

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2022

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

Commission file number 001-41379



DRAFTKINGS INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation or organization)

87-2764212

(I.R.S. Employer Identification No.)

222 Berkeley Street, 5th Floor

Boston, MA 02116

(Address of principal executive offices) (Zip Code)

(617) 986-6744

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report).

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol	Name of each exchange on which registered
Class A Common Stock, \$0.0001 par value	DKNG	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November 2, 2022, there were 448,848,235 shares of the registrant's Class A common stock, par value \$0.0001 per share, and 393,013,951 shares of the registrant's Class B common stock, par value \$0.0001 per share, outstanding.

DraftKings Inc.
Quarterly Report on Form 10-Q
For the Quarter Ended September 30, 2022

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PART I. - FINANCIAL INFORMATION

Item 1. Financial Statements.

DRAFTKINGS INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except par value)

	September 30, 2022 (Unaudited)	December 31, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 1,382,651	\$ 2,152,892
Cash reserved for users	581,355	476,950
Receivables reserved for users	89,454	51,949
Accounts receivable	40,991	45,864
Prepaid expenses and other current assets	98,627	25,675
Total current assets	2,193,078	2,753,330
Property and equipment, net	58,226	46,019
Intangible assets, net	788,647	535,017
Goodwill	894,019	615,655
Operating lease right-of-use assets	74,703	63,831
Equity method investments	8,746	9,825
Deposits and other non-current assets	174,634	45,377
Total assets	\$ 4,192,053	\$ 4,069,054
Liabilities and Stockholders' equity		
Current liabilities:		
Accounts payable and accrued expenses	\$ 560,794	\$ 387,737
Liabilities to users	670,784	528,874
Operating lease liabilities, current portion	5,645	12,814
Other current liabilities	47,951	—
Total current liabilities	1,285,174	929,425
Convertible notes, net of issuance costs	1,250,434	1,248,452
Non-current operating lease liabilities	76,080	57,341
Warrant liabilities	19,877	26,911
Long-term income tax liability	67,925	79,125
Other long-term liabilities	57,447	49,272
Total liabilities	\$ 2,756,937	\$ 2,390,526
Commitments and contingent liabilities (Note 13)		
Stockholders' equity:		
Class A common stock, \$0.0001 par value; 900,000 shares authorized as of September 30, 2022 and December 31, 2021; 457,108 and 414,911 shares issued and 448,664 and 407,781 outstanding as of September 30, 2022 and December 31, 2021, respectively	\$ 45	\$ 41
Class B common stock, \$0.0001 par value; 900,000 shares authorized as of September 30, 2022 and December 31, 2021; 393,014 shares issued and outstanding as of September 30, 2022 and December 31, 2021	39	39
Treasury stock, at cost; 8,444 and 7,130 shares as of September 30, 2022 and December 31, 2021, respectively	(328,626)	(306,614)
Additional paid-in capital	6,616,274	5,702,388
Accumulated deficit	(4,889,104)	(3,753,814)
Accumulated other comprehensive income	36,488	36,488
Total stockholders' equity	1,435,116	1,678,528
Total liabilities and stockholders' equity	\$ 4,192,053	\$ 4,069,054

See accompanying notes to unaudited condensed consolidated financial statements.

DRAFTKINGS INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(Amounts in thousands, except loss per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Revenue	\$ 501,938	\$ 212,819	\$ 1,385,328	\$ 822,700
Cost of revenue	372,692	170,749	998,838	540,980
Sales and marketing	321,714	303,658	840,695	703,056
Product and technology	76,299	65,222	234,853	184,016
General and administrative	186,261	219,706	590,476	587,509
Loss from operations	(455,028)	(546,516)	(1,279,534)	(1,192,861)
Other income (expense):				
Interest income (expense), net	6,301	(1,556)	8,378	1,071
(Loss) gain on remeasurement of warrant liabilities	(6,797)	7,091	20,199	(2,905)
Other income, net	8,257	—	40,566	—
Loss before income tax provision (benefit) and loss from equity method investment	(447,267)	(540,981)	(1,210,391)	(1,194,695)
Income tax provision (benefit)	3,177	3,845	(77,580)	1,654
Loss from equity method investments	50	202	2,479	549
Net loss attributable to common stockholders	\$ (450,494)	\$ (545,028)	\$ (1,135,290)	\$ (1,196,898)
Loss per share attributable to common stockholders:				
Basic and diluted	\$ (1.00)	\$ (1.35)	\$ (2.63)	\$ (2.98)

See accompanying notes to unaudited condensed consolidated financial statements.

Due to the timing of the consummation of the GNOG Transaction (as defined below), the above periods, to the extent applicable, exclude the operations of GNOG (as defined below) prior to the closing date of May 5, 2022.

DRAFTKINGS INC.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(Unaudited)

(Amounts in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (450,494)	\$ (545,028)	\$ (1,135,290)	\$ (1,196,898)
Other comprehensive (loss) income:				
Foreign currency translation adjustments arising during period, net of nil tax	—	(13,098)	—	(32,719)
Comprehensive loss	\$ (450,494)	\$ (558,126)	\$ (1,135,290)	\$ (1,229,617)

See accompanying notes to unaudited condensed consolidated financial statements.

Due to the timing of the consummation of the GNOG Transaction, the above periods, to the extent applicable, exclude the operations of GNOG prior to the closing date of May 5, 2022.

DRAFTKINGS INC.

CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY

(Unaudited)

(Amounts in thousands)

	Class A Common Stock		Class B Common Stock		Additional Paid in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Treasury Stock Amount	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
Balances at December 31, 2021	407,781	\$ 41	393,014	\$ 39	\$ 5,702,388	\$ (3,753,814)	\$ 36,488	\$ (306,614)	\$ 1,678,528
Exercise of stock options	913	—	—	—	1,770	—	—	—	1,770
Stock-based compensation expense	—	—	—	—	187,077	—	—	—	187,077
Purchase of treasury stock	(793)	—	—	—	—	—	—	(14,083)	(14,083)
Restricted stock unit vesting	9,327	1	—	—	—	—	—	—	1
Net loss	—	—	—	—	—	(467,693)	—	—	(467,693)
Balances at March 31, 2022	417,228	\$ 42	393,014	\$ 39	\$ 5,891,235	\$ (4,221,507)	\$ 36,488	\$ (320,697)	\$ 1,385,600
Exercise of stock options	902	—	—	—	3,131	—	—	—	3,131
Stock-based compensation expense	—	—	—	—	135,521	—	—	—	135,521
Equity consideration issued for acquisitions	29,252	3	—	—	460,125	—	—	—	460,128
Purchase of treasury stock	(254)	—	—	—	—	—	—	(3,393)	(3,393)
Restricted stock unit vesting	894	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(217,103)	—	—	(217,103)
Balances at June 30, 2022	448,022	\$ 45	393,014	\$ 39	\$ 6,490,012	\$ (4,438,610)	\$ 36,488	\$ (324,090)	\$ 1,763,884
Exercise of stock options	69	—	—	—	224	—	—	—	224
Stock-based compensation expense	—	—	—	—	126,038	—	—	—	126,038
Purchase of treasury stock	(267)	—	—	—	—	—	—	(4,536)	(4,536)
Restricted stock unit vesting	840	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(450,494)	—	—	(450,494)
Balances at September 30, 2022	448,664	\$ 45	393,014	\$ 39	\$ 6,616,274	\$ (4,889,104)	\$ 36,488	\$ (328,626)	\$ 1,435,116

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Treasury Stock Amount	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
Balances at December 31, 2020	396,303	\$ 40	393,014	\$ 39	\$ 5,067,135	\$ (2,230,619)	\$ 83,534	\$ (288,784)	\$ 2,631,345
Exercise of stock options	2,857	—	—	—	7,638	—	—	—	7,638
Stock-based compensation expense	—	—	—	—	151,843	—	—	—	151,843
Purchase of capped call options	—	—	—	—	(123,970)	—	—	—	(123,970)
Equity consideration issued for acquisitions	464	—	—	—	29,399	—	—	—	29,399
Shares issued for exercise of warrants	138	—	—	—	1,761	—	—	—	1,761
Purchase of treasury stock	(48)	—	—	—	—	—	—	(3,124)	(3,124)
Restricted stock unit vesting	178	—	—	—	—	—	—	—	—
Foreign currency translation, net of nil tax	—	—	—	—	—	—	(27,318)	—	(27,318)
Net loss	—	—	—	—	—	(346,344)	—	—	(346,344)
Balances at March 31, 2021	399,892	\$ 40	393,014	\$ 39	\$ 5,133,806	\$ (2,576,963)	\$ 56,216	\$ (291,908)	\$ 2,321,230
Exercise of stock options	1,878	—	—	—	10,816	—	—	—	10,816
Stock-based compensation expense	—	—	—	—	171,739	—	—	—	171,739
Equity consideration issued for acquisitions	56	—	—	—	3,750	—	—	—	3,750
Shares issued for exercise of warrants	43	—	—	—	2,419	—	—	—	2,419
Purchase of treasury stock	(115)	—	—	—	—	—	—	(6,773)	(6,773)
Restricted stock unit vesting	739	—	—	—	—	—	—	—	—
Foreign currency translation, net of nil tax	—	—	—	—	—	—	7,697	—	7,697
Net loss	—	—	—	—	—	(305,526)	—	—	(305,526)
Balances at June 30, 2021	402,493	\$ 40	393,014	\$ 39	\$ 5,322,530	\$ (2,882,489)	\$ 63,913	\$ (298,681)	\$ 2,205,352
Shares issued for exercise of warrants	28	—	—	—	1,050	—	—	—	1,050
Exercise of stock options	2,607	—	—	—	6,664	—	—	—	6,664
Stock-based compensation	—	—	—	—	175,664	—	—	—	175,664
Purchase of treasury stock	(80)	—	—	—	—	—	—	(4,437)	(4,437)
Restricted stock unit vesting	297	—	—	—	—	—	—	—	—
Foreign currency translation	—	—	—	—	—	—	(13,098)	—	(13,098)
Net loss	—	—	—	—	—	(545,028)	—	—	(545,028)
Balances at September 30, 2021	405,345	\$ 40	393,014	\$ 39	\$ 5,505,908	\$ (3,427,517)	\$ 50,815	\$ (303,118)	\$ 1,826,167

See accompanying notes to unaudited condensed consolidated financial statements.

Due to the timing of the consummation of the GNOG Transaction, the above periods, to the extent applicable, exclude the operations of GNOG prior to the closing date of May 5, 2022.

DRAFTKINGS INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(Amounts in thousands)

	Nine months ended September 30,	
	2022	2021
Operating Activities:		
Net loss	\$ (1,135,290)	\$ (1,196,898)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Depreciation and amortization	120,629	88,600
Non-cash interest expense, net	985	1,442
Stock-based compensation expense	448,636	499,246
Loss from equity method investments	2,479	549
(Gain) loss on remeasurement of warrant liabilities	(20,199)	2,905
Gain on equity securities and other financial assets, net	(32,483)	—
Deferred income taxes	(78,051)	(11,737)
Other expenses, net	(5,109)	—
Change in operating assets and liabilities, net of effect of business combinations:		
Receivables reserved for users	(34,691)	131
Accounts receivable	13,834	(421)
Prepaid expenses and other current assets	(20,669)	(19,093)
Deposits and other non-current assets	(1,989)	(4,760)
Operating leases, net	698	(1,212)
Accounts payable and accrued expenses	129,233	194,735
Other long-term liabilities	9,476	(856)
Long-term income tax liability	(11,200)	7,789
Liabilities to users	136,650	192,319
Net cash flows used in operating activities	(477,061)	(247,261)
Investing Activities:		
Purchases of property and equipment	(19,903)	(11,171)
Cash paid for internally developed software costs	(46,513)	(31,242)
Acquisition of gaming licenses	(3,919)	(7,563)
Cash paid for acquisitions, net of cash acquired	(96,507)	(64,969)
Other investing activities	(5,090)	(3,750)
Net cash flows used in investing activities	(171,932)	(118,695)
Financing Activities:		
Proceeds from issuance of convertible notes, net	—	1,247,116
Purchase of capped call options	—	(123,970)
Proceeds from shares issued for warrants	44	199
Purchase of treasury stock	(22,012)	(14,334)
Proceeds from exercise of stock options	5,125	25,118
Net cash flows (used in) provided by financing activities	(16,843)	1,134,129
Effect of foreign exchange rates on cash and cash equivalents and restricted cash	—	1,884
Net (decrease) increase in cash and cash equivalents and restricted cash	(665,836)	770,057
Cash and cash equivalents and restricted cash at the beginning of period	2,629,842	2,104,976
Cash and cash equivalents and restricted cash, end of period	\$ 1,964,006	\$ 2,875,033
Disclosure of cash, cash equivalents and restricted cash:		
Cash and cash equivalents	\$ 1,382,651	\$ 2,394,865
Cash reserved for users	581,355	480,168
Total cash, cash equivalents and restricted cash, end of period	\$ 1,964,006	\$ 2,875,033

DRAFTKINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Amounts in thousands)

	Nine months ended September 30,	
	2022	2021
Supplemental Disclosure of Noncash Investing and Financing Activities:		
Equity consideration issued for acquisitions	\$ 460,128	\$ 33,149
Acquisition of property and equipment, internally developed software and other investments included in accounts payable and accrued expenses	12,835	2,338
Convertible notes financing costs included in accounts payable and accrued expenses	—	773
Acquisition of gaming licenses included in accounts payable and accrued expenses	—	(4,976)
Increase of other current assets from transfer agent related to warrants	—	525
Supplemental Disclosure of Cash Activities:		
Increase in cash reserved for users	104,405	192,450
Cash paid for interest	—	—

See accompanying notes to unaudited condensed consolidated financial statements.

Due to the timing of the consummation of the GNOG Transaction, the above periods, to the extent applicable, exclude the operations of GNOG prior to the closing date of May 5, 2022.

DRAFTKINGS INC.

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Amounts in thousands, except loss per share data, unless otherwise noted)

1. Description of Business

DraftKings Inc. is a digital sports entertainment and gaming company. The Company's business-to-consumer ("B2C") segment provides users with sports betting ("Sportsbook"), online casino ("iGaming") and daily fantasy sports ("DFS") products, as well as media and other online consumer products. The Company's business-to-business ("B2B") segment's principal activities involve the design and development of sports betting and casino gaming software.

As further discussed in Note 3 hereof entitled "Acquisition of Golden Nugget Online Gaming, Inc.," on May 5, 2022 (the "GNOG Closing Date"), DraftKings Inc. (formerly New Duke Holdco, Inc.) consummated the acquisition of Golden Nugget Online Gaming, Inc., a Delaware corporation (together with its subsidiaries unless the context requires otherwise, "GNOG"), pursuant to a definitive agreement and plan of merger, dated August 9, 2021 (the "Merger Agreement"), in an all-stock transaction (the "GNOG Transaction"). In connection with the GNOG Transaction, DraftKings Inc. undertook a holding company reorganization whereby DraftKings Inc. became the going-forward public company and the direct parent company of both DraftKings Holdings Inc. (formerly DraftKings Inc.), a Nevada corporation ("Old DraftKings"), and GNOG. DraftKings Inc. is the registrant filing this Quarterly Report on Form 10-Q as the successor registrant for Old DraftKings. Unless otherwise indicated or the context otherwise requires, the terms "DraftKings", the "Company", "we", "us" and "our" refer to DraftKings Inc. (or, in respect of periods prior to the GNOG Closing Date, Old DraftKings), together with its consolidated subsidiaries.

In May 2018, the Supreme Court (the "Court") struck down on constitutional grounds the Professional and Amateur Sports Protection Act of 1992 ("PASPA"), a law that prohibited most states from authorizing and regulating sports betting. Since the Court's decision, many states have legalized sports betting. As of September 30, 2022, 32 U.S. states, the District of Columbia and Puerto Rico have legalized some form of sports betting. Of those 34 legal jurisdictions in the United States, 27 have legalized online sports betting. Of those 27 jurisdictions, 22 are live, and DraftKings operates in 18 of them. The jurisdictions in the United States with statutes legalizing iGaming are Connecticut, Delaware, Michigan, New Jersey, Pennsylvania and West Virginia.

As of September 30, 2022, the Company operates online Sportsbooks in Arizona, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Virginia, West Virginia, Wyoming, as well as Ontario, Canada and has retail Sportsbooks in Colorado, Connecticut, Illinois, Iowa, Kansas, Louisiana, Michigan, Mississippi, New Hampshire, New Jersey, New York and Washington. As of September 30, 2022, the Company offers iGaming products in Connecticut, Michigan, New Jersey, Pennsylvania and West Virginia, as well as Ontario, Canada. The Company also has arrangements in place with land-based casinos to expand operations into additional states upon the passing of relevant legislation, the issuance of related regulations and the receipt of required licenses.

Beginning in 2020 and continuing into 2022, the novel coronavirus ("COVID-19") pandemic adversely impacted global commercial activity, disrupted supply chains and contributed to significant volatility in financial markets. The primary impacts of the COVID-19 pandemic on the Company were the suspension, cancellation, rescheduling and shortening of sports seasons and sporting events, particularly between March 2020 and July 2020, when many sports seasons and sporting events, including the MLB regular season, domestic soccer leagues and European Cup competitions, the NBA regular season and playoffs, the NCAA college basketball tournament, the Masters golf tournament, and the NHL regular season and playoffs, were suspended or cancelled. The suspension of sports seasons and sporting events reduced customers' use of, and spending on, the Company's Sportsbook and DFS products.

Beginning in July 2020, major professional sports leagues gradually resumed regular activities with shortened seasons in many instances. In the nine months ended September 30, 2022, sports seasons continued and sporting events were held as planned, including the NFL regular season, the NFL Playoffs and Superbowl LVI, the NBA regular season and playoffs, the NHL regular season and playoffs, the NASCAR Cup Series, various NCAA football bowl games, the NCAA college basketball regular season and tournament, the MLB regular season and several golf tournaments. The continued return of major sports and sporting events generated significant user interest and activity in the Company's Sportsbook and DFS products. However, the possibility remains that sports seasons and sporting events may be suspended, cancelled, rescheduled or shortened due to COVID-19 outbreaks.

The Company's revenue varies based on sports seasons and sporting events amongst other factors, and cancellations, suspensions or alterations resulting from COVID-19 have the potential to adversely affect the Company's revenue, possibly

materially. However, the Company's products that do not rely on sports seasons and sporting events, such as iGaming, may partially offset this adverse impact on revenue.

A significant or prolonged decrease in consumer spending on entertainment or leisure activities would also likely have an adverse effect on demand for the Company's products, reducing cash flows and revenues, and thereby materially harming the Company's business, financial condition and results of operations. In addition, a materially disruptive resurgence of COVID-19 cases or the emergence of additional variants or strains of COVID-19 could cause other widespread or more severe impacts depending on where infection rates are highest. As steps taken to mitigate the spread of COVID-19 necessitated a shift away from a traditional office environment for many employees, the Company implemented business continuity programs to ensure that employees were safe and that the business continued to function with minimal disruptions to normal work operations while employees worked remotely. Since the second quarter of 2022, our primary offices, including our corporate headquarters in Boston, Massachusetts, have been re-opened with many of our employees returning to work onsite in various capacities. We will continue to monitor developments relating to disruptions and uncertainties caused by COVID-19.

2. Summary of Significant Accounting Policies and Practices

Basis of Presentation and Principles of Consolidation

These unaudited condensed consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC") and accounting principles generally accepted in the United States ("U.S. GAAP") for interim reporting. As such, certain notes or other information that are normally required by U.S. GAAP have been omitted if they substantially duplicate the disclosures contained in the Company's annual audited consolidated financial statements. Accordingly, the unaudited condensed consolidated financial statements should be read in connection with the Company's audited financial statements and related notes as of and for the fiscal year ended December 31, 2021, which are included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 as filed with the SEC on February 18, 2022 ("2021 Annual Report"). The accompanying condensed consolidated financial statements are unaudited; however, in the opinion of management, they include all normal and recurring adjustments necessary for a fair presentation of the Company's condensed consolidated financial statements for the periods presented. Results of operations reported for interim periods are not necessarily indicative of results for the entire year, due to seasonal fluctuations in the Company's revenue as a result of timing of the various sports seasons, sporting events and other factors.

The accompanying unaudited condensed consolidated financial statements include the accounts and operations of the Company, except that, due to the timing of the consummation of the GNOG Transaction, the accompanying unaudited condensed consolidated financial statements exclude the operations of GNOG prior to the GNOG Closing Date of May 5, 2022. All intercompany balances and transactions have been eliminated.

Foreign Currency

Effective as of January 1, 2022, the Company's significant non-U.S. subsidiaries' functional currency changed from the Euro to the U.S. dollar. Accordingly, the Company did not have to translate the financial statements of its significant non-U.S. subsidiaries for the period ended September 30, 2022.

Digital Assets and Liabilities

On March 31, 2022, the SEC issued Staff Accounting Bulletin No. 121 ("SAB 121"). SAB 121 sets out interpretive guidance from the staff of the SEC regarding the accounting for obligations to safeguard digital assets that an entity holds for its users, which is effective from the first interim period commencing after June 15, 2022, with retroactive application as of the beginning of the fiscal year to which the interim or annual period relates. In accordance with SAB 121, the Company recognized a liability for the obligation to safeguard its users' assets and recognized an associated asset for non-fungible tokens ("NFTs") held for its users. Both the liability and the associated asset are measured at the fair value of the NFTs being safeguarded. Refer to Note 6 hereof for disclosures required in accordance with Accounting Standards Codification 820, *Fair Value Measurement*.

Recently Issued Accounting Pronouncements Not Yet Adopted

In October 2021, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2021-08, Business Combinations (Topic 805): *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (“ASU 2021-08”), which requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities in accordance with Accounting Standards Codification Topic 606. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022 and early adoption is permitted. While the Company is continuing to assess the timing of adoption and the potential impacts of ASU 2021-08, it does not expect ASU 2021-08 to have a material effect on its consolidated financial statements.

In June 2022, the FASB issued ASU 2022-03, *Fair Value Measurement (Topic 820): Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions* (“ASU 2022-03”), which clarifies the guidance in Accounting Standards Codification Topic 820, *Fair Value Measurement* (“Topic 820”), when measuring the fair value of an equity security subject to contractual restrictions that prohibit the sale of an equity security and introduces new disclosure requirements for equity securities subject to contractual sale restrictions that are measured at fair value in accordance with Topic 820. ASU 2022-03 is effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years, and early adoption is permitted. While the Company is continuing to assess the timing of adoption and the potential impacts of ASU 2022-03, it does not expect ASU 2022-03 to have a material effect on the Company’s consolidated financial condition, results of operations or cash flows.

3. Business Combination

Acquisition of Golden Nugget Online Gaming, Inc.

On May 5, 2022, DraftKings consummated the GNOG Transaction, and, under the terms of the Merger Agreement and subject to certain exclusions contained therein, GNOG stockholders received a fixed ratio of 0.365 shares of DraftKings Inc.’s Class A common stock for each share of GNOG that they held on the GNOG Closing Date. DraftKings Inc. issued approximately 29.3 million shares of its Class A common stock in connection with the consummation of the GNOG Transaction.

Operating results for GNOG on and after the GNOG Closing Date are included in the Company’s unaudited condensed consolidated statements of operations for the three and nine months ended September 30, 2022. Because the Company is integrating GNOG’s operations into its consolidated operating activities, the amount of revenue and earnings attributable to the GNOG business from the GNOG Closing Date through September 30, 2022, which is included within revenue and net loss attributable to common stockholders in the Company’s unaudited condensed consolidated statements of operations, is impracticable to determine.

Preliminary Purchase Price Accounting for the GNOG Transaction

On the GNOG Closing Date, the Company acquired 100% of the equity interests of GNOG pursuant to the Merger Agreement. The following is a summary of the consideration issued on the GNOG Closing Date:

Share consideration ⁽¹⁾	\$	460,128
Other consideration ⁽²⁾		143,337
Total consideration	\$	603,465

(1) Includes the issuance of approximately 29.3 million shares of DraftKings Inc.’s Class A common stock issued at a price of \$15.73.

(2) Includes (i) payments made by the Company on behalf of GNOG, including repayment of the outstanding portion of GNOG’s term loan (including the associated prepayment premium) and payment of certain of GNOG’s transaction expenses incurred in connection with the GNOG Transaction and (ii) warrants that were exercisable for shares of GNOG Class A common stock prior to the GNOG Closing Date, which were assumed by DraftKings in connection with the GNOG Transaction and became eligible to be converted into approximately 2.1 million shares of DraftKings Inc.’s Class A common stock in the aggregate. These payments were partially offset by commercial credits received by the Company from Fertitta Entertainment, Inc. (“FEI”), which can be applied by the Company from time to time to offset future amounts otherwise owed by it to FEI or its affiliates under commercial arrangements among such parties, subject to certain limited exceptions, which partially offsets the other consideration issued in connection with the GNOG Transaction.

The purchase price allocation for the GNOG Transaction set forth herein is preliminary and subject to change within the measurement period, which will not extend beyond one year from the GNOG Closing Date. Measurement period adjustments will be recognized in the reporting period in which the adjustment amounts are determined and may include adjustments pertaining to intangible assets acquired, tax liabilities assumed, including the calculation of deferred tax assets and liabilities, and contingent consideration (if any). Any such adjustments may be material.

The following table summarizes the consideration issued or paid in connection with the GNOG Transaction and the preliminary fair value of the assets acquired and liabilities assumed in connection with the consummation of the GNOG Transaction on the GNOG Closing Date. The values set forth below are preliminary, pending finalization of valuation analyses:

Cash and cash equivalents	\$	66,709
Cash reserved for users		7,633
Receivables reserved for users		2,814
Accounts receivables		9,005
Prepaid expenses and other current assets		541
Property and equipment, net		2,674
Intangible assets, net		307,000
Operating lease right-of-use assets		1,185
Deposits and other non-current assets		47,395
Total identifiable assets acquired		444,956
Liabilities assumed:		
Accounts payable and accrued expenses		36,660
Liabilities to users		5,260
Operating lease liabilities		1,185
Other long-term liabilities		76,750
Total liabilities assumed		119,855
Net assets acquired (a)		325,101
Purchase consideration (b)		603,465
Goodwill (b) – (a)	\$	278,364

Goodwill represents the excess of the gross consideration transferred over the difference between the fair value of the underlying net assets acquired and the underlying liabilities assumed. Qualitative factors that contribute to the recognition of goodwill include certain intangible assets that are not recognized as separate identifiable intangible assets apart from goodwill. Intangible assets not recognized apart from goodwill consist primarily of benefits from securing buyer-specific synergies that increase revenue and profits and are not otherwise available to a market participant, as well as acquiring a talented workforce and cost savings opportunities. Goodwill associated with the GNOG Transaction is assigned as of the GNOG Closing Date to the Company's B2C reporting unit. Goodwill recognized is partially deductible for tax purposes.

Intangible Assets

	Fair Value	Weighted-Average Useful Life
Gaming licenses	\$ 137,000	12.2 years
Customer relationships	170,000	5.9 years
Total	\$ 307,000	

Loan Receivable

The Company acquired a long-term receivable in the amount of \$30.5 million in connection with the GNOG Transaction, which originally resulted from a \$30.0 million mezzanine loan (the “Danville GN Casino Loan”) by GNOG to certain parties before the GNOG Closing Date to develop and construct a “Golden Nugget”-branded casino in Danville, Illinois, pending regulatory approvals, that would enable GNOG to obtain market access to the State of Illinois. There has been no significant deterioration of credit quality since the origination date of the Danville GN Casino Loan. The receivable related to the Danville GN Casino Loan is classified within deposits and other non-current assets on the Company’s condensed consolidated balance sheet.

Transaction Costs

For the three and nine months ended September 30, 2022, the Company incurred \$0.6 million and \$14.9 million, respectively, in advisory, legal, accounting and management fees in connection with the GNOG Transaction which are included in general and administrative expenses on the Company’s condensed consolidated statements of operations.

Unaudited Pro-Forma Information

The financial information in the table below summarizes the combined results of operations of Old DraftKings and GNOG, on an actual and a pro forma basis, as applicable, as though the companies had been combined as of the beginning of the periods presented. The pro forma financial information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved if the GNOG Transaction had been consummated as of the beginning of the periods presented or of results that may occur in the future.

	Three months ended September 30,		Nine months ended September 30,	
	2022 Actual	2021 Pro Forma	2022 Pro Forma	2021 Pro Forma
Revenue	\$ 501,938	\$ 246,620	\$ 1,429,463	\$ 911,291
Net loss	(450,494)	(558,607)	(1,137,037)	(1,293,863)

The foregoing pro forma results are based on estimates and assumptions, which the Company believes are reasonable. The pro forma results include adjustments primarily related to purchase accounting adjustments. Acquisition costs and other non-recurring charges incurred are included in the earliest period presented.

4. Intangible Assets and Goodwill

Intangible Assets

The Company has the following intangible assets, net as of September 30, 2022:

	Weighted-Average Remaining Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net
Amortized intangible assets:				
Developed technology	5.6 years	\$ 422,900	\$ (126,938)	\$ 295,962
Internally developed software	2.6 years	158,746	(69,114)	89,632
Gaming licenses	10.9 years	195,361	(24,584)	170,777
Trademarks, tradenames and other	3.9 years	34,367	(11,490)	22,877
Customer relationships	4.8 years	269,728	(62,455)	207,273
		1,081,102	(294,581)	786,521
Indefinite-lived intangible assets:				
Digital assets, net of impairment	Indefinite-lived	2,126	—	2,126
Intangible assets, net		\$ 1,083,228	\$ (294,581)	\$ 788,647

The Company had the following intangible assets, net as of December 31, 2021:

	Weighted-Average Remaining Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net
Amortized intangible assets:				
Developed technology	6.4 years	\$ 422,900	\$ (87,089)	\$ 335,811
Internally developed software	2.6 years	117,953	(52,607)	65,346
Gaming licenses	7.3 years	54,442	(13,466)	40,976
Trademarks and tradenames	4.5 years	30,639	(5,952)	24,687
Customer relationships	3.3 years	99,728	(33,526)	66,202
		725,662	(192,640)	533,022
Indefinite-lived intangible assets:				
Digital assets	Indefinite-lived	1,995	—	1,995
Intangible assets, net		\$ 727,657	\$ (192,640)	\$ 535,017

Amortization expense was \$40.6 million and \$26.7 million for the three months ended September 30, 2022 and 2021, respectively, and \$106.8 million and \$78.6 million for the nine months ended September 30, 2022 and 2021, respectively.

Goodwill

The changes in the carrying amount of goodwill for the nine months ended September 30, 2022 by reporting unit are:

	B2C	B2B	Media	Total
Balance as of December 31, 2021	\$ 360,756	\$ 207,684	\$ 47,215	\$ 615,655
Goodwill resulting from the GNOG Transaction	278,364	—	—	278,364
Balance as of September 30, 2022	\$ 639,120	\$ 207,684	\$ 47,215	\$ 894,019

5. Current and Long-term Liabilities

Revolving Line of Credit

In October 2016, DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation (“DK DE”) entered into an amended and restated loan and security agreement with Pacific Western Bank (as amended from time to time, the “Credit Agreement”). The Credit Agreement provides a revolving line of credit of up to \$60.0 million. The Credit Agreement has a maturity date of November 26, 2022.

Borrowings under the Credit Agreement bear interest at a variable annual rate equal to the greater of (i) 1.00% above the prime rate then in effect and (ii) 6.50%, and the Credit Agreement requires monthly, interest-only payments. In addition, the Company is required to pay quarterly in arrears a fee equal to 0.25% per annum of the unused portion of the revolving line of credit. As of September 30, 2022 and December 31, 2021, the Credit Agreement provided a revolving line of credit of up to \$60.0 million. There was no principal outstanding as of September 30, 2022 or December 31, 2021. Net borrowing capacity available from the Credit Agreement as of September 30, 2022 and December 31, 2021 totaled \$56.0 million and \$55.8 million, respectively, which, in each case, excludes the letters of credit outlined in Note 13. The Company is also subject to certain affirmative and negative covenants until maturity. In connection with the issuance of the Convertible Notes (as defined below) and the entry into the Capped Call Transactions (as defined below), the Company obtained a waiver from Pacific Western Bank for any breach of the Credit Agreement that would have otherwise resulted from entering into these financing transactions. The Company also obtained a waiver from Pacific Western Bank for any breach of the Credit Agreement that would have otherwise resulted from exceeding a capital expenditure limitation for 2021 and the amendments to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020 and the Company’s Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2021 and June 30, 2021, in each case, for the material weakness previously identified in the Company’s Annual Report on Form 10-K/A for the fiscal year ended December 31, 2020, as filed with the SEC on November 5, 2021. In connection with the GNOG Transaction, the Company obtained a waiver from Pacific Western Bank for any breach

of the Credit Agreement that would have otherwise resulted from entering into the transactions contemplated thereby, as well as to permit certain transfers of cash from the borrowers thereunder to GNOG and its subsidiaries from time to time.

Convertible Notes and Capped Call

In March 2021, Old DraftKings issued zero-coupon convertible senior notes in an aggregate principal amount of \$1,265.0 million, which includes proceeds from the full exercise of the over-allotment option (collectively, the “Convertible Notes”). The Convertible Notes will mature on March 15, 2028 (the “Notes Maturity Date”), subject to earlier conversion, redemption or repurchase. In connection with the issuance of the Convertible Notes, Old DraftKings incurred \$17.0 million of lender fees and \$1.7 million of debt financing costs. The Convertible Notes represent senior unsecured obligations of Old DraftKings, which are being amortized through the Notes Maturity Date. On May 5, 2022, in connection with the consummation of the GNOG Transaction, (i) DraftKings Inc. agreed to fully and unconditionally guarantee all of Old DraftKings’ obligations under the Convertible Notes and the indenture governing the Convertible Notes and (ii) each Convertible Note which was outstanding as of the consummation of the GNOG Transaction and previously convertible into shares of Old DraftKings Class A common stock became convertible into shares of DraftKings Inc. Class A common stock.

The Convertible Notes are convertible at an initial conversion rate of 10.543 shares of DraftKings Inc.’s Class A common stock per \$1,000 principal amount of Convertible Notes, which is equivalent to an initial conversion price of approximately \$94.85 per share of DraftKings Inc.’s Class A common stock. The conversion rate is subject to adjustment upon the occurrence of certain specified events and includes a make-whole adjustment upon early conversion in connection with a make-whole fundamental change (as defined in the indenture governing the Convertible Notes).

Prior to September 15, 2027, the Convertible Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the Notes Maturity Date. Old DraftKings will satisfy any conversion election by paying or delivering, as the case may be, cash, shares of DraftKings Inc.’s Class A common stock or a combination of cash and shares of DraftKings Inc.’s Class A common stock. During the nine months ended September 30, 2022, the conditions allowing holders of the Convertible Notes to convert their Convertible Notes were triggered by the holding company reorganization in connection with the GNOG Transaction, whereby DraftKings Inc. became the going-forward public company and replaced Old DraftKings as the issuer of the Class A common stock issuable upon conversion of the Convertible Notes; such conversion window expired on June 27, 2022, and no holders of the Convertible Notes exercised their conversion rights.

In connection with the pricing of the Convertible Notes and the exercise of the over-allotment option to purchase additional notes, Old DraftKings entered into a privately negotiated capped call transaction (“Capped Call Transactions”). The Capped Call Transactions have a strike price of \$94.85 per share, subject to certain adjustments, which corresponds to the initial conversion price of the Convertible Notes. The Capped Call Transactions have an initial cap price of \$135.50 per share, subject to certain adjustments. The Capped Call Transactions are expected generally to reduce potential dilution to DraftKings Inc.’s Class A common stock upon any conversion of Convertible Notes. As the transaction qualifies for equity classification, the net cost of \$124.0 million incurred in connection with the Capped Call Transactions was recorded as a reduction to additional paid-in capital on the Company’s consolidated balance sheet.

Although recorded at amortized cost on the Company’s consolidated balance sheet, the estimated fair value of the Convertible Notes was \$830.5 million and \$953.8 million as of September 30, 2022 and December 31, 2021, respectively, which was calculated using level 2 inputs, including the estimated or actual bids and offers of the Convertible Notes in an over-the-counter market on the last business day of the period.

Indirect Taxes

Taxation of e-commerce is becoming more prevalent and could negatively affect the Company’s business as it primarily pertains to DFS and its users. The ultimate impact of indirect taxes on the Company’s business is uncertain, as is the period required to resolve this uncertainty. The Company’s estimated contingent liability for indirect taxes represents the Company’s best estimate of tax liability in jurisdictions in which the Company believes taxation is probable. The Company frequently reevaluates its tax positions for appropriateness.

Indirect tax statutes and regulations are complex and subject to differences in application and interpretation. Tax authorities may impose indirect taxes on Internet-delivered activities based on statutes and regulations which, in some cases, were established prior to the advent of the Internet and do not apply with certainty to the Company’s business. The Company’s estimated contingent liability for indirect taxes may be materially impacted by future audit results, litigation and settlements,

should they occur. The Company's activities by jurisdiction may vary from period to period, which could result in differences in the applicability of indirect taxes from period to period.

As of September 30, 2022 and December 31, 2021, the Company's estimated contingent liability for indirect taxes was \$56.0 million and \$47.5 million, respectively. The estimated contingent liability for indirect taxes is recorded within other long-term liabilities on the consolidated balance sheets and general and administrative expenses on the Company's condensed consolidated statements of operations.

Warrant Liabilities

As part of the initial public offering of Diamond Eagle Acquisition Corp. ("DEAC") on May 14, 2019 (the "IPO"), DEAC issued 13.3 million warrants each of which entitles the holder to purchase one share of DraftKings Inc.'s Class A common stock at an exercise price of \$11.50 per share (the "Public Warrants"). Simultaneously with the closing of the IPO, DEAC completed the private sale of 6.3 million warrants to DEAC's sponsor (the "Private Warrants"). As of September 30, 2022, there were no Public Warrants outstanding and 1.6 million Private Warrants outstanding. On May 5, 2022, in connection with the consummation of the GNOG Transaction, Old DraftKings entered into an assignment and assumption agreement (the "Old DraftKings Warrant Assignment Agreement") with DraftKings Inc., Computershare Trust Company, N.A. and Computershare Inc. (together, "Computershare"), pursuant to which Old DraftKings assigned to DraftKings Inc. all of its rights, interests and obligations under the warrant agreement, dated as of May 10, 2019 (the "Old DraftKings Warrant Agreement"), by and between DEAC and Continental Stock Transfer & Trust Company, as warrant agent, as assumed by Old DraftKings and assigned to Computershare by that certain assignment and assumption agreement, dated as of April 23, 2020, governing Old DraftKings' outstanding Private Warrants, on the terms and conditions set forth in the Old DraftKings Warrant Assignment Agreement. In connection with the consummation of the GNOG Transaction and pursuant to the Old DraftKings Warrant Assignment Agreement, each of the outstanding Private Warrants became exercisable for one share of DraftKings Inc. Class A common stock on the existing terms and conditions, except as otherwise described in the Old DraftKings Warrant Assignment Agreement.

In addition, on May 5, 2022, in connection with the consummation of the GNOG Transaction, the Company assumed an additional 5.9 million warrants, each of which entitled the holder to purchase one share of GNOG's Class A common stock at an exercise price of \$11.50 per share (the "GNOG Private Warrants"). Effective as of the consummation of the GNOG Transaction, each of the outstanding GNOG Private Warrants became exercisable for 0.365 of a share of DraftKings Inc.'s Class A common stock, or approximately 2.1 million shares of DraftKings Inc.'s Class A common stock in the aggregate, on the existing terms and conditions of such GNOG Private Warrants, except as otherwise described in the assignment and assumption agreement relating to the GNOG Private Warrants entered into on the GNOG Closing Date. As of September 30, 2022, there were 5.9 million GNOG Private Warrants outstanding, which corresponds to an assumed warrant liability of \$13.2 million as of the GNOG Closing Date less a loss on remeasurement of \$3.7 million for the three months ended September 30, 2022 and a gain on remeasurement of \$1.1 million from the GNOG Closing Date through September 30, 2022.

As of September 30, 2022, the fair value of the Company's warrant liability was \$19.9 million. Due to fair value changes throughout the three and nine months ended September 30, 2022, the Company recorded a loss on remeasurement of warrant liabilities of \$6.8 million and a gain on remeasurement of warrant liabilities \$20.2 million, respectively. Due to fair value changes throughout the three and nine months ended September 30, 2021, the Company recorded a gain on remeasurement of warrants liabilities of \$7.1 million and a loss on remeasurement of warrant liabilities of \$2.9 million, respectively. During the nine months ended September 30, 2022, a de minimis number of Private Warrants and GNOG Private Warrants were exercised. During the nine months ended September 30, 2021, 0.2 million Private Warrants were exercised resulting in a reclassification to additional paid-in-capital in the amount of \$5.2 million, reflecting the reclassification of the warrant liabilities of \$4.5 million and proceeds upon exercise of \$0.7 million.

6. Fair Value Measurements

Certain assets and liabilities are carried at fair value under U.S. GAAP. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Financial assets and liabilities carried at fair value and nonrecurring fair value measurements are to be classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable and the last is considered unobservable:

- Level 1 — Quoted prices in active markets for identical assets or liabilities.

- Level 2 — Observable inputs (other than Level 1 quoted prices), such as quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active for identical or similar assets or liabilities, or other inputs that are observable or can be corroborated by observable market data.
- Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to determining the fair value of the assets or liabilities, including pricing models, discounted cash flow methodologies and similar techniques.

The following tables set forth the fair value of the Company's financial assets and liabilities measured at fair value as of September 30, 2022 and December 31, 2021 based on the three-tier fair value hierarchy:

	September 30, 2022			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market funds	\$ 201,560 ⁽¹⁾	\$ —	\$ —	\$ 201,560
Other current assets:				
Digital assets held for users	—	47,951 ⁽²⁾	—	47,951
Other non-current assets:				
Derivative instruments	—	—	46,833 ⁽⁵⁾	46,833
Equity securities	19,150 ⁽³⁾	13,533 ⁽⁴⁾	—	32,683
Total	\$ 220,710	\$ 61,484	\$ 46,833	\$ 329,027
Liabilities				
Other current liabilities:				
Digital assets held for users	\$ —	\$ 47,951 ⁽²⁾	\$ —	\$ 47,951
Warrant liabilities	—	19,877 ⁽⁶⁾	—	19,877
Total	\$ —	\$ 67,828	\$ —	\$ 67,828

	December 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market funds	\$ 550,169 ⁽¹⁾	\$ —	\$ —	\$ 550,169
Other non-current assets:				
Derivative instruments	—	—	3,850 ⁽⁵⁾	3,850
Equity securities	27,200 ⁽³⁾	—	—	27,200
Total	\$ 577,369	\$ —	\$ 3,850	\$ 581,219
Liabilities				
Warrant liabilities	\$ —	\$ 26,911 ⁽⁶⁾	\$ —	\$ 26,911
Total	\$ —	\$ 26,911	\$ —	\$ 26,911

(1) Represents the Company's money market funds, which are classified as Level 1 because the Company measures these assets to fair value using quoted market prices.

(2) Represents the asset and liability balance for the digital assets held by the Company for its users, which are classified as Level 2 because the Company measures these digital assets to fair value using observable inputs for similar transactions.

(3) Represents the Company's marketable equity securities, which are classified as Level 1 because the Company measures these assets to fair value using quoted market prices.

- (4) Represents the Company's non-marketable equity securities, which are classified as Level 2 because the Company measures these assets to fair value using observable inputs for similar investments of the same issuer. The Company has elected the remeasurement alternative for these assets.
- (5) Represents the Company's derivative instruments held in other public and privately held entities. The Company measures these derivative instruments to fair value using option pricing models and, accordingly, classifies these assets as Level 3. During the nine months ended September 30, 2022, the Company did not purchase or issue a significant amount of new derivative instruments. The table below includes a range and an average weighted by relative fair value of the significant unobservable inputs used to measure these Level 3 derivative instruments to fair value. A change in these significant unobservable inputs might result in a significantly higher or lower fair value measurement at the reporting date.

Significant Unobservable Input	September 30, 2022	December 31, 2021
	Range (Weighted Average)	
Underlying stock price	\$7.66 - \$39.22 (\$34.26)	\$ 10.88
Volatility	65.0% - 75.0% (72.8%)	60.0 %
Risk-free rate	1.3% - 3.8% (1.7%)	0.3 %

- (6) The Company measures its Private Warrants and the GNOG Private Warrants to fair value using a binomial lattice model or a Black-Scholes model, where appropriate, with the significant assumptions being observable inputs and, accordingly, classifies these liabilities as Level 2.

During the three months ended September 30, 2022, the Company recorded \$0.5 million and \$0.2 million of unrealized gains for its Level 1 and Level 3 financial assets, respectively. During the nine months ended September 30, 2022, the Company recorded \$8.0 million of unrealized losses and \$40.5 million of unrealized gains for its Level 1 and Level 3 financial assets, respectively. Those unrealized gains and losses are included within other income, net in the Company's condensed consolidated statements of operations. During the three and nine months ended September 30, 2021, no such gains or losses were recorded.

7. Revenue Recognition

Deferred Revenue

The Company includes deferred revenue within accounts payable and accrued expenses and liabilities to users in its condensed consolidated balance sheets. The deferred revenue balances were as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Deferred revenue, beginning of the period	\$ 84,674	\$ 51,791	\$ 91,554	\$ 30,267
Deferred revenue, end of the period	165,185	84,951	165,185	84,951
Revenue recognized in the period from amounts included in deferred revenue at the beginning of the period	34,621	23,946	70,042	27,569

Deferred revenue primarily represents contract liabilities related to the Company's obligation to transfer future value in relation to in period transactions in which the Company has received consideration. Such obligations are recognized as liabilities when awarded to users and are recognized as revenue when those liabilities are later resolved.

Revenue Disaggregation

Disaggregation of revenue for the three and nine months ended September 30, 2022 and 2021 is as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Online gaming	\$ 468,455	\$ 176,257	\$ 1,289,257	\$ 707,146
Gaming software	9,093	23,725	34,057	82,587
Other	24,390	12,837	62,014	32,967
Total Revenue	\$ 501,938	\$ 212,819	\$ 1,385,328	\$ 822,700

Online gaming includes Sportsbook, iGaming and DFS, which have certain similar attributes and patterns of recognition. Other revenue primarily includes media, marketplace and retail Sportsbooks.

The following table presents the Company’s revenue by geographic region for the periods indicated:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
United States	\$ 495,563	\$ 188,166	\$ 1,354,234	\$ 737,814
International	6,375	24,653	31,094	84,886
Total Revenue	\$ 501,938	\$ 212,819	\$ 1,385,328	\$ 822,700

8. Stock-Based Compensation

The Company, historically, has issued three types of stock-based compensation: Time-Based awards, Long Term Incentive Plan (“LTIP”) awards and Performance-Based Stock Compensation Plan (“PSP”) awards. Time-Based awards are equity awards which generally vest over a 4-year period. LTIP awards are performance-based equity awards that are used to establish longer-term performance objectives and incentivize management to meet those objectives. PSP awards are short-term performance-based equity awards which establish performance objectives related to one or two particular fiscal years. LTIP awards generally vest when revenue, Adjusted EBITDA or share price targets are achieved amongst other conditions, while PSP awards generally vest upon achievement of revenue targets and have a range of payouts amongst other conditions.

The following table shows restricted stock unit (“RSU”) and stock option activity for the nine months ended September 30, 2022:

	Time-based		PSP		LTIP		Total	Weighted Average Exercise Price of Options	Weighted Average FMV of RSUs
	Options	RSUs	Options	RSUs	Options	RSUs			
Outstanding at December 31, 2021	14,695	4,195	2,354	1,488	11,671	19,343	53,746	\$ 5.46	\$ 49.94
Granted	200	10,485	—	2	—	1,080	11,767	31.40	20.68
Exercised options / vested RSUs	(1,661)	(2,139)	(54)	(2,671)	(169)	(6,251)	(12,945)	2.85	44.03
Change in awards due to performance-based multiplier	—	—	—	1,806	—	—	1,806	—	33.69
Forfeited	(154)	(971)	(5)	(26)	—	(501)	(1,657)	4.71	35.06
Outstanding at September 30, 2022	13,080	11,570	2,295	599	11,502	13,671	52,717	\$ 5.84	\$ 39.10

As of September 30, 2022, total unrecognized stock-based compensation expense of \$471.9 million related to granted and unvested share-based compensation arrangements is expected to be recognized over a weighted-average period of 2.0 years. The following table shows stock compensation expense for the three and nine months ended September 30, 2022 and 2021:

	Three months ended September 30, 2022			Three months ended September 30, 2021		
	Options	RSUs	Total	Options	RSUs	Total
Time Based ⁽¹⁾	\$ 3,577	\$ 25,924	\$ 29,501	\$ 3,787	\$ 15,512	\$ 19,299
PSP ⁽²⁾	—	11,368	11,368	—	18,537	18,537
LTIP ⁽²⁾	—	85,169	85,169	—	137,828	137,828
Total	\$ 3,577	\$ 122,461	\$ 126,038	\$ 3,787	\$ 171,877	\$ 175,664

	Nine months ended September 30, 2022			Nine months ended September 30, 2021		
	Options	RSUs	Total	Options	RSUs	Total
Time Based ⁽¹⁾	\$ 11,271	\$ 74,693	\$ 85,964	\$ 10,254	\$ 45,003	\$ 55,257
PSP ⁽²⁾	—	68,499	68,499	—	53,941	53,941
LTIP ⁽²⁾	—	294,173	294,173	—	390,048	390,048
Total	\$ 11,271	\$ 437,365	\$ 448,636	\$ 10,254	\$ 488,992	\$ 499,246

(1) Time-based awards vest and are expensed over a defined service period.

(2) PSP and LTIP awards vest based on defined performance criteria and are expensed based on the probability of achieving such criteria. During the three months ended March 31, 2022, the Company recorded a cumulative catch-up adjustment of \$20.7 million in additional stock-based compensation expense related to its updated expectation on achieving higher revenue targets than originally estimated for certain PSP awards which have a range of payouts.

9. Income Taxes

The Company's provision for income taxes for the three and nine months ended September 30, 2022 and 2021 is as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Income tax provision (benefit)	\$ 3,177	\$ 3,845	\$ (77,580)	\$ 1,654

The effective tax rates for the three months ended September 30, 2022 and 2021 were (0.7)% and (0.7)%, respectively, and the effective tax rates for the nine months ended September 30, 2022 and 2021 were 6.4% and (0.1)%, respectively. The difference between the Company's effective tax rates for the three and nine month periods in 2022 and 2021 and the U.S. statutory tax rate of 21% was primarily due to a valuation allowance related to the Company's deferred tax assets, offset partially by current state tax and current foreign tax. Additionally, the Company recorded a discrete income tax benefit of \$76.8 million during the second quarter of 2022, as well as a discrete tax benefit of \$6.8 million during the first quarter of 2021, which were attributable to non-recurring partial releases of the Company's U.S. valuation allowance as a result of the preliminary purchase accounting for GNOG and Vegas Sports Information Network, Inc., respectively. The Company regularly evaluates the realizability of its deferred tax assets and establishes a valuation allowance if it is more likely than not that some or all of the deferred tax assets will not be realized.

10. Segment Information

The Company operates its business and reports its results through two operating and reportable segments: B2C and B2B, in accordance with ASC Topic 280, Segment Reporting. The B2C segment provides users with Sportsbook, iGaming and DFS products, as well as media and other online consumer products. The B2B segment is involved in the design and development of sports betting and casino gaming software, which is primarily comprised of the Company's wholly-owned subsidiary, SBTech (Global) Limited (together with its subsidiaries unless the context requires otherwise, "SBTech").

Operating segments are components of the Company for which separate discrete financial information is available to and evaluated regularly by the chief operating decision maker ("CODM"), who is the Company's Chief Executive Officer, in making decisions regarding resource allocation and assessing performance. The CODM assesses a combination of metrics such as revenue and Adjusted EBITDA to evaluate the performance of each operating and reportable segment.

Any intercompany revenues or expenses are eliminated in consolidation. All of the Company's operating revenues and expenses, other than those excluded from Adjusted EBITDA as detailed below, are allocated to the Company's reportable segments. The Company defines and calculates Adjusted EBITDA as net loss before the impact of interest income or expense (net), income tax provision or benefit, and depreciation and amortization, and further adjusted for the following items: stock-based compensation, transaction-related costs, litigation, settlement and related costs, advocacy and other related legal expenses, gain or loss on remeasurement of warrant liabilities and other non-recurring and non-operating costs or income, as described in the reconciliation below.

A measure of segment assets and liabilities has not been currently provided to the Company's CODM and therefore is not shown below.

Summarized financial information for the Company's segments is shown in the following table:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Revenue:				
B2C	\$ 492,846	\$ 189,094	\$ 1,351,271	\$ 740,113
B2B	9,092	23,725	34,057	82,587
Total revenue	501,938	212,819	1,385,328	822,700
Adjusted EBITDA:				
B2C	(247,522)	(307,700)	(615,597)	(541,313)
B2B	(16,689)	(5,903)	(56,257)	(6,854)
Total adjusted EBITDA	(264,211)	(313,603)	(671,854)	(548,167)
<i>Adjusted for:</i>				
Depreciation and amortization	46,089	30,356	120,629	88,600
Interest (income) expense, net	(6,301)	1,556	(8,378)	(1,071)
Income tax provision (benefit)	3,177	3,845	(77,580)	1,654
Stock-based compensation	126,038	175,664	448,636	499,246
Transaction-related costs	751	4,348	15,030	15,261
Litigation, settlement and related costs	1,390	4,712	5,786	8,933
Advocacy and other related legal expenses	16,558	16,667	16,558	27,702
(Gain) loss on remeasurement of warrant liabilities	6,797	(7,091)	(20,199)	2,905
Other non-recurring and non-operating costs (income)	(8,216)	1,368	(37,046)	5,501
Net loss attributable to common shareholders	\$ (450,494)	\$ (545,028)	\$ (1,135,290)	\$ (1,196,898)

11. Loss Per Share

The computation of loss per share and weighted-average shares of DraftKings Inc.'s Class A common stock outstanding for the periods presented are as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (450,494)	\$ (545,028)	\$ (1,135,290)	\$ (1,196,898)
Basic and diluted weighted-average common shares outstanding	448,331	403,844	432,278	400,994
Loss per share attributable to common stockholders:				
Basic and diluted	\$ (1.00)	\$ (1.35)	\$ (2.63)	\$ (2.98)

There were no preferred or other dividends declared for the three and nine months ended September 30, 2022. For the periods presented, the following securities were not required to be included in the computation of diluted shares outstanding:

	September 30,	
	2022	2021
Class A common stock resulting from exercise of all warrants	3,761	1,741
Stock options and RSUs	52,717	55,620
Convertible notes	13,337	13,337
Total	69,815	70,698

12. Related-Party Transactions

Financial Advisor

The Company entered into an engagement letter with a related party (the “Financial Advisor”) in August 2019, as amended in December 2019. For the three and nine months ended September 30, 2022, the Company incurred \$0.0 million and \$8.5 million, respectively, of fees payable to its Financial Advisor. During the three and nine months ended September 30, 2021, the Company incurred no fees payable to its Financial Advisor.

Equity Method Investments

The Company provides office space and general operational support to DKFS, LLC, an equity-method affiliate. The operational support is primarily in the form of general and administrative services. As of September 30, 2022 and December 31, 2021, the Company had \$0.3 million and \$0.6 million, respectively, of receivables from DKFS, LLC related to those services and expenses to be reimbursed to the Company, which are included within non-current assets in its consolidated balance sheets. The Company has committed to invest up to \$17.5 million into DBDK Venture Fund I, LP, a Delaware limited partnership and a subsidiary of DKFS LLC. As of September 30, 2022, the Company had invested a total of \$4.9 million of the total commitment.

Transactions with a Shareholder and their Immediate Family Members

As of September 30, 2022 and December 31, 2021, the Company had \$0.0 million and \$3.8 million of receivables due from former shareholders of SBTech, respectively, which includes a current director and shareholder of the Company. For the three months ended September 30, 2022 and September 30, 2021, the Company had \$0.6 million and \$0.9 million in sales, respectively, to entities that are wholly owned by an immediate family member of a current director of the Company. The Company recorded \$1.7 million and \$4.0 million of such sales in the nine months ended September 30, 2022 and September 30, 2021, respectively. The Company had an associated accounts receivable balance of \$0.2 million and \$0.2 million as of September 30, 2022 and December 31, 2021, respectively, included in accounts receivable in its condensed consolidated balance sheets.

Aircraft

Starting in 2022, from time to time, the Company has chartered, without mark-up, the private plane owned by Jason Robins, the Company’s Chief Executive Officer, utilizing aircraft services from Jet Aviation Flight Services, Inc. for the business and personal travel of Mr. Robins and his family. The Company had no direct or indirect interest in such private plane. During the three and nine months ended September 30, 2022, the Company incurred \$0.0 million and \$0.7 million of expense for use of the aircraft under these chartering services, respectively.

In March 2022, the Company entered into a one-year lease of an aircraft from an entity controlled by Mr. Robins. Pursuant to such agreement, Mr. Robins’ entity leases the aircraft to the Company for \$0.6 million for a one-year period. The Company covers all operating, maintenance and other expenses associated with the aircraft. The audit and compensation committees of the Company’s board of directors approved this arrangement based, among other things, on the requirements of the overall security program that Mr. Robins and his family fly private and their assessment that such an arrangement is more efficient and flexible and better ensures safety, confidentiality and privacy. During the three and nine months ended September 30, 2022, the Company incurred \$0.1 million and \$0.3 million, respectively, of expense under the aircraft lease.

13. Leases, Commitments and Contingencies

Leases

The Company primarily leases corporate office facilities, data centers and motor vehicles under operating lease agreements. Some of the Company's leases include one or more options to renew. For a majority of our leases, we do not assume renewals in our determination of the lease term as the renewals are not deemed to be reasonably certain to exercise. Our lease agreements generally do not contain any material residual value guarantees or material restrictive covenants. As of September 30, 2022, the Company's lease agreements typically have terms not exceeding ten years.

Payments under the Company's lease arrangements may be fixed or variable, and variable lease payments primarily represent costs related to common area maintenance and utilities. The components of lease cost are as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Operating lease cost	\$ 5,562	\$ 4,207	\$ 15,471	\$ 12,569
Short term lease cost	1,550	1,051	4,628	1,918
Variable lease cost	984	1,008	2,863	2,691
Sublease income	(255)	(340)	(715)	(544)
Total lease cost	\$ 7,841	\$ 5,926	\$ 22,247	\$ 16,634

Supplemental cash flow and other information for the nine months ended September 30, 2022 and 2021 related to operating leases was as follows:

	Nine months ended September 30,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows used by operating leases	\$ 12,511	\$ 13,393
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 23,056	\$ 3,055

The weighted-average remaining lease term and weighted-average discount rate for the Company's operating leases were 7.3 years and 6.5% as of September 30, 2022. The Company calculated the weighted-average discount rates using incremental borrowing rates, which equal the rates of interest that it would pay to borrow funds on a fully collateralized basis over a similar term.

Maturity of lease liabilities are as follows:

	Years Ending December 31,
From October 1, 2022 to December 31, 2022	\$ 3,861
2023	10,721
2024	15,381
2025	13,442
2026	11,817
Thereafter	52,416
Total undiscounted future cash flows	107,638
Less: Imputed interest	(25,913)
Operating lease liabilities	\$ 81,725

As of September 30, 2022, the Company had long-lived assets, which consists of operating lease right-of-use assets and property and equipment, net, of \$109.7 million and \$23.2 million located in the United States and internationally, respectively. As of December 31, 2021, the company had long-lived assets of \$77.2 million and \$32.6 million located in the United States and internationally, respectively.

Other Contractual Obligations and Contingencies

The Company is a party to several non-cancelable contracts with vendors where the Company is obligated to make future minimum payments under the terms of these contracts as follows:

	Years Ending December 31,
From October 1, 2022 to December 31, 2022	\$ 164,209
2023	435,256
2024	387,199
2025	302,259
2026	187,588
Thereafter	355,050
Total	\$ 1,831,561

Contingencies

From time to time, and in the ordinary course of business, the Company may be subject to certain claims, charges and litigation concerning matters arising in connection with the conduct of the Company's business activities.

In Re: Daily Fantasy Sports Litigation (Multi-District Litigation)

Between late 2015 and early 2016, certain individuals who allegedly registered and competed in daily sports fantasy contests on our and FanDuel's websites, and their family members, filed numerous actions (primarily purported class actions) against us, FanDuel, and other related parties in courts across the United States (the "DFS defendants"). In February 2016, these actions were consolidated in a multi-district litigation in the U.S. District Court for the District of Massachusetts. The plaintiffs asserted 27 claims arising under both state and federal law against the DFS defendants. The plaintiffs' claims against us generally fell into four categories: (1) the Company's online daily fantasy sports contests constitute illegal gambling; (2) the Company promulgated false or misleading advertisements that emphasized the ease of play and likelihood of winning; (3) the Company induced consumers to lose money through a deceptive bonus program; and (4) the Company allowed our employees to participate in competitors' fantasy sports contests using non-public information, which gave such employees an unfair advantage over other contestants. The plaintiffs sought money damages, equitable relief, and disgorgement of gains against the Company.

On October 6, 2021, the court entered judgment and an order approving a settlement and dismissing the claims with prejudice brought by all plaintiffs except the family members plaintiffs and one plaintiff asserting claims against the DFS defendants as a concerned citizen of the State of Florida (the "Concerned Citizen Claims"). This settlement agreement became effective on November 5, 2021; as a result, the only remaining plaintiffs were the family member plaintiffs and the plaintiff who asserted the Concerned Citizen Claims. On January 21, 2022, DraftKings and the family member plaintiffs filed a joint motion for preliminary approval of a proposed settlement. On February 18, 2022, the court entered an order preliminarily approving the proposed settlement and scheduled a fairness hearing for final approval of the settlement on June 8, 2022. On June 8, 2022, the court entered judgment and an order approving the settlement and dismissing all claims with prejudice other than the Concerned Citizens Claims. On June 23, 2022, with all claims other than the Concerned Citizen Claims resolved, the court dismissed the Concerned Citizen Claims from federal court for lack of Article III standing and remanded the Concerned Citizens Claims to state court in Florida. On July 8, 2022, the court officially closed the docket for *In Re: Daily Fantasy Sports Litigation (Multi-District Litigation)*. The Company previously provided an accrual for this matter.

The Company intends to vigorously defend the Concerned Citizen Claims. If the plaintiff obtains a judgment in his favor in this matter, the Company could be subject to substantial damages and it could be restricted from offering DFS contests in Florida. The Company cannot provide any assurance as to the outcome of the Concerned Citizen Claims.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of the Concerned Citizen Claims will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Interactive Games LLC

On June 14, 2019, Interactive Games LLC filed suit against the Company in the U.S. District Court for the District of Delaware, alleging that our Daily Fantasy Sports product infringes two patents and the Company's Sportsbook product infringes two different patents. DraftKings intends to vigorously defend this case. In the event that a court ultimately determines that the Company is infringing the asserted patents, it may be subject to substantial damages, which may include treble damages and/or an injunction that could require the Company to modify certain features that we currently offer.

The Company cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Winview Inc.

On July 7, 2021, Winview Inc., a Delaware corporation, filed suit against the Company in the U.S. District Court for the District of New Jersey, which was subsequently amended on July 28, 2021, alleging that our Sportsbook product infringes two patents, our Daily Fantasy Sports product infringes one patent, and that our Sportsbook product and Daily Fantasy Sports product infringe another patent. On November 15, 2021, Winview Inc. filed a second amended complaint (the "SAC"), adding as defendants DK DE and Crown Gaming Inc., a Delaware corporation, which are wholly-owned subsidiaries of the Company. The SAC largely repeats the allegations of the first amended complaint.

DraftKings intends to vigorously defend this case. In the event that a court ultimately determines that the Company is infringing the asserted patents, it may be subject to substantial damages, which may include treble damages and/or an injunction that could require the Company to modify certain features that we currently offer.

The Company cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Securities Matters Related to Allegations in the Hindenburg Report

On July 2, 2021, the first of two substantially similar federal securities law putative class actions was filed in the U.S. District Court for the Southern District of New York against the Company and certain of its officers. The actions allege violations of Sections 10(b) and 20(a) of the Exchange Act on a behalf of a putative class of persons who purchased or otherwise acquired DraftKings stock between December 23, 2019 and June 15, 2021. The allegations relate to, among other things, allegedly false and misleading statements and/or failures to disclose information about the Company's business and prospects, based primarily upon the allegations concerning SBTech that were contained in a report published about the Company on June 15, 2021 by Hindenburg Research (the "Hindenburg Report"). The Company intends to vigorously defend against these claims. On November 12, 2021, the court consolidated the two actions under the caption *In re DraftKings Securities Litigation* and appointed a lead plaintiff. The lead plaintiff filed a consolidated amended complaint on January 11, 2022.

Beginning on July 9, 2021, the Company received subpoenas from the SEC seeking documents concerning, among other things, certain of the allegations raised in the Hindenburg Report, as well as the Company's disclosures regarding its compliance policies and procedures, and related matters. The Company intends to comply with the related requests and is cooperating with the SEC's ongoing inquiry.

The Company cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Securities Matters Related to the GNOG Transaction

On August 12, 2022, a putative class action was filed in Nevada state District Court in Clark County against Golden Nugget Online Gaming, Inc. ("GNOG Inc."), the Company and one of its officers, as well as former officers or directors and the former controlling stockholder of GNOG Inc. and Jefferies LLC. The lawsuit asserts claims on behalf of a putative class of former minority stockholders of GNOG Inc. alleging that certain former officers and directors of GNOG Inc. and its former controlling stockholder (Tilman Fertitta and/or Fertitta Entertainment, Inc.) breached their fiduciary duties to minority stockholders of GNOG Inc. in connection with the GNOG Transaction, and the other defendants aided and abetted the alleged breaches of fiduciary duty.

On September 9, 2022, two similar putative class actions were filed in the Delaware Court of Chancery against former directors of GNOG Inc. and its former controlling stockholder, one of which also names the Company and Jefferies Financial Group, Inc. as defendants. These pending actions in Delaware assert substantially similar claims on behalf of a putative class of former minority stockholders of GNOG Inc. alleging that certain former officers and directors of GNOG Inc. and its former controlling stockholder (Tilman Fertitta) breached their fiduciary duties to minority stockholders of GNOG Inc. in connection with the GNOG Transaction, and one of the actions also alleges that DraftKings aided and abetted the alleged breaches of fiduciary duty. On October 12, 2022, the Delaware Court of Chancery consolidated these two actions under the caption *In re Golden Nugget Online Gaming, Inc. Stockholders Litigation*.

The Company intends to vigorously defend against these claims. The Company cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of these proceedings will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Shareholder Derivative Litigation

On October 21, 2021, the first of five substantially similar putative shareholder derivative actions was filed in Nevada by alleged shareholders of the Company. The actions purport to assert claims on behalf of the Company against certain current and former officers and/or members of the board of directors of the Company and DEAC. The two actions filed in the U.S. District Court for the District of Nevada have since been consolidated, and two of the actions filed in Nevada state District Court in Clark County likewise have been consolidated. A substantially identical fifth action was filed in Nevada state District Court in Clark County and has been dismissed voluntarily by the plaintiff. The same plaintiff filed a substantially identical action in Massachusetts Superior Court, which has also been dismissed voluntarily by the plaintiff. The Nevada actions purport to assert claims on behalf of the Company for, among other things, breach of fiduciary duty and corporate waste based primarily upon the allegations concerning SBTech that were contained in the Hindenburg Report. The federal court action in Nevada also contends that certain individuals are liable to the Company for any adverse judgment in the federal securities class actions described above under Sections 10(b) and 21D of the Exchange Act. The Nevada actions seek unspecified compensatory

damages, changes to corporate governance and internal procedures, equitable and injunctive relief, restitution, costs and attorney's fees.

The Company cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Because the Nevada actions allege claims on behalf of the Company and purport to seek judgments in favor of the Company, the Company does not believe, based on currently available information, that the outcome of these proceedings will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

AG 18, LLC d/b/a/ Arrow Gaming

On August 19, 2021, AG 18, LLC d/b/a/ Arrow Gaming ("Arrow Gaming") filed a complaint against DraftKings in the United States District Court for the District of New Jersey alleging that DraftKings' DFS and Casino products infringe four patents. On October 12, 2021, Arrow Gaming filed an amended complaint to add one additional patent. On December 20, 2021, Arrow Gaming filed a second amended complaint adding new allegations with respect to alleged willful infringement.

DraftKings intends to vigorously defend this case. In the event that a court ultimately determines that the Company is infringing the asserted patents, it may be subject to substantial damages, which may include treble damages and/or an injunction that could require the Company to modify certain features that we currently offer.

The Company cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Beteiro, LLC

On November 22, 2021, Beteiro, LLC filed a complaint against the Company in the United States District Court for the District of New Jersey alleging that the Company's Sportsbook and Casino products infringe four patents.

DraftKings intends to vigorously defend this case. In the event that a court ultimately determines that the Company is infringing the asserted patents, it may be subject to substantial damages, which may include treble damages and/or an injunction that could require the Company to modify certain features that we currently offer.

The Company cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Diogenes Ltd. & Colossus(IOM) Ltd.

On December 1, 2021, Diogenes Ltd. & Colossus (IOM) Ltd. ("Colossus"), filed a complaint against the Company in the United States District Court for the District of Delaware alleging that the Company's Sportsbook product infringes seven patents. Colossus amended its complaint on February 7, 2022 to, among other things, add one additional patent.

DraftKings intends to vigorously defend this case. In the event that a court ultimately determines that the Company is infringing the asserted patents, it may be subject to substantial damages, which may include treble damages and/or an injunction that could require the Company to modify certain features that we currently offer.

The Company cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Internal Revenue Service

The Company is currently under Internal Revenue Service audit for prior tax years, with the primary unresolved issues relating to excise taxation of fantasy sports contests and informational reporting and withholding. The final resolution of that audit, and other audits or litigation, may differ from the amounts recorded in these consolidated financial statements and may materially affect the Company's consolidated financial statements in the period or periods in which that determination is made.

Letters of Credit

In connection with the Credit Agreement with Pacific Western Bank, the Company has entered into several letters of credit totaling \$4.0 million and \$4.2 million as of September 30, 2022 and December 31, 2021, respectively, for the Company's leases of office space.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis should be read in conjunction with our financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q (this “Report”) and the section entitled “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as filed with the SEC on February 18, 2022.

On May 5, 2022 (the “GNOG Closing Date”), DraftKings Inc. consummated its acquisition of Golden Nugget Online Gaming, Inc. (together with its subsidiaries unless the context requires otherwise, “GNOG”), pursuant to a definitive agreement and plan of merger, dated August 9, 2021 (the “Merger Agreement”), in an all-stock transaction (the “GNOG Transaction”). DraftKings’ unaudited condensed consolidated financial statements exclude GNOG’s operations prior to the GNOG Closing Date, unless indicated otherwise. In connection with the GNOG Transaction, DraftKings Inc. became the going-forward public company and the direct parent company of both DraftKings Holdings Inc. (formerly DraftKings Inc.), a Nevada corporation (“Old DraftKings”), and GNOG, and DraftKings Inc. is the registrant filing this Report as the successor registrant for Old DraftKings. Unless otherwise indicated, the terms “DraftKings,” the “Company,” “we,” “us,” or “our” refer to DraftKings Inc. (or, in respect of periods prior to the GNOG Closing Date, Old DraftKings), together with its consolidated subsidiaries.

Forward-Looking Statements

This Report contains forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995 that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements depend upon events, risks and uncertainties that may be outside of our control. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. You are cautioned that our business and operations are subject to a variety of risks and uncertainties, many of which are beyond our control, and, consequently, our actual results may differ materially from those projected.

Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the section entitled “Risk Factors” included elsewhere in this Report. Any statements contained herein that are not statements of historical fact may be forward-looking statements.

- factors relating to our business, operations and financial performance, including:
 - our ability to effectively compete in the global entertainment and gaming industries;
 - our ability to successfully acquire and integrate new operations;
 - our ability to obtain and maintain licenses with gaming authorities;
 - our inability to recognize deferred tax assets and tax loss carryforwards;
- market and global conditions and economic factors beyond our control, including the potential adverse effects of the ongoing global coronavirus (“COVID-19”) pandemic on capital markets, general economic conditions, including inflation, unemployment and our liquidity, operations and personnel;
- intense competition and competitive pressures from other companies worldwide in the industries in which we operate;
- our ability to raise financing in the future;
- our success in retaining or recruiting officers, key employees or directors; and
- litigation and the ability to adequately protect our intellectual property rights.

These risks and other factors include those set forth under the caption “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as filed with the SEC on February 18, 2022. Due to the uncertain nature of these factors, management cannot assess the impact of each factor on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Any forward-looking statement speaks only as of the date on which such statement is made, and we undertake no obligation to update any of these statements to reflect events or circumstances occurring after the date of this Report, except as

required by applicable law. New factors may emerge and it is not possible to predict all factors that may affect our business and prospects.

Our Business

We are a digital sports entertainment and gaming company. We provide users with sports betting (“Sportsbook”), online casino (“iGaming”) and daily fantasy sports (“DFS”) products, as well as media and other online consumer products. We are also involved in the design and development of sports betting and casino gaming software for online and retail Sportsbooks and casino gaming products, as well as other online consumer products. On May 5, 2022, we acquired GNOG in an all-stock transaction to enable us to leverage Golden Nugget’s established brand to broaden our reach into new customer segments and enhance the combined company’s iGaming product offerings through our vertically-integrated technology stack and GNOG’s unique capabilities, including live dealer.

Our mission is to make life more exciting by responsibly creating the world’s favorite real-money games and betting experiences. We accomplish this by creating an environment where our users can find enjoyment and fulfillment through Sportsbook, iGaming and DFS, as well as media and other online consumer products. We are also highly focused on our responsibility as a steward of this new era in real-money gaming. Our ethics guide our decision making, with respect to both the tradition and integrity of sports and our investments in regulatory compliance and consumer protection.

We make deliberate and substantial investments in support of our mission and long-term growth. For example, we have invested in our products and technology in order to continuously launch new product innovations, improve marketing, merchandising, and operational efficiency through data science, and deliver a great user experience. We also make significant investments in sales and marketing and incentives to grow and retain our paid user base, including personalized cross-product offers and promotions, and promote brand awareness to attract the “skin-in-the-game” sports fan. Together, these investments have enabled us to create a leading product built on scalable technology, while attracting a user base that has resulted in the rapid growth of our business.

Our priorities are to (a) continue to invest in our products and services, (b) launch our products in new geographies, (c) create replicable and predictable state-level unit economics in sports betting and iGaming and (d) expand our other online consumer products. When we launch Sportsbook and iGaming offerings in a new jurisdiction, we invest in user acquisition, retention and cross-selling until the new jurisdiction provides a critical mass of users engaged across our products.

Our current technology is highly scalable with relatively minimal incremental spend required to launch our products in new jurisdictions. We will continue to manage our fixed-cost base in conjunction with our market entry plans and focus our variable spend on marketing, user experience and support and regulatory compliance to become the product of choice for users and maintain favorable relationships with regulators. We also expect to improve our profitability over time through cost synergies and new opportunities driven by the continued optimization of our technology infrastructure.

Our path to profitability is based on the acceleration of positive contribution profit growth driven primarily by marketing efficiencies as we continue the transition from local to regional to national advertising as well as scale benefits from investments in our product and technology and general and administrative functions. On a consolidated Adjusted EBITDA basis, we expect to achieve profitability when total contribution profit exceeds the fixed costs of our business, which depends, in part, on the percentage of the U.S. adult population that has access to our products and the other factors summarized in the section entitled “Forward-Looking Statements”.

Basis of Presentation

We operate two complementary business segments: business-to-consumer (“B2C”) and business-to-business (“B2B”).

B2C

Our B2C business is comprised of the legacy business of DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation (“DK DE”), which includes our DraftKings-branded Sportsbook, iGaming and DFS products, as well as our other online consumer products, and our GNOG-branded Sportsbooks and iGaming products. Across our DraftKings-branded products, we offer users a single integrated product that provides one account, one wallet, a centralized payment system and responsible gaming controls. Currently, we operate our B2C segment primarily in the United States.

Our B2B business is primarily comprised of the operations of SBTech, which we acquired on April 23, 2020. Our B2B segment’s principal activities involve the design and development of sports betting and casino gaming software. Our B2B services are delivered through our proprietary software, and our complementary service offerings include trading and risk management and support for reporting, customer management and regulatory reporting requirements. The operations of our B2B segment are concentrated mainly in Europe and the United States.

Impact of COVID-19

Beginning in 2020 and continuing into 2022, the novel coronavirus (“COVID-19”) pandemic adversely impacted global commercial activity, disrupted supply chains and contributed to significant volatility in financial markets. The primary impacts of the COVID-19 pandemic on us were the suspension, cancellation, rescheduling and shortening of sports seasons and sporting events, particularly between March 2020 and July 2020, when many sports seasons and sporting events, including the MLB regular season, domestic soccer leagues and European Cup competitions, the NBA regular season and playoffs, the NCAA college basketball tournament, the Masters golf tournament, and the NHL regular season and playoffs, were suspended or cancelled. The suspension of sports seasons and sporting events reduced customers’ use of, and spending on, our Sportsbook and DFS products.

Beginning in July 2020, major professional sports leagues gradually resumed regular activities with shortened seasons in many instances. In the nine months ended September 30, 2022, sports seasons continued, and sporting events were held as planned, including the NFL regular season, the NFL Playoffs and Superbowl LVI, the NBA regular season and playoffs, the NHL regular season and playoffs, the NASCAR Cup Series, various NCAA football bowl games, the NCAA college basketball regular season and tournament, the MLB regular season and several golf tournaments. The continued return of major sports and sporting events generated significant user interest and activity in our Sportsbook and DFS products. However, the possibility remains that sports seasons and sporting events may be suspended, cancelled, rescheduled or shortened due to COVID-19 outbreaks.

Our revenue varies based on sports seasons and sporting events amongst other factors, and cancellations, suspensions or alterations resulting from COVID-19 have the potential to adversely affect our revenue, possibly materially. However, our products that do not rely on sports seasons and sporting events, such as iGaming, may partially offset this adverse impact on revenue.

A significant or prolonged decrease in consumer spending on entertainment or leisure activities would also likely have an adverse effect on demand for our products, reducing cash flows and revenues, and thereby materially harming our business, financial condition and results of operations. In addition, a materially disruptive resurgence of COVID-19 cases or the emergence of additional variants or strains of COVID-19 could cause other widespread or more severe impacts depending on where infection rates are highest. As steps taken to mitigate the spread of COVID-19 necessitated a shift away from a traditional office environment for many employees, we implemented business continuity programs to ensure that employees were safe and that our business continued to function with minimal disruptions to normal work operations while employees worked remotely. Since the second quarter of 2022, our primary offices, including our corporate headquarters in Boston, Massachusetts, have been re-opened with many of our employees returning to work onsite in various capacities. We will continue to monitor developments relating to disruptions and uncertainties caused by COVID-19.

Financial Highlights and Trends

The following table sets forth a summary of our financial results for the periods indicated:

<i>(amounts in thousands)</i>	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Revenue	\$ 501,938	\$ 212,819	\$ 1,385,328	\$ 822,700
Net Loss	(450,494)	(545,028)	(1,135,290)	(1,196,898)
Adjusted EBITDA ⁽¹⁾	(264,211)	(313,603)	(671,854)	(548,167)

(1) Adjusted EBITDA is a non-GAAP financial measure. See “—Non-GAAP Information” below for additional information about this measure and a reconciliation of this measure to the most directly comparable financial measure calculated in accordance with U.S. GAAP.

Revenue increased by \$289.1 million in the three months ended September 30, 2022 compared to the three months ended September 30, 2021. This improvement is primarily due to the strong performance of our B2C segment in the three months ended September 30, 2022 resulting from robust customer acquisition and retention, the successful launches of our Sportsbook and iGaming products in additional jurisdictions since the third quarter of 2021, and atypically strong hold rates (primarily in NFL wagering) and reduced promotional intensity in the three months ended September 30, 2022.

Revenue increased by \$562.6 million in the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021 primarily due to the strong performance of our B2C segment as a result of robust customer acquisition and retention, the successful launches of our Sportsbook and iGaming products in additional jurisdictions since the third quarter of 2021 and reduced promotional intensity.

Key Performance Indicators – B2C Operations

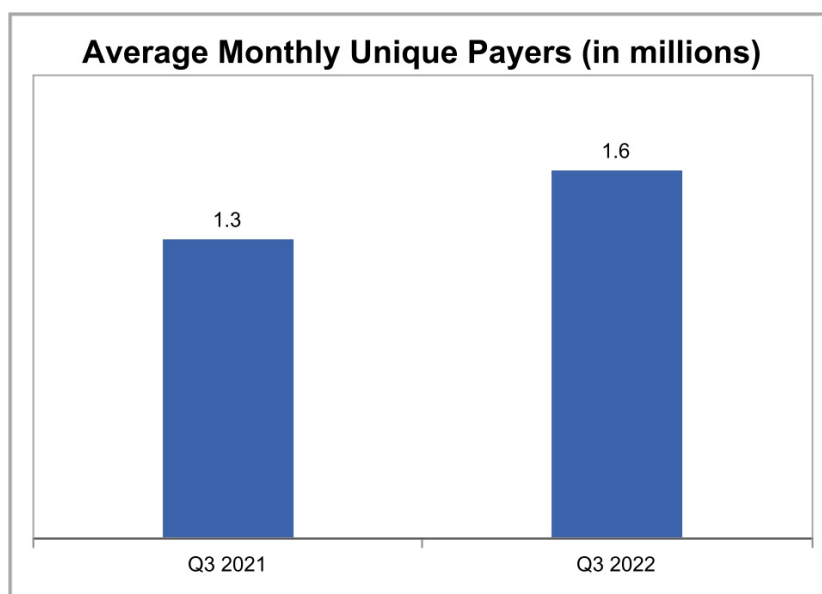
Monthly Unique Payers (“MUPs”). MUPs is the average number of unique paid users (“unique payers”) that use our B2C products on a monthly basis.

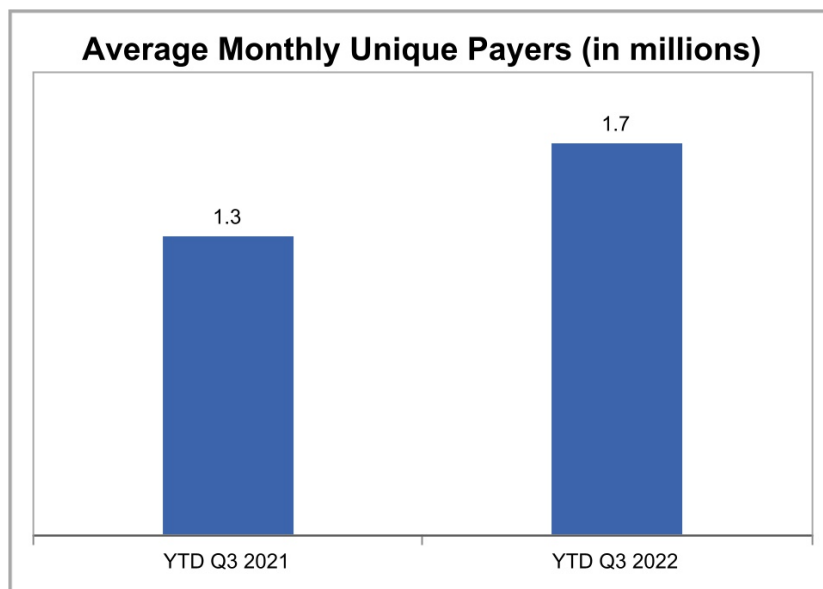
MUPs is a key indicator of the scale of our B2C user base and awareness of our brand. We believe that year-over-year growth in MUPs is also generally indicative of the long-term revenue growth potential of our B2C segment, although MUPs in individual periods may be less indicative of our longer-term expectations. We expect the number of MUPs to grow as we attract, retain and re-engage users in new and existing jurisdictions and expand our products to appeal to a wider audience.

We define MUPs as the number of unique payers per month who had a paid engagement (*i.e.*, participated in a real-money engagement with one of our B2C products such as a DFS contest, sports bet or casino game) across one or more of our products via our technology. For reported periods longer than one month, we average the MUPs for the months in the reported period.

A “unique paid user” or “unique payer” is any person who had one or more paid engagements via our B2C technology during the period (*i.e.*, a user that participates in a paid engagement with one of our B2C products counts as a single unique paid user or unique payer for the period). We exclude users who have made a deposit but have not yet had a paid engagement. Unique payers or unique paid users include users who have participated in a paid engagement with only promotional incentives, which are fungible with other funds deposited into their wallets on our technology; however, the number of such users has not been material to date.

The charts below present our MUPs for the three and nine months ended September 30, 2021 and 2022:

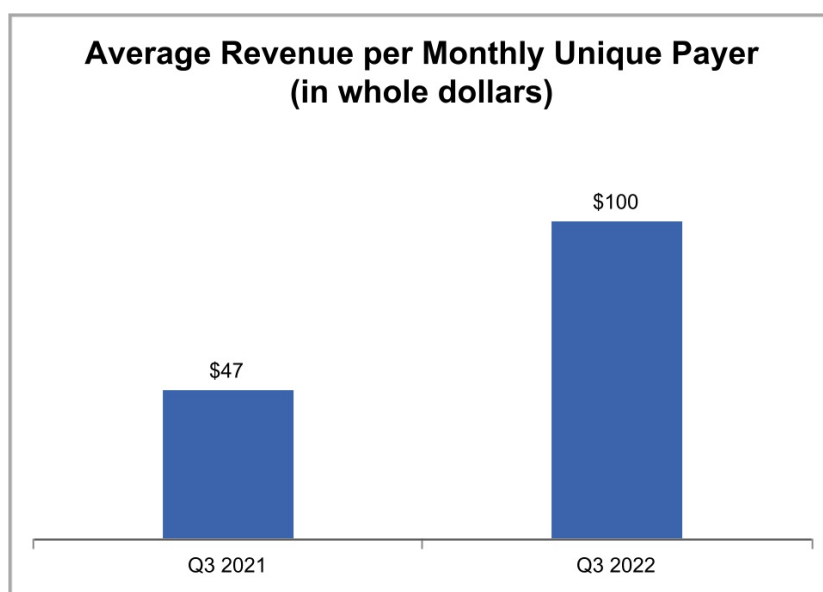


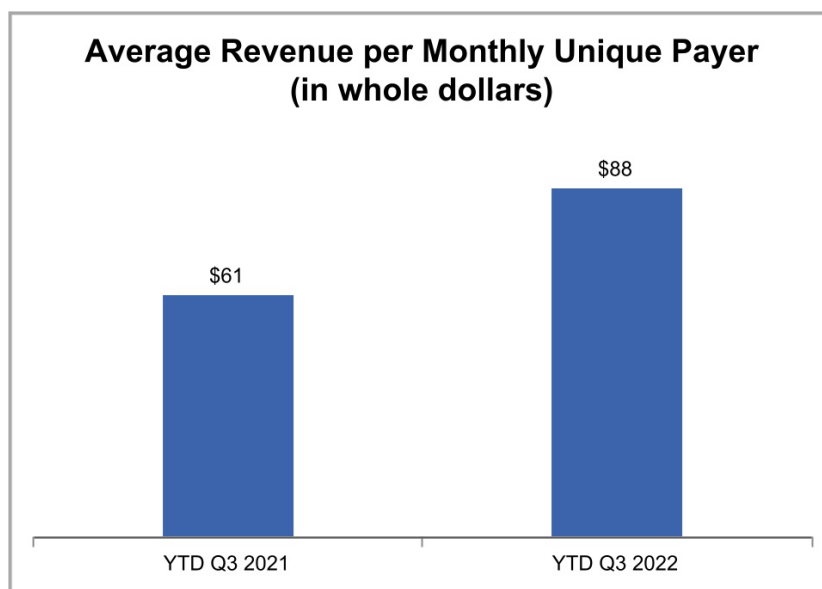


Average Revenue per MUP (“ARPMUP”). ARPMUP is the average B2C segment revenue per MUP, and this key metric represents our ability to drive usage and monetization of our B2C products.

We define and calculate ARPMUP as the average monthly B2C segment revenue for a reporting period, divided by MUPs (*i.e.*, the average number of unique payers) for the same period.

The charts below present our ARPMUP for the three and nine months ended September 30, 2021 and 2022:





MUPs increased for the three and nine months ended September 30, 2022, compared to the same periods in 2021, primarily due to strong unique payer retention and acquisition across our Sportsbook and iGaming products as well as the expansion of our Sportsbook and iGaming products into new jurisdictions, partially offset by a decline in Daily Fantasy Sports MUPs.

ARPMUP increased in the three months ended September 30, 2022, compared to the same period in 2021, primarily due to a continued mix shift into our Sportsbook and iGaming products, atypically strong Sportsbook hold rates (primarily in NFL wagering) and reduced promotional intensity.

ARPMUP increased in the nine months ended September 30, 2022, compared to the same period in 2021, primarily due to a continued mix shift into our Sportsbook and iGaming products and reduced promotional intensity.

Non-GAAP Information

This Report includes Adjusted EBITDA, which is a non-GAAP financial measure that we use to supplement our results presented in accordance with U.S. GAAP. We believe Adjusted EBITDA is useful in evaluating our operating performance, similar to measures reported by our publicly-listed U.S. competitors, and regularly used by security analysts, institutional investors and other interested parties in analyzing operating performance and prospects. Adjusted EBITDA is not intended to be a substitute for any U.S. GAAP financial measure. As calculated, it may not be comparable to other similarly titled measures of performance of other companies in other industries or within the same industry.

We define and calculate Adjusted EBITDA as net loss before the impact of interest income or expense (net), income tax provision or benefit, and depreciation and amortization, and further adjusted for the following items: stock-based compensation, transaction-related costs, litigation, settlement and related costs, advocacy and other related legal expenses, gain or loss on remeasurement of warrant liabilities and other non-recurring and non-operating costs or income, as described in the reconciliation below.

We include non-GAAP financial measures because they are used by management to evaluate our core operating performance and trends and to make strategic decisions regarding the allocation of capital and new investments. Adjusted EBITDA excludes certain expenses that are required in accordance with U.S. GAAP because they are non-recurring items (for example, in the case of transaction-related costs and advocacy and other related legal expenses), non-cash expenditures (for example, in the case of depreciation and amortization, remeasurement of warrant liabilities and stock-based compensation), or non-operating items which are not related to our underlying business performance (for example, in the case of interest income and expense and litigation, settlement and related costs).

Adjusted EBITDA

The table below presents our Adjusted EBITDA reconciled to our net loss, which is the most directly comparable financial measure calculated in accordance with U.S. GAAP, for the periods indicated:

(amounts in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (450,494)	\$ (545,028)	\$ (1,135,290)	\$ (1,196,898)
<i>Adjusted for:</i>				
Depreciation and amortization ⁽¹⁾	46,089	30,356	120,629	88,600
Interest (income) expense, net	(6,301)	1,556	(8,378)	(1,071)
Income tax provision (benefit)	3,177	3,845	(77,580)	1,654
Stock-based compensation ⁽²⁾	126,038	175,664	448,636	499,246
Transaction-related costs ⁽³⁾	751	4,348	15,030	15,261
Litigation, settlement, and related costs ⁽⁴⁾	1,390	4,712	5,786	8,933
Advocacy and other related legal expenses ⁽⁵⁾	16,558	16,667	16,558	27,702
Loss (gain) on remeasurement of warrant liabilities	6,797	(7,091)	(20,199)	2,905
Other non-recurring and non-operating costs (income) ⁽⁶⁾	(8,216)	1,368	(37,046)	5,501
Adjusted EBITDA	\$ (264,211)	\$ (313,603)	\$ (671,854)	\$ (548,167)
<i>Adjusted EBITDA by segment:</i>				
B2B	\$ (16,689)	\$ (5,903)	\$ (56,257)	\$ (6,854)
B2C	\$ (247,522)	\$ (307,700)	\$ (615,597)	\$ (541,313)

- (1) The amounts include the amortization of acquired intangible assets of \$29.8 million and \$20.2 million for the three months ended September 30, 2022 and 2021, respectively, and \$76.1 million and \$59.9 million for the nine months ended September 30, 2022 and 2021, respectively.
- (2) Reflects stock-based compensation expenses resulting from the issuance of awards under incentive plans.
- (3) Includes capital markets advisory, consulting, accounting and legal expenses related to evaluation, negotiation and integration costs incurred in connection with pending or completed transactions and offerings.
- (4) Primarily includes external legal costs related to litigation and litigation settlement costs deemed unrelated to our core business operations.
- (5) Includes certain non-recurring costs relating to advocacy efforts and other legal expenses in jurisdictions where we do not operate certain products and are actively seeking licensure, or similar approval, for those products. For the three and nine months ended September 30, 2022, those costs primarily related to our activities in California. For the three and nine months ended September 30, 2021, those costs primarily related to our activities in California and Florida. The amounts presented exclude other costs relating to advocacy efforts and other legal expenses incurred in jurisdictions where related legislation has been passed and we currently operate.
- (6) Primarily includes the change in fair value of certain financial assets, as well as our equity method share of the investee's losses and other costs relating to non-recurring and non-operating items.

Due to the timing of the consummation of the GNOG Transaction, the above periods, to the extent applicable, exclude GNOG's operations prior to the GNOG Closing Date of May 5, 2022.

Results of Operations

Three Months Ended September 30, 2022 Compared to the Three Months Ended September 30, 2021

The following table sets forth a summary of our consolidated results of operations for the interim periods indicated, and the changes between periods. Due to the timing of the consummation of the GNOG Transaction, the below periods, to the extent applicable, exclude GNOG's operations prior to the GNOG Closing Date of May 5, 2022.

(amounts in thousands, except percentages)	Three months ended September 30,			
	2022	2021	\$ Change	% Change
Revenue	\$ 501,938	\$ 212,819	\$ 289,119	135.9 %
Cost of revenue	372,692	170,749	(201,943)	(118.3) %
Sales and marketing	321,714	303,658	(18,056)	(5.9) %
Product and technology	76,299	65,222	(11,077)	(17.0) %
General and administrative	186,261	219,706	33,445	15.2 %
Loss from operations	(455,028)	(546,516)	91,488	16.7 %
Interest income (expense), net	6,301	(1,556)	7,857	504.9 %
(Loss) gain on remeasurement of warrant liabilities	(6,797)	7,091	(13,888)	(195.9) %
Other income, net	8,257	—	8,257	100.0 %
Loss before income tax provision and loss from equity method investment	(447,267)	(540,981)	93,714	17.3 %
Income tax provision	3,177	3,845	668	17.4 %
Loss from equity method investment	50	202	152	75.2 %
Net loss	\$ (450,494)	\$ (545,028)	\$ 94,534	17.3 %

Revenue. Revenue increased \$289.1 million, or 135.9%, to \$501.9 million in the three months ended September 30, 2022, from \$212.8 million in the three months ended September 30, 2021. The increase was attributable to \$303.8 million in incremental B2C segment revenue, partially offset by a decrease in B2B segment revenue of \$14.6 million.

The \$303.8 million increase in our B2C segment revenue was primarily attributable to our online gaming revenues which increased \$292.2 million, or 165.8%, to \$468.5 million in the three months ended September 30, 2022, from \$176.3 million in the three months ended September 30, 2021. The remaining increase in our B2C segment revenue was attributable to "Other" revenue, which primarily includes media, marketplace and retail Sportsbooks.

Online gaming revenue grew in the three months ended September 30, 2022 primarily due to MUPs increasing by 22.3% and ARPMUP increasing by 114.0% as compared to the three months ended September 30, 2021. These key performance indicators increased primarily due to strong unique payer retention and acquisition across our Sportsbook and iGaming products as well as the expansion of our Sportsbook and iGaming products into new jurisdictions, atypically strong hold rates (primarily in NFL wagering), a continued mix shift into our Sportsbook and iGaming products and reduced promotional intensity.

Cost of Revenue. Cost of revenue increased \$201.9 million, or 118.3%, to \$372.7 million in the three months ended September 30, 2022, from \$170.7 million in the three months ended September 30, 2021. Our B2C segment accounted for substantially all of this increase, reflecting growth in revenue from our expanded product and geographic footprint, including the launch of our Sportsbook product in Connecticut, Louisiana, Kansas, New York and Ontario, Canada and the launch of our iGaming product in Connecticut and Ontario, Canada since the three months ended September 30, 2021. The cost of revenue increase was primarily attributable to an increase in our variable expenses such as product taxes and payment processing fees, which increased by \$107.3 million and \$24.8 million, respectively, relative to the expenses incurred during the three months ended September 30, 2021. The remaining increase was primarily attributable to variable platform costs and revenue share arrangements resulting from additional customer activity.

B2C segment cost of revenue as a percentage of B2C revenue decreased by 2.8 percentage points to 69.7% in the three months ended September 30, 2022, as compared to 72.5% in the three months ended September 30, 2021, primarily reflecting atypically strong hold rates (primarily in NFL wagering) and reduced promotional intensity, which positively impacted cost of revenue as a percentage of B2C revenue in the three months ended September 30, 2022 compared to the same period in 2021.

Sales and Marketing. Sales and marketing expense increased \$18.1 million, or 5.9%, to \$321.7 million in the three months ended September 30, 2022, from \$303.7 million in the three months ended September 30, 2021. Our B2C segment accounted for substantially all of this increase. Of the \$18.1 million increase, \$20.3 million resulted from activities to acquire and retain

players in new states that we operate in, such as marketing costs including advertising and the development of marketing campaigns, as well as headcount and technology associated with analyzing, developing and deploying those campaigns. This increase was partially offset by a decrease in stock-based compensation expense.

Product and Technology. Product and technology expense increased \$11.1 million, or 17.0%, to \$76.3 million in the three months ended September 30, 2022, from \$65.2 million in the three months ended September 30, 2021, of which \$0.6 million was attributable to our B2B segment. The remaining increase of \$10.5 million primarily reflects additions to our product operations and engineering headcount in our B2C segment.

General and Administrative. General and administrative expense decreased \$33.4 million, or 15.2%, to \$186.3 million in the three months ended September 30, 2022, from \$219.7 million in the three months ended September 30, 2021. Our B2C segment accounted for substantially all of this decrease, primarily driven by a decrease in stock-based compensation expense of \$40.7 million, which was partially offset by an increase of \$15.3 million in compensation costs due to an increase in headcount.

(Loss) Gain on Remeasurement of Warrant Liabilities. We recorded a loss on remeasurement of warrant liabilities of \$6.8 million in the three months ended September 30, 2022, compared to a gain of \$7.1 million in the three months ended September 30, 2021 primarily due to changes in the underlying share price of DraftKings Inc.'s Class A common stock.

Other Income. Other income, net was \$8.3 million in the three months ended September 30, 2022, as compared to no other income, net in the three months ended September 30, 2021. This increase was primarily attributable to the recovery of a tax liability indemnity.

Income Tax Provision. We recorded an income tax provision of \$3.2 million in the three months ended September 30, 2022, as compared to an income tax provision of \$3.8 million in the three months ended September 30, 2021.

Net Loss. Net loss decreased by \$94.5 million to \$450.5 million in the three months ended September 30, 2022, as compared to a net loss of \$545.0 million in the three months ended September 30, 2021, for the reasons discussed above.

Nine Months Ended September 30, 2022 Compared to the Nine Months Ended September 30, 2021

The following table sets forth a summary of our consolidated results of operations for the interim periods indicated, and the changes between periods. Due to the timing of the consummation of the GNOG Transaction, the below periods, to the extent applicable, exclude GNOG's operations prior to the GNOG Closing Date of May 5, 2022.

<i>(amounts in thousands, except percentages)</i>	Nine months ended September 30,			
	2022	2021	\$ Change	% Change
Revenue	\$ 1,385,328	\$ 822,700	\$ 562,628	68.4 %
Cost of revenue	998,838	540,980	(457,858)	(84.6) %
Sales and marketing	840,695	703,056	(137,639)	(19.6) %
Product and technology	234,853	184,016	(50,837)	(27.6) %
General and administrative	590,476	587,509	(2,967)	(0.5) %
Loss from operations	(1,279,534)	(1,192,861)	(86,673)	(7.3)%
Interest income, net	8,378	1,071	7,307	682.3 %
Gain (loss) on remeasurement of warrant liabilities	20,199	(2,905)	23,104	795.3 %
Other income, net	40,566	—	40,566	100.0 %
Loss before income tax (benefit) provision and loss from equity method investment	(1,210,391)	(1,194,695)	(15,696)	(1.3)%
Income tax (benefit) provision	(77,580)	1,654	79,234	4,790.4 %
Loss from equity method investment	2,479	549	(1,930)	(351.5) %
Net loss	\$ (1,135,290)	\$ (1,196,898)	\$ 61,608	5.1 %

Revenue. Revenue increased \$562.6 million, or 68.4%, to \$1,385.3 million in the nine months ended September 30, 2022, from \$822.7 million in the nine months ended September 30, 2021. The increase was attributable to \$611.2 million in incremental B2C segment revenue, partially offset by a decrease in B2B segment revenue of \$48.5 million.

The \$611.2 million increase in our B2C segment revenue was primarily attributable to our online gaming revenues which increased \$582.1 million, or 82.3%, to \$1,289.3 million in the nine months ended September 30, 2022, from \$707.1 million in

the nine months ended September 30, 2021. The remaining increase in our B2C segment revenue was attributable to “Other” revenue, which primarily includes media, marketplace and retail Sportsbooks.

Online gaming revenue grew in the nine months ended September 30, 2022 primarily due to MUPs increasing by 27.0% and ARPMUP increasing by 43.5% as compared to the nine months ended September 30, 2021. These key performance indicators increased primarily due to strong player retention and acquisition across our Sportsbook and iGaming products as well as the expansion of our Sportsbook and iGaming products into new jurisdictions, a continued mix shift into our Sportsbook and iGaming products and reduced promotional intensity.

Cost of Revenue. Cost of revenue increased \$457.9 million, or 84.6%, to \$998.8 million in the nine months ended September 30, 2022, from \$541.0 million in the nine months ended September 30, 2021. Our B2C segment accounted for substantially all of this increase, reflecting growth in revenue from our expanded product and geographic footprint, including the launch of our Sportsbook product in Connecticut, Louisiana, Kansas, New York and Ontario, Canada and the launch of our iGaming product in Connecticut and in Ontario, Canada since the nine months ended September 30, 2021. The cost of revenue increase was primarily attributable to an increase in our variable expenses such as product taxes and payment processing fees, which increased by \$253.5 million and \$63.0 million, respectively, relative to the expenses incurred during the nine months ended September 30, 2021. The remaining increase was primarily attributable to variable platform costs and revenue share arrangements resulting from additional customer activity.

B2C segment cost of revenue as a percentage of B2C revenue increased by 7.5 percentage points to 67.2% in the nine months ended September 30, 2022, as compared to 59.7% in the nine months ended September 30, 2021, reflecting our changed revenue mix from our more mature DFS product to our iGaming and Sportsbook products. In addition, as a result of customer activity due to the launches of our products in new states, we incurred variable expenses that are not based on net revenue, including payment processing fees, and revenue share arrangements. In general, our iGaming and Sportsbook products produce revenue at a higher cost per revenue dollar relative to our more mature DFS product.

Sales and Marketing. Sales and marketing expense increased \$137.6 million, or 19.6%, to \$840.7 million in the nine months ended September 30, 2022, from \$703.1 million in the nine months ended September 30, 2021. Our B2C segment accounted for substantially all of this increase with \$114.4 million of the increase resulting from activities to acquire and retain players in new states that we operate in, such as marketing costs including advertising and the development of marketing campaigns, as well as headcount and technology associated with analyzing, developing and deploying those campaigns.

Product and Technology. Product and technology expense increased \$50.8 million, or 27.6%, to \$234.9 million in the nine months ended September 30, 2022, from \$184.0 million in the nine months ended September 30, 2021, of which \$7.2 million was attributable to our B2B segment. The remaining increase of \$43.6 million primarily reflects additions to our product operations and engineering headcount in our B2C segment.

General and Administrative. General and administrative expense increased \$3.0 million, or 0.5%, to \$590.5 million in the nine months ended September 30, 2022, from \$587.5 million in the nine months ended September 30, 2021. Our B2C segment accounted for substantially all of this increase, primarily driven by an increase of \$45.0 million in compensation costs due to an increase in headcount, as well as an increase in software and facility fees of \$11.5 million, which were partially offset by a decrease in stock-based compensation expense of \$50.9 million.

Gain (Loss) on Remeasurement of Warrant Liabilities. We recorded a gain on remeasurement of warrant liabilities of \$20.2 million in the nine months ended September 30, 2022, compared to a loss of \$2.9 million in the nine months ended September 30, 2021 primarily due to changes in the underlying share price of DraftKings Inc.’s Class A common stock.

Other Income. Other income, net was \$40.6 million in the nine months ended September 30, 2022, as compared to no other income, net in the nine months ended September 30, 2021. This increase was primarily attributable to a change in the fair value of certain financial assets.

Income Tax (Benefit) Provision. We recorded an income tax benefit of \$77.6 million in the nine months ended September 30, 2022, as compared to an income tax provision of \$1.7 million in the nine months ended September 30, 2021. This increase was primarily due to a discrete income tax benefit of \$76.8 million recorded during the second quarter of 2022, which was attributable to non-recurring partial releases of the Company's U.S. valuation allowance as a result of the preliminary purchase accounting for GNOG.

Net Loss. Net loss decreased by \$61.6 million to \$1,135.3 million in the nine months ended September 30, 2022, as compared to a net loss of \$1,196.9 million in the nine months ended September 30, 2021, for the reasons discussed above.

Liquidity and Capital Resources

We had \$1.4 billion in cash and cash equivalents as of September 30, 2022 (excluding player cash, which we segregate from our operating cash balances on behalf of our paid users for all jurisdictions and products). We believe our cash on hand is sufficient to meet our current working capital and capital expenditure requirements for a period of at least twelve months. We will continue to evaluate our long-term operating performance and cash needs and believe we are well positioned to continue to fund the operations of the business long-term.

Debt. In March 2021, we issued zero-coupon convertible senior notes in an aggregate principal amount of \$1,265.0 million (the "Convertible Notes"). The Convertible Notes mature on March 15, 2028, subject to earlier conversion, redemption or repurchase. In connection with the pricing of the Convertible Notes and the exercise of the option to purchase additional Convertible Notes, we entered into privately negotiated capped call transactions (the "Capped Call Transactions"). The Capped Call Transactions are expected generally to reduce potential dilution to DraftKings Inc.'s Class A common stock upon any conversion of the Convertible Notes. The net cost of \$124.0 million incurred to enter into the Capped Call Transactions was recorded as a reduction to additional paid-in capital on the Company's consolidated balance sheet. As of September 30, 2022, the Convertible Notes, net of issuance costs, balance was \$1,250.4 million.

Leases. We have lease arrangements for certain corporate office facilities, data centers, and motor vehicles. As of September 30, 2022, the Company had lease obligations of \$81.7 million, with \$5.6 million payable within 12 months.

Other Purchase Obligations. We have certain non-cancelable contracts with vendors, licensors and others requiring us to make future cash payments. As of September 30, 2022, these purchase obligations were \$1,831.6 million, with \$164.2 million payable in the remainder of 2022.

Cash Flows

The table below summarizes our cash flows for the periods indicated. Due to the timing of the consummation of the GNOG Transaction, the below periods, to the extent applicable, exclude GNOG's operations prior to the GNOG Closing Date of May 5, 2022.

<i>(amounts in thousands)</i>	Nine months ended September 30,	
	2022	2021
Net cash used in operating activities	\$ (477,061)	\$ (247,261)
Net cash used in investing activities	(171,932)	(118,695)
Net cash (used in) provided by financing activities	(16,843)	1,134,129
Effect of foreign exchange rates on cash and cash equivalents and restricted cash	—	1,884
Net (decrease) increase in cash and cash equivalents and restricted cash	(665,836)	770,057
Cash and cash equivalents and restricted cash at beginning of period	2,629,842	2,104,976
Cash and cash equivalents and restricted cash at end of period	\$ 1,964,006	\$ 2,875,033

Operating Activities. Net cash used in operating activities in the nine months ended September 30, 2022 was \$477.1 million, compared to \$247.3 million in the nine months ended September 30, 2021, mainly reflecting a decrease in operating working capital of \$147.3 million primarily due to an increase in cash used in accounts payable, accrued expenses, liabilities to users and receivables reserved for users. In addition, we incurred a \$61.6 million lower net loss, for the reasons discussed above, net of non-cash cost items. Non-cash cost items decreased \$144.1 million period-over-period, primarily driven by deferred income taxes, a gain on various financial assets and a gain on remeasurement of warrants liabilities.

Investing Activities. Net cash used in investing activities during the nine months ended September 30, 2022 increased by \$53.2 million to \$171.9 million from \$118.7 million during the same period in 2021, mainly reflecting an increase in cash paid for acquisitions during the nine months ended September 30, 2022 when compared to the nine months ended September 30, 2021.

Financing Activities. Net cash provided by (used in) financing activities during the nine months ended September 30, 2022 decreased by \$1,151.0 million to \$(16.8) million from \$1,134.1 million during the same period in 2021, mainly reflecting the completion of our issuance of Convertible Notes during the three months ended March 31, 2021.

Commitments and Contingencies

Refer to Note 13 of our unaudited condensed consolidated financial statements included elsewhere in this Report for a summary of our commitments as of September 30, 2022.

Critical Accounting Estimates

Our financial statements have been prepared in accordance with U.S. GAAP. Our discussion and analysis of the financial condition and results of operations are based on these financial statements. The preparation of these financial statements requires the application of accounting policies in addition to certain estimates and judgments by our management. Our estimates and judgments are based on currently available information, historical results and other assumptions we believe are reasonable. Actual results could differ materially from these estimates.

During the nine months ended September 30, 2022, there were no changes to the critical accounting policies discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as filed with the SEC on February 18, 2022.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no significant changes in our exposure to market risk during the nine months ended September 30, 2022. Refer to Item 7A. Quantitative and Qualitative Disclosures about Market Risk in our 2021 Annual Report.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of September 30, 2022. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in Internal Control Over Financial Reporting

There has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives, as specified above. Our management recognizes that any control system, no matter how well designed and operated, is based upon certain judgments and assumptions and cannot provide absolute assurance that its objectives will be met.

PART II. —OTHER INFORMATION

Item 1. Legal Proceedings.

We are involved in a number of legal proceedings (including those described below) concerning matters arising in connection with the conduct of our business activities. These proceedings are at varying stages, and many of these proceedings seek an indeterminate amount of damages. We regularly evaluate the status of the legal proceedings in which we are involved to assess whether a loss is probable or there is a reasonable possibility that a loss or an additional loss may have been incurred and to determine if accruals are appropriate. If accruals are not appropriate, we further evaluate each legal proceeding to assess whether an estimate of the possible loss or range of possible loss can be made.

For certain cases described on the following pages, management is unable to provide a meaningful estimate of the possible loss or range of possible loss because, among other reasons, (i) the proceedings are in various stages; (ii) damages have not been sought; (iii) damages are unsupported and/or exaggerated; (iv) there is uncertainty as to the outcome of pending appeals or motions; (v) there are significant factual issues to be resolved; and/or (vi) there are novel legal issues or unsettled legal theories to be presented or a large number of parties involved. For these cases, however, management does not believe, based on currently available information, that the outcomes of these proceedings will have a material adverse effect on our financial condition, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

In Re: Daily Fantasy Sports Litigation (Multi-District Litigation)

Between late 2015 and early 2016, certain individuals who allegedly registered and competed in daily sports fantasy contests on our and FanDuel's websites, and their family members, filed numerous actions (primarily purported class actions) against us, FanDuel, and other related parties (the "DFS defendants") in courts across the United States. In February 2016, these actions were consolidated in a multi-district litigation in the U.S. District Court for the District of Massachusetts. On September 2, 2016, the consolidated group of plaintiffs filed their First Amended Master Class Action Complaint, superseding their original class action complaint, which superseded their individual complaints.

The plaintiffs asserted 27 claims arising under both state and federal law against the DFS defendants. The plaintiffs' claims against us generally fell into four categories: (1) our online daily fantasy sports contests constitute illegal gambling; (2) we promulgated false or misleading advertisements that emphasized the ease of play and likelihood of winning; (3) we induced consumers to lose money through a deceptive bonus program; and (4) we allowed our employees to participate in competitors' fantasy sports contests using non-public information, which gave such employees an unfair advantage over other contestants. The plaintiffs sought money damages, equitable relief, and disgorgement of gains against us.

On November 16, 2016, the DFS defendants filed a motion to compel arbitration against all named plaintiffs except one plaintiff asserting claims against the DFS defendants as a concerned citizen of the State of Florida (the "Concerned Citizen Claims"). On November 27, 2019, the Court granted the DFS defendants' motion to compel arbitration with respect to all named plaintiffs other than a small set of plaintiffs who are family members of individuals who have DraftKings or FanDuel accounts and who asserted claims under various state laws regarding gambling (the "Family Member Plaintiffs"). On March 9, 2020, the DFS defendants moved to dismiss the Family Member Plaintiffs' claims and the Concerned Citizen Claims. On April 7, 2020, an opposition to the motion to dismiss the Concerned Citizen Claim was filed. On April 20, 2020, the Family Member Plaintiffs filed their opposition to the DFS defendants' motion to dismiss, and on April 29, 2020, the Family Member Plaintiffs filed a motion for leave to amend the First Amended Master Class Action Complaint. On May 11, 2020, the DFS defendants filed their reply in support of their motion to dismiss the Family Member Plaintiffs' claims and the Concerned Citizen Claims, and on May 13, 2020, the DFS defendants filed their opposition to the Family Member Plaintiffs' motion for leave to amend the First Amended Master Class Action Complaint. On March 5, 2020, one named plaintiff with respect to whom the motion to compel was granted filed a renewed motion to remand his case to state court. On May 29, 2020, we filed an opposition to that motion.

On March 3, 2021, DraftKings and the plaintiffs (other than the Family Member Plaintiffs) filed in Court a joint motion for preliminary approval of a proposed settlement, which the Court granted on June 15, 2021. On October 6, 2021, the Court entered judgment and an order approving a settlement and dismissing the claims with prejudice brought by all plaintiffs except the Family Member Plaintiffs and the Concerned Citizen Claims. This settlement agreement became effective on November 5, 2021; as a result, the only remaining plaintiffs were the Family Member Plaintiffs and the plaintiff who asserted the Concerned Citizen Claims. On January 21, 2022, DraftKings and the Family Member Plaintiffs filed a joint motion for preliminary approval of a proposed settlement. On February 18, 2022, the Court entered an order preliminarily approving the proposed settlement and scheduled a fairness hearing for final approval of the settlement on June 8, 2022. On June 8, 2022, the court

entered judgment and an order approving the settlement and dismissing all claims with prejudice other than the Concerned Citizens Claims. On June 23, 2022, with all claims other than the Concerned Citizen Claims resolved, the court dismissed the Concerned Citizen Claims from federal court for lack of Article III standing and remanded the Concerned Citizen Claims to state court in Florida. On July 8, 2022, the court officially closed the docket for *In Re: Daily Fantasy Sports Litigation (Multi-District Litigation)*. The Company previously provided an accrual for this matter.

We intend to vigorously defend the Concerned Citizen Claims. If the plaintiff obtains a judgment in his favor in this matter, we may be subject to substantial damages and we may have to withdraw our DFS operation in Florida. We cannot predict with any degree of certainty the outcome of the Concerned Citizen Claims.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of the Concerned Citizen Claims will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Attorney General of Texas

On January 19, 2016, the Texas Attorney General issued an opinion letter that “odds are favorable that a court would conclude that participation in paid daily fantasy sports leagues constitutes illegal gambling” under Texas law. In response to the opinion letter, we sued the Texas Attorney General on March 4, 2016 in Dallas County, Texas.

The lawsuit makes five claims: (1) a claim for a declaratory judgment that daily fantasy sports contests do not violate Texas law; (2) a claim of denial of due process under the Fifth and Fourteenth Amendments to the U.S. Constitution; (3) a claim of denial of due course of law under Article I of the Texas Constitution; (4) a claim of denial of equal protection under the Fourteenth Amendment to the U.S. Constitution; and (5) a claim of denial of equal rights under Article I of the Texas Constitution. We are also seeking reimbursement of our costs and attorneys’ fees.

On May 2, 2016, the Texas Attorney General filed a motion to transfer venue to Travis County, Texas. On April 16, 2018, the parties filed a notice of agreed non-suit without prejudice, and we re-filed our lawsuit against the Texas Attorney General in Travis County. On April 17, 2018, the Dallas County court granted the parties’ agreed non-suit without prejudice, thereby dismissing the Dallas County lawsuit without prejudice.

On May 24, 2018, the Texas Attorney General answered the complaint filed in Travis County, Texas.

FanDuel filed a petition in intervention on August 24, 2018, seeking essentially the same relief as DraftKings seeks. The Court entered an updated scheduling order setting the case for a non-jury trial on April 20, 2021. The parties subsequently filed an agreed motion to extend the scheduling order seeking, among other things, to change the non-jury trial date to January 29, 2024.

We intend to vigorously pursue our claims. In the event a court ultimately determines that daily fantasy sports contests violate Texas law, that determination could cause financial harm to us and loss of business in Texas.

We cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities.

We do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Interactive Games LLC

On June 14, 2019, Interactive Games LLC (“IG”) filed suit against us in the U.S. District Court for the District of Delaware. In the Complaint, IG alleges that our daily fantasy sports (“DFS”) product infringes two patents: U.S. Patent No. 8,956,231 (the “231 Patent”), which is entitled “Multi-process communication regarding gaming information”, and U.S. Patent No. 8,974,302 (the “302 Patent”), which is entitled “Multi-process communication regarding gaming information.” That same Complaint alleges that our Sportsbook product infringes two additional patents: U.S. Patent No. 8,616,967 (the “967 Patent”), which is entitled “System and method for convenience gaming” and U.S. Patent No. 9,430,901 (the “901 Patent”), which is entitled “System and method for wireless gaming with location determination.” All four of these patents are collectively referred to as the “IG Patents.”

In response to the complaint, we filed a motion to dismiss the complaint under 35 U.S.C. Section 101, asserting the IG Patents are directed to non-patentable subject matter. The Court has not yet ruled on that motion, as the judge previously stayed the District Court litigation pending resolution of the *inter partes* reviews and dismissed the motion to dismiss (without ruling on the merits), but granted leave to refile such motion with updated briefing if the stay is lifted.

On June 17, 2020, we filed petitions for inter partes review with the Patent Trial and Appeal Board (the “PTAB”) challenging the validity of each of the IG Patents. The PTAB instituted review for the ‘901 Patent, the ‘231 Patent, and the ‘967 Patent but denied institution for the ‘302 Patent. On February 5, 2021, we filed a request for rehearing regarding the decision on the ‘302 Patent, which was denied by the PTAB on March 2, 2021. On October 13, 2021, the PTAB heard oral argument on the ‘901 Patent, the ‘231 Patent, and the ‘967 Patent. On January 4, 2022, the PTAB issued a final written decision finding all challenged claims of the ‘901 Patent, the ‘231 Patent, and the ‘967 Patent unpatentable. On March 8, 2022, IG appealed the final written decisions for all three instituted inter partes reviews. On April 19, 2022, IG moved to voluntarily dismiss the appeal for the inter partes review related to the ‘901 Patent, which was granted on April 20, 2022. On July 15, 2022, IG filed its opening briefs in the appeals of the inter partes reviews for the ‘231 Patent and ‘967 Patent. On October 5, 2022, we filed our responsive briefs in the appeals of the IPRs related to the ‘231 Patent and ‘967 Patent. The District Court litigation remains stayed pending resolution of all appeals from the inter partes reviews.

We intend to vigorously defend this case. In the event that a court ultimately determines that we are infringing the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to modify certain features that we currently offer.

We cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. We also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in this matter could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company’s operations and cash flows.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Winview Inc.

On July 7, 2021, Winview Inc., a Delaware corporation (“Winview”) filed suit against DraftKings Inc., a Nevada corporation in the U.S. District Court for the District of New Jersey. In the complaint, Winview alleges that DraftKings infringe two patents: U.S. Patent No. 9,878,243 (“the ‘243 Patent”), entitled “Methodology for Equalizing Systemic Latencies in Television Reception in Connection with Games of Skill Played in Connection with Live Television Programming”, and U.S. Patent No. 10,721,543 (“the ‘543 Patent”), entitled “Method of and System for Managing Client Resources and Assets for Activities on Computing Devices”. The allegations based on the ‘243 Patent are directed to Sportsbook, and the allegations based on the ‘543 Patent are directed to both Sportsbook and DFS.

On July 28, 2021, Winview filed an amended complaint, in which it alleges that DraftKings infringes two additional patents: U.S. Patent No. 9,993,730 (“the ‘730 Patent”), entitled “Methodology for Equalizing Systemic Latencies in Television Reception in Connection with Games of Skill Played in Connection with Live Television Programming”, and U.S. Patent No. 10,806,988 (“the ‘988 Patent”), entitled “Method Of and System For Conducting Multiple Contests of Skill with a Single Performance”. The allegations based on the ‘730 Patent are directed at Sportsbook, and the allegations based on the ‘988 Patent are directed at DFS.

On October 4, 2021, we filed a motion to dismiss Winview’s direct infringement claims for the ‘543 Patent and the ‘730 Patent, as well as its claims for willful, induced, and contributory infringement for all four asserted patents. On October 29, 2021, the parties filed a stipulation that allowed Winview to file a second amended complaint on or before November 15, 2021, which the court signed and ordered on November 1, 2021.

On November 15, 2021, Winview filed a second amended complaint (the “SAC”), adding as defendants DK DE and Crown Gaming Inc., a Delaware corporation, which are wholly-owned subsidiaries of DraftKings. The SAC, among other allegations, repeats the allegations of the first amended complaint that the defendants infringe the ‘243 Patent, the ‘543 Patent, the ‘730 Patent, and the ‘988 Patent. On December 15, 2021, DraftKings filed its motion to dismiss the SAC, again arguing that Winview failed to state a claim for direct infringement of the ‘543 Patent and the ‘730 Patent, and for willful, induced, and contributory infringement for all four asserted patents. Winview filed its memorandum in opposition to the motion to dismiss on January 24, 2022, and DraftKings filed its reply brief to Winview’s opposition on January 31, 2022. On August 3, 2022, we

filed a petition for inter partes review with the PTAB challenging the validity of the '243 Patent. On September 20, 2022, the court entered an order staying the pending motion to dismiss and staying all discovery pending final resolution of the petition for inter partes review through a final written decision.

We intend to vigorously defend this case. In the event that a court ultimately determines that we are infringing the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to modify certain features that we currently offer.

We cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. We also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in this matter could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Securities Matters Related to Allegations in the Hindenburg Report

On July 2, 2021, the first of two substantially similar federal securities law putative class actions was filed in the U.S. District Court for the Southern District of New York against the Company and certain of its officers. The actions allege violations of Sections 10(b) and 20(a) of the Exchange Act on a behalf of a putative class of persons who purchased or otherwise acquired DraftKings stock between December 23, 2019 and June 15, 2021. The allegations relate to, among other things, allegedly false and misleading statements and/or failures to disclose information about the Company's business and prospects, based primarily upon the allegations concerning SBTech that were contained in a report published about DraftKings on June 15, 2021 by Hindenburg Research (the "Hindenburg Report"). We intend to vigorously defend against these claims. On November 12, 2021, the court consolidated the two actions under the caption *In re DraftKings Securities Litigation* and appointed a lead plaintiff. The lead plaintiff filed a consolidated amended complaint on January 11, 2022. On February 22, 2022, defendants filed a motion seeking dismissal of this action, and in response, the lead plaintiff filed a second amended complaint on April 5, 2022. On April 26, 2022, defendants again filed a motion seeking dismissal of this action. That motion remains pending.

Beginning on July 9, 2021, the Company received subpoenas from the SEC seeking documents concerning, among other things, certain of the allegations raised in the Hindenburg Report, as well as the Company's disclosures regarding its compliance policies and procedures, and related matters. The Company intends to comply with the related requests and is cooperating with the SEC's ongoing inquiry.

We cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities. We also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Securities Matters Related to the GNOG Transaction

On August 12, 2022, a putative class action was filed in Nevada state District Court in Clark County against Golden Nugget Online Gaming, Inc. ("GNOG Inc."), the Company and one of its officers, as well as former officers or directors and the former controlling stockholder of GNOG Inc. and Jefferies LLC. The lawsuit asserts claims on behalf of a putative class of former minority stockholders of GNOG Inc. alleging that certain former officers and directors of GNOG Inc. and its former controlling stockholder (Tilman Fertitta and/or Fertitta Entertainment, Inc.) breached their fiduciary duties to minority stockholders of GNOG Inc. in connection with the GNOG Transaction, and the other defendants aided and abetted the alleged breaches of fiduciary duty. On November 1, 2022, defendants filed motions to dismiss the action on the grounds of improper forum and lack of personal jurisdiction over certain defendants.

On September 9, 2022, two similar putative class actions were filed in the Delaware Court of Chancery against former directors of GNOG Inc. and its former controlling stockholder, one of which also names the Company and Jefferies Financial

Group, Inc. as defendants. These pending actions in Delaware assert substantially similar claims on behalf of a putative class of former minority stockholders of GNOG Inc. alleging that certain former officers and directors of GNOG Inc. and its former controlling stockholder (Tilman Fertitta) breached their fiduciary duties to minority stockholders of GNOG Inc. in connection with the GNOG Transaction, and one of the actions also alleges that DraftKings and Jefferies Financial Group, Inc. aided and abetted the alleged breaches of fiduciary duty. On October 12, 2022, the Delaware Court of Chancery consolidated these two actions under the caption *In re Golden Nugget Online Gaming, Inc. Stockholders Litigation*. On October 29, 2022, the court appointed co-lead plaintiffs in the consolidated action. The Company's obligation to respond to the consolidated action has been stayed by the court until the filing of a consolidated amended complaint.

The Company intends to vigorously defend against these claims. The Company cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in these matters could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, the Company does not believe, based on currently available information, that the outcome of these proceedings will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

Shareholder Derivative Litigation

On October 21, 2021, the first of five substantially similar putative shareholder derivative actions was filed in Nevada by alleged shareholders of the Company. The actions purport to assert claims on behalf of the Company against certain current and former officers and/or members of the board of directors of the Company and DEAC. The two actions filed in the U.S. District Court for the District of Nevada have since been consolidated, and two of the actions filed in Nevada state District Court in Clark County likewise have been consolidated. A substantially identical fifth action was filed in Nevada state District Court in Clark County and has been dismissed voluntarily by the plaintiff. The same plaintiff filed a substantially identical action in Massachusetts Superior Court, which has also been dismissed voluntarily by the plaintiff. The Nevada actions purport to assert claims on behalf of the Company for, among other things, breach of fiduciary duty and corporate waste based primarily upon the allegations concerning SBTech that were contained in the Hindenburg Report. The federal court action in Nevada also contends that certain individuals are liable to the Company for any adverse judgment in the federal securities class actions described above under Sections 10(b) and 21D of the Exchange Act. The Nevada actions seek unspecified compensatory damages, changes to corporate governance and internal procedures, equitable and injunctive relief, restitution, costs and attorney's fees. All proceedings in both pending Nevada actions have been stayed by agreement of the parties pending resolution of the above-referenced motion to dismiss in *In re DraftKings Securities Litigation*.

The Company cannot predict with any degree of certainty the outcome of these matters or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Because the Nevada actions allege claims on behalf of the Company and purport to seek judgments in favor of the Company, the Company does not believe, based on currently available information, that the outcome of these proceedings will have a material adverse effect on DraftKings' financial condition, although the outcome could be material to DraftKings' operating results for any particular period, depending, in part, upon the operating results for such period.

AG 18, LLC d/b/a/ Arrow Gaming

On August 19, 2021, AG 18, LLC d/b/a/ Arrow Gaming ("Arrow Gaming") filed a complaint against DraftKings in the United States District Court for the District of New Jersey alleging that DraftKings' DFS and Casino products infringe four patents. On October 12, 2021, Arrow Gaming filed an amended complaint to add one additional patent. The following U.S. Patents are asserted against one or both of DraftKings' DFS and Casino products in the amended complaint: (1) U.S. Patent No. 9,613,498 ("the '498 Patent"), entitled "Systems and Methods For Peer-to-Peer Gaming"; (2) U.S. Patent No. 9,978,205 ("the '205 Patent"), entitled "Location Based Restrictions on Networked Gaming"; (3) U.S. Patent No. 10,497,220 ("the '220 Patent") entitled "Location Based Restrictions on Networked Gaming"; (4) U.S. Patent No. 10,614,657 ("the '657 Patent") entitled "Location Based Restrictions on Networked Gaming"; and (5) U.S. Patent No. 11,024,131 ("the '131 Patent") entitled "Location Based Restrictions on Networked Gaming" (collectively, the "Arrow Gaming Patents").

On November 9, 2021, we filed a motion to dismiss plaintiff's complaint. On November 10, 2021, we answered the complaint and filed counterclaims (the "Counterclaims"). In the Counterclaims we seek, among other things, a declaratory judgment that the Arrow Gaming Patents are invalid. On December 1, 2021, Arrow Gaming answered our Counterclaims. On

December 20, 2021, Arrow Gaming filed a second amended complaint adding new allegations with respect to the alleged willful infringement.

On January 21, 2022, DraftKings filed a motion to dismiss plaintiff's second amended complaint. On February 22, 2022, plaintiff filed its opposition to DraftKings' motion to dismiss plaintiff's second amended complaint, and on March 25, 2022, DraftKings filed its reply thereto. On March 7, 2022, DraftKings filed a motion to disqualify plaintiff's counsel. On March 21, 2022, plaintiff filed its opposition to DraftKings' motion to disqualify plaintiff's counsel, and on March 28, 2022, DraftKings filed its reply thereto. On September 21, 2022, DraftKings' motion to dismiss was administratively terminated, pending the outcome of the disqualification motion. On October 4, 2022, the presiding Magistrate Judge denied DraftKings' motion to disqualify plaintiff's counsel. On October 21, 2022, DraftKings filed a renewed motion to dismiss plaintiff's complaint.

Between August 22, 2022 and August 30, 2022, DraftKings filed petitions for inter partes review with the Patent Trial and Appeal Board challenging the validity of each of the Arrow Gaming Patents.

We intend to vigorously defend this case. In the event that a court ultimately determines that we are infringing the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to modify certain features that we currently offer.

We cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. We also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in this matter could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Beteiro, LLC

On November 22, 2021, Beteiro, LLC ("Beteiro") filed a complaint against the Company in the United States District Court for the District of New Jersey alleging that the Company's Sportsbook and Casino products infringe four patents. The following U.S. Patents are asserted against Company's Sportsbook and Casino products in the complaint: U.S. Patent No. 9,965,920, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity" ("the '920 Patent"); U.S. Patent No. 10,043,341, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity" ("the '341 Patent"); U.S. Patent No. 10,147,266, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity" ("the '266 Patent"); and U.S. Patent No. 10,255,755, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity" ("the '755 Patent") (collectively, the "Beteiro Patents").

DraftKings' filed its motion to dismiss plaintiff's complaint on February 9, 2022. On April 7, 2022, Plaintiff filed its opposition to DraftKings' motion to dismiss, and on April 25, 2022, DraftKings filed its reply thereto. On September 7, 2022, DraftKings' motion to dismiss the complaint was granted. On September 22, 2022, Beteiro filed its notice to appeal the ruling on the motion to dismiss. On October 5, 2022, Beteiro filed a motion for reconsideration of the ruling on the motion to dismiss at the District Court, which was denied by the District Court on November 2, 2022. On October 28, 2022, DraftKings filed petitions for inter partes review with the Patent Trial and Appeal Board challenging the validity of each of the Beteiro Patents.

We intend to vigorously defend this case. In the event that a court ultimately determines that we are infringing the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to modify certain features that we currently offer.

We cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. We also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in this matter could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company's operations and cash flows.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

On December 1, 2021, Diogenes Ltd. & Colossus (IOM) Ltd. (“Colossus”), filed a complaint against DraftKings in the United States District Court for the District of Delaware alleging that the Company’s Sportsbook product infringes seven of its patents. The following U.S. Patents, each entitled “Wagering apparatus, methods and systems”, are asserted against the Company’s Sportsbook product in the complaint: U.S. Patent No. 8,721,439 (“the ’439 patent”); U.S. Patent No. 9,117,341 (“the ’341 patent”); U.S. Patent No. 9,275,516 (“the ’516 patent”); U.S. Patent No. 9,424,716 (“the ’716 patent”); U.S. Patent No. 9,704,338 (“the ’338 patent”); U.S. Patent No. 10,970,969 (“the ’969 patent”); and U.S. Patent No. 10,997,822 (“the ’822 patent”).

On January 24, 2022, DraftKings filed its motion to dismiss the original complaint. On February 7, 2022, Colossus filed an amended complaint (the “Amended Complaint”) to, among other things, assert one additional patent against DraftKings, U.S. Patent No. 11,200,779 (“the ’779 patent”).

DraftKings filed its motion to dismiss the Amended Complaint on February 22, 2022. On March 15, 2022, Plaintiffs filed their opposition to DraftKings’ motion to dismiss, and on March 29, 2022, DraftKings’ filed its reply thereto. On March 25, 2022, a scheduling order was entered in which, among other things, trial was scheduled for January 13, 2025. On July 18, 2022, Magistrate Judge Burke issued a report and recommendation (the “Report and Recommendation”) that the motion to dismiss be granted-in-part and denied-in-part. The Company and Colossus each filed their objections to the Report and Recommendation on August 1, 2022. On August 26, 2022, District Court Judge Noreika overruled both parties’ respective objections and adopted the Report and Recommendation of Magistrate Judge Burke regarding the motion to dismiss.

We intend to vigorously defend this case. In the event that a court ultimately determines that we are infringing the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to modify certain features that we currently offer.

We cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. We also cannot provide an estimate of the possible loss or range of loss. Any adverse outcome in this matter could expose the Company to substantial damages or penalties that may have a material adverse impact on the Company’s operations and cash flows.

Despite the potential for significant damages, we do not believe, based on currently available information, that the outcome of this proceeding will have a material adverse effect on our financial condition, although the outcome could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Other

In addition to the above actions, we are subject to various other legal proceedings and claims that arise in the ordinary course of business. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial condition, results of operations or liquidity, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Item 1A. Risk Factors.

Factors that could cause our actual results to differ materially from those in this Report are any of the risks described in our 2021 Annual Report. Any of these factors could result in a significant or material adverse effect on our results of operations or financial condition. Additional risk factors not presently known to us or that we currently deem immaterial may also impair our business or results of operations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

On and after November 2, 2022, certain DraftKings' executives agreed to delay vesting of the third tranche of their restricted stock units granted under a long-term incentive plan and to add a service condition through an extended vesting date. This modification impacts the issuance of approximately 4 million shares of DraftKings Inc.'s Class A common stock, which are now expected to vest approximately one year after the performance condition is met.

Item 6. Exhibits.

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
<u>31.1*</u>	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.
<u>31.2*</u>	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.
<u>32.1**</u>	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<u>32.2**</u>	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Labels Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104.1	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit).

* Filed herewith.

** Furnished herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 4, 2022

DRAFTKINGS INC.

By: /s/ Jason K. Park
Name: Jason K. Park
Title: Chief Financial Officer
(Principal Financial Officer)

By: /s/ Erik Bradbury
Name: Erik Bradbury
Title: Chief Accounting Officer
(Principal Accounting Officer)

**Certification of Principal Executive Officer Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a)
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Jason D. Robins, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of DraftKings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2022

/s/ Jason D. Robins

Jason D. Robins

Chief Executive Officer and Chairman of the Board

(Principal Executive Officer)

**Certification of Principal Financial Officer Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a)
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Jason K. Park, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of DraftKings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2022

/s/ Jason K. Park

Jason K. Park
Chief Financial Officer
(Principal Financial Officer)

Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Jason D. Robins, Chief Executive Officer and Chairman of the Board of DraftKings Inc. (the "Company"), hereby certify, that, to my knowledge:

1. The Quarterly Report on Form 10-Q for the period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 4, 2022

/s/ Jason D. Robins

Jason D. Robins

Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Jason K. Park, Chief Financial Officer of DraftKings Inc. (the "Company"), hereby certify, that, to my knowledge:

1. The Quarterly Report on Form 10-Q for the period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 4, 2022

/s/ Jason K. Park

Jason K. Park

Chief Financial Officer

(Principal Financial Officer)