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, 2023

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	**87-2764212**
(State or other jurisdiction of incorporation or organization)	(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	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

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 1, 2023, there were 466,241,933 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, 2023

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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, 2023 (Unaudited)	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	$ 1,111,596	$ 1,309,172
Cash reserved for users	475,984	469,653
Receivables reserved for users	209,485	160,083
Accounts receivable	27,778	51,097
Prepaid expenses and other current assets	143,079	94,836
Total current assets	**1,967,922**	**2,084,841**
Property and equipment, net	64,927	60,102
Intangible assets, net	718,958	776,934
Goodwill	886,373	886,373
Operating lease right-of-use assets	77,180	65,957
Equity method investments	9,630	10,080
Deposits and other non-current assets	136,526	155,865
Total assets	**$ 3,861,516**	**$ 4,040,152**
Liabilities and Stockholders' equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 594,067	$ 517,587
Liabilities to users	856,334	686,173
Operating lease liabilities, current portion	12,132	4,253
Other current liabilities	65,930	38,444
Total current liabilities	**1,528,463**	**1,246,457**
Convertible notes, net of issuance costs	1,253,089	1,251,103
Non-current operating lease liabilities	76,926	69,332
Warrant liabilities	53,695	10,680
Long-term income tax liability	68,253	69,858
Other long-term liabilities	79,668	70,029
Total liabilities	**$ 3,060,094**	**$ 2,717,459**
Commitments and contingent liabilities (Note 12)		
Stockholders' equity:		
Class A common stock, $0.0001 par value; 900,000 shares authorized as of September 30, 2023 and December 31, 2022; 477,198 and 459,265 shares issued and 465,906 and 450,575 outstanding as of September 30, 2023 and December 31, 2022, respectively	$ 46	$ 45
Class B common stock, $0.0001 par value; 900,000 shares authorized as of September 30, 2023 and December 31, 2022; 393,014 shares issued and outstanding as of September 30, 2023 and December 31, 2022	39	39
Treasury stock, at cost; 11,292 and 8,690 shares as of September 30, 2023 and December 31, 2022, respectively	(391,484)	(332,133)
Additional paid-in capital	7,045,655	6,750,055
Accumulated deficit	(5,889,322)	(5,131,801)
Accumulated other comprehensive income	36,488	36,488
Total stockholders' equity	**$ 801,422**	**$ 1,322,693**
Total liabilities and stockholders' equity	**$ 3,861,516**	**$ 4,040,152**

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,	
	2023	**2022**	**2023**	**2022**
Revenue	**$ 789,957**	**$ 501,938**	**$ 2,434,536**	**$ 1,385,328**
Cost of revenue	543,454	372,692	1,575,517	998,838
Sales and marketing	313,323	321,714	909,943	840,695
Product and technology	89,005	76,299	266,999	234,853
General and administrative	130,761	186,261	427,493	590,476
Loss from operations	**(286,586)**	**(455,028)**	**(745,416)**	**(1,279,534)**
Other income (expense):				
Interest income	14,420	6,969	39,626	10,360
Interest expense	(670)	(668)	(1,991)	(1,982)
(Loss) gain on remeasurement of warrant liabilities	(7,751)	(6,797)	(44,827)	20,199
Other income (expense), net	(1,217)	8,257	(1,153)	40,566
Loss before income tax provision and loss from equity method investment	**(281,804)**	**(447,267)**	**(753,761)**	**(1,210,391)**
Income tax provision (benefit)	1,291	3,177	3,310	(77,580)
Loss from equity method investment	8	50	450	2,479
Net loss attributable to common stockholders	**$ (283,103)**	**$ (450,494)**	**$ (757,521)**	**$ (1,135,290)**
Loss per share attributable to common stockholders:				
Basic and diluted	$ (0.61)	$ (1.00)	$ (1.64)	$ (2.63)

See accompanying notes to unaudited condensed consolidated financial statements.

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, 2022	**450,575**	**$ 45**	**393,014**	**$ 39**	**$ 6,750,055**	**$ (5,131,801)**	**$ 36,488**	**$ (332,133)**	**$ 1,322,693**
Exercise of stock options	701	—	—	—	2,192	—	—	—	2,192
Stock-based compensation expense	—	—	—	—	117,400	—	—	—	117,400
Purchase of treasury stock	(1,399)	—	—	—	—	—	—	(27,358)	(27,358)
Restricted stock unit vesting	11,757	1	—	—	—	—	—	—	1
Net loss	—	—	—	—	—	(397,148)	—	—	(397,148)
Balances at March 31, 2023	**461,634**	**$ 46**	**393,014**	**$ 39**	**$ 6,869,647**	**$ (5,528,949)**	**$ 36,488**	**$ (359,491)**	**$ 1,017,780**
Exercise of stock options	284	—	—	—	1,144	—	—	—	1,144
Stock-based compensation expense	—	—	—	—	89,193	—	—	—	89,193
Shares issued for exercise of warrants	62	—	—	—	1,470	—	—	—	1,470
Purchase of treasury stock	(587)	—	—	—	—	—	—	(13,826)	(13,826)
Restricted stock unit vesting	1,864	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(77,270)	—	—	(77,270)
Balances at June 30, 2023	**463,257**	**$ 46**	**393,014**	**$ 39**	**$ 6,961,454**	**$ (5,606,219)**	**$ 36,488**	**$ (373,317)**	**$ 1,018,491**
Exercise of stock options	1,359	—	—	—	5,506	—	—	—	5,506
Stock-based compensation expense	—	—	—	—	78,353	—	—	—	78,353
Shares issued for exercise of warrants	11	—	—	—	342	—	—	—	342
Purchase of treasury stock	(617)	—	—	—	—	—	—	(18,167)	(18,167)
Restricted stock unit vesting	1,896	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(283,103)	—	—	(283,103)
Balances at September 30, 2023	**465,906**	**$ 46**	**393,014**	**$ 39**	**$ 7,045,655**	**$ (5,889,322)**	**$ 36,488**	**$ (391,484)**	**$ 801,422**

	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 acquisition	29,252	3	—	—	460,125	—	—	—	460,128
Shares issued for exercise of warrants	—	—	—	—	—	—	—	—	—
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
Shares issued for exercise of warrants	—	—	—	—	—	—	—	—	—
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**

See accompanying notes to unaudited condensed consolidated financial statements.

DRAFTKINGS INC.

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

	Nine months ended September 30,	
	2023	**2022**
Operating Activities:		
Net loss	$ (757,521)	$ (1,135,290)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Depreciation and amortization	146,722	120,629
Non-cash interest (income) expense, net	(554)	985
Stock-based compensation expense	284,946	448,636
Loss from equity method investment	450	2,479
Loss (gain) on remeasurement of warrant liabilities	44,827	(20,199)
Loss (gain) on marketable equity securities and other financial assets	75	(32,483)
Deferred income taxes	4,527	(78,051)
Other expenses, net	(1,944)	(5,109)
Change in operating assets and liabilities, net of business combinations:		
Receivables reserved for users	(49,402)	(34,691)
Accounts receivable	24,174	13,834
Prepaid expenses and other current assets	(20,757)	(20,669)
Deposits and other non-current assets	(3,983)	(1,989)
Operating leases, net	1,907	698
Accounts payable and accrued expenses	79,047	129,233
Liabilities to users	170,161	136,650
Long-term income tax liability	(1,605)	(11,200)
Other long-term liabilities	5,112	9,476
Net cash flows used in operating activities	**$ (73,818)**	**$ (477,061)**
Investing Activities:		
Purchases of property and equipment	(19,885)	(19,903)
Cash paid for internally developed software costs	(60,006)	(46,513)
Acquisition of gaming licenses	(10,971)	(3,919)
Proceeds from marketable equity securities and other financial assets	24,425	—
Cash paid for acquisition, net of cash acquired	—	(96,507)
Other investing activities, net	(481)	(5,090)
Net cash flows used in investing activities	**$ (66,918)**	**$ (171,932)**
Financing Activities:		
Proceeds from shares issued for warrants	—	44
Purchase of treasury stock	(59,351)	(22,012)
Proceeds from exercise of stock options	8,842	5,125
Net cash flows used in financing activities	**$ (50,509)**	**$ (16,843)**
Net decrease in cash and cash equivalents and restricted cash	(191,245)	(665,836)
Cash and cash equivalents and restricted cash at the beginning of period	1,778,825	2,629,842
Cash and cash equivalents and restricted cash, end of period	**$ 1,587,580**	**$ 1,964,006**
Disclosure of cash, cash equivalents and restricted cash:		
Cash and cash equivalents	$ 1,111,596	$ 1,382,651
Cash reserved for users	475,984	581,355
Total cash, cash equivalents and restricted cash, end of period	**$ 1,587,580**	**$ 1,964,006**
Supplemental Disclosure of Noncash Investing and Financing Activities:		
Equity consideration issued for acquisitions	$ —	$ 460,128
Investing activities included in changes in accounts payable and accrued expenses	$ (408)	$ 12,835
Decrease of warrant liabilities from cashless exercise of warrants	$ 1,812	$ —
Supplemental Disclosure of Cash Activities:		
Increase in cash reserved for users	$ 6,331	$ 104,405
Cash paid for interest	$ —	$ —

See accompanying notes to unaudited condensed consolidated financial statements.

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

1. Description of Business

We are a digital sports entertainment and gaming company that provides users with online sports betting ("Sportsbook"), online casino ("iGaming") and daily fantasy sports ("DFS") product offerings, as well as retail sportsbook, media and other consumer product offerings. We are also involved in the design and development of sports betting and casino gaming software for online and retail sportsbooks and iGaming operators.

In May 2018, the Supreme Court (the "Court") struck down on constitutional grounds the Professional and Amateur Sports Protection Act of 1992, a law that prohibited most states from authorizing and regulating sports betting. As of September 30, 2023, 36 U.S. states, the District of Columbia and Puerto Rico have legalized some form of sports betting. Of those 38 legal jurisdictions, 31 have legalized online sports betting. Of those 31 jurisdictions, 27 are live, and DraftKings operates in 22 of them. The U.S. jurisdictions with statutes legalizing iGaming are Connecticut, Delaware, Michigan, New Jersey, Pennsylvania, Rhode Island and West Virginia.

As of September 30, 2023, we operate our Sportsbook product offering in Arizona, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, West Virginia, Wyoming and Ontario, Canada, and we operate retail sportsbooks in Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, New Hampshire, New Jersey and Washington. As of September 30, 2023, we operate our iGaming product offering in Connecticut, Michigan, New Jersey, Pennsylvania, West Virginia and 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.

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 "GNOG Merger Agreement"), in an all-stock transaction (the "GNOG Transaction"). In connection with the GNOG Transaction, DraftKings Inc. undertook a holding company reorganization whereby (i) each share of DraftKings Holdings Inc. (formerly DraftKings Inc.), a Nevada corporation ("Old DraftKings"), Class A common stock and Class B common stock was converted on a one-for-one basis into a share of DraftKings Inc. Class A common stock and Class B common stock, respectively, and (ii) DraftKings Inc. became the going-forward public company and the direct parent company of both 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, with respect to periods prior to the GNOG Closing Date, Old DraftKings), together with its consolidated subsidiaries.

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 of America ("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, these unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited financial statements and related notes as of and for the fiscal year ended December 31, 2022, which are included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, as filed with the SEC on February 17, 2023 (the "2022 Annual Report"). These 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 the timing of various sports seasons, sporting events and other factors.

The Company consummated the GNOG Transaction on the GNOG Closing Date. In the GNOG Transaction, the Company was determined to be the accounting acquirer and, as such, the acquisition is considered a business combination under Accounting Standards Codification ("ASC") Topic 805, *Business Combinations*, and was accounted for using the acquisition method of accounting. These 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, these unaudited condensed consolidated financial statements exclude the operations of GNOG prior to the GNOG Closing Date.

All intercompany accounts and transactions are eliminated upon consolidation. Certain amounts, which are not material, in the prior year's consolidated financial statements have been reclassified to conform to the current year's presentation.

Segments

The Company regularly reviews its operating segments and the approach used by the chief operating decision maker ("CODM") to evaluate performance and allocate resources. As a result of the Company's acquisition of DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation, and SBTech (Global) Limited ("SBTech") and the consummation of the transactions contemplated by the business combination agreement, dated December 22, 2019 (as amended), in April 2020, the Company began to identify two distinct operating segments: a business-to-consumer ("B2C") segment, which included its Sportsbook, iGaming and DFS product offerings, as well as media and other consumer product offerings, and a business-to-business ("B2B") segment, which had principal activities involving the design and development of gaming software.

However, beginning in the fourth quarter of 2022, as a result of the Company's integration of the technology and expertise of SBTech, the Company began to view the B2B segment primarily as a cost center of the B2C segment and, therefore, began to operate its business and report its results as a single operating segment. The Company's determination that it operates as a single segment is consistent with the CODM's regular review of consolidated financial information for the purposes of evaluating performance, allocating resources and planning and forecasting for future periods. Prior periods have been reclassified to conform with the new segment presentation.

Recently Issued Accounting Pronouncements Not Yet Adopted

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 ASC 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 GNOG 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 following the GNOG Closing Date are included in the Company's consolidated statements of operations for the three and nine months ended September 30, 2023 and 2022.

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 GNOG 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) $170.9 million of 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.

The following table summarizes the consideration issued or paid in connection with the GNOG Transaction and the fair value of the assets acquired and liabilities assumed in connection with the consummation of the GNOG Transaction on the GNOG Closing Date:

Cash and cash equivalents	$	66,709
Cash reserved for users		7,633
Receivables reserved for users		2,814
Accounts receivables		7,783
Prepaid expenses and other current assets		64
Property and equipment, net		1,433
Intangible assets, net		315,000
Operating lease right-of-use assets		1,185
Deposits and other non-current assets		47,395
Total identifiable assets acquired		**450,016**
Liabilities assumed:		
Accounts payable and accrued expenses		32,989
Liabilities to users		4,314
Operating lease liabilities		1,185
Other long-term liabilities		78,781
Total liabilities assumed		**117,269**
Net assets acquired (a)	**$**	**332,747**
Purchase consideration (b)	**$**	**603,465**
Goodwill (b) – (a)	**$**	**270,718**

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 was assigned as of the GNOG Closing Date to the Company's B2C reporting unit. Goodwill recognized is partially deductible for tax purposes, and the amount of deductible goodwill was determined to be $160.7 million.

Intangible Assets

	Fair Value	Weighted-Average Useful Life
Gaming licenses	$ 145,000	12.2 years
Customer relationships	170,000	5.9 years
Total	**$ 315,000**	

Loan Receivable

The Company acquired a long-term receivable in the amount of $30.1 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 that, pending regulatory approvals, 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 consolidated balance sheet.

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 January 1, 2021. 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,	
	2023 Actual	2022 Pro Forma	2023 Actual	2022 Pro Forma
Revenue	$ 789,957	$ 501,938	$ 2,434,536	$ 1,429,463
Net loss	$ (283,103)	$ (450,494)	$ (757,521)	$ (1,137,037)

The foregoing pro forma financial information is based on estimates and assumptions, which the Company believes are reasonable. The pro forma financial information includes adjustments primarily related to purchase accounting adjustments. Acquisition costs and other non-recurring charges incurred are included in the period of assumed acquisition.

4. Intangible Assets

Intangible Assets

The Company has the following intangible assets, net as of September 30, 2023:

	Weighted-Average Remaining Amortization Period		Gross Carrying Amount		Accumulated Amortization		Net
Amortized intangible assets:							
Developed technology	4.6 years	$	422,900	$	(179,985)	$	242,915
Internally developed software	2.3 years		227,882		(104,217)		123,665
Gaming licenses	10.6 years		217,626		(42,752)		174,874
Customer relationships	4.2 years		269,728		(114,718)		155,010
Trademarks, tradenames and other	3.5 years		37,674		(19,080)		18,594
Indefinite-lived intangible assets:							
Digital assets, net of impairment	Indefinite-lived		3,900		—		3,900
Total		**$**	**1,179,710**	**$**	**(460,752)**	**$**	**718,958**

The Company had the following intangible assets, net as of December 31, 2022:

	Weighted-Average Remaining Amortization Period		Gross Carrying Amount		Accumulated Amortization		Net
Amortized intangible assets:							
Developed technology	5.4 years	$	422,900	$	(140,200)	$	282,700
Internally developed software	2.4 years		168,277		(70,575)		97,702
Gaming licenses	11.0 years		206,655		(29,487)		177,168
Customer relationships	4.6 years		269,728		(75,791)		193,937
Trademarks, tradenames and other	3.8 years		36,193		(13,463)		22,730
Indefinite-lived intangible assets:							
Digital assets, net of impairment	Indefinite-lived		2,697		—		2,697
Intangible assets, net		**$**	**1,106,450**	**$**	**(329,516)**	**$**	**776,934**

Amortization expense was $45.1 million and $131.2 million for the three and nine months ended September 30, 2023, respectively, and $40.6 million and $106.8 million for the three and nine months ended September 30, 2022, respectively.

5. Current and Long-term Liabilities

Revolving Line of Credit

On December 20, 2022, the Company entered into a loan and security agreement with Pacific Western Bank and Citizens Bank, as lenders (as amended, the “Credit Agreement”), which provides the Company with a revolving line of credit of up to $125.0 million (the “Revolving Line of Credit”). The Credit Agreement has a maturity date of December 20, 2024 and replaced the Company’s amended and restated loan and security agreement entered into with Pacific Western Bank in October 2016, which provided a revolving line of credit of up to $60.0 million and was terminated in connection with the Company’s entry into the Credit Agreement.

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) 5.00%, and the Credit Agreement requires monthly, interest-only payments on any outstanding borrowings. In addition, the Company is required to pay quarterly in arrears a commitment fee equal to 0.25% per annum of the unused portion of the Revolving Line of Credit. As of September 30, 2023, the Credit Agreement provided a revolving line of credit of up to $125.0 million, and there was no principal outstanding under the Credit Agreement. Net borrowing capacity available from the Credit Agreement as of September 30, 2023 totaled $122.7 million. The Company is also subject to certain affirmative and negative covenants under the Credit Agreement, which the Company was in compliance with as of September 30, 2023.

Surety Bonds

As of September 30, 2023, the Company has been issued $175.0 million in surety bonds at a combined annual premium cost of 0.4%, which are held for certain regulators' use and benefit in order for the Company to satisfy state license requirements. There have been no claims against such bonds and the likelihood of future claims is remote.

Convertible Notes and Capped Call Transactions

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, which are being amortized through the Notes Maturity Date. The Convertible Notes represent senior unsecured obligations of Old DraftKings. 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 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.

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 (the “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 the Company's Class A common stock upon any conversion of Convertible Notes. As the Capped Call Transactions qualify 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.

As of September 30, 2023, the Company's convertible debt balance was $1,253.1 million, net of unamortized debt issuance costs of $11.9 million. Amortization of debt issuance costs was $0.7 million and $2.0 million for the three and nine months ended September 30, 2023, respectively, and $0.7 million and $2.0 million for the three and nine months ended September 30, 2022, which are included in the interest expense line-item on the Company's consolidated statements of operations. Although recorded at amortized cost on the Company's consolidated balance sheets, the estimated fair value of the Convertible Notes was $963.8 million and $786.5 million as of September 30, 2023 and December 31, 2022, respectively, which was calculated using 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, which is a Level 1 fair value measurement.

Indirect Taxes

Taxation of e-commerce is becoming more prevalent and could negatively affect the Company's business as it pertains to DFS and its contestants. 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, 2023 and December 31, 2022, the Company's estimated contingent liability for indirect taxes was $68.3 million and $60.3 million, respectively. The estimated contingent liability for indirect taxes is recorded within other long-term liabilities on the condensed consolidated balance sheets and general and administrative expenses on the 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"), 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. As of September 30, 2023, there were no Public Warrants outstanding and 1.5 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, 2023, there were 5.9 million GNOG Private Warrants outstanding.

The Company classifies the Public Warrants, the Private Warrants and the GNOG Private Warrants pursuant to ASC Topic 815, Derivatives and Hedging, as derivative liabilities with subsequent changes in their respective fair values recognized in its consolidated statement of operations at each reporting date. As of September 30, 2023, the fair value of the Company's warrant liability was $53.7 million. Due to fair value changes during the three and nine months ended September 30, 2023, the Company recorded losses on the remeasurement of its warrant liabilities of $7.8 million and $44.8 million, respectively. The Company recorded a loss on the remeasurement of its warrant liability of $6.8 million for the three months ended September 30, 2022 and a gain on the remeasurement of its warrant liability of $20.2 million for the nine months ended September 30, 2022, respectively. During the three and nine months ended September 30, 2023, 0.1 million Private Warrants were exercised and no GNOG Private Warrants were exercised.

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, 2023 and December 31, 2022 based on the three-tier fair value hierarchy:

	September 30, 2023			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market funds	$ 212,218 [1]	$ —	$ —	$ 212,218
Other current assets:				
Digital assets held for users	—	65,930 [6]	—	65,930
Other non-current assets:				
Derivative instruments	—	—	19,999 [4]	19,999
Equity securities	—	13,533 [3]	—	13,533
Total	**$ 212,218**	**$ 79,463**	**$ 19,999**	**$ 311,680**
Liabilities				
Digital assets held for users	$ —	$ 65,930 [6]	$ —	$ 65,930
Warrant liabilities	—	53,695 [5]	—	53,695
Total	**$ —**	**$ 119,625**	**$ —**	**$ 119,625**

	December 31, 2022			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market funds	$ 304,216 (1)	$ —	$ —	$ 304,216
Other current assets:				
Digital assets held for users	—	38,444 (6)	—	38,444
Other non-current assets:				
Derivative instruments	—	—	26,248 (4)	26,248
Equity securities	18,250 (2)	13,533 (3)	—	31,783
Total	**$ 322,466**	**$ 51,977**	**$ 26,248**	**$ 400,691**
Liabilities				
Digital assets held for users	—	$ 38,444 (6)	—	$ 38,444
Warrant liabilities	$ —	$ 10,680 (5)	$ —	10,680
Total	**$ —**	**$ 49,124**	**$ —**	**$ 49,124**

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

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

(3) Represents the Company’s non-marketable equity securities, which are classified as Level 2 because the Company measures the fair value of these assets using observable inputs for similar investments of the same issuer. The Company has elected the remeasurement alternative for these assets.

(4) Represents the Company’s derivative instruments held in other public and privately held entities. The Company measures the fair value of these derivative instruments using option pricing models and, accordingly, classifies these assets as Level 3. During the nine months ended September 30, 2023, we sold Level 3 derivative instruments with a fair value at December 31, 2022 of $6.2 million for proceeds of $5.3 million and there were no new Level 3 derivative instruments purchased by or issued to the Company. The table below includes a range and an average weighted by relative fair value of the significant unobservable inputs used to measure the fair value of the Level 3 derivative instruments. A change in these significant unobservable inputs might result in a significantly higher or lower fair value measurement at the reporting date.

	September 30, 2023	December 31, 2022
Significant Unobservable Input	**Range (Weighted Average)**	**Range (Weighted Average)**
Underlying stock price	$12.79 - $19.80 ($19.41)	$7.30 - $19.80 ($16.53)
Volatility	75.0% - 80.0% (79.7%)	56.0% - 80.0% (74.1%)
Risk-free rate	1.3% - 4.2% (4.0%)	1.3% - 4.3% (4.1%)

(5) The Company measures the fair value of its warrant liabilities 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.

(6) 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 the fair value of these digital assets using observable inputs for similar transactions.

For the three and nine months ended September 30, 2023, the Company recorded zero unrealized gains or losses and $0.1 million of unrealized gains on its financial assets carried at fair value, respectively. For the three and nine months ended September 30, 2022, the Company recorded $0.7 million and $32.5 million of unrealized gains, respectively, which primarily resulted from those financial assets categorized as Level 3. Those unrealized gains and losses are included within other income, net in the condensed consolidated statements of operations.

7. Revenue Recognition

Deferred Revenue

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

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Deferred revenue, beginning of the period	$ 105,478	$ 84,674	$ 133,851	$ 91,554
Deferred revenue, end of the period	$ 239,225	$ 165,185	$ 239,225	$ 165,185
Revenue recognized in the period from amounts included in deferred revenue at the beginning of the period	$ 85,122	$ 34,621	$ 133,054	$ 70,042

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. These obligations are primarily related to incentive programs and wagered amounts associated with unsettled or pending outcomes that fluctuate based on volume of activity. 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, 2023 and 2022 is as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Online gaming	$ 768,265	$ 468,455	$ 2,353,293	$ 1,289,257
Gaming software	6,304	9,093	23,495	34,057
Other	15,388	24,390	57,748	62,014
Total Revenue	**$ 789,957**	**$ 501,938**	**$ 2,434,536**	**$ 1,385,328**

Online gaming includes Sportsbook, iGaming and DFS, which have certain similar attributes and patterns of recognition. Sources of other revenue primarily include media and other consumer product offerings. The opening and closing balances of the Company's accounts receivable from contracts with customers were $51.1 million and $27.8 million for the nine months ended September 30, 2023, respectively, and $45.9 million and $41.0 million for the nine months ended September 30, 2022, respectively.

8. Stock-Based Compensation

The Company has historically 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 that tie vesting to length of service with the Company and generally vest over a four-year period in annual and/or quarterly installments. 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 performance-based equity awards which establish performance objectives related to one or two particular fiscal years. LTIP awards generally vest when revenue and/or Adjusted EBITDA targets are achieved amongst other conditions, while PSP awards generally vest upon achievement of revenue and/or Adjusted EBITDA targets and have a range of payouts amongst other conditions. All stock-based compensation awards expire seven to ten years after the grant date thereof.

The following table shows restricted stock unit ("RSU") and stock option activity for the nine months ended September 30, 2023:

	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, 2022	**12,259**	**15,273**	**2,273**	**13,119**	**11,152**	**13,864**	**67,940**	**$ 6.17**	**$ 29.64**
Granted	600	11,128	—	2,240	—	209	14,177	25.81	18.77
Exercised options / vested RSUs	(1,152)	(5,460)	(546)	(1,715)	(646)	(8,342)	(17,861)	3.85	42.07
Change in awards due to performance-based multiplier	—	—	—	1,141	—	—	1,141	—	60.25
Forfeited	(285)	(1,508)	—	(893)	—	(387)	(3,073)	6.88	21.98
Outstanding at September 30, 2023	**11,422**	**19,433**	**1,727**	**13,892**	**10,506**	**5,344**	**62,324**	**$ 6.68**	**$ 22.35**

As of September 30, 2023, total unrecognized stock-based compensation expense of $602.4 million related to granted and unvested stock-based compensation arrangements is expected to be recognized over a weighted-average period of 2.7 years. The following tables shows stock compensation expense for the three and nine months ended September 30, 2023 and 2022:

	Three months ended September 30, 2023			Three months ended September 30, 2022		
	Options	RSUs	Total	Options	RSUs	Total
Time-based (1)	$ 1,849	$ 39,936	$ 41,785	$ 3,577	$ 25,924	$ 29,501
PSP (2)	—	21,876	21,876	—	11,368	11,368
LTIP (2)	—	14,692	14,692	—	85,169	85,169
Total	**$ 1,849**	**$ 76,504**	**$ 78,353**	**$ 3,577**	**$ 122,461**	**$ 126,038**

	Nine months ended September 30, 2023			Nine months ended September 30, 2022		
	Options	RSUs	Total	Options	RSUs	Total
Time-based (1)	$ 8,239	$ 123,495	$ 131,734	$ 11,271	$ 74,693	$ 85,964
PSP (2)	—	81,763	81,763	—	68,499	68,499
LTIP (2)	—	71,449	71,449	—	294,173	294,173
Total	**$ 8,239**	**$ 276,707**	**$ 284,946**	**$ 11,271**	**$ 437,365**	**$ 448,636**

(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 of achieving higher revenue targets than originally estimated for certain PSP awards which have a range of payouts.

9. Income Taxes

The Company's provision (benefit) for income taxes for the three and nine months ended September 30, 2023 and 2022 is as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Income tax provision (benefit)	$ 1,291	$ 3,177	$ 3,310	$ (77,580)

The effective tax rates for the three months ended September 30, 2023 and 2022 were (0.5)% and (0.7)%, respectively, and the effective tax rates for the nine months ended September 30, 2023 and 2022 were (0.4)% and 6.4%, respectively. The difference between the Company's effective tax rates for the three and nine month periods ended September 30, 2023 and 2022 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 which was attributable to non-recurring partial releases of the Company's U.S. valuation allowance as a result of the purchase accounting for GNOG. 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 such deferred tax assets will not be realized.

10. Loss Per Share

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

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Net loss attributable to common stockholders	$ (283,103)	$ (450,494)	$ (757,521)	$ (1,135,290)
Basic and diluted weighted-average common shares outstanding	464,773	448,331	460,762	432,278
Loss per share attributable to common stockholders:				
Basic and diluted	$ (0.61)	$ (1.00)	$ (1.64)	$ (2.63)

There were no preferred or other dividends declared for the three and nine months ended September 30, 2023. For the periods presented, the following securities were not required to be included in the computation of diluted shares outstanding:

	September 30, 2023	September 30, 2022
Class A common stock resulting from exercise of all warrants	$ 3,630	$ 3,761
Stock options and RSUs	62,324	52,717
Convertible notes	13,337	13,337
Total	**$ 79,291**	**$ 69,815**

11. Related-Party Transactions

Financial Advisor

On May 7, 2021, DraftKings entered into a master engagement letter (as amended, the "Master Engagement Letter"), with Raine Securities LLC (the "Financial Advisor"), an affiliate of Raine. John Salter, who served as a member of our Board of Directors until April 2022, is a partner of Raine. Pursuant to the Master Engagement Letter, Raine Securities will act as a financial advisor to DraftKings in connection with certain proposed transactions, and DraftKings will pay Raine Securities certain fees and expenses from time to time on the terms and conditions described in the related statements of work. For the three and nine months ended September 30, 2023, the Company incurred no fees payable to the Financial Advisor. During the three and nine months ended September 30, 2022, the Company incurred $8.5 million of fees payable to the Financial Advisor.

Receivables from Equity Method Investment

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, 2023 and December 31, 2022, the Company had no receivables and $0.2 million of receivables, respectively, from DKFS, LLC related to those services and expenses to be reimbursed to the Company, which are included within non-current assets in its condensed 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, 2023, the Company had invested a total of $6.7 million of the total commitment.

Transactions with a Former Director and their Immediate Family Members

For the three and nine months ended September 30, 2023, the Company had $0.2 million and $1.4 million in sales, respectively, to entities owned by an immediate family member of a former director of the Company. The Company had an associated accounts receivable balance of $0.1 million and $0.2 million as of September 30, 2023 and December 31, 2022, respectively, included in accounts receivable in its condensed consolidated balance sheets.

Aircraft

In 2022, from time to time, the Company chartered, without mark-up, a private plane owned by an entity controlled 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, 2023, the Company incurred no expense for use of the aircraft under these chartering services. During the three and nine months ended September 30, 2022, the Company incurred no expense and a $0.7 million expense for use of the aircraft under these chartering services, respectively.

On March 30, 2022, the Company entered into a one-year lease of an aircraft from an entity controlled by Mr. Robins, pursuant to which Mr. Robins’ entity leased the aircraft to the Company for $0.6 million for a one-year period (the “Original Aircraft Lease”). The Company covered all operating, maintenance and other expenses associated with the aircraft. The Original Aircraft Lease expired in accordance with its terms on March 30, 2023, and DraftKings entered into a new one-year lease of such aircraft from an entity controlled by Mr. Robins for $0.6 million and otherwise on terms and conditions substantially the same as the Original Aircraft Lease, effective upon the expiration thereof (collectively with the Original Aircraft Lease, the “Aircraft Leases”). The audit and compensation committees of the Company’s Board of Directors approved this arrangement, as well as the Aircraft Leases, based on, among other things, the requirements of the overall security program that Mr. Robins and his family fly private and the committees' 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, 2023, the Company incurred $0.1 million and $0.5 million of expense under the Aircraft Leases, respectively.

12. 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 assured. Our lease agreements generally do not contain any material residual value guarantees or material restrictive covenants. As of September 30, 2023, 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,	
	2023	2022	2023	2022
Operating lease cost	$ 5,779	$ 5,562	$ 14,298	$ 15,471
Short term lease cost	361	1,550	2,221	4,628
Variable lease cost	1,382	984	4,215	2,863
Sublease income	(236)	(255)	(704)	(715)
Total lease cost	**$ 7,286**	**$ 7,841**	**$ 20,030**	**$ 22,247**

Supplemental cash flow and other information for the nine months ended September 30, 2023 and 2022 related to operating leases was as follows:

	Nine months ended September 30, 2023	2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows used for operating leases	$ 9,830	$ 12,511
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 22,221	$ 23,056

The weighted-average remaining lease term for the Company's operating leases was 7.5 years, and the weighted-average discount rate for the Company's operating leases was 6.5%, in each case as of September 30, 2023. The Company calculated the weighted-average discount rate 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.

Maturities of lease liabilities are as follows:

	Years Ending December 31,
From October 1, 2023 to December 31, 2023	$ 3,711
2024	15,768
2025	14,616
2026	14,528
2027	11,455
Thereafter	50,372
Total undiscounted future cash flows	110,450
Less: Imputed interest	(21,392)
Present value of undiscounted future cash flows	**$ 89,058**

Other Contractual Obligations and Contingencies

The Company is 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, 2023 to December 31, 2023	$ 126,691
2024	439,149
2025	346,934
2026	195,764
2027	112,088
Thereafter	265,029
Total	**$ 1,485,655**

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.

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 offering infringes two patents and the Company’s Sportsbook product offering infringes two different patents. The Company 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 the Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon our 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 offering infringes two patents, our Daily Fantasy Sports product offering infringes one patent, and that our Sportsbook product offering and Daily Fantasy Sports product offering infringe another patent. On November 15, 2021, Winview Inc. filed a second amended complaint (the “SAC”), adding as defendants DK Crown Holdings Inc. 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.

The Company 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 the Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon the operating results for such period.

Securities Matters Arising From the Hindenburg Report and Related Matters

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 alleged 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 the Company's stock between December 23, 2019 and June 15, 2021. The allegations related 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”). 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 January 10, 2023, the court granted the Company's motion to dismiss and final judgment was entered dismissing the action with prejudice.

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 adherence to and 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 the SEC matter 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 the SEC 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, the Company does not believe, based on currently available information, that the outcome of the SEC matter will have a material adverse effect on the Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon the operating results for such period.

Shareholder Derivative Litigation Related to Allegations in the Hindenburg Report

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 purported 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 were subsequently consolidated, and two of the actions filed in Nevada state District Court in Clark County likewise were consolidated. A substantially identical fifth action was filed in Nevada state District Court in Clark County and was subsequently dismissed voluntarily by the plaintiff. The same plaintiff filed a substantially identical action in Massachusetts Superior Court, which was also dismissed voluntarily by the plaintiff. The Nevada actions purported 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 contended 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 sought unspecified compensatory damages, changes to corporate governance and internal procedures, equitable and injunctive relief, restitution, costs and attorney’s fees. The Nevada actions were voluntarily dismissed without prejudice by the plaintiffs in state court on February 27, 2023 and in federal court on March 3, 2023.

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 and two affiliates, 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 the Company 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 the Company's financial condition, although the outcome could be material to the Company's 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 the Company in the United States District Court for the District of New Jersey alleging that the Company's DFS and Casino product offerings 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.

The Company 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 the Company's financial condition, although the outcome could be material to the Company's 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 product offerings infringe four patents.

The Company 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 the Company's financial condition, although the outcome could be material to the Company's 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 offering infringes seven patents. Colossus amended its complaint on February 7, 2022 to, among other things, add one additional patent.

The Company 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 the Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon the operating results for such period.

Steiner

Nelson Steiner filed suit against the Company and FanDuel Inc. in Florida state court on November 9, 2015. The action was subsequently transferred to In Re: Daily Fantasy Sports Litigation (Multi-District Litigation) (the "MDL"), and Mr. Steiner's action was consolidated into the MDL's amended complaint, which, in February 2016, consolidated numerous actions (primarily purported class actions) filed against the Company, FanDuel, and other related parties in courts across the United States. By June 23, 2022, the MDL was resolved, except for Mr. Steiner's action, and the court officially closed the MDL docket on July 8, 2022.

Mr. Steiner brings this action as a concerned citizen of the state of Florida alleging that, among other things, defendants' daily fantasy sports contests are illegal gambling under the state laws of Florida and seeks disgorgement of "gambling losses" purportedly suffered by Florida citizens on behalf of the state. On June 23, 2022, the MDL court remanded Mr. Steiner's action to the Circuit Court for Pinellas County, Florida. Plaintiff has not yet filed an amended pleading.

The Company intends to vigorously defend this suit. Any adverse outcome in this matter could subject the Company 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 this matter.

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 matter will have a material adverse effect on Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon the operating results for such period.

Turley

On January 9, 2023, Simpson G. Turley, individually and on behalf of all others similarly situated, filed a purported class action against the Company in the United States District Court for the District of Massachusetts. Plaintiff alleges, among other things, that he was a contestant in the Company's daily fantasy showdown contest for the January 2, 2023 NFL game between the Cincinnati Bengals and the Buffalo Bills (the "Bengals-Bills Game"). The Bengals-Bills Game was postponed and eventually cancelled due to Damar Hamlin collapsing during the game. Plaintiff alleges that he was winning prizes in multiple showdown contests at the point in time that the Bengals-Bills Game was cancelled (with 5:58 remaining in the first quarter). Plaintiff alleges that, instead of paying out the prize money, the Company refunded entry fees to contestants that entered showdown or flash draft fantasy contests. On May 8, 2023, plaintiff Turley and a new plaintiff (Erik Ramos) filed a First Amended Class Action Complaint. The plaintiffs assert claims for breach of contract, unfair and deceptive acts and practices, false advertising, and unjust enrichment. Among other things, plaintiffs seek statutory damages, monetary damages, punitive damages, attorney fees and interest.

The Company intends to vigorously defend this case. Any adverse outcome in this matter could subject the Company to substantial damages and/or require alterations to the Company's business. The Company cannot provide any assurance as to the outcome of this matter.

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

Securities Matters Related to DraftKings Marketplace

On March 9, 2023, a putative class action was filed in Massachusetts federal court by alleged purchasers of non-fungible tokens ("NFTs") on the DraftKings Marketplace ("DK Marketplace"). The complaint asserts claims for violations of federal and state securities laws against the Company and three of its officers on the grounds that, among other things, the NFTs that are sold and traded on the DK Marketplace allegedly constitute securities that were not registered with the SEC in accordance with federal and Massachusetts law, and that the DK Marketplace is a securities exchange that is not registered in accordance with federal and Massachusetts law. Based on these allegations, plaintiff brings claims seeking rescissory damages and other relief on behalf of himself and a putative class of persons who purchased NFTs on the DK Marketplace between August 11, 2021 and the present. The Company intends to vigorously defend this matter.

On July 17, 2023, the Company received a subpoena from the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts seeking documents and requesting answers to interrogatories concerning, among other things, DK Marketplace and NFTs that are sold on DK Marketplace, and related matters. We intend to comply with these requests.

The Company cannot predict with any degree of certainty the outcome of these matters 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, penalties and/or require alterations to the Company's business 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 matters will have a material adverse effect on Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon the operating results for such period.

Shareholder Derivative Litigation Related to DraftKings Marketplace

On May 31, 2023, a putative shareholder derivative action was filed in Nevada state court by an alleged shareholder of the Company. The action asserts claims on behalf of the Company against certain senior officers and members of the Board of Directors of the Company for breach of fiduciary duty and unjust enrichment based primarily on allegations that the defendants caused or allowed the Company to disseminate misleading and inaccurate information to its shareholders in connection with NFTs that are sold and traded on the DK Marketplace. The action also alleges that certain individuals are liable for trading in Company stock at artificially inflated prices. The action seeks unspecified compensatory damages, changes to corporate governance and internal procedures, restitution, disgorgement, costs and attorney's fees, and other unspecified relief.

The Company cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Because this action alleges claims on behalf of the Company and purports to seek a judgment in favor of the Company, the Company does not believe, based on currently available information, that the outcome of the proceedings will have a material adverse effect on the Company's financial condition, although the outcome could be material to the Company's 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.

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, 2022, as filed with the SEC on February 17, 2023 (the "2022 Annual Report").

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, in an all-stock transaction (the "GNOG Transaction"). DraftKings' 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, with respect to periods prior to the GNOG Closing Date, Old DraftKings), together with its consolidated subsidiaries.

Cautionary Statement Regarding 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," "will," "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. Our historical results are not necessarily indicative of the results that may be expected for any period in the future as 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, such as:

- 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 global coronavirus pandemic (or the emergence of additional variants or strains thereof), as well as the potential impact of general economic conditions, including inflation, rising interest rates and instability in the banking system, on our liquidity, operations and personnel;
- significant 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.

In addition to these risks, other factors that could cause or contribute to such differences include those set forth under the caption "Risk Factors" in our 2022 Annual Report. Due to the uncertain nature of these factors, management cannot assess the impact of each factor on our 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 that provides users with online sports betting (“Sportsbook”), online casino (“iGaming”) and daily fantasy sports (“DFS”) product offerings, as well as retail sportsbook, media and other consumer product offerings. We are also involved in the design and development of sports betting and casino gaming software for online and retail sportsbooks and iGaming operators.

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 product offerings. 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 continue to make deliberate and substantial investments in support of our mission and long-term growth. For example, we have invested in our product offerings 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 product offerings, (b) launch our product offerings in new jurisdictions, (c) create replicable and predictable state-level unit economics in sports betting and iGaming and (d) expand our other online consumer product offerings. When we launch our Sportsbook and iGaming product offerings in a new jurisdiction, we invest heavily in user acquisition, retention and cross-selling until the new jurisdiction provides a critical mass of users engaged across our product offerings.

Our current technology is highly scalable with relatively minimal incremental spend required to launch our product offerings 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 to maintain favorable relationships with regulators. We also expect to improve our profitability over time as our revenue and gross profit expand as states mature, and our variable marketing expenses and fixed costs stabilize or grow at a slower rate.

Our path to profitability is based on the acceleration of positive contribution profit growth driven by increased revenue and gross profit generation from ongoing efficient customer acquisition that is enabled by the transition from local to regional to national advertising, strong customer retention, improved monetization from increased frequency of customer play and higher hold percentage, as well as scale benefits from investments in our product offerings and technology and general and administrative functions. In any given period, we expect to achieve profitability on a consolidated Adjusted EBITDA basis 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 product offerings and the other factors summarized in the section entitled “Cautionary Statement Regarding Forward-Looking Statements”.

Financial Highlights and Trends

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

(amounts in thousands)	Three months ended September 30, 2023	Three months ended September 30, 2022	Nine months ended September 30, 2023	Nine months ended September 30, 2022
Revenue	$ 789,957	$ 501,938	$ 2,434,536	$ 1,385,328
Net Loss	(283,103)	(450,494)	(757,521)	(1,135,290)
Adjusted EBITDA (1)	(153,414)	(264,211)	(302,053)	(671,854)

(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.

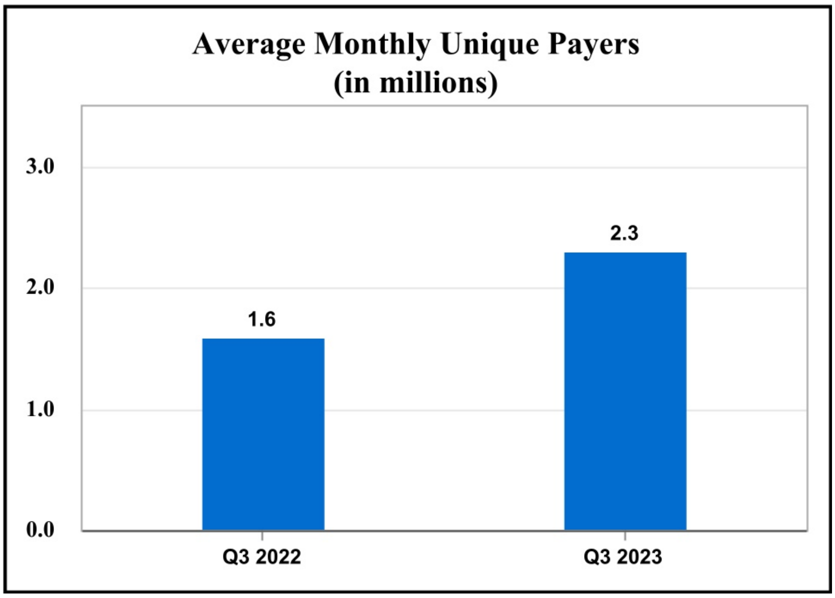
Revenue increased by $288.0 million and $1,049.2 million in the three and nine months ended September 30, 2023 compared to the three and nine months ended September 30, 2022, respectively, primarily due to the strong performance of our Sportsbook and iGaming product offerings as a result of robust customer acquisition and retention, the successful launches of those product offerings in additional jurisdictions, and improved promotional reinvestment for Sportsbook and iGaming.

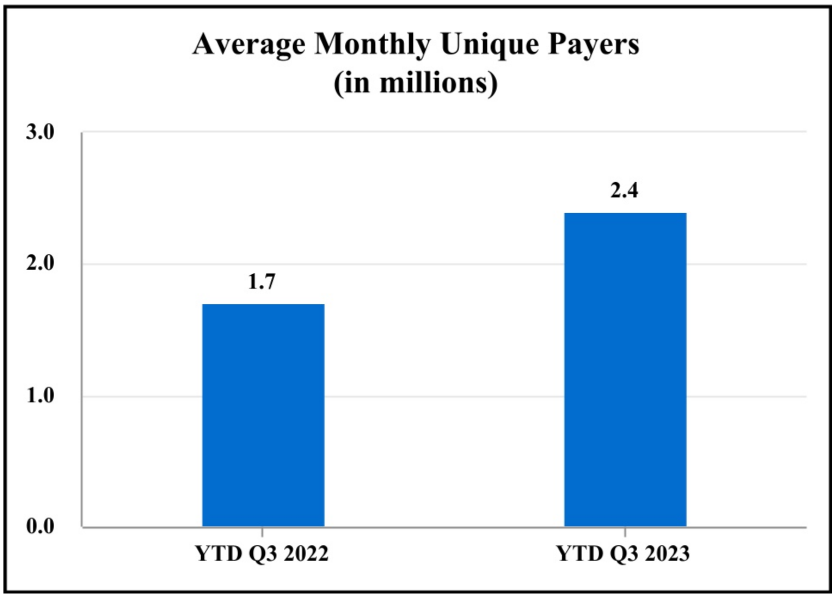
Key Performance Indicators

Monthly Unique Payers ("MUPs"). We define MUPs as the number of unique paid users per month who had one or more real-money, paid engagements across one or more of our Sportsbook, iGaming, DFS, or other consumer product offerings via our technology. For reported periods longer than one month, we average the MUPs for the months in the reported period. Although the number of unique paid users includes those users that have participated in a real-money, paid engagement using only promotional incentives (which has not been a material number of users to date), which are fungible with other funds deposited into their wallets on our technology, it does not include users who have made a deposit but have not yet had a real-money, paid engagement.

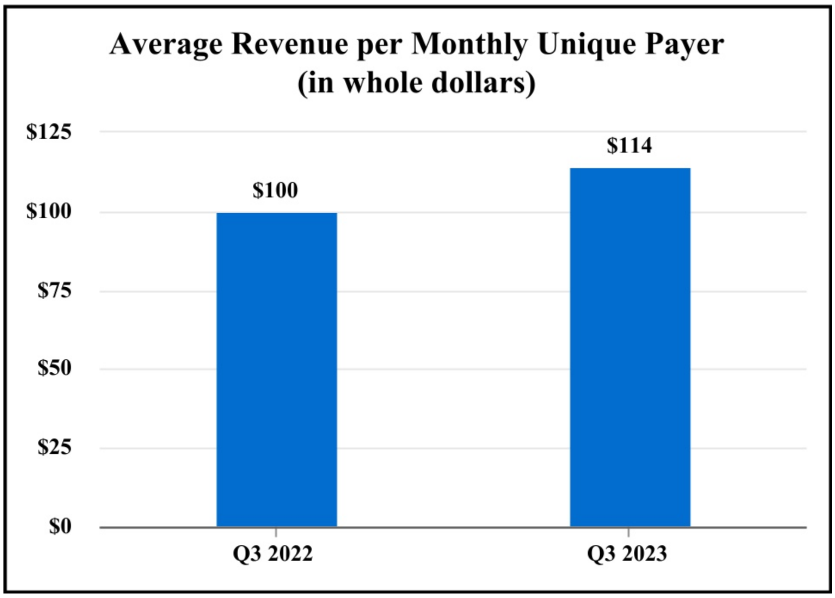
MUPs is a key indicator of the scale of our online gaming user base and awareness of our brand. We believe that year-over-year growth in MUPs is also generally indicative of the long-term revenue growth potential of our online gaming product offerings, although MUPs in individual periods may be less 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 product offerings to appeal to a wider audience.

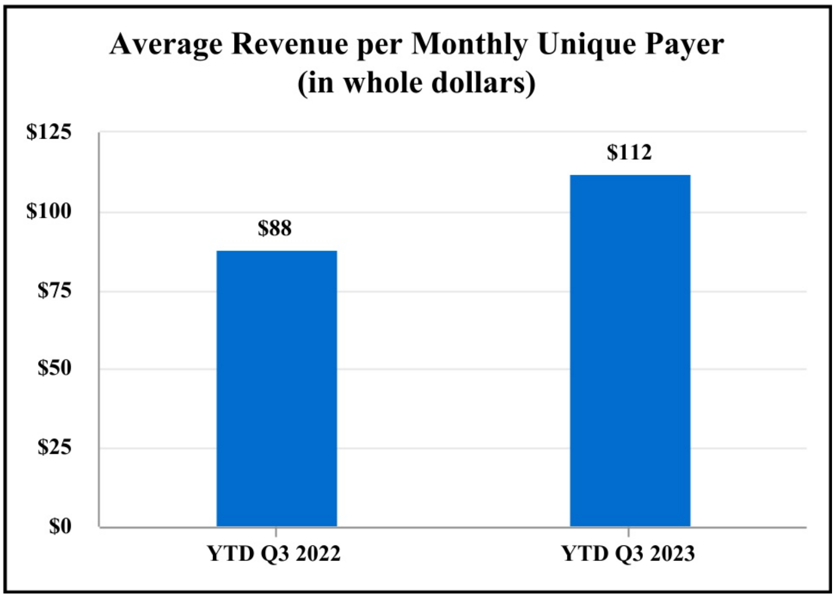
The charts below present our average MUPs for the three and nine months ended September 30, 2022 and 2023:





Average Revenue per MUP ("ARPMUP"). We define and calculate ARPMUP as the average monthly revenue, excluding revenue from gaming software services, for a reporting period, divided by the average number of MUPs for the same period. ARPMUP is a key indicator of our ability to drive usage and monetization of our product offerings. The charts below present our ARPMUP for the three and nine months ended September 30, 2022 and 2023:





The increase in MUPs for the three and nine months ended September 30, 2023, compared to the same periods in 2022, primarily reflects strong unique payer retention and acquisition across our Sportsbook and iGaming product offerings, as well as the expansion of our Sportsbook and iGaming product offerings into new states, partially offset by a decline in DFS MUPs.

ARPMUP increased in the three and nine months ended September 30, 2023, compared to the same periods in 2022, primarily due to structural improvement in our Sportsbook hold rate and improved promotional reinvestment for Sportsbook and iGaming.

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 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:

	Three months ended September 30,		Nine months ended September 30,	
(amounts in thousands)	2023	2022	2023	2022
Net loss	$ (283,103)	$ (450,494)	$ (757,521)	$ (1,135,290)
Adjusted for:				
Depreciation and amortization [(1)]	50,245	46,089	146,722	120,629
Interest income, net	(13,750)	(6,301)	(37,635)	(8,378)
Income tax provision (benefit)	1,291	3,177	3,310	(77,580)
Stock-based compensation [(2)]	78,353	126,038	284,946	448,636
Transaction-related costs [(3)]	681	751	1,106	15,030
Litigation, settlement, and related costs [(4)]	3,891	1,390	10,590	5,786
Advocacy and other related legal expenses [(5)]	—	16,558	—	16,558
Loss (gain) on remeasurement of warrant liabilities	7,751	6,797	44,827	(20,199)
Other non-recurring costs and non-operating (income) costs [(6)]	1,227	(8,216)	1,602	(37,046)
Adjusted EBITDA	**$ (153,414)**	**$ (264,211)**	**$ (302,053)**	**$ (671,854)**

(1) The amounts include the amortization of acquired intangible assets of $29.2 million and $29.8 million for the three months ended September 30, 2023 and 2022, respectively, and $88.0 million and $76.1 million for the nine months ended September 30, 2023 and 2022, 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 proposed, pending or completed transactions and offerings, including costs relating to the GNOG Transaction for the three and nine months ended September 30, 2022.
(4) Primarily includes external legal costs related to litigation and litigation settlement costs deemed unrelated to our core business operations.
(5) Reflects non-recurring and non-ordinary course costs relating to advocacy efforts and other legal expenses in jurisdictions where we do not operate certain product offerings and are actively seeking licensure, or similar approval, for those product offerings. This adjustment excludes (i) costs relating to advocacy efforts and other legal expenses in jurisdictions where we do not operate that are incurred in the ordinary course of business and (ii) 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, 2023 Compared to the Three Months Ended September 30, 2022

The following table sets forth a summary of our consolidated results of operations for the interim periods indicated, and the changes between periods:

	Three months ended September 30,			
(amounts in thousands, except percentages)	**2023**	**2022**	**$ Change**	**% Change**
Revenue	**$ 789,957**	**$ 501,938**	**$ 288,019**	**57.4 %**
Cost of revenue	543,454	372,692	170,762	45.8 %
Sales and marketing	313,323	321,714	(8,391)	(2.6) %
Product and technology	89,005	76,299	12,706	16.7 %
General and administrative	130,761	186,261	(55,500)	(29.8) %
Loss from operations	**(286,586)**	**(455,028)**	**168,442**	**37.0 %**
Interest income	14,420	6,969	7,451	106.9 %
Interest expense	(670)	(668)	(2)	0.3 %
(Loss) gain on remeasurement of warrant liabilities	(7,751)	(6,797)	(954)	14.0 %
Other income (expense), net	(1,217)	8,257	(9,474)	(114.7) %
Loss before income tax provision and loss from equity method investment	**(281,804)**	**(447,267)**	**165,463**	**37.0 %**
Income tax provision (benefit)	1,291	3,177	1,886	59.4 %
Loss from equity method investment	8	50	42	84.0 %
Net loss	**$ (283,103)**	**$ (450,494)**	**$ 167,391**	**37.2 %**

Revenue. Revenue increased by $288.0 million, or 57.4%, to $790.0 million in the three months ended September 30, 2023, from $501.9 million in the three months ended September 30, 2022. The increase was primarily attributable to our online gaming revenues, which increased $299.8 million, or 64.0%, to $768.3 million in the three months ended September 30, 2023, from $468.5 million in the three months ended September 30, 2022, due to MUPs increasing by 40.0% as compared to the three months ended September 30, 2022. The increase in MUPs was due to strong player retention and acquisition across our Sportsbook and iGaming product offerings as well as the expansion of our Sportsbook product offering into new jurisdictions. Online gaming revenues also increased due to structural improvement in our Sportsbook hold rate and improved promotional reinvestment for Sportsbook and iGaming, which contributed to ARPMUP growth of 14.0% compared to the three months ended September 30, 2022.

Cost of Revenue. Cost of revenue increased $170.8 million, or 45.8%, to $543.5 million in the three months ended September 30, 2023, from $372.7 million in the three months ended September 30, 2022. Our online gaming product offerings accounted for substantially all of this increase, reflecting growth in revenue from our expanded product and jurisdictional footprint, including the launch of our Sportsbook product offering in Kentucky, Maryland, Massachusetts, and Ohio since September 30, 2022. In particular, 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 $111.6 million and $32.3 million, respectively. The remaining increase was primarily attributable to an increase in our variable platform costs resulting from additional customer activity.

Cost of revenue as a percentage of revenue decreased by 5.5% percentage points to 68.8% in the three months ended September 30, 2023, as compared to 74.3% in the three months ended September 30, 2022, reflecting, in part, structural improvement in our Sportsbook hold rate, partially offset by a change in revenue mix from our more mature DFS product offering to our Sportsbook and iGaming product offerings, which, in general, produce revenue at a higher cost per revenue dollar relative to our more mature DFS product offering.

Sales and Marketing. Sales and marketing expense decreased $8.4 million, or 2.6%, to $313.3 million in the three months ended September 30, 2023, from $321.7 million in the three months ended September 30, 2022. The decrease was primarily attributable to lower advertising costs, primarily related to a reduction in league and team partnerships of $5.3 million, as well as reduced stock-based compensation expense of $2.2 million.

Product and Technology. Product and technology expense increased $12.7 million, or 16.7%, to $89.0 million in the three months ended September 30, 2023, from $76.3 million in the three months ended September 30, 2022. The increase primarily reflects additions to our product operations and engineering headcount.

General and Administrative. General and administrative expense decreased $55.5 million, or 29.8%, to $130.8 million in the three months ended September 30, 2023, from $186.3 million in the three months ended September 30, 2022. This decrease was primarily driven by a reduction in stock-based compensation expense of $44.9 million and a reduction in advocacy expense of $16.6 million, partially offset by an increase in cash-based compensation expense due to an increase in headcount.

(Loss) Gain on Remeasurement of Warrant Liabilities. We recorded a loss on remeasurement of warrant liabilities of $7.8 million in the three months ended September 30, 2023, compared to a loss of $6.8 million in the three months ended September 30, 2022, due to changes in the underlying share price of our Class A common stock.

Other Income, Net. We recorded a loss of $1.2 million in the three months ended September 30, 2023, as compared to income of $8.3 million in the three months ended September 30, 2022. This change was primarily attributable to the receipt of income pursuant to a tax indemnity in the three months ended September 30, 2022.

Net Loss. Net loss decreased by $167.4 million to $283.1 million in the three months ended September 30, 2023, as compared to a net loss of $450.5 million in the three months ended September 30, 2022, for the reasons discussed above.

Nine Months Ended September 30, 2023 Compared to the Nine Months Ended September 30, 2022

The following table sets forth a summary of our consolidated results of operations for the interim periods indicated, and the changes between periods:

	Nine months ended September 30,			
(amounts in thousands, except percentages)	**2023**	**2022**	**$ Change**	**% Change**
Revenue	**$ 2,434,536**	**$ 1,385,328**	**$ 1,049,208**	**75.7 %**
Cost of revenue	1,575,517	998,838	576,679	57.7 %
Sales and marketing	909,943	840,695	69,248	8.2 %
Product and technology	266,999	234,853	32,146	13.7 %
General and administrative	427,493	590,476	(162,983)	(27.6) %
Loss from operations	**(745,416)**	**(1,279,534)**	**534,118**	**41.7 %**
Interest income	39,626	10,360	29,266	282.5 %
Interest expense	(1,991)	(1,982)	(9)	0.5 %
(Loss) gain on remeasurement of warrant liabilities	(44,827)	20,199	(65,026)	(321.9) %
Other income, net	(1,153)	40,566	(41,719)	(102.8) %
Loss before income tax provision and loss from equity method investment	**(753,761)**	**(1,210,391)**	**456,630**	**37.7 %**
Income tax provision (benefit)	3,310	(77,580)	(80,890)	104.3 %
Loss from equity method investment	450	2,479	2,029	81.8 %
Net loss	**$ (757,521)**	**$ (1,135,290)**	**$ 377,769**	**33.3 %**

Revenue. Revenue increased by $1,049.2 million, or 75.7%, to $2,434.5 million in the nine months ended September 30, 2023, from $1,385.3 million in the nine months ended September 30, 2022. The increase was primarily attributable to our online gaming revenues, which increased $1,064.0 million, or 82.5%, to $2,353.3 million in the nine months ended September 30, 2023, from $1,289.3 million in the nine months ended September 30, 2022, primarily due to MUPs increasing by 40.9% as compared to the nine months ended September 30, 2022. The increase in MUPs was due to strong player retention and acquisition across our Sportsbook and iGaming product offerings, as well as the expansion of our Sportsbook and iGaming product offerings into new jurisdictions. Online gaming revenues also increased due to structural improvement in our Sportsbook hold rate and improved promotional reinvestment, which contributed to ARPMUP growth of 25.8% compared to the nine months ended September 30, 2022.

Cost of Revenue. Cost of revenue increased $576.7 million, or 57.7%, to $1,575.5 million in the nine months ended September 30, 2023, from $998.8 million in the nine months ended September 30, 2022. Our online gaming product offerings accounted for substantially all of this increase, reflecting growth in revenue from our expanded product and jurisdictional footprint, including the launch of our Sportsbook product offering in Kentucky, Maryland, Massachusetts, and Ohio since September 30, 2022. In particular, 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 $368.3 million and $74.3 million, respectively.

The remaining increase was primarily attributable to an increase in our variable platform costs and revenue share arrangements resulting from additional customer activity.

Cost of revenue as a percentage of revenue decreased by 7.4% percentage points to 64.7% in the nine months ended September 30, 2023, as compared to 72.1% in the nine months ended September 30, 2022, reflecting, in part, structural improvement in our Sportsbook hold rate and improved promotional intensity, partially offset by a change in revenue mix from our more mature DFS product offering to our Sportsbook and iGaming product offerings, which in general, produce revenue at a higher cost per revenue dollar relative to our more mature DFS product offering.

Sales and Marketing. Sales and marketing expense increased $69.2 million, or 8.2%, to $909.9 million in the nine months ended September 30, 2023, from $840.7 million in the nine months ended September 30, 2022. The increase was primarily attributable to an increase of $51.5 million in advertising costs .

Product and Technology. Product and technology expense increased $32.1 million, or 13.7%, to $267.0 million in the nine months ended September 30, 2023, from $234.9 million in the nine months ended September 30, 2022. The increase primarily reflects additions to our product operations and engineering headcount.

General and Administrative. General and administrative expense decreased $163.0 million, or 27.6%, to $427.5 million in the nine months ended September 30, 2023, from $590.5 million in the nine months ended September 30, 2022. This decrease was primarily driven by a reduction in stock-based compensation expense of $153.7 million, a reduction in transaction-related costs of $14.0 million and a reduction in advocacy expense of $16.6 million partially offset by an increase in cash-based compensation expense due to an increase in headcount.

(Loss) Gain on Remeasurement of Warrant Liabilities. We recorded a loss on remeasurement of warrant liabilities of $44.8 million in the nine months ended September 30, 2023, compared to a gain of $20.2 million in the nine months ended September 30, 2022 due to changes in the underlying share price of our Class A common stock.

Other Income, Net. We recorded a loss of $1.2 million in the nine months ended September 30, 2023, as compared to income of $40.6 million in the nine months ended September 30, 2022. This decrease was primarily attributable to a change in the fair value of certain financial assets recorded in the nine months ended September 30, 2022.

Net Loss. Net loss decreased by $377.8 million to $757.5 million in the nine months ended September 30, 2023, as compared to a net loss of $1,135.3 million in the nine months ended September 30, 2022, for the reasons discussed above.

Liquidity and Capital Resources

We had $1.1 billion in cash and cash equivalents as of September 30, 2023 (excluding player cash, which we segregate from our operating cash balances on behalf of our paid users for all jurisdictions and product offerings). 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 our 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, 2023, the Convertible Notes, net of issuance costs, balance was $1,253.1 million.

Leases. We have lease arrangements for certain corporate office facilities, data centers, and motor vehicles. As of September 30, 2023, the Company had lease obligations of $89.1 million, with $12.1 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, 2023, these purchase obligations were $1,485.7 million, with $126.7 million payable in the remainder of 2023.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

(amounts in thousands)	Nine months ended September 30, 2023	2022
Net cash used in operating activities	$ (73,818)	$ (477,061)
Net cash used in investing activities	(66,918)	(171,932)
Net cash used in financing activities	(50,509)	(16,843)
Net decrease in cash and cash equivalents and restricted cash	(191,245)	(665,836)
Cash and cash equivalents and restricted cash at beginning of period	1,778,825	2,629,842
Cash and cash equivalents and restricted cash at end of period	**$ 1,587,580**	**$ 1,964,006**

Operating Activities. Net cash used in operating activities in the nine months ended September 30, 2023 improved $403.2 million to $73.8 million, compared to $477.1 million in the nine months ended September 30, 2022, mainly reflecting an improvement in net loss, net of non-cash items, of $419.9 million, slightly offset by changes in operating assets and liabilities.

Investing Activities. Net cash used in investing activities during the nine months ended September 30, 2023 improved by $105.0 million to $66.9 million from $171.9 million during the same period in 2022, mainly reflecting $24.4 million of proceeds from the sale of marketable equity securities and other financial assets in 2023 and a reduction of $96.5 million from cash paid for acquisitions, net of cash acquired, related to the GNOG Transaction in 2022, partially offset by an increase in cash paid for internally developed software.

Financing Activities. Net cash used in financing activities during the nine months ended September 30, 2023 increased by $33.7 million to $50.5 million from $16.8 million during the same period in 2022, primarily reflecting purchases of treasury stock related to the satisfaction of withholding taxes due upon the vesting of restricted stock units.

Commitments and Contingencies

Refer to Note 12 of our unaudited condensed consolidated financial statements included elsewhere in this Report for a summary of our commitments as of September 30, 2023.

Critical Accounting Estimates

Our consolidated 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, 2023, there were no changes to the critical accounting estimates discussed in the 2022 Annual Report.

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, 2023. Refer to Item 7A. Quantitative and Qualitative Disclosures about Market Risk in the 2022 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, 2023. 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.

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 the Company 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 27, 2025.

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 DFS product offering 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 offering 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. On November 23, 2022, IG filed its reply briefs in the appeals of the IPRs related to the ’231 Patent and ’967 Patent. Oral argument for both appeals was held on June 7, 2023. On June 9, 2023, the Federal Circuit affirmed the PTAB’s decisions for the IPRs related to both the ’231 Patent and ’967 Patent.

The ’302 Patent is currently subject to an ex parte reexamination proceeding at the U.S. Patent and Trademark Office (U.S. Patent Application No. 90/015,151) (the “’302 Reexam”). On June 12, 2023, a non-final office action was issued in the ’302 Reexam, rejecting or objecting to all claims in the ’302 Patent.

The District Court litigation remains stayed pending resolution of both: (1) all appeals from the inter partes reviews, and (2) the '302 Reexam and any subsequent appeals therefrom.

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 the Company in the U.S. District Court for the District of New Jersey. In the complaint, Winview alleges that the Company infringes 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 the Company 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 Crown Holdings Inc. and Crown Gaming Inc., a Delaware corporation, which are wholly-owned subsidiaries of the Company. 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, the Company 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 the Company 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. On January 31, 2023, the PTAB granted institution of the inter partes review, and it is expected to issue a final written decision by January 31, 2024. On February 15, 2023, the District Court administratively terminated the lawsuit pending the PTAB's 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 Arising From the Hindenburg Report and Related Matters

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 alleged 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 the Company's stock between December 23, 2019 and June 15, 2021. The allegations related 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"). 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. On January 10, 2023, the court granted the motion to dismiss and final judgment was entered dismissing the action with prejudice.

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 adherence to and 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 the SEC 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 the SEC 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 the SEC matter 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.

Shareholder Derivative Litigation Related to Allegations in the Hindenburg Report

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 purported 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 were subsequently consolidated, and two of the actions filed in Nevada state District Court in Clark County likewise were consolidated. A substantially identical fifth action was filed in Nevada state District Court in Clark County and was subsequently dismissed voluntarily by the plaintiff. The same plaintiff filed a substantially identical action in Massachusetts Superior Court, which was also dismissed voluntarily by the plaintiff. The Nevada actions purported 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 contended 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 sought unspecified compensatory damages, changes to corporate governance and internal procedures, equitable and injunctive relief, restitution, costs and attorney's fees. The Nevada actions were voluntarily dismissed without prejudice by the plaintiffs in state court on February 27, 2023 and in federal court on March 3, 2023.

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 and two affiliates, 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 procedural grounds of improper forum and lack of personal jurisdiction over certain defendants or, in the alternative, to stay the action pending resolution of parallel proceedings in the Delaware Court of Chancery. On May 24, 2023, the court (i) granted the motions to dismiss for improper forum with respect to GNOG Inc. and its former officers and directors other than Mr. Fertitta, as well as Jefferies LLC, (ii) denied the motions to dismiss for improper forum with respect to the Company and its officer and two affiliates, as well as Mr. Fertitta and Fertitta Entertainment, Inc., and (iii) granted the non-dismissed defendants' alternative request to stay the action for at least nine months pending resolution of parallel proceedings in the Delaware Court of Chancery. On June 29, 2023, the plaintiff filed a motion for reconsideration of the court's order insofar as it found certain claims subject to a Delaware forum requirement. On July 27, 2023, defendants filed oppositions to the plaintiff's motion for reconsideration, and certain defendants filed countermotions for certification of final judgment as to the claims that the court previously dismissed pursuant to its May 24, 2023 order. On October 1, 2023, the court entered an order (1) denying the motion for reconsideration and (2) granting the motion for certification of final judgment as to the defendants whose claims against them previously were dismissed.

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 the Company 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. On November 3, 2022, co-lead plaintiffs designated an operative complaint in the consolidated action. On January 13, 2023, defendants filed a motion seeking dismissal of the action. On June 8, 2023, the court denied defendants' motion to dismiss.

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 the Company's financial condition, although the outcome could be material to the Company's 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 the Company in the United States District Court for the District of New Jersey alleging that the Company's DFS and Casino product offerings 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 the Company's DFS and Casino product offerings in the amended complaint: (1) U.S. Patent No. 9,613,498, entitled "Systems and Methods For Peer-to-Peer Gaming"; (2) U.S. Patent No. 9,978,205, entitled "Location Based Restrictions on Networked Gaming"; (3) U.S. Patent No. 10,497,220 entitled "Location Based Restrictions on Networked Gaming"; (4) U.S. Patent No. 10,614,657 entitled "Location Based Restrictions on Networked Gaming"; and (5) U.S. Patent No. 11,024,131 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, the Company filed a motion to dismiss plaintiff's second amended complaint. On February 22, 2022, plaintiff filed its opposition to the Company's motion to dismiss plaintiff's second amended complaint, and on March 25, 2022, the Company filed its reply thereto. On March 7, 2022, the Company filed a motion to disqualify plaintiff's counsel. On March 21, 2022, plaintiff filed its opposition to the Company's motion to disqualify plaintiff's counsel, and on March 28, 2022, the Company filed its reply thereto. On September 21, 2022, the Company's motion to dismiss was administratively terminated, pending the outcome of the disqualification motion. On October 4, 2022, the presiding Magistrate Judge denied the Company's motion to disqualify plaintiff's counsel. On October 21, 2022, the Company filed a renewed motion to dismiss plaintiff's complaint. On November 4, 2022, Arrow Gaming filed an opposition to the renewed motion to dismiss. On November 14, 2022, the Company filed its reply in support of the motion to dismiss. On November 4, 2022, the Company filed a motion to stay the case pending resolution of the below-referenced petitions for inter partes review. On November 23, 2022 Arrow Gaming filed an opposition to the motion to stay. On December 2, 2022, the Company filed a reply in support of the motion to stay.

Between August 22, 2022 and August 30, 2022, the Company filed petitions for inter partes review with the PTAB challenging the validity of each of the Arrow Gaming Patents. On March 14, 2023, the PTAB granted institution of all inter partes review petitions, and it is expected to issue final written decisions by March 14, 2024. On June 7, 2023, Arrow Gaming filed its responses to the petitions. On September 6, 2023, DraftKings filed its replies in support of the petitions.

On April 3, 2023, the District Court administratively terminated the lawsuit pending the PTAB's final written decisions.

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 product offerings infringe four patents. The following U.S. Patents are asserted against the 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"; U.S. Patent No. 10,043,341, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity"; U.S. Patent No. 10,147,266, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity"; and U.S. Patent No. 10,255,755, entitled "Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity" (collectively, the "Beteiro Patents").

The Company filed its motion to dismiss plaintiff's complaint on February 9, 2022. On April 7, 2022, Plaintiff filed its opposition to the Company's motion to dismiss, and on April 25, 2022, the Company filed its reply thereto. On September 7, 2022, the Company's 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 March 9, 2023, Beteiro filed its opening appellate brief. DraftKings' responsive brief was filed on June 9, 2023. Beteiro's reply brief was filed on July 1, 2023.

On October 28, 2022, the Company filed petitions for inter partes review with the PTAB challenging the validity of each of the Beteiro Patents. Between May 11, 2023 and May 12, 2023, the PTAB instituted review for all Beteiro Patents. The PTAB is expected to issue a final written decision for the IPRs by May 12, 2024.

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.

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 offering 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 offering 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, the Company 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 the Company, U.S. Patent No. 11,200,779 ("the '779 patent"). The patents asserted by Colossus are collectively referred to as the "Colossus Patents."

The Company filed its motion to dismiss the Amended Complaint on February 22, 2022. On March 15, 2022, plaintiffs filed their opposition to the Company's motion to dismiss, and on March 29, 2022, the Company's 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. On December 27, 2022, the Company filed an Answer to the Amended Complaint, including certain affirmative defenses. On January 17, 2023, Colossus filed a motion to strike the affirmative defense of unenforceability from the Company’s Answer. On February 7, 2023, the Company filed an Amended Answer and Counterclaims to the Amended Complaint, and also filed a response to Colossus’ motion to strike. On February 28, 2023, Colossus filed another motion to strike DraftKings’ inequitable conduct affirmative defense and counterclaim. DraftKings filed its responsive brief on March 28, 2023. Colossus filed its reply brief on April 11, 2023. Magistrate Judge Burke held a hearing on Colossus’ motion on June 6, 2023 and subsequently issued a report and recommendation (the “Second Report and Recommendation”) that the motion be denied in part and granted in part. Colossus filed objections to the Second Report and Recommendation on June 21, 2023, and DraftKings filed its response to Colossus’ objections on July 5, 2023. On August 2, 2023, Judge Noreika overruled Colossus’ objections and adopted the Second Report and Recommendation.

Between November 29, 2022, and February 7, 2023, the Company filed petitions for inter partes review with the PTAB challenging the validity of the Colossus Patents. With respect to the seven patents remaining pending in the case, the PTAB granted institution of IPRs for each of the ’341 patent, ’969 patent, and the ’822 patent. The PTAB is expected to issue final written decisions for these three IPRs by June 22, 2024. The PTAB denied institution of IPR for each of the ’516 patent, ’716 patent, ’338 patent and the '779 patent. On September 11, 2023, the Company filed a request for Director review of the PTAB’s decision not to institute review in the IPR for the ’779 patent.

On September 6, 2023, the parties stipulated to a stay of the district court litigation pending resolution of the instituted IPRs.

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.

Steiner

Nelson Steiner filed suit against the Company and FanDuel Inc. in Florida state court on November 9, 2015. The action was subsequently transferred to In Re: Daily Fantasy Sports Litigation (Multi-District Litigation) (the “MDL”), and Mr. Steiner’s action was consolidated into the MDL’s amended complaint, which, in February 2016, consolidated numerous actions (primarily purported class actions) filed against the Company, FanDuel, and other related parties in courts across the United States. By June 23, 2022, the MDL was resolved, except for Mr. Steiner’s action, and the court officially closed the MDL docket on July 8, 2022.

Mr. Steiner brings this action as a concerned citizen of the state of Florida alleging that, among other things, defendants’ daily fantasy sports contests are illegal gambling under the state laws of Florida and seeks disgorgement of “gambling losses” purportedly suffered by Florida citizens on behalf of the state. On June 23, 2022, the MDL court remanded Mr. Steiner’s action to the Circuit Court for Pinellas County, Florida. Plaintiff has not yet filed an amended pleading.

The Company intends to vigorously defend this suit. Any adverse outcome in this matter could subject the Company 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 this matter.

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 matter will have a material adverse effect on Company’s financial condition, although the outcome could be material to the Company’s operating results for any particular period, depending, in part, upon the operating results for such period.

Turley

On January 9, 2023, Simpson G. Turley, individually and on behalf of all others similarly situated, filed a purported class action against the Company in the United States District Court for the District of Massachusetts. Plaintiff alleges, among other things, that he was a contestant in the Company’s daily fantasy showdown contest for the January 2, 2023, NFL game between the Cincinnati Bengals and the Buffalo Bills (the “Bengals-Bills Game”). The Bengals-Bills Game was postponed and eventually cancelled due to Damar Hamlin collapsing during the game. Plaintiff alleges that he was winning prizes in multiple showdown contests at the point in time that the Bengals-Bills Game was cancelled (with 5:58 remaining in the first quarter). Plaintiff alleges that, instead of paying out the prize money, the Company refunded entry fees to contestants that entered showdown or flash draft fantasy contests. On May 8, 2023, plaintiff Turley and a new plaintiff (Erik Ramos) filed a First Amended Class Action Complaint. On June 12, 2023, DraftKings filed a motion to dismiss the claims asserted by both plaintiffs or, in the alternative, strike the flash draft allegations. Plaintiffs filed an opposition on July 17, 2023. On August 3, 2023, Defendant filed its reply, and the motion remains pending. The plaintiffs assert claims for breach of contract, unfair and deceptive acts and practices, false advertising, and unjust enrichment. Among other things, plaintiffs seek statutory damages, monetary damages, punitive damages, attorney fees and interest.

The Company intends to vigorously defend this case. Any adverse outcome in this matter could subject the Company to substantial damages and /or require alterations to the Company’s business. The Company cannot provide any assurance as to the outcome of this matter.

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

Securities Matters Related to DraftKings Marketplace

On March 9, 2023, a putative class action was filed in Massachusetts federal court by an alleged purchaser of non-fungible tokens (“NFTs”) on the DraftKings Marketplace (“DK Marketplace”). The complaint asserts claims for violations of federal and state securities laws against the Company and three of its officers on the grounds that, among other things, the NFTs that are sold and traded on the DK Marketplace allegedly constitute securities that were not registered with the SEC in accordance with federal and Massachusetts law, and that the DK Marketplace is a securities exchange that is not registered in accordance with federal and Massachusetts law. Based on these allegations, the plaintiff brings claims seeking rescissory damages and other relief on behalf of himself and a putative class of persons who purchased NFTs on the DK Marketplace between August 11, 2021 and the present. On June 27, 2023, the court entered an order authorizing the plaintiff to file an amended complaint by August 4, 2023. On September 25, 2023, defendants filed a motion seeking dismissal of this action. We intend to vigorously defend this case.

On July 17, 2023, the Company received a subpoena from the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts seeking documents and requesting answers to interrogatories concerning, among other things, DK Marketplace and NFTs that are sold on DK Marketplace, and related matters. We intend to comply with these requests.

Any adverse outcome in these matters could subject the Company to substantial damages and/or require alterations to the Company’s business. The Company cannot provide any assurance as to the outcome of these matters.

The Company cannot predict with any degree of certainty the outcome of these matters 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, penalties and/or require alterations to the Company's 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 matters will have a material adverse effect on Company's financial condition, although the outcome could be material to the Company's operating results for any particular period, depending, in part, upon the operating results for such period.

Shareholder Derivative Litigation Related to DraftKings Marketplace

On May 31, 2023, a putative shareholder derivative action was filed in Nevada state court by an alleged shareholder of the Company. The action asserts claims on behalf of the Company against certain senior officers and members of the Board of Directors of the Company for breach of fiduciary duty and unjust enrichment based primarily on allegations that the defendants caused or allowed the Company to disseminate misleading and inaccurate information to its shareholders in connection with NFTs that are sold and traded on the DK Marketplace. The action also alleges that certain individuals are liable for trading in Company stock at artificially inflated prices. The action seeks unspecified compensatory damages, changes to corporate governance and internal procedures, restitution, disgorgement, costs and attorney's fees, and other unspecified relief. All proceedings in this action have been stayed by agreement of the parties pending resolution of the above-referenced motion to dismiss in the putative class action in Massachusetts federal court.

The Company cannot predict with any degree of certainty the outcome of this matter or determine the extent of any potential liabilities. The Company also cannot provide an estimate of the possible loss or range of loss. Because this action alleges claims on behalf of the Company and purports to seek a judgment in favor of the Company, the Company does not believe, based on currently available information, that the outcome of the proceedings will have a material adverse effect on the Company's financial condition, although the outcome could be material to the Company's 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 the 2022 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.

Securities Trading Plans of Directors and Executive Officers

Certain of our directors and executive officers have made, and may from time to time enter into trading plans or make elections to have shares sold or withheld to cover withholding taxes or pay the exercise price of options, which may be designed to satisfy the affirmative defense conditions of Rule 10b5-1 under the Exchange Act or may constitute non-Rule 10b5–1 trading arrangements (as defined in Item 408(c) of Regulation S-K).

On August 16, 2023, our Chief Financial Officer, Jason Park, entered into a trading arrangement designed to satisfy the affirmative defense conditions of Rule 10b5-1 under the Exchange Act (the "Park 10b5-1 Plan"). The Park 10b5-1 Plan provides for the sale of up to 750,000 shares of the Company's Class A Common Stock and terminates on December 2, 2024 or earlier if all transactions under such trading arrangement are completed.

On September 8, 2023, Accomplice Fund I, L.P., Accomplice Fund II, L.P., Accomplice Management Holdings, LLC, Atlas Venture Fund VIII, L.P., and Accomplice Management, LLC, each of which is an affiliate of a member of our board directors, Ryan Moore, entered into a trading arrangement designed to satisfy the affirmative defense conditions of Rule 10b5-1 under the Exchange Act (the "Atlas 10b5-1 Plan"). The Atlas 10b5-1 Plan provides for the sale of up to 782,202 shares of the Company's Class A Common Stock and terminates on December 11, 2024 or earlier if all transactions under such trading arrangement are completed.

Item 6. Exhibits.

The following exhibits are filed as part of, or incorporated by reference into, this Report:

Exhibit Index

Exhibit No.	Description
31.1*	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.
31.2*	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.
32.1**	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.
32.2**	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.

DRAFTKINGS INC.

Date: November 3, 2023

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

Exhibit 31.1

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 3, 2023

/s/ Jason D. Robins

Jason D. Robins
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

Exhibit 31.2

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 3, 2023

/s/ Jason K. Park

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

Exhibit 32.1

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, 2023 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 3, 2023

/s/ Jason D. Robins

Jason D. Robins
Chief Executive Officer and
Chairman of the Board
(Principal Executive Officer)

Exhibit 32.2

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, 2023 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 3, 2023

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