IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, STATE OF CALIFORNIA, and DISTRICT OF COLUMBIA Plaintiffs, v. DRAFTKINGS INC. and FANDUEL LIMITED Defendants.	Civil Action No. 1:17-cv-01195 (KBJ) **PUBLIC VERSION**

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR CHANGE OF VENUE

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INTRODUCTION

Contrary to Plaintiffs' overreaching assertion that "Defendants lack any legal basis to undo Plaintiffs' choice of this District," the determination to transfer under Section 1404(a) is entrusted to this Court's sound discretion. In its opposition, Plaintiffs focus on arguing that the District of Massachusetts is an equally *inconvenient* forum rather than attempting to show that the District of Columbia is actually a convenient forum—for the parties and likely witnesses—and that the District of Columbia has any meaningful ties to this matter. The meaningful ties that Plaintiffs allege are not particularized to the District of Columbia. Certainly, the Attorney General for the District of Columbia's 11th-hour involvement in this case does not, in and of itself, create a meaningful connection. As Plaintiffs concede, "[t]he harm alleged will affect customers in every state where Defendants do business." Memorandum of Points and Authorities in Opposition to Defendants' Motion for Change of Venue ("Pls.' Opp'n Mem.") at 19. Thus, Plaintiffs cannot credibly contend that this District faces more alleged harm than any other jurisdiction in the United States. Indeed, given this District's size and the relevant customer data, it is less affected than most of the jurisdictions. Nor can Plaintiffs invoke the FTC's investigation, and its use of compulsory process to compel testimony at the FTC's offices, as evidence of a meaningful connection to the District of Columbia. Accordingly, Plaintiffs' choice of forum should not be accorded any deference.

Defendants have carried their burden by demonstrating that the public and private interest factors, on balance, weigh heavily in favor of transfer. Defendants have provided concrete, particularized evidence that supports transfer to the District of Massachusetts. The planning and negotiating of the Merger Agreement overwhelmingly occurred in Massachusetts and New York, the respective headquarters of DraftKings and FanDuel. To the extent the government's pre-

Complaint investigation reflects the likely witnesses in this matter, then the convenience of the parties and witnesses unquestionably supports transfer. All seven of DraftKings's employees subpoenaed for testimony by the Federal Trade Commission ("FTC") work and reside in Massachusetts. None of the FanDuel employees subpoenaed for investigational hearing testimony works or resides in the District of Columbia. [redacted]. Of the declarations sought by the FTC to support its case, 21 of 22 declarants are located outside of this District.[1] The Boston Consulting Group ("BCG"), which Defendants retained to conduct efficiencies analysis and integration planning, is headquartered in Massachusetts and performed substantial work onsite at both Defendants' headquarters. Not only do Defendants have a sound legal basis for requesting that this Court transfer the matter to the District of Massachusetts, but this request is amply supported by the facts.

ARGUMENT

I. THE INTERESTS OF JUSTICE AND CONVENIENCE OF THE PARTIES AND WITNESSES FAVOR TRANSFER TO THE DISTRICT OF MASSACHUSETTS.

Despite Plaintiffs' argument that Massachusetts is no more convenient a forum than the District of Columbia, no meaningful connection to this matter exists that is unique or particular to this District. Curiously, Plaintiffs rely on factors that are not typically considered in a Section 1404(a) analysis but fail to address many of the substantive points raised in Defendants' motion counseling in favor of a change of venue. As set forth below, both the private and public interest factors weigh substantially in favor of transfer, and Defendants respectfully request that the court exercise its discretion to transfer this case to the District of Massachusetts.

[1] This figure reflects the declarations provided by the FTC to Defendants on June 22, 2017.

A. Private Interest Factors

(1) Plaintiffs' Choice of Forum

Plaintiffs cannot reasonably claim that they are entitled to deference to their choice of forum. To be sure, the FTC has broad power to bring actions under Section 13(b) of the FTC Act. Pls.' Opp'n Mem. at 6. But this supports only the FTC's allegation that venue can be proper in this District—just as it is in the District of Massachusetts. The FTC, as a governmental agency based in the District of Columbia, cannot invoke deference in the absence of a meaningful connection to the chosen forum. Plaintiffs claim that "[i]t is beyond question that 'a plaintiff's choice of forum will rarely be disturbed," *id.* (quoting *Gross v. Owen*, 221 F.2d 94, 95 (D.C. Cir. 1955)),[2] but they notably ignore that "this deference is mitigated if the plaintiffs' choice of forum 'has no meaningful ties to the controversy and no *particular interest* in the parties or subject matter.'" *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 128 (D.D.C. 2001) (emphasis added) (citation omitted). Further, "the defendants' burden in a motion to transfer decreases when the plaintiffs' choice of forum has no meaningful nexus to the controversy and the parties." *Id.*

Plaintiffs overstate the District of Columbia's ties to this case. First, this is a case where Plaintiffs have alleged harm in a "nationwide" market in which twenty-eight jurisdictions allegedly face harm in greater proportions than the District of Columbia. While Plaintiffs characterize [redacted] in entry fees" submitted by D.C. residents in 2016 on the parties' contests as a "powerful connection," Pls.' Opp'n Mem. at 7–8, they decline to explain that the Defendants collected [redacted] of entry fees as revenue, meaning the more appropriate measure of the District of Columbia's proportional stake is closer to [redacted]

[2] This Court has granted a number of motions for change of venue in recent history. *See, e.g.*, *FTC v. Graco, Inc.*, No. 11-cv-02239 (RLW), 2012 WL 3584683 (D.D.C. Jan. 26, 2012); *FTC v. Lab. Corp. of Am.*, No. 10-CV-02053 (RWR) (D.D.C. 2010); *FTC v. Cephalon, Inc.*, 551 F. Supp. 2d 21, 24 (D.D.C. 2008).

[redacted] In stark contrast, Massachusetts, which, despite being the 15th largest state by population, has a revenue stake [redacted] that of the District of Columbia, and was DraftKings's [redacted] state by revenue in 2016. Decl. of Tim Dent ¶ 15 (Massachusetts generated [redacted] in entry fees in 2016). Plaintiffs cite to the declaration of D.C. Attorney General Karl A. Racine relating to the alleged harm the consummation of the merger would have on D.C. residents. Pls.' Opp'n Mem. at 7, 9, Ex. 9 (Declaration of Karl. A. Racine). But this does not establish the requisite meaningful connection that would militate against transfer. Here, the FTC has similarly alleged that the relevant market is the United States. Compl. ¶ 32 ("The provision of paid DFS in the United States constitutes a relevant market for evaluating the effects of the Merger."). Because the relevant market is national in scope, the merger *necessarily* implicates each locale within the United States. As this court held in a substantially similar circumstance: "The FTC argues that the 'acquisition is national in scope—it affects this district as well as districts all across the country.' However, *this broad assertion further establishes that the District of Columbia has no meaningful connection to this action*." *Graco*, 2012 WL 3584683, at *5 (emphasis added). The fact that Defendants transact business and compete in the District of Columbia neither makes *Graco* inapplicable nor creates a meaningful connection for purposes of Section 1404(a) analysis as Plaintiffs suggest. The District of Columbia's interest does not give it a "particular interest in the parties or subject matter," because this interest is shared by every jurisdiction in the United States. *See Greater Yellowstone Coal.*, 180 F. Supp. 2d at 128.

Second, Plaintiffs do not—and cannot—dispute that the District of Columbia did not "join the investigation" until all practical aspects of the investigation had ceased and the FTC was mere days away from filing the complaint. The District of Columbia made no effort to

contact counsel for the Defendants until [redacted]

[redacted] *See* Ex. 1 (Declaration of Frank Qi); Ex. 2 (Declaration of Jack Mellyn).

None of the District of Columbia's "attorneys, staff, and office facilities"—the same ones that Plaintiffs now claim would be "inconvenienced" by their proposed preliminary injunction hearing in the District of Massachusetts—could have been involved in the FTC investigative staff's conclusion.[7] [redacted] Finally, that the parties did not

[3] Ex. 3, Letter from FTC to M. McFalls and S. Sher ([redacted]); Ex. 4, Email Transcribing Voicemail from C. Jackson to S. Sher ([redacted]).
[4] Ex. 5, Letter from FTC to M. McFalls ([redacted]); Ex. 6, Letter from FTC to S. Sher ([redacted]).
[5] Ex. 7, Letter from FTC to D. Johnson ([redacted]); Ex. 8, Letter from FTC to S. Sher ([redacted]).
[6] Ex. 9, Letter from F. Qi and A. Paul to FTC ([redacted]); Ex. 10, [redacted]
[7] [redacted] Decl. of F. Qi, Ex. 1. [redacted] *Id.* ¶ 18.
[8] [redacted] *Id.*

provide a voluntary waiver to the District of Columbia [redacted] ([redacted]) did not prevent the District of Columbia whatsoever from taking ordinary course action to obtain documents and data from the subjects of the investigation.[9] The District of Columbia simply chose not to do so earlier. Instead, the District of Columbia waited [redacted] to offer proposed waiver language, which DraftKings and FanDuel analyzed and executed [redacted] and [redacted], respectively.[10] Additionally, the idea that the District of Columbia has a meaningful connection to this action simply because of its party status proves too much. If that were the case, courts would have no need to assess transfer under Section 1404(a) analysis, because the caption alone would be dispositive. It cannot be the case that mere joinder of the District of Columbia would keep all merger litigation in the District of Columbia no matter how inconvenient to other parties and nonparty witnesses.

Third, it is inconsequential that FanDuel has office space in the District of Columbia. That "office" consists of rented space from ZwillGen, Mr. Genetski's former employer.[11] *See* Pls.' Opp'n Mem., Ex. 2 at 5. This Court concluded in *Cephalon* that a "very small public affairs office in the District of Columbia" failed to create a meaningful connection to the District of Columbia because none of the conduct "at the heart of [the] controversy took place in, or [was] in any other way related to, the District." *Cephalon*, 551 F. Supp. 2d at 26. The same can be said here.

[9] Ex. 12, Email with Attachment from F. Qi to FTC and C. Jackson ([redacted]); Ex. 13, Email with Attachment from J. Mellyn to FTC and C. Jackson ([redacted]).
[10] Ex. 14, Email with Attachment from C. Jackson to F. Qi ([redacted]); Ex. 15, Email with Attachment from C. Jackson to J. Mellyn ([redacted]).
[11] *Introducing FanDuel Team Captains*, FanDuel, https://www.fanduel.com/about (last visited June 29, 2017) ("Christian Genetski: Formerly General Counsel of Entertainment Software Assoc., partner at ZwillGen law firm, and prosecutor with U.S. Department of Justice."). Mr. Genetski splits his time between New York, Washington, D.C., and Edinburgh. Ex. 16 (Declaration of Christian Genetski) ¶ 4.

(2) Defendants' Choice of Forum Weighs in Favor of Transfer

Defendants have identified particularized facts and events that underlie Plaintiffs' cause of action that took place in their district of choice, the District of Massachusetts. Contrary to Plaintiffs' assertion, Defendants never suggested that Defendants' "choice of forum is entitled to more weight than Plaintiffs' [choice of forum]." Pls.' Opp'n Mem. at 10. Rather, Defendants stated only that "defendants' choice of forum weighs in favor of transfer." Memorandum of Law in Support of Defendants DraftKings Inc. and FanDuel Ltd.'s Motion for Change of Venue Pursuant to 28 U.S.C. § 1404(a) ("Defs.' Mem.") at 6.

(3) Plaintiffs' Claims Clearly Arose in Massachusetts

Plaintiffs claim that "the Merger Agreement between Defendants is not a material issue in this case," Pls.' Opp'n Mem. at 12, yet their entire action stems from the Merger Agreement. Moreover, it is eminently clear from the FTC's administrative complaint that its enforcement action is about the Agreement. The first count of its two-count administrative complaint states, "Count I—Illegal Agreement," in case there was any question.[12] In their federal Complaint, Plaintiffs seek a preliminary injunction enjoining Defendants from consummating their proposed merger as contemplated by Defendants' Merger Agreement. Compl. at 2. Thus, it is clear that the Merger Agreement is central to Plaintiffs' claims and the relief sought.

Plaintiffs mischaracterize this Court's analysis in *United States v. H&R Block* in claiming that the merger's alleged nationwide harm to consumers somehow is "more significant" than the location of the conduct giving rise to this claim. Pls.' Opp'n Mem. at 11. Despite Plaintiffs' suggestion otherwise, this Court analyzed the alleged nationwide harm to dispel the idea that

[12] Paragraph 85 of the administrative complaint states, in full, the following: "The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45." *FTC v. DraftKings. Inc.*, FTC Docket No. 9375 (June 19, 2019), https://www.ftc.gov/system/files/documents/cases/docket_no_9375_draftkings_fanduel_part_3_complaint_with_provisional_redactions_final.pdf.

there was particular geographic harm (an argument that Plaintiffs selectively chose to assert) that would implicate the interests of specific districts over others. *United States v. H&R Block*, 789 F. Supp. 2d 74, 80 (D.D.C. 2011). However, the Court did not ignore the location of the merger negotiations. In fact, the Court expressly considered where the "planning and negotiating" of the merger occurred, concluding that "those activities emanated from the defendants' corporate headquarters," *even though* the plaintiff's antitrust claims alleged nationwide anticompetitive effects. *Id.* The Court never described conduct relating to the planning and negotiating of a merger as a "non-factor" as Plaintiffs do here. Pls.' Opp'n Mem. at 12 ("[T]he locus of the negotiations and execution of the Merger Agreement is, for purposes of this motion, a non-factor.").

Lastly, the only logical conclusion from Plaintiffs' focus on the national scope of the alleged relevant market is that this action arose *everywhere*. This argument ignores the fact that real events took place at real, identifiable locations. The negotiations and execution of the Merger Agreement and the subsequent merger planning, much of which was facilitated by BCG, predominantly took place in Massachusetts and New York, the locations of Defendants' corporate headquarters. Ex. 17 (Declaration of Jason Robins) ¶¶ 6, 8–11. Plaintiffs note that FanDuel's Chief Legal Officer resides and works in the District of Columbia. But Mr. Genetski is only one of many individuals who were involved in merger planning and negotiating. Moreover, Mr. Genetski's communications with DraftKings and its employees pertaining to the merger presumably implicate the District of Massachusetts, where DraftKings's corporate headquarters is located, as much as the District of Columbia. Plaintiffs also note that Defendants' "antitrust counsel work out of offices in the District of Columbia." Pls.' Opp'n Mem. at 11. The location of parties' antitrust counsel has not been afforded weight in Section

1404(a) analyses. Many antitrust counsel are based in the District of Columbia because the antitrust laws are federal and enforced by agencies headquartered in our nation's capital. This assertion does not shift the balance. *See, e.g.*, *Cephalon*, 551 F. Supp. 2d at 27–28 (declining to give weight to FTC's broad assertions that it "routinely files antitrust enforcement actions in the District of Columbia").

(4) Convenience of the Parties Favors Transfer

Plaintiffs incorrectly assign each party to this action equal weight in its analysis of party convenience. The "[s]imple math" performed by Plaintiffs is overly simplified. *See* Pls.' Opp'n Mem. at 12–13. As set forth above, adding the District of Columbia at the 11th hour as a Plaintiff—in what seems to be an attempt to manufacture a meaningful connection to this District—does not alter the equation. Further, two of the Plaintiffs, the State of California and the District of Columbia, are unlikely to be called on to testify. On the Defendants' side, Plaintiffs repeatedly characterize DraftKings as merely "one Defendant" to discount the fact that the District of Massachusetts would be indisputably more convenient for *one of only two* defendants in this action and for the many employees of DraftKings that will likely be called to testify.

With respect to the FTC, only its testifying expert(s) will likely testify. The FTC's history of pursuing litigation outside of the District of Columbia, moreover, calls into question its assertion that "transfer would impose significant costs on the federal . . . government[]." *Id*. at 13 n.8. In fact, the FTC regularly files actions outside the District of Columbia, including in California, Idaho, Illinois, Ohio, and Pennsylvania.[13] It is abundantly clear that the FTC has had no issue litigating away from "home." *Id.*

[13] *See, e.g.*, *FTC v. Qualcomm Inc.*, No. 5:17-cv-00220 (N.D. Cal. Jan. 17, 2017); *FTC v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-02362-JEJ (M.D. Pa. 2016); *FTC v. Steris Corp.*, No. 15-cv-01080-DAP (N.D. Ohio May 29,

Plaintiffs also call attention to Defendants' choice of law provision in their Merger Agreement, which designates [redacted] as the controlling jurisdiction. [redacted]. Giving any weight to Plaintiffs' argument that the choice of law provision in the Merger Agreement demonstrates a willingness to litigate outside of Massachusetts risks setting precedent with wide-ranging implications on the [redacted].[14] Such a choice of law provision should have no bearing here with respect to the Court's determination on the appropriate venue.

(5) The District of Massachusetts Is a More Convenient Forum for Witnesses

Neither party has yet provided a preliminary witness list, but most of the expected witnesses are located in Massachusetts or elsewhere in the Northeast—and almost none is in the District of Columbia. Overall, it would be much more convenient for witnesses for this litigation to be conducted in the District of Massachusetts instead of the District of Columbia.

First, every key DraftKings employee likely to be called as a witness is located at the company's headquarters in Massachusetts, and most key FanDuel employees are in New York.

2015); *FTC v. St. Luke's Health Sys.*, No. 1:12-cv-00560-BLW-REB (D. Idaho Mar. 12, 2013); *FTC v. Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill. Dec. 22, 2015).

[14] [redacted]

Just four of Defendants' employees work in the District of Columbia, predominantly on regulatory matters, and they will almost certainly not be called as witnesses. That Defendants sent their employees to the District of Columbia in response to the FTC's investigative power does not mean that litigating this matter in District of Columbia is *convenient* for these witnesses. Defendants had no say in the location of the FTC investigation. Their efforts to cooperate with the government and/or comply with subpoenas for their testimony does not mean that these visits were, in fact, *convenient*. That was far from the case.

Second, most third parties likely to be called as witnesses are located in Massachusetts, or at least closer to Massachusetts than the District of Columbia. For example, BCG conducted efficiencies analysis and premerger integration planning for Defendants at its own offices, which are headquartered in Massachusetts, and at Defendants' offices in Massachusetts and New York. Further, none of DraftKings's institutional investors subpoenaed by the FTC during its investigation is located in the District of Columbia; rather, they are based in [redacted].[15] Likewise, none of FanDuel's institutional investors is located in the District of Columbia.

Finally, of the 22 declarants whose declarations were produced voluntarily by Plaintiffs on June 22, 2017—and who are likely to be government witnesses—21 are located outside of the District of Columbia. There is thus no special tie between Plaintiffs' likely witnesses and the District of Columbia.

In the antitrust context, the long arm of 15 U.S.C. § 23 reaches far, allowing both the FTC and the companies against whom they litigate to issue subpoenas nationwide, but courts

[15] Plaintiffs assert that Defendants failed to "identify how many, or which, of their institutional investors are likely to be witnesses." Pls.' Opp'n Mem. at 16. This is not the case. Defendants listed by name and location twenty likely witnesses, including DraftKings' employees, consultants, competitors, strategic partners, and the four institutional investors that had received subpoenas from the FTC during its investigation. *See* Decl. of Tim Dent ¶¶ 8-13.

must correspondingly give greater weight to witness convenience. *See, e.g.*, *United States v. General Motors Corp.*, 183 F. Supp. 858, 861–62 (S.D.N.Y. 1960) ("In a Government antitrust suit, the court must consider the welfare of nonparty witnesses, because they are without the protection from subpoena to attend at places far from home normally afforded them by [Rule 45(c)]."). Given this nationwide subpoena power, Plaintiffs can conduct this litigation just as effectively in the District of Massachusetts. As set forth above, it would be more convenient for Defendants' witnesses, "who are likely to comprise a large portion of the fact witnesses in this case," to litigate in the District of Massachusetts. *See Cephalon*, 551 F.Supp.2d at 28. When viewed collectively, the convenience of witnesses weighs in favor of transfer. *See id.* at 28–29.

(6) Transfer Would Greatly Facilitate Access to Sources of Proof

In a variation on their point that party witnesses have previously traveled to the District of Columbia, Plaintiffs also contend that the relevant documentary evidence is already in the District of Columbia. That argument is equally unavailing. Documentary evidence in the District of Columbia exists only because the FTC "subpoenaed [it] to its D.C. office." *See SEC v. Ernst & Young*, 775 F. Supp. 411, 415 (D.D.C. 1991). This Court should not allow Plaintiffs to use Defendants' cooperation with the FTC's investigation to manufacture venue.

Rather, this Court should look to the straightforward facts of this case. Although technological advances have undoubtedly eased information exchange, original evidence still has a part to play. *See Graco*, 2012 WL 3584683, at *6. Forum in the District of Massachusetts, where DraftKings is headquartered, would provide significantly easier access to original evidence from at least one Defendant. In contrast, Plaintiffs possess essentially only documents that they received via electronic transfer—and as Plaintiffs themselves contend, if they have been transferred once, they can be "easily digitized and transported to any appropriate forum." Pls.'

Opp'n Mem. at 18 (citations omitted). On balance, the factor regarding access to sources of proof weighs in favor of transfer.

B. Public Interest Factors

Public interest factors also favor transfer. The District of Massachusetts has a local interest in the controversy and could resolve this case just as, if not more, quickly as the District of Columbia. Furthermore, the FTC's attempt to impute antitrust expertise to the District of Columbia is unavailing.

(1) The District of Massachusetts's Local Interest Weighs in Favor of Transfer

Massachusetts's local interest in this matter weighs in favor of transfer. Certainly Massachusetts's local interest is greater than the District of Columbia's, "because the individuals and 'events that make up the claims' factual predicate are more connected' to [Massachusetts]." *Harris v. U.S. Dep't of Veterans Affairs*, 196 F. Supp. 3d 21, 25 (D.D.C. 2016) (granting transfer) (citing *Montgomery v. STG Int'l, Inc.*, 532 F. Supp. 2d 29, 34 (D.D.C. 2008)). The merger agreement that forms the basis of this case was negotiated and signed in Massachusetts, where DraftKings is headquartered. *See Bader v. Air Line Pilots Ass'n, Int'l*, 63 F. Supp. 3d 29 (D.D.C. 2014) (granting change of venue, in part because "there is some local interest in the outcome of the case in the Northern District of Illinois, as United's headquarters are located in Chicago and the disposition of this case could have some impact on its employees.").

As discussed above, the District of Columbia has no particularized local interest in this case, as its last-second and minimal involvement was apparently undertaken so that Plaintiffs could oppose the instant motion to transfer. Contrary to Plaintiffs' unsupported claims, Pls.' Opp'n Mem. at 19, this case does in fact disproportionately impact the District of Massachusetts, which was [redacted] in entry fees collected by Defendants in 2016, while the

District of Columbia ranked [redacted]. Given the connection between the parties and Massachusetts—which is clearly more than that between the parties and the District of Columbia—the District of Massachusetts has a local interest in resolving this controversy at home.

(2) Transfer Would Facilitate Speedy Resolution

Without citing to authority, Plaintiffs contend the correct measure of court congestion for purposes of Section 1404(a) analysis is "whether the forum can adjudicate this matter on the expedited timeline contemplated by the parties." Pls.' Opp'n Mem. at 20. Not so. No precedent exists for using a "status call with the Court," *see id.*, as evidence that proceedings might be more quickly resolved in one forum or another. In fact, no Case Management Scheduling Order has yet been entered in this case. Plaintiffs essentially ask the Court to judge the transferor and transferee courts' relative speed of resolution based on an invented "expedited timeline" which only exists in the "contemplat[ion] of the parties." *Id.*

Since the parties have had minimal interactions with this Court beyond a status call, transfer would not delay resolution. *See, e.g.*, *Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 52 n.7 (D.D.C. 2000). There, as here, the court had neither dealt with other issues in the suit nor yet familiarized itself with the underlying merits of the case. *Id*. at 57 ("Since this case is in its earliest stages, there would be no delay associated with the [transferee] district court's having to familiarize itself with this case.") (citation omitted). Any delay caused by the transfer would be negligible. *See, e.g.*, *Graco*, 2012 WL 3584683 (where Defendants filed a substantive Letter to District Judge and proposed scheduling order the day after the case was transferred from the District of District of Columbia to the District of Minnesota). Furthermore, there is "no reason to

suspect the [District of Massachusetts's] docket could not accommodate this case." *Veney v. Starbucks Corp.*, 559 F. Supp. 2d 79, 84 (D.D.C. 2008).

Nothing suggests that the District of Columbia would reach more expeditious resolution of this case than the District of Massachusetts. On the contrary, the District of Massachusetts is already the forum of a multidistrict litigation ("MDL") action that implicates many of the same witnesses, *In re Daily Fantasy Sports Litigation*, MDL No. 16-02677-GAO (D. Mass. 2016). *Cf. Cephalon*, 551 F. Supp. 2d at 31 (granting transfer and noting the transferee court "is already familiar with the facts and legal issues presented by way of managing the private cases (that are admittedly at a more advanced stage of litigation than this proceeding)"). Although the MDL concerns legal issues different from those before this Court, there is significant overlap between the facts of the two cases. *See Bader*, 63 F. Supp. 3d. at 36 (noting that, "[t]he cases are based on the same or largely overlapping set of operative facts, will likely involve much overlapping evidence, and there is no compelling reason that two related cases should be tried separately in different forums."). Here, there are particularly significant opportunities for judicial efficiency, due to the importance in both cases of technical explanations about how fantasy sports products work as well as economic analyses of how Defendants define and operate in various markets. These overlapping issues explain why the FTC subpoenaed both DraftKings and FanDuel for "all data, documents, court filings, affidavits, briefs, or other material" relating to the District of Massachusetts litigation as part of its pre-Complaint investigation.[16]

(3) No Federal District Court Has Particular Expertise in Antitrust Law.

Plaintiffs' attempt to claim that the District of Columbia has particular expertise in antitrust merger challenges is unfounded and cannot be squared with the basic tenets of federal

[16] Ex. 18, Excerpt from FTC Second Request Issued to DraftKings ([redacted]); Ex. 19, Excerpt from FTC Second Request Issued to FanDuel ([redacted]).

courts practice. It is well-established that "[a]ll federal courts are presumed to be equally familiar with the law governing federal statutory claims." *See, e.g., Bartolucci v. 1-800 Contacts, Inc.*, No. 1:17-00097 (ABJ), 2017 WL 1166324, at *8 (D.D.C. Mar. 28, 2017) (quoting *Fed. Hous. Fin. Agency v. First Tenn. Bank*, 856 F. Supp. 2d 186, 194) (D.D.C. 2012)).

The factor regarding familiarity with applicable law is neutral here; generally, analysis of this factor is applied only in cases involving state law, *see Ctr. for Envtl. Sci., Accuracy & Reliability v. Nat'l Park Serv.*, 75 F. Supp. 3d 353, 358 (D.D.C. 2014). It is thus inappropriate and without legal basis to take that factor into account here.

CONCLUSION

For the reasons set forth above, this Court should grant the defendants' Motion for Change of Venue to the District of Massachusetts.

DATE: June 30, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of June, 2017, I served this document via electronic mail to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Chong Park
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