrangements they may have (Section 177).

450. There are several notable principles applied under Scots law when considering whether fiduciary duties have been breached. For example, breach of duty is established where there

is a lack of full disclosure by the agent. The fairness of the underlying transaction is also assumed. The question is, simply, whether there is a possibility of "personal interest conflicting" with those whom the fiduciary is bound to protect. *Aberdeen Railway Co v Blaikie Bros* (1854) 4 Macq 461.

451. And as for damages for a breach of fiduciary duty, the general principle under Scots law is to "put the pursuer in the position he would have been in but for the breach." *Kidd v Paull & Williamsons LLP* [2017] CSOH 16, 2018 SC 193 at [46]. "The assessment is to be made with the benefit of hindsight and not as at the date of the breach. Foreseeability is not therefore a relevant consideration. But the loss compensated must flow directly from the breach, and the actings of the pursuer, as well as the actings of third parties after the date of the breach, will be material to the determination of whether the link between breach and loss is sufficiently direct to entitle the pursuer to the compensation sought." *Id.*

4. "Fraud On A Power"

452. Above and beyond the fiduciary duties that agents owe their principals, there is an overarching responsibility that fiduciaries only exercise their powers for a proper purpose, *i.e.* the purposes for which they were conferred. This duty has its origins in a common law doctrine known as "fraud on a power." *Eclairs Group Ltd v JKX Oil & Gas plc* [2015] Bus LR 1395 at [15].

453. The requirement that fiduciaries exercise their powers for a proper purpose takes on special importance when the fiduciary's actions interfere with the balance of rights and interests among groups of shareholders. As described in *Eclairs Group Ltd*: "it is important that the court should uphold the proper purposes principle in relation to the exercise of fiduciary powers by directors, all the more so where the power is capable of affecting, or interfering with, the constitutional balance between shareholders and directors, and between particular groups of directors." [2015] Bus LR 1395 at [29].

454. A court's evaluation of whether directors acted for a proper purpose is subjective. When, as here, power has been exercised to confer benefits on one class of shareholders at the expense of another (or to oppress a minority class of shareholders), the directors' exercise of their authority is likely for an improper purpose. As stated in *Redwood Master Fund Ltd v TD Bank Europe Ltd* [2002] EWHC 2703 (Ch), [2006] 1 BCLC 149 at [105]:

> The vice against which control on the exercise of the majority power is directed is the potential for a dishonest abuse of that power … if…. the power has been exercised for purpose of conferring special collateral benefits on the majority, or if the obtaining of such collateral benefits can be shown to have been the motive for the exercise of the power, that will likely lead to a conclusion that the exercise has been bad. It would not have been exercised for the purpose for which it was conferred, and its exercise in those circumstances would or might amount to a fraud on the minority. Equally, if the exercise of the power can be down to have been motivated by a malicious wish to damage or oppress the interests of the minority adversely affected by it, then that too will vitiate the exercise, since that too will clearly amount to the commission of fraud on the minority, which is also obviously outside the scope of the power on grounds such as these.

B. Oppression: "Fraud on the Minority"

455. Apart from illustrating the potential use of fiduciary powers for an improper purpose, minority shareholders may also sue directly for any losses suffered as a result of oppressive conduct by those in control of the company, whether that be at the hands of directors or majority shareholders afforded certain rights and/or powers. Entitlement to pursue an "oppression" or "fraud on the minority" claim does not require the establishment of a predicate fiduciary duty. Instead, Scots law affords minority shareholders the right and title to pursue claims based on oppressive conduct that was designed to unfairly target and dispose of their interests.

456. In both *Menier v Hooper's Telegraph Works* and *Cook v. Deeks*, actions were sustained by shareholders against the directors and controlling majority shareholders of companies.

457. The plaintiffs in *Menier* were minority shareholders in a company that sued the majority shareholders. The case revolved around a vote where the majority shareholders unwound

the company at issue under circumstances where the majority shareholders enriched themselves at the expense of the minority shareholders. As the court described the claim, "the minority of the shareholders say in effect that the majority has divided the assets of the company, more or less, between themselves, to the exclusion of the minority." *Menier v Hooper's Telegraph Works* (1874) LR 9 Ch App 350 [at 353]. Under the circumstances alleged, the *Menier* court concluded that the minority shareholders had a right to pursue a claim:

> I think it would be a shocking thing if that could be done, because if so the majority might divide the whole assets of the company, and pass a resolution that everything must be given to them, and that the minority should have nothing to do with it. Assuming the case to be as alleged by the bill, then the majority have put something into their pockets at the expense of the minority. If so, it appears to me that the minority have a right to have their share of the benefits ascertained for them in the best way in which the Court can do it, and given to them.

458. Similarly, in *Cook* the plaintiff was a director and shareholder in a company that sued the other three directors of the company. Plaintiff alleged that the three defending directors had procured a contract for themselves outside of the company and then used their power over the company to disavow the company's interest in the contract. The court described the alleged misconduct of the defendant directors as having "intentionally concealed all circumstances relating to their negotiations until a point had been reached when the whole arrangement had been concluded in their own favour and there was no longer any real chance that there could be any interference with their plans. This means that while entrusted with the conduct of the affairs of the company they deliberately designed to exclude, and used their influence and position to exclude, the company whose interest it was their first duty to protect." *Cook v Deeks* [1916] 1 AC 554 [at 562]. As the court explained, directors "who assume the complete control of a company's business must remember that they are not at liberty to sacrifice the interests which they are bound to protect, and, while ostensibly acting for the company, divert in their own favour business which should properly belong to the company they represent." *Id.* at [563].

459. Here, too, KKR, Shamrock, and the other preferred shareholders were not permitted to dispose of FanDuel in a way that made a gift to themselves of the PandaCo shares owed to FanDuel's common shareholders. Plaintiffs' allegations that KKR, Shamrock, and the Director Defendants distributed to the preferred shareholders all of the PandaCo shares that FanDuel received without ascertaining the fair value of those shares and, in the process, unjustly expropriated Plaintiffs' common shares in FanDuel, state a claim for oppression under Scots law.

C. Contract Between Shareholders

460. In addition to claims of fiduciary breach and/or oppression, shareholders may bring contractual claims against other shareholders under Scots law. That is so because the Articles of Association constitute a contract between the members of a company in Scotland. Companies Act 2006, Section 33. As a result, injured shareholders can bring action against members of a company to redress conduct taken in violation of a company's Articles.

461. Breach of contract under Scots law requires (1) the existence of a contract between the parties, (2) the defendant's breach of an obligation under that contract, and (3) that the plaintiff suffered damages as a result of the breach.

462. As with other contracts, terms may be implied into a company's Articles under Scots law, either in law or in fact. As to the former, there is an implied obligation imposed on each shareholder to exercise any discretionary rights and/or powers they are afforded under a company's Articles in a manner which is not arbitrary, capricious, or unreasonable. Failure to do so can give rise to claims of breach of the implied duty. *Braganza v BP Shipping Ltd* [2015] UKSC 17, [2015] 1 WLR 1661 at [20]. As to the latter, Scottish courts may imply terms on the facts and circumstances of the case on the ground that it is necessary to give effect to the Articles themselves. *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988.

463. In the context of a resolution of a majority to introduce provisions into a company's Articles that allowed for the expropriation of a shareholder, it was held in *Re Charterhouse Capital Ltd.*, [2015] BCC 574, 594 (CA) at [90], that:

> The limitations on the exercise of the power [of the majority shareholders] to amend a company's articles arise because, as in the case of all powers, the manner of their exercise is constrained by the purpose of the power and because the framers of the power of a majority to bind a minority will not, in the absence of clear words, have intended the power to be completely without limitation. Those principles may be characterized as principles of law and equity or as implied terms.

464. KKR's and Shamrock's collective Drag Along Rights are set out in Article 78 of FanDuel's Articles. As such, the contours of the Drag Along Rights stated therein are a matter of contract between KKR, Shamrock, and FanDuel's remaining shareholders, including the Plaintiffs. Under Scots law, the Articles describe the scope and requirements of KKR's and Shamrock's rights; each also owes an implied duty to FanDuel's other shareholders, including Plaintiffs, not to exercise their rights in an arbitrary and capricious manner.

D. Knowing Receipt

465. Under Scots law, those who receive assets with knowledge that the asset has been transferred in breach of fiduciary duty can be held liable to repay their ill-gotten gains in a cause of action known as "knowing receipt." Knowing receipt is akin to a tracing claim in most practical respects. The general principle is that those who know of a fiduciary relationship and receive assets with the knowledge that those assets are the proceeds of a breach of duty are liable to repay those sums to the principal. *Style Financial Services Ltd v Bank of Scotland* 1996 SLT 421 at 426; *Commonwealth Oil & Gas Ltd v Baxter* 2010 SC 156 at [20].

II. Other Economic Delicts (Torts) Under Scots Law

466. Apart from the company law-based claims described above, Plaintiffs also have claims against the Defendants based on the general law of delict (tort) in Scotland. As Scots law is

based largely on principle, there is no exhaustive list of economic delicts available to a plaintiff. Instead, where the conduct alleged appears wrongful, Scots law will seek to afford a remedy.

A. Unlawful Means Conspiracy

467. There are two forms of conspiracies in Scotland. The first is "lawful means" conspiracy, which does not require any unlawful acts to be done but does require the parties to the conspiratorial agreement to have a "real and predominant purpose" to cause injury to the target. The second is an "unlawful means" conspiracy." An "unlawful means conspiracy" arises when two or more persons have combined so as to injure the claimant's interests using unlawful means. An unlawful means conspiracy occurs where actions, if carried out by one person, would give rise to civil liability. *Customs and Excise Commissioners v Total Network SL* [2008] 1 AC 1174**.** But unlike a "lawful means" conspiracy, an unlawful means conspiracy does not require that the "predominant purpose" of the conspiratorial agreement between the defendant and another is to injure the claimant. *Kuwait Oil Tanker v Al Bader* [2002] 2 All ER (Comm) 271. Instead, it is sufficient for an "unlawful means" conspiracy to show that the defendants' primary purpose was to enrich themselves or others so long as the means to achieve that end was by injuring the plaintiff.

468. An unlawful means conspiracy claim requires (1) an agreement or combination between two or more persons, (2) an intention to injure the plaintiff (though this intention need not be the predominant motivation of the wrongdoer, e.g. it is sufficient if causing harm to the plaintiff is a means to an end such as enriching the defendants or others), (3) one or more unlawful acts carried out pursuant to the combination or agreement, and (4) loss suffered by the plaintiff as a consequence of those acts.

469. In either form of conspiracy, there is no requirement that the conspiratorial agreement or combination is set forth in writing or otherwise expressly detailed. An agreement may be implied between conspiring parties.

B. Knowing Assistance

470. Under Scots law, the claim of "knowing assistance" involves establishing that a person, acting dishonestly, knowingly assisted in a breach of fiduciary duties by another. *Commonwealth Oil & Gas v. Baxter*, 2010 SC 156 at [85]. A plaintiff must demonstrate that (1) a breach of a fiduciary duty owed to the plaintiff by another, (2) the defendant's awareness of that breach, (3) the defendant assisted the breach in some way, and (4) that the plaintiff was injured.

471. One may become liable as an accessory to a delictual wrong under Scots law without possessing the same intention or state of mind as the principal wrongdoer. *Frank Houlgate Investment Co Ltd v Biggart Baillie LLP* 2015 SC 187. "Dishonesty" in the context of a knowing assistance claim is not subjective. As stated by the Lord Nicholls of Birkenhead: "Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour." *Royal Brunei Airlines Sdn. Bhd. v Tan* [1995] 2 AC 378, 389.

C. Fraud

472. In Scots law, fraud is a free-standing intentional delict and has been recognized as such since the 17th century. As stated thereabouts by Lord Stair: "Fraud gives remeid by reparation to all that are damnified thereby, against the actor of the fraud, either by annulling the contract or other deed elicit or induced by fraud, or by making up the damage sustained by the fraud at the option of the injured." Institutions of the Law of Scotland (1681, 2nd edn 1693, repr 1981) 1.9.14.

473. Scots law version of fraud may arise in a myriad of different circumstances, but at its core, involves a dishonest or false act that has a practical result or a resultant loss. *Marine & Offshore (Scotland) Ltd v Hill* [2018] CSIH 9, 2018 SLT 239 at [16]. As to the first element, the dishonest or false act must be knowingly made or made without honest belief in its truth. And as for the second element, while reliance by the plaintiff often occurs in the paradigmatic cases, it is not a necessary

element of the delict in Scotland. In other words, while a causal relationship must exist between the "false pretense" and the "resultant loss," Scots law does not require a plaintiff to plead or prove detrimental reliance as part of establishing a claim of fraud.

474. The recent case of *GWR Property Co. Ltd. v. Forrest Outdoor Media Ltd.*, 2022 SCLR 57, is instructive. There, a claimant sought to have a certificate set aside that he claimed had been issued fraudulently and dishonestly under a building contract, even though the claimant was not a party to the contract. As noted by the court:

> The case does not involve reduction of a contract which the defender was induced to enter into as a result of a fraudulent misrepresentation. The defender seeks reduction ope exceptionis of an allegedly false document which if not reduced would result in the purification of the suspensive condition in the missives and the defender becoming bound by the sub-lease. In effect, the allegation is that there was an attempted fraud or dishonest assertion intended to achieve, and which if not reduced will achieve, a practical result. While I was not addressed in any detail on the law applying to such an attempt or assertion, a false document dishonestly prepared to achieve purification of a suspensive condition must be open to reduction. I cannot therefore conclude that the defender's case for reduction ope exceptionis on the basis of alleged falsity, characterised as a fraud or connivance, is bound to fail.

475. Where fraud is established, "fraud unravels all." *Royal Bank of Scotland v Holmes* 1999 SLT 563 at 569. Under Scots law, technical distinctions such as whether directors owed fiduciary duties to the company or shareholders carry little weight, if the court is satisfied that the directors' conduct amounted to fraud.

476. Two other points regarding fraud in Scotland are noteworthy. First, Scots procedural law requires that cases of fraud be plead with precision, including details as to which individual did what, when and how. *Id.* Second, the general Scottish approach to recipients of ill-gotten gains from fraud is summarized in the maxim: "No profit from another's fraud." In turn, claimants can recover restitution or other damages for the gains achieved by a fraud under Scots law. *Id.*

D. Secret Commissions

477. When a fiduciary accepts a secret commission, which tempts him or her to act contrary to the duty of loyalty owed to his or her principle, it is called a "bribe." A secret commission is, like fraud, a free-standing delict in Scotland. It is also a claim that may be brought against either the payor of the commission or its recipient.

478. The basic elements of a "secret commission" under Scots law are (1) a payment to a fiduciary that was (2) unknown or a "secret" to his or her principal, (3) which places the fiduciary in a position where his interest may potentially conflict with his fiduciary obligations. It is not necessary to establish any fraudulent intent on the part of the payor of a secret commission. The secrecy, or lack of disclosure of the payment, suffices.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY UNDER SCOTS LAW (DIRECTOR DEFENDANTS)

479. Plaintiffs reallege and incorporate by reference paragraphs 1 through 478.

480. Under Scots law, directors of a company owe fiduciary duties to shareholders in special factual circumstances. Such circumstances arise when events take place that "bring the directors into direct and close contact with the shareholders in a manner capable of generating fiduciary obligations." *Peskin v Anderson* [2001] 1 BCLC 372 at [33]-[34] (CA). For example, fiduciary duties may arise in special factual circumstances "which replicate the salient features of well-established categories of fiduciary relationships. … Those duties are, in general, attracted by and attached to a person who undertakes, or who, depending on all the circumstances, is treated as having assumed, responsibility to act on behalf of, or for the benefit of, another person." *Id.*

481. When fiduciary duties do arise between directors and shareholders, the directors' obligations are straightforward. They are "not to prefer and promote their own interests at the

expense of the shareholders." *Id.* Directors are also said to have: "a duty to act in accordance with a company's constitution and to only exercise powers for the purposes for which they are conferred" (Companies Act 2006, Section 171); a duty to promote the success of the company for the benefit of its members (*i.e.* shareholders) as a whole, having regard to *inter alia* the need to act fairly as between the shareholders (Companies Act 2006, Section 172(1)(f)); a duty to exercise independent judgment (Companies Act 2006, Section 173); and a duty to avoid conflicts of interest (Companies Act 2006, Section 175).

482. Whether such duties are said to be in addition to the directors' more general obligations to the company under the Companies Act 2006, or a right of individual shareholders to enforce the fiduciary duties of directors to the company under the Companies Act 2006 in special factual circumstances, the point is the same: the categories of fiduciary relationships directors may have are not limited to the company of which they are directors under Scots law. *Gloag & Henderson, The Law of Scotland* (14th Ed., 2017) at Paragraph 3.04.

483. To state a claim for fiduciary breach under Scots law, three basic elements must be established: (1) the existence of a duty; (2) breach of that duty; and (3) loss suffered by the individual (or entity) to whom the duty is owed.

484. Each of the Director Defendants—King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson—had a fiduciary relationship with the common shareholders of FanDuel, including the Plaintiffs. That relationship arose from the facts and circumstances in the spring and summer of 2018 that brought the Director Defendants into "direct and close contact with the shareholders." Notably, each of the Director Defendants voted on when and how the company would run the waterfall under Article 83. That decision altered and modified the property rights and interests FanDuel's common shareholders possessed in their shares, as provided by the company's Articles of Association. In executing the provisions of the Company's Articles that define the boundaries of the

rights and privileges between different classes of shares, the Director Defendants put themselves in the position of determining the value (if any) assigned to each individual shareholder's property interest in the Company. Having put themselves in the position of determining the property rights of competing individual shareholders, the Defendant Directors were brought into direct and close contact with the shareholders. Further, as recognized in the PandaCo offer letter and provided for in Article 78.8, the Director Defendants were also expressly deemed as "agent(s)" of "each FanDuel Stockholder" to effectuate any transfer of their stock pursuant to the closing of the Paddy Power Betfair merger. Such an agency relationship is the paradigm of a fiduciary relationship.

485. King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson breached their fiduciary duties to Plaintiffs as common shareholders in several ways, including but not limited to:

- Failing to seek, obtain, or consider a valuation of the "aggregate consideration" received in the Paddy Power Betfair merger—*i.e.*, shares of PandaCo—prior to executing the waterfall provision of Article 83, much less to seek, obtain, or consider a valuation that was fair to the common shareholders of FanDuel.

- Using an illegitimate price as the value of the "aggregate consideration" received in the Paddy Power Betfair merger when executing the waterfall provision of Article 83. And doing so with full knowledge that the price was illegitimate, that the true value of the shares in PandaCo that FanDuel received in the merger were worth significantly more, and that running the waterfall when and how the Director Defendants did would wipe out an entire class of shares of the Company.

- Paying the FanDuel preference shareholders an amount exceeding the Subscription Price of A Preference Shares in violation of Article 83 of the FanDuel Articles of Association.

- Failing to act fairly as between different common shareholders by re-creating the interest of certain common shareholders (*e.g.* Messrs. King, Genetski, VanEgmond and others) in Fastball Holdings while cancelling the remaining common shareholders interest in the Company for no value.

- Failing to adopt procedural safeguards to make sure that the process by which the Defendant Directors accepted the PandaCo offer and

valued the PandaCo shares received by FanDuel in the Paddy Power Betfair transaction was fair. For example, Defendant Directors did not exhaust financial options that would have preserved common shareholder value. Defendants did not seek a fairness opinion by an independent financial advisor (in fact, they explicitly told the company's financial advisor not to issue one). Defendants also did not condition entering into the merger transaction on the approval of a special committee that was independent and empowered to freely select its own advisors and to reject the transaction. Nor did Defendants seek the approval of a majority of the common shareholders.

- Failing to comply with the terms of FanDuel's Articles of Association including, but not limited to, the requirements of Articles 77, 78, and 83. Defendant Directors did not appoint an independent expert to determine and certify that the terms and conditions offered to shareholders called by the exercise of KKR and Shamrock's Drag Along Right were not less favorable than those offered to KKR and Shamrock, despite knowing that such a dispute existed. Defendant Directors also failed to appoint an independent director to assess the value of the consideration received in the PandaCo offer—shares of PandaCo—despite having actual knowledge of a dispute between the FanDuel shareholders about the value of the PandaCo shares.

- Accepting KKR's and Shamrock's illegitimate exercise of their "Drag Along Rights" despite knowing the company had not received a qualifying offer on *bona fide* arm's length terms as required by FanDuel's Articles.

- Knowingly permitting KKR and Shamrock to abuse their "Drag Along Rights" as a mechanism to improperly enrich the Dragging Shareholders at the expense of the FanDuel common shareholders.

- Failing to provide adequate notice of the Paddy Power Betfair merger to Plaintiffs.

- Directing the company to mislead common shareholders by falsely telling them that the aggregate consideration received from PandaCo in the Paddy Power Betfair merger was less than the Subscription Price of A Preference Shares in the Company. And doing so in order to convince common shareholders not to exercise any vested options they may have held in the Company despite knowing the value of the PandaCo shares received by FanDuel well-exceeded the Subscription Price of A Preference Shares in the Company.

486. Prior to the Paddy Power Betfair merger, each of the Plaintiffs owned common shares and/or vested options to purchase common shares of FanDuel. As a direct or reasonably

foreseeable result of the various breaches of fiduciary duty as set forth in detail above by each of King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson, Plaintiffs were injured when their common shares and options were wiped out without compensation. But for the Defendant Directors' misconduct, Defendants would have been required to appropriately value the consideration FanDuel received in the Paddy Power Betfair merger, receive full shareholder approval of the Paddy Power Betfair merger, or otherwise treat the ordinary shareholders of FanDuel in a fair and equitable manner.

487. As a result of the Defendant Directors' conduct alleged above, Plaintiffs received nothing for their common shares and options and were therefore damaged. Because the Paddy Power Betfair merger was completed through each of the Defendant Directors' breaches of fiduciary duty, Plaintiffs are entitled to damages and disgorgement of Defendants' ill-gotten gains.

488. The breaches of fiduciary duty and acts to assist in the completion of breaches of fiduciary duty by each of Defendants King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson were done deliberately and intentionally to deprive Plaintiffs of their common shares and legal rights. This was calculated and despicable conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

SECOND CAUSE OF ACTION:
OPPRESSION OF THE MINORITY
UNDER SCOTS LAW
(Director Defendants, KKR and Shamrock)

489. Plaintiffs reallege and incorporate by reference paragraphs 1 through 488.

490. Under Scots law, oppressive conduct that expropriates the interests of minority shareholders without compensation is actionable. As explained in the context of a majority that "divided the assets of a company, more or less, between themselves, to the exclusion of the minority," when "the majority have put something into their pockets at the expense of the

minority," minority shareholders have "the right to have their share of the benefits ascertained … and given to them." *Menier v Hooper's Telegraph Works* (1874) LR 9 Ch App 350.

491. Oppression of the minority under Scots law requires that the defendants act with an intent to oppress the minority in order to enrich the majority. As described in *Cook v. G.S. Deeks*, the claim arises when the majority acts with the intent to "forfeit[] the interest and property of the minority shareholders in favor of the majority." [1916] 1 AC 554. A plaintiff is not required to show that the defendant acted with malicious intent such that the primary or sole motivation was injury to the plaintiff. Instead, oppression of the minority arises when the defendant intends harm to the plaintiff for the purpose of enriching themself or those to whom the defendant is beholden.

492. Scots law recognizes that there are situations in which the majority's conduct will cause a loss to the minority that is not reflective of an overall loss suffered by the company. Classic examples occur when the majority gifts to themselves the property or opportunities of the company to the exclusion of the minority shareholders. Under those circumstances, minority shareholders have suffered a loss that is not reflected in a loss to the company and are entitled to pursue a claim to recover that loss as individuals.

493. To state a claim for oppression of the minority under Scots law, three basic elements must be established: (1) the existence of discernable minority shareholders; (2) action or inaction by those who assume control of the company (directors and/or majority shareholders) with the intent to harm minority shareholders in order to enrich themselves; and (3) the suffering of a loss by individual shareholders, distinct from any harm to the company itself.

494. Plaintiffs here represent the interests of FanDuel's minority shareholders. Each Plaintiff held FanDuel common shares, vested options to purchase FanDuel common shares, or

both, at the time of FanDuel's merger with Paddy Power Betfair. And each Plaintiff held, in all events and at all times, a greater percentage of FanDuel common shares than preferred shares.

495. The Director Defendants, KKR, and Shamrock, represent those who assumed control of the company in the spring and summer of 2018. Either through appointment, personal investments, or a series of side deals, the Director Defendants' interests were aligned with FanDuel's preferred shareholders, who held a majority ownership interest in the company. Defendants KKR and Shamrock were themselves preferred shareholders; they were also controlling shareholders by virtue of the Drag Along Right they possessed to accept an offer for the entire share capital of the company on bona fide arm's length terms without a shareholder vote. KKR and Shamrock also exerted control over the conflicted Director Defendants—King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson—who acted in concert with and/or at the direction of KKR and Shamrock.

496. The Director Defendants, KKR, and Shamrock acted to oppress minority shareholders and enrich themselves in a number of ways, including but not limited to:

- Acting with an improper purpose by failing to seek, obtain, or consider a valuation of the "aggregate consideration" received in the Paddy Power Betfair merger—*i.e.*, shares of PandaCo—prior to executing the waterfall provision of Article 83, much less to seek, obtain, or consider a valuation that was fair to the minority shareholders of the company, the common shareholders of FanDuel. FanDuel's Articles do not permit or condone such actions; nor were they a legitimate exercise of the powers and authorities bestowed upon the Director Defendants, KKR and/or Shamrock thereunder.

- Acting with an improper purpose by using an illegitimate price as the value of the "aggregate consideration" received by FanDuel in the Paddy Power Betfair merger when executing the waterfall provision of Article 83. And doing so with full knowledge that the price was illegitimate, that the true value of the shares in PandaCo that FanDuel received in the merger were worth significantly more, and that running the waterfall when and how they did would wipe out the minority shareholders of the Company.

- Acting with an improper purpose by ignoring the requirements of Articles 77, 78 and 83. Defendant Directors did not appoint an

independent expert to determine and certify that the terms and conditions offered to shareholders called by the exercise of KKR and Shamrock's Drag Along Right were not less favorable than those offered to KKR and Shamrock, despite knowing that such a dispute existed. Defendant Directors also failed to appoint an independent director to assess the value of the consideration received in the PandaCo offer—shares in PandaCo—despite having actual knowledge of a dispute between the shareholders about the value of the PandaCo shares.

- Acting with an improper purpose by abusing (and knowingly permitting the abuse of) the "Drag Along Rights" afforded under FanDuel's Articles, as a mechanism to improperly enrich the Director Defendants, KKR, Shamrock, and other FanDuel preference shareholders at the expense of the minority shareholders of FanDuel, its common shareholders.

- Appropriating the assets and interests of the minority shareholders by distributing to the FanDuel preference shareholders shares in PandaCo that exceeded the Subscription Price of A Preference Shares and were otherwise the property of FanDuel's common shareholders, in violation of Article 83 of the FanDuel Articles of Association.

497. The Director Defendants, KKR, and Shamrock took these actions with the intent to oppress FanDuel's common shareholders, including the Plaintiffs, for the purpose of enriching themselves and FanDuel's other preference shareholders. Director Defendants, KKR, and Shamrock acted with the knowledge and intent that their conduct would deprive the common shareholders, including Plaintiffs, of their interest in PandaCo in order to benefit themselves and the preference shareholders.

498. As a result of the oppressive conduct of the Director Defendants, KKR and Shamrock, FanDuel's minority shareholders, represented by Plaintiffs here, suffered harm that was distinct from the Company. Notably, FanDuel received the shares that it was owed in the Paddy Power Betfair merger: a 40% interest in the new merged entity, PandaCo. Each of FanDuel's shareholders, including its minority shareholders, was entitled to some portion of those PandaCo shares, based on their respective interests in the Company. The Director

Defendants, KKR, and Shamrock failed to distribute the shares in PandaCo that FanDuel's minority shareholders were owed; instead, they distributed to FanDuel's preferred shareholders more shares in PandaCo than they were entitled to under FanDuel's Articles. As a result, the harm experienced is unique to FanDuel's common shareholders.

499. As a result of the Director Defendants, KKR, and Shamrock's conduct, Plaintiffs received nothing for their common shares and options and were therefore damaged. Because the Paddy Power Betfair merger was completed through oppression of FanDuel's minority shareholders, Plaintiffs are entitled to compensatory damages and disgorgement of Defendants' ill-gotten gains.

500. The oppressive acts by each of the Director Defendants, KKR, and Shamrock were done deliberately and intentionally to deprive Plaintiffs of their common shares and legal rights (and enrich themselves in the process). This was calculated and despicable conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

THIRD CAUSE OF ACTION:
UNLAWFUL MEANS CONSPIRACY
UNDER SCOTS LAW
(ALL DEFENDANTS)

501. Plaintiffs reallege and incorporate by reference paragraphs 1 through 500.

502. The nature of conspiracy liability under Scots law is explained in a leading treatise on the subject as follows: "an agreement of two or more to do an unlawful act or to do a lawful act by unlawful means." Gloag & Henderson, Paragraphs 28.04-05. A conspiracy might be characterized, in turn, as either a "lawful means" conspiracy or an "unlawful means conspiracy." The latter type of conspiracy arises where the actions of two or more, if carried out by one person, would give rise to civil liability, or where the activities in question, though not themselves giving rise to civil liability incur criminal or other statutory sanctions. *See Customs and*

Excise Commissioners v. Total Network SL [2008] 1 AC 1174. "If the means are unlawful the conduct is none the less actionable because done in combination." *Walker, The Law of Delict in Scotland,* (Second Ed. 1981) at 931.

503. An unlawful means conspiracy arises where one or more of the actions taken in pursuit of the conspiracy is actionable—either by the plaintiff or someone else. An unlawful means conspiracy exists even if additional acts (beyond the one or more that can give rise to a cause of action) are taken as part of the conspiracy that are not themselves independently actionable. There is no requirement that each member of an unlawful means conspiracy completes an unlawful act.

504. "There is no limit to the kinds of combinations which may be attacked as actionable conspiracies" under Scots law. *Walker, The Law of Delict in Scotland,* (Second Ed. 1981) at 928. So long as there is an agreement between two or more parties, a conspiracy is actionable under Scots law without regard to whether the conspiracy is memorialized in writing or otherwise expressly detailed. An agreement may be inferred from the actions of the co-conspirators.

505. When conspirators undertake to execute their scheme by lawful means, the conspiracy is only actionable if the "predominant purpose" is "to injure" the plaintiff. *Walker, The Law of Delict in Scotland,* (Second Ed. 1981) at 929. However, when conspirators agree to execute their scheme using unlawful means, the conspiracy is actionable so long as they intended to cause injury to the plaintiff even if the primary purpose was to enrich themselves. Put another way, an unlawful means conspiracy is actionable under Scots law if the conspirators intended to cause injury to the plaintiff to benefit themselves.

506. To state a claim for unlawful means conspiracy under Scots law, three basic elements must be established: (1) an agreement of two or more persons; (2) activities that, if carried out by one person, would give rise to civil liability; (3) intent in carrying out those

activities to enrich one or more of the conspirators by causing a loss to the plaintiff; and (4) resulting damages to the plaintiff.

507. The Defendants collectively agreed to participate in a scheme the purpose of which was to deprive FanDuel's common shareholders of their interest in PandaCo while enriching themselves and FanDuel's preferred shareholders. This conspiracy is manifest in a series of formal and informal agreements by, between, and among the Defendants, each made with the purpose to advance the conspiracy, for example:

- Defendant Directors' agreement with KKR and Shamrock to cede authority over the PandaCo merger negotiations to KKR and Shamrock.

- KKR's, Shamrock's, and the Defendant Directors' agreement to instruct Moelis not to value PandaCo before the May 22, 2018 board meeting and, instead, to proceed to vote on the waterfall without having an independent financial advisor doing so.

- Defendant Directors' agreement not to seek the opinion of an independent expert on the terms or value of the PandaCo merger despite their obligations to do so under Article 77 and 78 of the Company's Articles, and in violation of their fiduciary duties to the Company and the common shareholders in light of the special factual circumstances at issue.

- Defendant Directors' agreement to run the Article 83 waterfall using a sham price and giving PandaCo shares to FanDuel's preferred shareholders worth far in excess of the Subscription Price of A Preference Shares, in violation of their fiduciary duties to the Company and the common shareholders in light of the special factual circumstances at issue.

- KKR's agreement with Shamrock to pay off the outstanding "Convertible Note" in exchange for Shamrock's agreement to vote in favor of running the Article 83 waterfall in May 2018 using a sham price for PandaCo instead of a real valuation.

- KKR's and Shamrock's agreement to exercise their collective "Drag Along" notwithstanding that the offer FanDuel received from PandaCo did not satisfy the requirements set out in the Company's Articles to authorize them to do so.

- The Defendant Directors' agreement with KKR and Shamrock to accept KKR's and Shamrock's exercise of their collective Drag Along Rights before any offer was received from PandaCo and notwithstanding that the ultimate offer received from PandaCo did not comply with the terms of the Company's Articles governing the Drag Along Right.

- KKR's, Shamrock's, Cleland's, and King's agreement with Comcast to give Comcast additional consideration as part of the PandaCo merger—including additional financial and business compensation—in exchange for Comcast's support in closing the PandaCo merger and running the Article 83 waterfall using a sham price for PandaCo instead of a real valuation.

- Fastball Holdings' agreement with KKR, Shamrock, and the Defendant Directors to execute the Fastball Holding Call Option in order to force FanDuel to run the waterfall and effectuate the Defendants' scheme to wipe out FanDuel's common shareholders.

- Fastball Holdings, KKR, Shamrock, and the Defendant Directors agreement with King, Nathanson, and Vogel to recreate their management carve out interest in Fastball Holdings and to recreate senior management common options in Fastball Holdings in order to secure King's, Nathanson's, and Vogel's support for running the Article 83 waterfall in a way that understated the value of PandaCo and wiped out FanDuel's common shareholders.

- PandaCo's agreement to the Contribution Agreement that contained non-arm's length terms it knew were intended to facilitate KKR's, Shamrock's, and the Defendant Directors' scheme to wipe out FanDuel's common shareholders.

- PandaCo's agreement with Fastball Holdings, KKR, and Shamrock to condition its offer for the share capital of the Company on FanDuel giving Fastball Holdings a call option to perfect the Defendants' plan to eliminate FanDuel's common shareholders.

- PandaCo's issuance of an offer that contained non-arm's length terms and KKR's and Shamrock's acceptance of the same using their purported "Drag Along Rights" to force FanDuel's common shareholders to accept the Paddy Power Betfair merger without a vote.

508. The collective intent of the Defendants was to deprive FanDuel's common shareholders of their interests in PandaCo in order to enrich the Defendants or otherwise serve the Defendants' interests. KKR, Shamrock, Oberwager, LaSalle, and Cleland sought to enrich themselves by obtaining a greater interest in PandaCo than their preference shares entitled them to receive. Wiping out the common shareholders served PandaCo's interest by avoiding the delay and expense of regulatory filings. King, Nathanson, and Vogel intended to deprive FanDuel's common shareholders of their interests in PandaCo in order to secure the benefits promised to them by Fastball Holdings, KKR, and Shamrock. Fastball Holdings served its interest of obtaining control over FanDuel's shares in PandaCo by facilitating the scheme to wipe out the common shareholders. The intent of each Defendant, and of the Defendants' collectively, was to deprive the common shareholders of their interests in PandaCo in order to enrich themselves.

509. One or more Defendants engaged in unlawful acts in furtherance of the conspiracy, each of which is actionable under Scots law, including, but not limited to:

- Defendant Directors' breach of their fiduciary duties to FanDuel and, given the special factual circumstances present, their fiduciary relationship with FanDuel's common shareholders, to distribute the proceeds of the FanDuel-Paddy Power Betfair merger in accordance with the Article 83 waterfall.

- Defendant Directors' breach of their fiduciary duties to FanDuel and, given the special factual circumstances present, their fiduciary relationship with FanDuel's common shareholders, to seek an independent expert to evaluate the terms of, and value of the aggregate consideration received in, the PandaCo merger as required by Articles 77 and 78 of the Articles.

- Defendant Directors' breach of their fiduciary duties to FanDuel by ignoring expressions of interest from other potential joint venture partners and investors after the U.S. Supreme Court *Murphy* decision or failing to allow the exclusivity provision in the term sheet to expire before soliciting such interest. The Defendant Directors failed to do so because the structure of the deal that was in place with Paddy

Power Betfair, including the way in which the Director Defendants had agreed to exercise the Article 83 waterfall, enriched Defendants and FanDuel's preferred shareholders in a way that was not replicable by an alternative transaction negotiated after *Murphy*.

- Defendant Directors' abdication of their fiduciary duties to FanDuel by turning over the negotiation of the Paddy Power Betfair merger, a change in control transaction for the Company, to two of the Company's preferred shareholders, KKR & Shamrock, neither of whom represented the interest of FanDuel's members as a whole and both of which were known by the Defendant Directors at the time to have elevated their interests over those of FanDuel's common shareholders.

- Defendant Directors' failure to disclose, in writing or otherwise, their conflicts of interest in relation to the acts and actions each took to execute the Article 83 waterfall at their May 22, 2018, board meeting, as required by the Company's Articles.

- Fastball Holdings', Nathanson's, and Vogel's agreement to enter into a secret commission that replaced the MCO payment that Nathanson and Vogel were entitled to receive from FanDuel by agreements with Fastball Holdings that pegged the value of each's MCO Payment to the value of Fastball Holdings' PandaCo shares at predetermined exit points in the Paddy Power Betfair deal.

- KKR's and Shamrock's breach of contract between the shareholders resulting from their execution of their Drag Along Rights despite the fact that KKR and Shamrock knew PandaCo's offer contained non-*bona fide* arm's length terms.

- KKR's and Shamrock's breach of their implied duty not to exercise their contractual Drag Along Rights in an arbitrary and capricious manner when they exercised those rights knowing the Defendant Directors had voted to run the Article 83 waterfall using a sham price that would unjustly wipe out the common shareholders and enrich KKR and Shamrock.

- Defendant Directors' fraudulent statements and omissions each of which was designed to advance the Defendants' collective interest in advancing the scheme to wipe out FanDuel's common shareholders for the benefit of the Defendants and FanDuel's other preferred shareholders.

510. As a result of the unlawful means conspiracy engaged in by the Defendants, FanDuel's common shareholders, represented by Plaintiffs here, suffered harm that was distinct

from the Company. Notably, FanDuel received the shares that it was owed in the Paddy Power Betfair merger: a 40% interest in the new merged entity, PandaCo. Each one of FanDuel's shareholders, including its common shareholders, was entitled to some portion of those PandaCo shares, based on the respective interest in FanDuel that they gave-up in the merger. The Defendants failed to distribute the shares in PandaCo that FanDuel's common shareholders were owed and, instead, distributed to FanDuel's preferred shareholders more shares in PandaCo than they were entitled to in furtherance of the objective of the conspiracy. As a result, the harm experienced is unique to FanDuel's common shareholders in the form of their lost interests in PandaCo, the value of which is hundreds of millions of dollars.

511. As a result of the Defendants' conduct, Plaintiffs received nothing for their common shares and options in FanDuel and were therefore damaged. Because the Paddy Power Betfair merger was completed through this unlawful means conspiracy, Plaintiffs are entitled to damages and disgorgement of Defendants' ill-gotten gains.

512. The unlawful means conspiracy Defendants engaged in was set about to deliberately and intentionally deprive Plaintiffs of their common shares and legal rights (and enrich Defendants in the process). This was calculated and despicable conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

FOURTH CAUSE OF ACTION:
KNOWING RECEIPT
UNDER SCOTS LAW
(KKR, SHAMROCK, FASTBALL HOLDINGS, KING, OBERWAGER, LASALLE, AND CLELAND)

513. Plaintiffs reallege and incorporate by reference paragraphs 1 through 512.

514. A ground of action in Scots law arises for knowing receipt when a person or entity receives funds derived from a breach of duty in circumstances where he knows (or ought

to know) of the duty and its breach. *See generally Commonwealth Oil and Gas Co. Ltd. v. Baxter*, 2010 SC 156, 177. The focus of a knowing receipt claim is on the property itself. In that regard, it is akin to tracing, whereby a plaintiff seeks to identify property in the hands of a defendant that otherwise belongs to him or her.

515. The elements of knowing receipt include (1) a party received property, (2) at the expense of another, and (3) knowing that the property was obtained through a breach of duty.

516. As directors in FanDuel, Defendants King, Oberwager, LaSalle, Vogel, Nathanson, and Cleland owed fiduciary duties to the Company and to the Plaintiffs as common shareholders under the special factual circumstances described in paragraphs 479 to 488 above. Each was financially interested in the Paddy Power Betfair merger and advanced their interest over those of the common shareholders of the Company in breach of their fiduciary duties. Those duties included, among others, the duty of loyalty and the duty to exercise due care in the operation of FanDuel. In light of these conflicts of interest, the fiduciary duties of Defendants King, Oberwager, LaSalle, Vogel, Nathanson, and Cleland included the obligation to treat the common shareholders of FanDuel, including the Plaintiffs, with fairness by ensuring that any distribution of aggregate consideration received by the Company in the Paddy Power Betfair merger was the result of a fair process and was made at a fair value.

517. Each of the Defendant Directors breached their fiduciary duties to the shareholders in several ways, including, but not limited to those alleged in paragraphs 479 through 488 above.

518. The practical result of the Director Defendants' breaches of their fiduciary duties was that PandaCo shares that should have been distributed to FanDuel's common shareholders under the Article 83 waterfall were instead distributed to FanDuel's preference shareholders. In other words, FanDuel's preference shareholders received a greater ownership percentage in PandaCo than they were entitled to under the Article 83 waterfall.

519. Defendants KKR, Shamrock, Fastball Holdings, King, LaSalle, Oberwager, and Cleland were each aware of the Defendant Directors' breaches of their fiduciary duties.

- Defendant Oberwager was a FanDuel director who participated in breaching his fiduciary duties. He was also a managing director of KRR and, in that capacity, planned, discussed, and schemed to breach his fiduciary duties with the direct input, knowledge, and assistance of KKR & Co. employees including, but not limited to, Mssrs. Sarnoff, Jean-Baptiste, Saeks, and the KKR & Co. investment committee.

- Defendant LaSalle was a FanDuel director who participated in breaching his fiduciary duties. He was also a managing director of Shamrock Capital, and, in that capacity, he planned, discussed, and schemed to breach his fiduciary duties with the direct input, knowledge, and assistance of Shamrock Capital employees including, but not limited to, Ms. Wallach, Ms. Armstrong and the Shamrock Capital investment committee.

- Defendants King and Cleland were each directors of FanDuel that directly participated in breaching their fiduciary duties to the common shareholders.

- Defendant Fastball Holdings was created by Defendants KKR, Shamrock, and King for the express purpose of consummating Defendant Directors' breach of their fiduciary duties by removing the PandaCo shares from FanDuel thereby allowing the elimination of the common shareholders. Fastball Holdings was aware of the Director Defendants' breach of their fiduciary duties.

520. Defendants KKR, Shamrock, Fastball Holdings, King, LaSalle, Oberwager, and Cleland each received property, in the form of PandaCo shares and interests, as a result of the Defendant Directors' breaches of their fiduciary duties.

- KKR and Shamrock each operated wholly owned investment vehicles that held more preferred than common shares in FanDuel. Each received a greater share of PandaCo as a result of the Direct Defendants' decision to run the Article 83 waterfall using a sham value designed to wipe out the common shareholders. As investors in KKR's and Shamrock's investment vehicles, Defendants Oberwager and LaSalle respectively received a greater share of PandaCo than they were entitled to under the Articles.

- Defendant Fastball Holdings was given an illegitimate call option as part of the Defendant Directors' scheme to wipe out the common shareholders and divert the PandaCo shares the Company received in the Paddy Power Betfair transaction entirely to FanDuel's preferred shareholders. Through the use of the Fastball Holdings Call Option, Defendant Fastball Holdings obtained FanDuel's entire interest in PandaCo a portion of which rightfully belonged to the Company's common shareholders.

- Defendant Cleland held investments in Comcast's investment vehicles that held a greater percentage of preferred shares than common shares in FanDuel. As a result of the Director Defendants' decision to run the Article 83 waterfall using a sham value designed to wipe out the Company's common shareholders, he received a greater interest in PandaCo than he was entitled under the terms of FanDuel's Articles.

- Defendant King received an interest in PandaCo in the form of shares in Fastball Holdings as part of the elicit agreement he signed to support the Director Defendants' breach of their fiduciary duties.

521. Prior to the Paddy Power Betfair merger, Plaintiffs each owned common shares and/or vested options to purchase common shares of FanDuel. As a direct or reasonably foreseeable result of the Director Defendants' breach of their fiduciary duties, Plaintiffs were injured when their common shares and options were wiped out without compensation. The PandaCo shares that Plaintiffs were entitled to receive under the Article 83 waterfall were diverted to, among others, KKR, Shamrock, Fastball Holdings, King, Oberwager, LaSalle, and Cleland. Each of those Defendants received PandaCo shares that they knew properly belonged to the Plaintiffs and were obtained through a breach of fiduciary duty.

522. As a result of Defendants KKR's, Shamrock's, Fastball Holdings', King's, LaSalle's, Oberwager's, and Cleland's knowing receipt of property obtained through breach of fiduciary duties, Plaintiffs received nothing for their common shares and options in FanDuel and were therefore damaged. Plaintiffs are entitled to damages and disgorgement of Defendants' ill-gotten gains.

523. The knowing receipt of property obtained through breaches of fiduciary duty by Defendants KKR, Shamrock, Fastball Holdings, King, LaSalle, Oberwager, and Cleland was deliberate and intentional, depriving Plaintiffs of their common shares and legal rights (and enriching Defendants in the process). This was calculated and despicable conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

FIFTH CAUSE OF ACTION:
BREACH OF CONTRACT BETWEEN SHAREHOLDERS
UNDER SCOTS LAW
(KKR & SHAMROCK)
Under Scots Law

524. Plaintiffs reallege and incorporate by reference paragraphs 1 through 523.

525. Under Scots law, a company's constitution functions as a contract between its members (shareholders). As stated in Section 33 of the Companies Act 2006, "the provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions." A member that fails to observe the provisions of the company's constitution can be held liable for a breach of contract under Scots law for damages caused to other members.

526. Breach of contract under Scots law requires (1) the existence of a contract between the parties, (2) the defendant's breach of an obligation under that contract, and (3) that the plaintiff suffered damages as a result of the breach.

527. As of June 30, 2018, KKR was a member of FanDuel through its investment vehicles Fan Investor Limited and Fan Investors L.P. that owned common and preferred shares of the Company. Further, KKR & Co. controlled its investment vehicles in FanDuel as the general partner of each and through KKR & Co. employees Oberwager, Sarnoff, Jean-Baptiste, and Saeks. Shamrock was a member of FanDuel through its investment vehicles Shamrock

Capital Growth Fund III, LP, Shamrock FanDuel Co-Invest LLC, and Shamrock FanDuel Co-Invest II, LP, that owned common and preferred shares of the Company. Further, Shamrock Capital controlled its investment vehicles in FanDuel as the general partner and through Shamrock Capital employees LaSalle, Wallach, and Armstrong. Plaintiffs were members of FanDuel through their ownership of common shares.

528. As members of FanDuel, KKR, Shamrock, and the Plaintiffs were bound by a covenant to observe the obligations set out in FanDuel's Articles of Association, which is a contract between the members of FanDuel under Scots law.

529. Article 78 of the FanDuel Articles of Association defined KKR's and Shamrock's collective "rights to drag non-accepting shareholders along in a sale" (the "Drag Along Rights"). Article 78 defined the requirements, parameters, and limitations on KKR's and Shamrock's collective Drag Along Rights. As members of FanDuel, KKR and Shamrock were contractually bound to the Company's other members to exercise their collective Drag Along Rights only in ways consistent with FanDuel's Articles.

530. Among other limitations, KKR and Shamrock were only entitled to "require all Called Shareholders" to accept a proposal that qualified as an "Offer" under the Company's Articles. A proposal could only qualify as an "Offer" if it was "made on *bona fide* arm's length terms." (*See* Article 1.1 (Definition of "Offer"); Article 77.3) Therefore, KKR and Shamrock were contractually obligated to only exercise their Drag Along Rights to force the acceptance of a proposal if it was made on *bona fide* arm's length terms.

531. On June 30, 2018, KKR and Shamrock jointly issued a "Drag Along Notice" to FanDuel that purported to "irrevocably accept" an offer made that same day by PandaCo. KKR's and Shamrock's "Drag Along Notice" constituted a breach of their covenants under the

Company's Articles because both KKR and Shamrock knew that the terms of PandaCo's offer did not qualify as *bona fide* arm's length terms.

532. Several terms in the PandaCo offer did not qualify as *bona fide* arm's length terms, including at least the following:

- The PandaCo offer, along with the Contribution Agreement, purported to dictate when and how FanDuel's board executed certain non-discretionary duties under the Company's Articles (e.g., the Article 83 waterfall provision);
- The PandaCo offer included a so-called "Signing Date Share Price" that did not reflect an actual, independent valuation of PandaCo as a going concern and, instead, was a sham price set to obscure KKR's and Shamrock's scheme to eliminate FanDuel's common shareholders;
- The PandaCo offer required each Called Shareholder to grant a "Call Option" to Fastball Holdings LLC, which was a company created by KKR and Shamrock and thus could not stand at arm's length to them.

533. Plaintiffs were injured by KKR's and Shamrock's breaches of the FanDuel Articles. Based on the illegitimate exercise of their collective Drag Along Rights, FanDuel instituted the remaining provisions of Article 78 that included forcing each Plaintiff to consent to the PandaCo offer or accept the appointment of an agent to do so on each Plaintiff's behalf. The direct and proximate result of KKR's and Shamrock's breaches was that the Company accepted the PandaCo offer without a shareholder vote, distributed the PandaCo shares only to preferred shareholders, and cancelled Plaintiffs' shares in FanDuel without compensation.

534. As a result of the conduct alleged above, Plaintiffs received nothing for their common shares and vested options and were therefore damaged. Because Plaintiffs' injuries were the direct and proximate result of KKR's and Shamrock's breach of contract, Plaintiffs are entitled to compensatory damages.

SIXTH CAUSE OF ACTION:
BREACH OF THE IMPLIED DUTY NOT TO EXERCISE CONTRACTUAL RIGHTS IN AN ARBITRARY OR CAPRICIOUS MANNER UNDER SCOTS LAW
(KKR & SHAMROCK)

535. Plaintiffs reallege and incorporate by reference paragraphs 1 through 534.

536. Under Scots law, a company's constitution functions as a contract between its members (shareholders). As stated in Section 33 of the Companies Act 2006, "the provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions." Where the company's constitution gives a member discretion in the exercise of a contractual right, Scots law implies a duty on that member not to exercise their right in an arbitrary or capricious manner.

537. Breach of this implied duty in law under Scots law requires (1) the existence of a contract between the parties, (2) the defendant had discretion regarding whether to exercise its contractual rights under the contract, (3) the defendant exercised its contractual rights in an arbitrary or capricious manner, and (4) the plaintiff suffered damages as a result.

538. As of June 30, 2018, KKR was a member of FanDuel through its investment vehicles Fan Investor Limited and Fan Investors L.P. that owned common and preferred shares of the Company. Further, KKR & Co. controlled its investment vehicles in FanDuel as the general partner of each and through KKR & Co. employees Oberwager, Sarnoff, Jean-Baptiste, and Saeks. Shamrock was a member of FanDuel through its investment vehicles Shamrock Capital Growth Fund III, LP, Shamrock FanDuel Co-Invest LLC, and Shamrock FanDuel Co-Invest II, LP, that owned common and preferred shares of the Company. Further, Shamrock Capital controlled its investment vehicles in FanDuel as the general partner and through

Shamrock Capital employees LaSalle, Wallach, and Armstrong. Plaintiffs were members of FanDuel through their ownership of common shares.

539. As members of FanDuel, KKR, Shamrock, and the Plaintiffs were bound by a covenant to observe the obligations set out in FanDuel's Articles, which is a contract between the members of FanDuel under Scots law.

540. Article 78 of the FanDuel Articles of Association defined KKR's and Shamrock's collective "rights to drag non-accepting shareholders along in a sale" (the "Drag Along Rights"). The Drag Along Rights provided KKR and Shamrock with a collective right to force FanDuel's remaining shareholders to accept an offer they "wish[ed] to accept" subject to the terms and conditions set out in the Company's Articles. KKR and Shamrock had discretion over whether to accept a qualified "Offer" for the share capital of FanDuel. Because KKR and Shamrock had discretion over whether to exercise their Drag Along Rights, Scots law implied a duty on them not to exercise those rights in an arbitrary or capricious manner.

541. On June 30, 2018, KKR and Shamrock jointly issued a "Drag Along Notice" to FanDuel that purported to "irrevocably accept" an offer made that same day by PandaCo. At the time KKR and Shamrock issued the "Drag Along Notice," they were aware of the following facts:

- The Defendant Directors—at the insistence of KKR and Shamrock—had already voted to run the Article 83 waterfall to distribute the PandaCo shares that the Company would receive in the merger using a contrived valuation that did not actually value PandaCo or include sports gambling in the analysis;
- The shares of PandaCo that FanDuel would receive in the merger transaction were, in fact, worth far in excess of $559 million;
- The consequence of exercising their Drag Along Rights was to force approval of the Paddy Power Betfair merger transaction and the distribution of the PandaCo shares in a way that did not reflect the true value of the "aggregate consideration" received by

the Company in the merger and was detrimental to FanDuel's common shareholders;

- KKR and Shamrock would directly benefit as a result of executing the merger transaction and Article 83 waterfall using a sham value in place of a fair market value of PandaCo; and

- KKR and Shamrock would directly benefit at the expense of the common shareholders from running the Article 83 waterfall in this manner.

542. KKR and Shamrock collectively exercised their discretion to invoke their collective Drag Along Rights in an arbitrary and capricious manner. They did so for the purpose of depriving the common shareholders of shares in PandaCo as part of a scheme to enrich themselves. The exercise of contractual discretion to enrich oneself by depriving contractual counterparties of their entitlements is the very embodiment of an arbitrary and capricious act.

543. Plaintiffs were injured by KKR's and Shamrock's breach of the implied duty not to exercise their contractual discretion in an arbitrary and capricious manner. Based on KKR's and Shamrock's arbitrary and capricious exercise of their collective Drag Along Rights, FanDuel instituted the remaining provisions of Article 78 that included forcing each Plaintiff to consent to the PandaCo offer or accept the appointment of an agent to do so on each Plaintiff's behalf. The direct and proximate result of KKR's and Shamrock's breach was that the company accepted the PandaCo offer without a shareholder vote, distributed the PandaCo shares only to preferred shareholders, and cancelled Plaintiffs' shares in FanDuel without compensation.

544. As a result of the conduct alleged above, Plaintiffs received nothing for their common shares and vested options and were therefore damaged. Because Plaintiffs' injuries were the direct and proximate result of KKR's and Shamrock's breach of the implied duty not to exercise contractual rights in an arbitrary and capricious way, Plaintiffs are entitled to compensatory damages.

SEVENTH CAUSE OF ACTION:
FRAUD
UNDER SCOTS LAW
(DIRECTOR DEFENDANTS & PANDACO/FANDUEL GROUP)

545. Plaintiffs reallege and incorporate by reference paragraphs 1 through 544.

546. Fraud is an intentional tort (or delict) under Scots law that can give rise to a direct action in damages by those that have been defrauded. The elements of a fraud claim in Scotland are straightforward: (1) a "machination or contrivance to deceive" (2) with "resultant loss." *Marine & Offshore (Scotland) Ltd. v. Hill* [2018] CSIH 9, 2018 SLT 239 at 16. A machination or contrivance to deceive is otherwise known as a "false pretense," which includes the making of a statement (or the concealment of an important fact), the falsity of the statement, and knowledge that the statement is untrue (or a reckless disregard for the truth).

547. Scots law's version of fraud may arise in a myriad of different circumstances. At its core, it differs from claims of fraud under New York law because reliance by the plaintiff is not a necessary element, though it often occurs in the paradigmatic cases. In other words, while a causal relationship must exist between the "false pretense" and the "resultant loss," Scots law does not require a plaintiff to plead or prove detrimental reliance as part of establishing a claim of fraud. *GWR Property Co. Ltd. v. Forrest Outdoor Media Ltd.*, 2022 SCLR 57.

548. Where established, "fraud unravels all." *Royal Bank of Scotland v. Holmes*, 1999 SLT 563 at 569. No person shall "profit from another's fraud." And bad faith or gratuitous recipients of the fruits of fraud can be made to make restitution of ill-gotten gains to the defrauded parties.

549. There are a number of distinct frauds that took place in the events that transpired in the spring and summer of 2018. Each instance of fraud identified below was undertaken intentionally for the purpose of advancing Defendants' scheme to strip FanDuel's common shareholders, including Plaintiffs, of their interests in the Company, as well as their

rights and entitlements to the shares in PandaCo that the Company received in the Paddy Power Betfair merger. These fraudulent statements and omissions were undertaken with full knowledge on the part of the Defendants that they were fraudulent and that the practical result of making the statements and omissions would be to injure the Plaintiffs, among other of FanDuel's common shareholders. Furthermore, these fraudulent statements and omissions were each material and necessary to advance the Defendants' overarching scheme.

550. ***First,*** **each of the Director Defendants committed fraud in running the Article 83 waterfall using the "implied enterprise value of" FanDuel from the preliminary non-binding term sheet.** The Defendant Directors understood that FanDuel's Articles required them to value the "aggregate consideration" received in the FanDuel-Paddy Power Betfair merger, *i.e.* FanDuel's 40% interest in PandaCo. The Defendant Directors ran the waterfall based on the false representation that the "implied enterprise value" from the term sheet, referenced in the FanDuel board's May 22 meeting minutes, was an appropriate basis to distribute the aggregate consideration. The Defendant Directors knew the "implied enterprise value" was not a valuation of PandaCo and did not take into account the legalizing of sports gambling and the business opportunity afforded PandaCo as a result of the *Murphy* decision.

551. Moreover, each of the Director Defendants knew that the "implied enterprise value" grossly understated the value of the PandaCo shares that FanDuel received such that running the waterfall on the basis of that sham valuation would result in unjustly depriving FanDuel's common shareholders of their interests in PandaCo. For example, each of the Director Defendants was expressly informed that management viewed "the opening of the US sports betting market [as] a significant opportunity for PandaCo" and had been shown projections indicating FanDuel stood to earn billions in additional revenue from the launch of the sports gambling market. Likewise, at the same time, Defendant King (then the Company's CEO and a director) had constructed a model of

PandaCo reflecting all of its business opportunities, including sports gambling. King's model put the value of FanDuel's 40% interest in PandaCo at well-over $1.3 billion, a number that dwarfed the "implied enterprise value of" FanDuel from the preliminary term sheet. Just days after the Director Defendants voted on running the Article 83 waterfall at the "implied enterprise value of" FanDuel in the preliminary term sheet, the Company admitted to its preferred shareholders that "no fair market value" of the newly merged company, *i.e.* PandaCo, had been established.

552. Defendant Directors intentionally misstated the value of PandaCo during the May 22, 2018 board meeting for the purpose of furthering their scheme to deprive the common shareholders of their interest in PandaCo and enrich the preferred shareholders to which the Defendant Directors were beholden.

553. As a result of the Defendant Directors' intentional misrepresentation of the value of PandaCo, FanDuel ran the Article 83 waterfall in a way that allocated shares to the Company's preferred shareholders that properly belonged to the common shareholders, including the Plaintiffs. Plaintiffs' shares in FanDuel were stripped from them in exchange for no compensation, while valuable PandaCo shares were diverted as a direct result of the fraud.

554. ***Second*, each of the Director Defendants and PandaCo (now known as FanDuel Group) committed fraud in falsely calling-out the Signing Date Share Price as the actual value of the PandaCo shares transferred from PandaCo to FanDuel as part of the FanDuel-Paddy Power Betfair merger**. The Director Defendants and PandaCo incorporated this false representation about the Signing Date Share Price into various documents including the Contribution Agreement, the PandaCo offer letter, and the materials directed to FanDuel's shareholders describing the Paddy Power Betfair merger. The intent of the Director Defendants and PandaCo was to mislead FanDuel's common shareholders into

believing that their common shares in FanDuel were worthless in hopes of avoiding shareholder resistance to the merger and the way the Article 83 waterfall was executed.

555. The Director Defendants and PandaCo knew that the Signing Date Share Price reflected in the Contribution Agreement and the PandaCo offer letter did not reflect an actual, independent valuation of PandaCo as a going concern and, instead, was a sham price. They each knew this fact, given that the Signing Date Share Price was not supported by any valuation of PandaCo (much less one reflecting the sports gambling opportunity) or the opinion of any independent financial advisor. Both the Director Defendants and PandaCo had seen projections of the U.S. sports gambling market that showed FanDuel was likely to earn billions in revenues following the legalization of sports gambling, none of which was reflected in the so-called Signing Date Share Price.

556. Likewise, the Director Defendants and PandaCo knew the Signing Date Share Price was a sham because Defendant King (then the Company's CEO) had constructed a model of PandaCo reflecting all of its business opportunities, including sports gambling. King's model put the value of FanDuel's 40% interest in PandaCo at well over $1.3 billion, a number that dwarfed the value attributed to those same shares in the Signing Date Share Price. This model was shared with PandaCo executives contemporaneously.

557. As a result of the Defendant Directors' and PandaCo's intentional misrepresentation of the Signing Date Share Price, FanDuel formally ran the Article 83 waterfall in a way that allocated shares to the Company's preferred shareholders that properly belonged to its common shareholders, including the Plaintiffs. Plaintiffs' shares in FanDuel were stripped from them in exchange for no compensation, while valuable PandaCo shares were diverted as a direct result of the fraud. The Director Defendants' and PandaCo's fraud also served as the justification for FanDuel removing the

common shareholders from the Company's registrar in order to deprive the common shareholders of remedies under the Companies Act 2006.

558. ***Third*, the Defendant Directors authorized distribution of "Dear Shareholder" letters on or about July 3, 2018, to each of FanDuel's common shareholders under Article 78. The letter intentionally misrepresented the value of PandaCo and the basis under which the Company was running the Article 83 waterfall.** The "Dear Shareholder" letter provided each common shareholder with "details of [their] shareholding in FanDuel and the consideration [they] would receive (if any) pursuant to the [PandaCo] Offer, based on the information available as at the date hereof." In each instance, the "Dear Shareholder" letter stated that FanDuel's "Ordinary Shares" were worth "Nil."

559. The Director Defendants knew that statement was false. For example, each of the Director Defendants was expressly informed that management viewed "the opening of the US sports betting market [as] a significant opportunity for PandaCo" and had been shown projections indicating FanDuel stood to earn billions of dollars in additional revenue from the launch of the sports gambling market. The Defendant Directors knew that none of that revenue was considered in the assessment of the PandaCo shares included in the "Dear Shareholder" letter and, in fact, that there had been no formal valuation of PandaCo whatsoever. Likewise, Defendant King (then the Company's CEO and a director) had constructed a model of PandaCo reflecting all of its business opportunities, including sports gambling. King's model put the value of FanDuel's 40% interest in PandaCo at well over $1.3 billion. By the time the Defendant Directors caused the company to issue the "Dear Shareholder" letter, they were aware of Defendant King's model and that the PandaCo shares were worth well in-excess of the Subscription Price of FanDuel A Preference Shares, and in turn FanDuel's Ordinary Shares were worth more than "Nil."

560. As a result of the Defendant Directors' intentional misrepresentations of PandaCo's value in the "Dear Shareholder" letter, FanDuel formally ran the Article 83 waterfall in a way that allocated shares to the Company's preferred shareholders that properly belonged to the common shareholders, including the Plaintiffs. Plaintiffs' shares in FanDuel were stripped from them in exchange for no compensation, while valuable PandaCo shares were diverted as a direct result of the fraud. The Director Defendants' fraud also served as the justification for FanDuel removing the common shareholders from the Company's registrar in order to deprive FanDuel's common shareholders of remedies under the Companies Act 2006.

561. ***Fourth*, the Defendant Directors authorized distribution of "Dear Shareholder" letters on or about July 3, 2018 to each of FanDuel's common shareholders under Article 78. The letter intentionally misrepresented the value of PandaCo in order to induce shareholders who held options to purchase FanDuel common shares to let their options expire.** The "Dear Shareholder" letter made fraudulent representations to holders of vested options over "Ordinary Shares" that were capable of being exercised "immediately before and conditionally upon completion" of the Paddy Power Betfair merger. The letter notes that "taking into account FanDuel's capital waterfall that will be operated on Completion, it is highly likely that, as part of the transaction described in this letter, all Ordinary Shares will be compulsorily transferred to the Company for no consideration." And then in bold, the letter further states "if a participant in the Scheme were to exercise their option prior to the above noted lapse date and pay the exercise price for their Ordinary Shares, they would make a loss (*i.e.* he/she would not recover the amount they paid for those shares)." The "Dear Shareholder" letter thus induced option holders to let their options expire based on the false premise that the PandaCo shares FanDuel received in the Paddy Power Betfair merger

transaction were worth less than Subscription Price of FanDuel A Preference Shares, *i.e.*, the preference stack.

562. The Director Defendants knew that these statements were false. For example, each of the Director Defendants was expressly informed that management viewed "the opening of the US sports betting market [as] a significant opportunity for PandaCo" and had been shown projections indicating FanDuel stood to earn billions in additional revenue from the launch of the sports gambling market. The Defendant Directors knew that none of that revenue was considered in the assessment of the PandaCo shares included in the "Dear Shareholder" letter and, in fact, that there had been no formal valuation of PandaCo whatsoever. Likewise, Defendant King (then the Company's CEO and a director) had constructed a model of PandaCo reflecting all of its business opportunities, including sports gambling. King's model put the value of FanDuel's 40% interest in PandaCo at well over $1.3 billion. By the time the Defendant Directors caused the company to issue the "Dear Shareholder" letter, they were aware of Defendant King's model and that the PandaCo shares were worth well in-excess of the preference stack, and thus FanDuel's option holders would not have made a "loss" had any of them chosen to exercise their respective options.

563. The Director Defendants' statements were made with the intent to induce FanDuel's option holders to let their options in the Company expire, rather than converting those options to common shares in the Company. In turn, the Director Defendants' fraud caused the option holders to lose their valuable interests in PandaCo shares based on the option holder's justifiable reliance on the fraudulent statements made to them. The Defendant Directors have also used the fact that certain option holders did not exercise their options—induced by the Defendant Directors' intentional fraud—in an effort to deprive the common option holders of remedies for the Defendant Directors' deceit.

564. ***Fifth*, the Defendant Directors committed fraud by intentionally failing to disclose their various conflicts of interest in relation to the acts and actions taken to execute the Article 83 waterfall**. Each Defendant Director was aware that he had a conflict of interest that should have prevented his participation in the FanDuel board's vote on the Article 83 waterfall. Each of the Investor Directors—including Oberwager, LaSalle, and Cleland—had personal investments and other interests in their respective appointers, including direct investments in special purpose vehicles that held preferred shares in the Company. These investments and interests went beyond the authorized "Fund-related interests" allowed for each Investor Director in the Company's Articles. Moreover, each of the non-Investment Directors—including King, Nathanson, and Vogel—had an unauthorized material relationship with KKR and/or Shamrock, both preferred shareholders of the Company. These unauthorized material relationships included the execution of side deals to alter the economic incentives of King, Nathanson, and Vogel as they pertained to FanDuel's board vote on when and how to run the Article 83 waterfall.

565. Even though each Director Defendant was aware of his conflicts of interest, each intentionally failed to disclose those conflicts in relation to the acts and actions taken to execute the Article 83 waterfall. The Director Defendants did not declare their conflicts of interest in writing before the May 22, 2018 board meeting as required by the Company's Articles. Their omissions were intentional. The Director Defendants were aware that FanDuel's board would not have a proper quorum to conduct official business during the May 22, 2018 board meeting had the Director Defendants declared their conflicts of interest. As such, the Director Defendants deliberately failed to identify their conflicts of interest for the purpose of hiding the fact that FanDuel's board lacked authority under the Company's Articles to approve the Contribution Agreement or run the Article 83 waterfall. The Director Defendants

memorialized their omission in the board meeting minutes which falsely asserted that all conflicts of interest were declared.

566. As a result of the Defendant Directors' intentional failure to disclose their conflicts of interest, FanDuel ran the Article 83 waterfall in a way that allocated shares in PandaCo to the preferred shareholders of the Company that properly belonged to the common shareholders, including the Plaintiffs. As a result, Plaintiffs' shares in FanDuel were stripped from them in exchange for no compensation, while the valuable PandaCo shares were diverted to other shareholders as a direct result of the fraud.

567. ***Sixth*, the Defendant Directors committed fraud by falsely stating in a resolution proposing amendments to FanDuel's Articles that the purpose, effect, and impact of those amendments was "procedural, and designed to facilitate a faster close," when in fact the amendments expanded KKR & Shamrock's Drag Along Rights and facilitated Defendants' scheme to wipe out FanDuel's common shareholders.** Each Defendant Director was aware that at the time the Company entered into the Contribution Agreement (May 23, 2018), the FanDuel Articles did not allow for KKR & Shamrock to accept via the Drag Along Rights provided in Article 78 an offer for less than entire share capital of the company, issued and "to be issued" shares alike. Each Defendant Director understood that, and that to modify FanDuel's Articles required consent in writing of a majority of FanDuel's common shareholders. When confronted with a proposal to modify FanDuel's Articles, the Defendant Directors were obligated under Scots law to provide FanDuel's common shareholders with full and fair disclosure of all matters within their knowledge for the common shareholders to make an informed decision. To that end, the Defendant Directors were each aware that the information provided in the resolution should not mislead FanDuel's common

shareholders either overtly or by omission—yet, that is exactly what the resolution circulated by the Defendant Directors did.

568. On June 12, 2018, the Company sent to common shareholders notice of a resolution proposing "certain amendments" to FanDuel's Articles. The amendments removed the phrase "and to be issued" from the definition of Offer, a term that defined the scope of deals KKR & Shamrock could accept under Article 78. The amendments also inserted new article 78.8A, which provided that FanDuel's option holders had to transfer and relinquish their shares, even if they were not "called" to do so by the offer itself. Notably, Article 78.8A further stated that "[f]or the avoidance of doubt, it shall be no objection to a transfer of shares pursuant to this article that no consideration is payable to such person." The enlargement of Defendant KKR's & Shamrock's rights to accept an offer that did not include FanDuel's options was far from a trivial "procedural change" that did not impact the "substantive economics of the transaction for anyone." The change stripped FanDuel's common shareholders and option holders of their ability to vote on the merger, and effectively forced both groups to forfeit their interests in the Company without just compensation in return. And the shortcut the Defendant Directors took to get there in light of their prior decision on how and when to run the Article 83 waterfall was itself conduct outside the powers afforded FanDuel's directors under its Articles.

569. Even though each Director Defendant was aware of the true purpose, effect, and impact of the proposed modifications to FanDuel's Articles, the resolution did not fully and fairly disclose that information to FanDuel's common shareholders. It did not say that as a result of the amendment, KKR & Shamrock could usher through a transaction that would wipe-out common shareholders' interests in the company. It did not say that as a result of the amendment, common shareholders would not be able to vote on a transaction that wiped out their interest in the company. And it did not say that as a result of the amendment, FanDuel's preferred shareholders

would take the hard-earned equity in the Company that FanDuel's common shareholders and option holders had built-up over their years of service.

570. The practical effect of the Director Defendants' materially false statements and omissions was dramatic. FanDuel common shareholders were duped into accepting the proposed change to the Articles under the false premise that the changes were merely "procedural" and would not have any impact on their substantive rights. The steps that the Director Defendants took to mislead the common shareholders and option holders also had the practical effect of discouraging them from exercising their rights under FanDuel's Articles and the Companies Act 2006 to resist the self-serving manipulation of the FanDuel Articles by KKR, Shamrock, and the Director Defendants. By fraudulently misrepresenting the changes in the Articles, the Director Defendants avoided the common shareholders taking steps—either by vote or through the courts—to derail the Defendants' scheme.

571. As a result of the Defendant Directors' false statements and intentional failures to disclose full and fair information to FanDuel's common shareholders regarding the proposed modifications to Article 78 of FanDuel Articles, KKR & Shamrock were able to expand their Drag Along Right and accept an offer that excluded FanDuel's "to be issued" shares, *i.e.*, holders of vested options. In turn, KKR & Shamrock could accept an offer the result of which they, and the Defendant Directors, knew would be to wipe-out FanDuel's common shareholders and option holders, given that the Defendant Directors had already voted on how and when to run FanDuel's Article 83 waterfall.

572. As a result of each of the Defendant Directors' and PandaCo's frauds identified above, Plaintiffs received nothing for their common shares and options in FanDuel and were therefore damaged. Because the Paddy Power Betfair merger was completed through the fraudulent

conduct of the Defendant Directors and PandaCo, Plaintiffs are entitled to damages and disgorgement of any ill-gotten gains by those Defendants.

573. The fraud committed by the Defendant Directors and PandaCo was deliberate and intentional, depriving Plaintiffs of their common shares and legal rights (and enriching Defendants in the process). This was calculated and despicable conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

EIGHTH CAUSE OF ACTION:
SECRET COMMISSIONS
UNDER SCOTS LAW
(FASTBALL HOLDINGS, NATHANSON, VOGEL)

574. Plaintiffs reallege and incorporate by reference paragraphs 1 through 573.

575. Under Scots law, the giving or receiving of a "secret commission" is a standalone cause of action in the context of fiduciary relationships, as the secrecy of the commission is considered to give rise to a temptation on the part of the agent to act against the interests of his or her principal irrespective of the intention of the payer.

576. Secret payments are also known as bribes in Scotland, and once the secrecy of the payment is established, Scots law presumes that the recipient was influenced by the payment. *Oil States Industries (UK) Ltd. v. S. Ltd.* [2022] CSOH 52 at 9-12, 21, 22. Moreover, the fairness of the underlying transaction to the plaintiff is also not relevant if a bribe has occurred. Indeed, "[s]o strictly is the principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into" when a bribe has occurred. *Aberdeen Railway Co. v. Blaikie Bros (1854)* 4 Macq 461.

577. The elements of a claim for "secret commissions" include (1) a payment to a fiduciary that was (2) unknown or a "secret" to his or her principal, and (3) which places the fiduciary in a position where his interest may potentially conflict with his fiduciary obligations.

578. Defendant Directors Nathanson and Vogel were each directors of FanDuel at the time of the Paddy Power Betfair merger. In turn, each had a fiduciary relationship with the Company for the benefit of its members (*i.e.*, the common shareholders) as a whole, and each also held a fiduciary relationship with FanDuel's common shareholders given the special factual circumstances described in paragraphs 479 through 488 above that brought FanDuel's directors into "direct and close contact with [its common] shareholders."

579. Defendants Fastball Holdings, Nathanson, and Vogel each made or received a payment, including but not limited to the following:

- Fastball Holdings replaced the MCO payment that Nathanson and Vogel were entitled to receive from FanDuel in a change in control transaction entered into by the Company. Fastball Holdings executed new agreements for Nathanson and Vogel that tied the value that each would receive in any change in control transaction to the value of Fastball Holdings' PandaCo shares at predetermined exit points in the Paddy Power Betfair deal. By striking this side deal with Defendants Vogel and Nathanson, Fastball Holdings made sure that each would receive the entirety of the MCO bonus they had originally negotiated with FanDuel. Had Fastball Holdings not entered into this secret commission, Vogel's and Nathanson's MCO payment would have been significantly smaller, given that it would have been based on the waterfall price at which the Defendant Directors elected to wipe out the Company's common shareholders. Fastball Holdings promised these enhanced MCO payments to Vogel and Nathanson as part of plan to win their support for KKR's and Shamrock's scheme to wipe out FanDuel's common shareholders.

- Nathanson's agreement to accept payment from Fastball Holdings that tied his MCO payment to the value of Fastball Holdings' PandaCo shares at predetermined exit points in the Paddy Power Betfair deal. Nathanson had no fiduciary relationship with Fastball Holdings. Accepting payment from Fastball Holdings in lieu of what Nathanson was otherwise entitled to under his MCO agreement with FanDuel improperly influenced his decision as a director of the Company on how to vote on executing the Article 83 waterfall. The Fastball Holdings payment allowed Nathanson to support KKR's and Shamrock's scheme to wipe out the common shareholders without Nathanson personally suffering from a lower MCO payment.

- Vogel's agreement to accept payment from Fastball Holdings that tied his MCO payment to the value of Fastball Holdings' PandaCo shares at predetermined exit points in the Paddy Power Betfair deal. Vogel had no fiduciary relationship with Fastball Holdings. Accepting payment from Fastball Holdings in lieu of what Vogel was otherwise entitled to under his MCO agreement with FanDuel improperly influenced his decision as a director of the Company on how to vote on executing the Article 83 waterfall. The Fastball Holdings payment allowed Vogel to support KKR's and Shamrock's scheme to wipe out the common shareholders without Vogel personally suffering from a lower MCO payment.

580. The above payments were never disclosed to the Company or the common shareholders of FanDuel, and thus were executed in secret. Notably, the secret commissions Nathanson and Vogel received from Fastball Holdings were executed by those parties and documented in "MCO Agreement(s)" between each "Participant" and Fastball Holdings, LLC. Vogel's and Nathanson's "MCO Agreements" with Fastball Holdings were not disclosed in any correspondence between FanDuel and its common shareholders. Nor were they disclosed to FanDuel's common shareholders as part of the Company's 280G materials regarding taxable compensation received by its senior executives.

581. The MCO Agreements between Fastball Holdings, Nathanson, and Vogel, created an impermissible, undisclosed, and incurable conflict of interest that influenced both Nathanson's and Vogel's votes on how and when to execute the Article 83 waterfall.

582. After receiving a secret MCO Agreement from Fastball Holdings, both Vogel and Nathanson exercised their votes on the FanDuel board to favor entering into the Contribution Agreement and running the Article 83 waterfall without valuing the shares of PandaCo that the Company received in the merger. Vogel and Nathanson undertook these actions knowing that the Company had not obtained an independent valuation of PandaCo or even conducted a formal internal valuation of the newly merged entity. Vogel and Nathanson

were also aware at the time of their votes that the shame price used for purposes of running the Article 83 waterfall did not reflect the billions of dollars in revenue FanDuel projected to earn from the legalization of sports gambling. Vogel's and Nathanson's votes in the May 22, 2018, board meeting were in breach of their fiduciary duties to the Company and to the common shareholders of FanDuel under the special factual circumstances present in this case. As common shareholders in FanDuel that had their interests in the Company wiped out without compensation, Plaintiffs suffered damages as a direct result of Vogel's, Nathanson's, and Fastball Holdings' misconduct.

NINTH CAUSE OF ACTION:
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
UNDER NEW YORK LAW
(KKR, SHAMROCK, FASTBALL HOLDINGS, PANDACO/FANDUEL GROUP)

583. Plaintiffs reallege and incorporate by reference paragraphs 1 through 582.

584. Each of Defendants KKR, Shamrock, PandaCo/FanDuel Group, and Fastball Holdings knowingly induced and/or substantially assisted in the multiple breaches of fiduciary duties committed by the Director Defendants, including King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson, in connection with the notice, approval, and distribution of proceeds from the Paddy Power Betfair merger.

585. As directors in FanDuel, Defendants King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson owed fiduciary duties to the Company, and to the Plaintiffs as common shareholders under the special circumstances described in paragraphs 479 to 488 above. Each of Defendants King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson was financially interested in the Paddy Power Betfair merger and advanced their interests over those of the common shareholders of the Company in breach of their fiduciary duties. Those duties included, among others, the duty of loyalty and the duty to exercise due care in the operation of FanDuel. In light of these conflicts of interest, the fiduciary duties of Defendants King, Cleland, Oberwager, LaSalle, Vogel, and

Nathanson included the obligation to treat the common shareholders of FanDuel, including the Plaintiffs, with fairness by ensuring that any distribution of aggregate consideration received in the Paddy Power Betfair merger was the result of a fair process and was made at a fair value.

586. Each of Defendants King, Cleland, Oberwager, LaSalle, Vogel, and Nathanson breached their fiduciary duties to the shareholders in several ways, including, but not limited to those alleged in paragraphs 479 through 488 above.

587. Defendants KKR and Shamrock had actual knowledge of the Director Defendants' fiduciary duties. Defendants KKR and Shamrock caused Defendants King, Oberwager, LaSalle, Vogel, and Nathanson to be appointed to the FanDuel board of directors and worked with Cleland in his capacity as a member of the FanDuel board of directors. Defendants KKR and Shamrock also signed a revised investment agreement that acknowledged that these Director Defendants owed fiduciary or other legal duties to the common shareholders of FanDuel. Defendants KKR and Shamrock thus had actual knowledge that these Director Defendants owed fiduciary duties.

588. Moreover, Defendants KKR and Shamrock had actual knowledge of the Director Defendants' breaches of fiduciary duties because each had members on the FanDuel board. And each knew that the Signing Date Share Price and "implied enterprise value" of FanDuel used to run the Article 83 waterfall was not a reflection of the actual value of PandaCo shares received in the Paddy Power Betfair merger. In addition, KKR and Shamrock knew that the Director Defendants had not sought a valuation of the aggregate consideration the Company received in the PandaCo merger; that the value of PandaCo shares the Company received exceeded the Subscription Price of A Preference Shares in the Company; and that the Director Defendants put no procedural safeguards in place with respect to the PandaCo offer to protect the interests of minority shareholders.

589. Defendants PandaCo/FanDuel Group and Fastball Holdings had actual knowledge of the Director Defendants' fiduciary duties. Defendant PandaCo (which is now FanDuel Group) was a party to the Contribution Agreement, which expressly recognized the obligations of the Director Defendants to value and distribute the proceeds from the merger in accordance with the Company's Articles. Defendants PandaCo/FanDuel Group and Fastball Holdings each were formed to effectuate the Paddy Power Betfair merger and/or hold shares of PandaCo. Each of Defendants PandaCo/FanDuel Group and Fastball Holdings interacted with the Director Defendants in their capacities as fiduciaries. Moreover, each of Defendants PandaCo/FanDuel Group and Fastball Holdings had actual knowledge of the Director Defendants' breaches of fiduciary duty, in particular, because each knew the actual value of the PandaCo shares received by the Company and each knew of the manner, valuation, and process in which shares of PandaCo were distributed to the FanDuel shareholders.

590. Defendants KKR, Shamrock, PandaCo/FanDuel Group, and Fastball Holdings knowingly induced and/or provided substantial assistance to the Director Defendants' breaches of fiduciary duty by providing the most efficient and administratively simple mechanism by which those breaches could occur. Defendants did so by, among other ways:

- Knowingly causing the Director Defendants to breach FanDuel's Articles of Association in multiple ways, including by failing to value the PandaCo shares prior to execution of the waterfall provision under the FanDuel Articles of Association and distributing to the preference shareholders of FanDuel compensation in excess of the Subscription Price of A Preference Shares in the Company in violation of Article 83 of the FanDuel Articles of Association.

- Knowingly causing the Director Defendants to pay the FanDuel preference shareholders an amount exceeding the Subscription Price of A Preference Shares in the Company in violation of Article 83 of the FanDuel Articles of Association.

- Encouraging the Director Defendants not to adopt procedural safeguards to make sure that the process by which Defendants

accepted the PandaCo offer and valued the PandaCo shares received in the transaction was fair.

- Including non-*bona fide* arm's length terms in the PandaCo offer that purported to force the FanDuel common shareholders to accept the Drag Along process and issue a call option to Fastball Holdings that was used to effectuate the breach of fiduciary duty.

- Improperly invoking the provisions of Article 78.1 to compel acceptance of the Paddy Power Betfair merger by FanDuel common shareholders when no qualifying "Offer" had been made.

- Negotiating and executing agreements with King, Vogel, Nathanson, Comcast, and Shamrock to secure support for the Defendant Directors in breaching their fiduciary duties.

- Forming and structuring Fastball Holdings to segregate and shield any shares of PandaCo and/or FanDuel Group received in the Paddy Power Betfair merger from the common shareholders of FanDuel and to further the scheme to understate the value of FanDuel's 40% interest in PandaCo.

591. But for the misconduct of KKR, Shamrock, PandaCo/FanDuel Group, and Fastball Holdings, the Director Defendants would have been required to value the actual consideration received in the Paddy Power Betfair merger, postpone running the Article 83 waterfall until an actual liquidity event had occurred, modify the terms of the Paddy Power Betfair merger, receive full shareholder approval of the Paddy Power Betfair merger, or otherwise treat the common shareholders of FanDuel in a fair and equitable manner.

592. Prior to the Paddy Power Betfair merger, Plaintiffs each owned common shares and/or vested options to purchase common shares of FanDuel. As a direct or reasonably foreseeable result of the knowing inducement, substantial assistance, encouragement, and support KKR, Shamrock, PandaCo, FanDuel Group, and Fastball Holdings provided the Director Defendants in breaching their fiduciary duties, Plaintiffs were injured when their common shares and options were wiped out without compensation.

593. As a result of the conduct alleged above, Plaintiffs received nothing for their common shares and vested options and were therefore damaged. Because the Paddy Power Betfair merger was completed through various breaches of fiduciary duty by the Director Defendants and substantial assistance, encouragement, and aid in those breaches of fiduciary duty by KKR, Shamrock, PandaCo/FanDuel Group, and Fastball Holdings, Plaintiffs are entitled to damages and disgorgement of any ill-gotten gains by these Defendants.

594. The breaches of fiduciary duty and acts to assist, aid, and abet the completion of those breaches of fiduciary duty by Defendants KKR, Shamrock, PandaCo/FanDuel Group, and Fastball Holdings alleged above were done deliberately and intentionally to deprive Plaintiffs of their common shares and legal rights. This was calculated conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

TENTH CAUSE OF ACTION:
FRAUD
UNDER NEW YORK LAW
(KING)

595. Plaintiffs reallege and incorporate by reference paragraphs 1 through 594.

596. Under New York law, the five elements of a fraud claim are: (1) a material misrepresentation or omission of fact, (2) made by defendant with knowledge of its falsity, (3) and intent to induce reliance, (4) reasonable reliance on the part of the plaintiff, and (5) resulting damages. *Eurycleia Partners, LP v. Seward & Kissel, LLP,* 12 N.Y.3d 553, 559 (2009).

597. A fraud claim under New York law must be pleaded with particularity under CPLR § 3016(b). A plaintiff does so when the complaint identifies "who made the misrepresentation [and] to whom, the date the misrepresentation was made, and its content." *El Entm't U.S. LP v. Real Talk Entm't, Inc.*, 85 A.D.3d 561, 562 (1st Dept. 2011).

598. On or about July 3, 2018, Defendant King, then the CEO and a director of the Company, signed and sent a letter to each of FanDuel's common shareholders who held vested options to purchase common shares of the Company. The "Dear Shareholder" letter was addressed to holders of vested options of "Ordinary Shares" that were capable of being exercised "immediately before and conditionally upon completion" of the Paddy Power Betfair merger.

599. The "Dear Shareholder" letter intentionally misrepresented the value of the aggregate consideration FanDuel received in the merger transaction to induce the Company's option holders to let their options expire. It states, in pertinent part, that "taking into account FanDuel's capital waterfall that will be operated on Completion [of the merger], it is highly likely that, as part of the transaction described in this letter, all Ordinary Shares will be compulsorily transferred to the Company for no consideration." And then in bold, the letter further states "if a participant in the Scheme were to exercise their option prior to the above noted lapse date and pay the exercise price for their Ordinary Shares, they would make a loss (*i.e.* he/she would not recover the amount they paid for those shares)." Defendant King's "Dear Shareholder" letter thus induced option holders to let their options expire based on the false premise that the PandaCo shares FanDuel received in the Paddy Power Betfair merger transaction were worth less than the Subscription Price of FanDuel A Preference Shares, *i.e.*, the hurdle above which all common shares of the Company would receive consideration.

600. Defendant King knew that these statements in the "Dear Shareholder" letter were false. For example, he was part of the presentations by Company management that expressed the view that "the opening of the US sports betting market [was] a significant opportunity for PandaCo" and had been shown projections indicating FanDuel stood to earn billions in additional revenue from the launch of the sports gambling market. King knew that none of that revenue was

considered in the assessment of the PandaCo shares included in the "Dear Shareholder" letter and, in fact, that there had been no formal valuation of PandaCo whatsoever done to support the accounting provided therein. Likewise, weeks before sending the "Dear Shareholder" letter, Defendant King had constructed a model of PandaCo reflecting all of its business opportunities, including sports gambling. King's model put the value of FanDuel's 40% interest in PandaCo at well over $1.3 billion. King's model explicitly shows that the PandaCo shares were worth well in-excess of the Subscription Price of FanDuel's A Preference Shares, and thus FanDuel's option holders would not have made a "loss" had any of them chosen to exercise their respective options. To the contrary, King's analysis shows that FanDuel's option holders would have been "in the money" (*i.e.*, the value of the shares would be worth more than the exercise price of the options) under a fair value of the PandaCo shares received by FanDuel in the merger transaction.

601. King's statements were made with the intent to induce FanDuel's option holders to forfeit their options, rather than converting those options to common shares in the Company. Expunging FanDuel's common share options benefited King in several ways. Notably, doing so expedited the closing of the Paddy Power Betfair transaction, the opening of PandaCo sports gambling facilities across New Jersey, and King's receipt of a multi-million dollar MCO payment for the completion of a change-in-control transaction. Had King not induced FanDuel's option holders to forfeit their options, Paddy Power Betfair (and FanDuel) would have had to go through the time and expense associated with preparing a prospectus for the transaction and sought approved from relevant financial authorities in Europe. This process would have delayed the transaction and, therefore, delayed PandaCo's entry into the U.S. sports gambling market.

602. Each of FanDuel's option holders relied on King's "Dear Shareholder" letter and did not exercise their options before or upon the completion of the Paddy Power Betfair transaction. This reliance was reasonable as it was predicated on the belief that King's

statements—made in his capacity as the CEO and a director of the Company—were accurate and that exercising their options "would make a loss (i.e. he/she would not recover the amount they paid for those shares)." King was the Company's CEO at the time and had the means available to him of knowing the value of the shares in PandaCo that FanDuel received in the merger—matters not within the knowledge of FanDuel's vested option holders.

603. As a result of Defendant King's fraud, Plaintiffs who held options for common shares in FanDuel allowed those options to expire. Plaintiffs received nothing in exchange for their common shares and vested options in the Company (though they were entitled to do so) and were therefore damaged. Plaintiffs are thus entitled to damages and disgorgement of any ill-gotten gains. Moreover, because King's fraud was done deliberately and intentionally to deprive Plaintiffs of their common shares and legal rights, it justifies an award of exemplary and punitive damages.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs hereby demand a trial by jury on all issues so triable, and a judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiffs damages for all injuries suffered as a result of Defendants' unlawful and improper conduct, including:

(1) compensatory damages as determined by a jury, but in any case in excess of $500,000;

(2) punitive damages based on Defendants' deliberate and intentional disregard of Plaintiffs' rights and interests;

(3) disgorgement of Defendants' ill-gotten gains from having erased the interest of FanDuel ordinary shareholders; and

(4) pre-judgment and post-judgment interest, in an amount to be determined at trial;

b. The imposition of a constructive trust over the stock in PandaCo/FanDuel Group, Fastball Holdings, and/or Flutter Entertainment, and all proceeds obtained from any transfers or appreciation of such stock, held by Defendants as a result of the Paddy Power Betfair acquisition of FanDuel and Fastball Holdings' subsequent sale of that interest to Flutter Entertainment;

c. Costs of this action, including attorneys' fees; and

d. Such other legal and equitable relief as this Court deems just and proper.

Respectfully submitted,

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