

**ORDER 2020-142  
IN RE SETTLEMENT AGREEMENT**

**CROWN IN GAMING LLC d/b/a DRAFTKINGS  
20-DK-02**

After having reviewed the attached Settlement Agreement, the Indiana Gaming Commission hereby:

**APPROVED**

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APPROVES OR DISAPPROVES

the proposed terms of the Settlement Agreement.

**IT IS SO ORDERED THIS THE 23<sup>rd</sup> DAY OF NOVEMBER, 2020.**

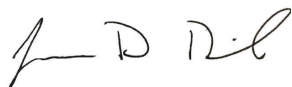
**THE INDIANA GAMING COMMISSION:**



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Michael B. McMains, Chair

ATTEST:



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Jason Dudich, Secretary

**STATE OF INDIANA  
INDIANA GAMING COMMISSION**

<b>IN RE THE MATTER OF:</b>	)	
	)	<b>SETTLEMENT</b>
<b>CROWN IN GAMING LLC</b>	)	<b>20-DK-02</b>
<b>d/b/a DRAFTKINGS</b>	)	

**SETTLEMENT AGREEMENT**

The Indiana Gaming Commission (“Commission”) by and through its Executive Director Sara Gonso Tait and Crown IN Gaming LLC d/b/a DraftKings (“DraftKings”), (collectively, the “Parties”) desire to enter into this settlement agreement (“Agreement”) prior to the initiation of a disciplinary proceeding pursuant to 68 IAC 13-1-18(a). The Parties stipulate and agree that the following facts are true:

**FINDINGS OF FACT**

**COUNT I**

1. IC 4-38-5-4(a) provides that a certificate holder or vendor may accept wagers on professional and collegiate sporting events approved for sports wagering by the commission, and other events as approved by the commission. A certificate holder or vendor may use data selected in a manner approved by the commission to determine whether a wager is a winning wager.
2. Chapter 7, Section 1 of the Emergency Rules for Sports Wagering provides that before accepting wagers on any event category from patrons, a sports wagering operator must receive event category approval from the executive director or the executive director’s designee. The sports wagering operator shall provide notice to the executive director or the executive director’s designee and such notice shall include the name of the sports governing body and a description of its policies and procedures regarding event integrity. The commission reserves the right to prohibit the acceptance of any wagers, and may order the cancellation of wagers and require refunds on any event for which wagering would be contrary to the public policies of the state.
3. On January 29, 2020, the Commission’s Director of Sports Wagering contacted DraftKings’ Sportsbook Operations Manager regarding a Super Bowl National Anthem vs. Shortest Drive wager being offered. The Commission had not approved any markets related to the national anthem’s performance even if it was tied to an approved wager. The Sportsbook Operations Manager responded that the offering would be removed. The offer went live in Indiana on or about January 23, 2020. During the seven days that the offer was live, DraftKings took three bets totaling \$9. Per the Commission’s instruction, all three bets were voided.

## COUNT II

4. Chapter 9, Section 1 of the Emergency Rules for Sports Wagering provides that (a) the sports wagering system shall be required to generate those reports necessary to record the adjusted gross receipts, wagering liability, ticket redemption, and such other information relating to sports wagering as deemed necessary by the executive director or as required by internal controls. Such reporting shall be done using cash basis accounting.  
(b) To determine the daily win amount, the sports wagering operator's accounting department shall compare a win report from the sports wagering system to the reconciliation of the sports wagering drawers. The operator shall be required to calculate and report adjusted gross sports wagering receipts using the higher amount identified in such comparison, unless otherwise authorized by the commission in its internal controls.  
(c) The sports wagering operator shall permit duly authorized representatives of the commission's audit department to examine the operator's accounts and records for the purpose of certifying total gross revenue receipts and adjusted gross revenue receipts.  
(d) Such information shall be entered on forms prescribed by the commission.
5. Chapter 9, Section 2 of the Emergency Rules for Sports Wagering provides that (a) remittance of wagering taxes shall be the sole responsibility of the certificate holder.  
(b) If the amount of adjusted gross receipts on a gaming day is a negative figure, the certificate holder shall remit no sports wagering tax for that gaming day. Any negative adjusted gross receipts shall be carried over and calculated as a deduction on Form RG-1 on the subsequent gaming days until the negative figure has been brought to a zero (0) balance.
6. On August 7, 2019, a Tax Remittance Directive for Sports Wagering was issued by the Commission, which requires, in relevant part, that sports wagering revenue must be reported daily on a cash basis through the electronic tax system on the state form RG-1.
7. DraftKings' approved internal controls procedures describe the procedures for daily reporting.
8. On June 24, 2020, DraftKings identified a software issue that prevented two revenue reports – one from June 22nd and one from June 23rd – from being sent to Ameristar Casino. Upon learning about the issue, DraftKings immediately notified Ameristar Casino.
9. On June 24, 2020, Ameristar's VP of Finance reported this issue to the Commission's Audit Department and requested an extension. The same day, the Commission's Assistant Director of Audit notified the Commission Sports Wagering Division that DraftKings failed to submit a report which resulted in the certificate holder, Ameristar Casino, filing their Daily Adjusted Gross Receipts and Tax Remittance Form for June 22, 2020, late. .

The Commission's Director of Sports Wagering subsequently contacted DraftKings to inquire why the report had not been sent. DraftKings explained that it had recently launched casino games in Pennsylvania, which interrupted the underlying table that pulls revenue reports causing a delay in revenue reporting across all jurisdictions. DraftKings confirmed that the delay caused the revenue reports from June 22, 2020, and June 23, 2020, to be sent to Ameristar Casino on June 25, 2020.

DraftKings reporting issue caused Ameristar Casino to fail to meet their deadline as required by 68 IAC 15-5-2(d), which provides that the casino licensee shall be required to file a Form RG-1 and remit the tax imposed by IC 4-33-13 to the department before the close of the business day following the day the wagers are made.

### **COUNT III**

10. Chapter 4, Section 2(1)(9) of the Emergency Rules for Sports Wagering provides that a sports wagering operator shall provide a written notice to the executive director or the executive director's designee as soon as the sports wagering operator licensee becomes aware of a violation or apparent violation of a rule of the commission of any action, event, or nonevent, with respect to which the executive director has instructed the sports wagering operator to provide notice so that the executive director can ensure that the sports wagering operator continues to maintain suitability for licensure.
11. On August 29, 2019, the Commission issued a Change Management Policy Directive (the "Directive") to all sports wagering operators and platform providers. All changes to the sports wagering system must comply with this policy. As part of the policy, sports wagering platform providers are responsible for recording all changes to the event wagering system into a change management log. Additionally, a control program self-verification report shall be maintained and submitted. Both the change management log and control program self-verification report are to be submitted to the Commission on the 15<sup>th</sup> day following the close of each quarter.

The Directive also requires that sports wagering operators provide the Commission with release notes regarding any change to the event wagering system. The sports wagering operators that submit the release notes designate a level of the release, or change, based on guidance provided in the Directive. Level 1 release notes require only notice to the Commission, while Level 2 and Level 3 release notes require approval. Section G of the Directive provides "if a response is not received within five business days from the date and time the notice was submitted, approval may be assumed." The Directive also provides guidance for what changes would trigger an automatic recertification or submission to an independent testing laboratory, including changes to components for payment processing.

12. DraftKings launched its Sportsbook product in Indiana in October 2019. After launching, DraftKings provided the Commission with weekly hash signature reports. On January 13, 2020, DraftKings emailed the Commission's Sports Wagering Division DraftKings' Q4 Change Management log, as required by the Directive. The Change Management Log listed every Sportsbook system change that was made during Q4. This was

DraftKings' first submission under the new policy directive. In addition to the Change Management Log, the Directive required submission of a control program self-verification report. The self-verification report contains the hash values associated with all of the system changes listed in the Change Management Log. DraftKings had been submitting weekly hash reports to the Commission for all of the system changes made in Q4 and believed that these reports – because they contained the exact information required by the self-verification report – satisfied the Commission's self-verification report requirement. As a result, DraftKings did not attach a self-verification report containing a compilation of each individual report previously submitted. .

12. On January 14, 2020, the Commission's Sports Wagering Investigator replied to the Release Manager's email notifying her that the submission was incomplete, as the control program self-verification report was missing.
14. On February 4, 2020, the Commission's Sports Wagering Investigator sent the Release Manager another email following up on the above request. In response, the Release Manager requested a phone call to discuss the self-verification requirement.
15. On February 7, 2020, the Commission's Assistant Director of Sports Wagering and the Commission's Sports Wagering Investigator held a conference call with the Release Manager to discuss the self-verification report requirement. During the conversation, the Release Manager stated that she was under the impression that the weekly hash reports satisfied the requirement and that DraftKings did not have a system that would generate all historical hashes for Q4 on one report, but that she would manually create and submit a report containing all changes for Q4 as requested.
16. On August 6, 2020, the Commission's Sports Wagering Division received a release note from DraftKings requesting approval for updates to the DraftKings sports wagering system. The release note identified the update as a Level 2 change. Release notes are reviewed by Commission staff and, during the review of the release notes, the Commission routinely follows up with sports wagering operators with any questions or clarifications needed in order for the Commission to approve the release. DraftKings' release note was requesting to perform back-end work to support gift card processing with a target launch of August 26, 2020
17. On August 10, 2020, the Sports Wagering Investigator sent Draft Kings a follow-up email requesting more information on this update. The Release Manager stated that DraftKings was working to integrate an option that would allow gift cards to be used as payment in the app, as this functionality was currently not available. This update would only be backend work and would not make any user end changes whatsoever.
18. On August 11, 2020, the Sports Wagering Investigator replied asking what payment processor this was tied to. DraftKings Release Manager advised that this feature would be tied to Incomm for Indiana users.

19. On August 13, 2020, the Sports Wagering Investigator replied to the Release Manager asking if this had been tested by an independent testing laboratory.
20. On August 14, 2020, the Sports Wagering Investigator received notification from the Assistant Director of Sports Wagering that the hash signature of several critical components to DraftKings sports wagering platform had been changed indicating that a file had been altered, changed or modified without prior Commission review.

The report reviewed by the Assistant Director of Sports Wagering was submitted to the Commission on August 14, 2020, and reflected that six (6) hash signature changes had been made.

21. On August 14, 2020, the Assistant Director of Sports Wagering confirmed that the Commission sent Incomm their certificate of registration on January 10, 2020.
22. On August 14, 2020, the Sports Wagering Investigator sent another email to DraftKings asking for an update regarding testing with an independent testing laboratory.
23. On August 17, 2020, DraftKings responded that it planned to have GLI test and certify the release within the ninety (90) day threshold once the backend work was complete. The Directive does not contain a ninety day (90) stipulation; however, it does contemplate allowing the Commission to require a sports wagering operator to seek recertification of particular software or the entire platform and provides the operator sixty (60) days to obtain that recertification.

The Sports Wagering Investigator replied and asked DraftKings to provide an incident report for deploying the release without their approval. DraftKings responded that the release did not make the new feature available to users; it was simply done to prepare for the payment method launch later in the month.

24. On August 24, 2020, the Sports Wagering Investigator requested an update on the requested incident report as it was now overdue. DraftKings replied stating that it was under the impression that the matter was closed when DraftKings replied to the Sports Wagering Investigator on August 17, 2020, notifying him that the release had not been pushed-out to users.
25. On August 25, 2020, the Sports Wagering Investigator clarified that the matter was not closed because this was an unapproved update that was deployed. In response, as requested, DraftKings submitted an incident report regarding the release acknowledging that DraftKings deployed the release note prior to receiving explicit approval from the Commission. The Directive only allows a release note to be automatically approved if no response is received from the Commission within five (5) business days. Since the Commission did provide a response to DraftKings within this time frame, approval should not have been assumed.

## **TERMS AND CONDITIONS**

As set forth above, Commission staff alleges that the acts or omissions of DraftKings by and through its agents as described herein constitute a breach of IC 4-38; the Emergency Rules for Sports Wagering; and/or 68 IAC 6-3-4(e)(3). The Commission and DraftKings hereby agree to a monetary settlement of the alleged violations described herein in lieu of the Commission pursuing formal disciplinary action against DraftKings.

DraftKings shall pay to the Commission a total of \$11,500 (\$500 for Count I, \$5,000 for Count II and \$6,000 for Count III) and ensure that all wagers placed on all unapproved events are voided and the original wager is returned to the player in consideration for the Commission foregoing disciplinary action based on the facts specifically described in the Findings of Fact contained in this Agreement. This Agreement extends only to those violations and findings of fact specifically alleged in the findings above. If the Commission subsequently discovers facts that give rise to additional or separate violations, the Commission may pursue disciplinary action for such violations even if the subsequent violations are similar or related to an incident described in the findings above.

Upon execution and approval of this Agreement, Commission staff shall submit this Agreement to the Commission for review and final action. Upon approval of the Agreement by the Commission, DraftKings agrees to: 1) promptly remit payment in the amount of \$11,500; 2) ensure that all wagers placed on all unapproved events are voided and the original wager is returned to the player; and 3) waive all rights to further administrative or judicial review.

This Agreement constitutes the entire agreement between the Parties. No prior or subsequent understandings, agreements, or representations, oral or written, not specified or referenced within this document will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all Parties.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by electronic mail, facsimile, or other electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

This Agreement shall be binding upon the Commission and DraftKings.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date and year as set forth below.

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Sara Gonso Tait, Executive Director  
Indiana Gaming Commission

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Date

*Karl Gambin*

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Karl Gambin, Director of Regulatory  
Operations  
Crown IN Gaming LLC d/b/a DraftKings

11/18/2020

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Date

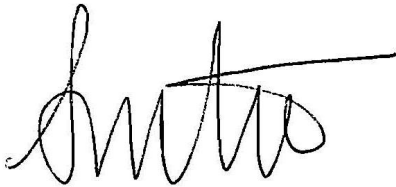


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Sara Gonso Tait, Executive Director  
Indiana Gaming Commission

11/20/20

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karl Gambin, Director of Regulatory  
Operations  
Crown IN Gaming LLCd/b/a DraftKings

\_\_\_\_\_  
Date