



NEW YORK STATE GAMING COMMISSION

STIPULATION OF SETTLEMENT

NYSGC Case No.: UND-IFS-001-2023

A. Incident Information:

Effective Date of Stipulation: March 14, 2025

Dates Included in Stipulations: July 16, 2020 – March 14, 2025

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B. Entities Affected by Stipulations:

<u>Name</u>	<u>Address</u>
Underdog Sports, LLC d/b/a “Underdog Fantasy” (operating as or through Underdog Fantasy and/or Underdog Sports, Inc., Underdog Sports Holdings, Inc. and/or Synkt Games, Inc.)	Underdog Sports Holdings, Inc. 150 Waterbury St. Brooklyn, NY 11206

C. Statutes Implicated:

Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) §§ 116, 1400(3), 1402(1)(a) and (b), 1404(3)(a), 1405(2) and 1412.

D. Summary of Facts:

Pursuant to Racing Law § 104(7), on or about September 7, 2022, the New York State Gaming Commission (“Commission”) issued a Subpoena Duces Tecum to Underdog Sports, Inc., whether doing business as Underdog Sports, Inc. or otherwise, for the Commission’s investigation into the operation of the underdogfantasy.com website and the iOS and Android applications operated by or on behalf of Underdog Fantasy. In the cumulative responses provided, it has been conceded that Underdog Sports, LLC and Underdog Sports, Inc. are under the common control of Underdog Sports Holdings, Inc. (collectively, “Underdog Fantasy”). As of December 21, 2022, Synkt Games, Inc. (“Synkt”) also came under the control of Underdog Sports Holdings, Inc.

The Commission has “all powers necessary and proper to fully and effectively execute” Article 14 of the Racing Law and “to initiate proper enforcement proceedings where such action is deemed by the commission to be necessary or appropriate.” See Racing Law § 1405(2)(a) and (f). Racing Law section 116 grants the Commission authority to impose civil penalties.



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Underdog Fantasy asserts that it operated in New York since December 22, 2022 under a good-faith belief that it had the ability to do so lawfully, pursuant to the temporary permit held by Synkt as of that date, based on Underdog Sports, LLC's acquisition of Synkt. This Stipulation resolves all matters concerning whether Synkt and/or Underdog Fantasy had the authority to operate each of their purported interactive fantasy sports contests to customers located in New York during the time period set forth in section A herein and the Commission's legislative and regulatory authority related to administering, regulating, and enforcing civil laws related to interactive fantasy sports in New York. In the interest of efficient resolution of this matter, Underdog accepts without admitting the Commission's findings and application and interpretation of law. In doing so, Underdog does not accept or admit and expressly reserves all rights with respect to any claim, facts, or issues of law with respect to private parties and claimants.

E. Stipulations

The Commission and Underdog Fantasy, also on behalf of Synkt, agree as follows:

1. Underdog Fantasy operates a website and mobile applications that purport to be interactive fantasy sports within the meaning of Racing Law Article 14 ("IFS"). Such purported IFS offerings are available to New York residents.
2. Underdog Fantasy did not offer IFS in New York before November 10, 2015. Synkt offered IFS in New York before November 10, 2015.
3. Synkt holds a temporary permit from the Commission to operate IFS in New York. No entity within Underdog Fantasy held or holds a temporary permit from the Commission to operate IFS in New York.
4. Through December 21, 2022, Underdog Fantasy had not been authorized to offer IFS in New York pursuant to Article 14 of the Racing Law. As of September 8, 2016, Synkt has been authorized to offer IFS in New York pursuant to Article 14 of the Racing Law, pursuant to the terms and conditions set forth in a temporary permit the Commission issued to Synkt.
5. Underdog Fantasy has been offering purported IFS in New York since July 16, 2020.
6. Underdog Fantasy cooperated with the Commission's investigation of this matter.
7. None of the actions taken by Underdog Fantasy that are the subject matter of this Stipulation of Settlement disqualifies Underdog Fantasy from consideration of an application for IFS registration or other gaming license application, provided, however,



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that if Synkt fails to file with the Commission IFS tax reporting forms as the Commission may direct and fails to pay taxes, and interest and penalties owed on unpaid taxes, for permitted IFS games pursuant to applicable law (including regulations), the Commission may consider such failure in evaluating the application of Underdog Fantasy and/or Synkt for IFS registration.

8. Underdog Fantasy acknowledges the validity of the Commission's interactive fantasy sports regulations promulgated as of the date of this Stipulation of Settlement, as codified in Chapter VI of Subtitle T of Title 9 of the New York Codes, Rules and Regulations ("IFS Regulations").

F. Findings of the Commission and Remedies:

1. Assuming Underdog Fantasy's offerings are, as it asserts, IFS, Underdog Fantasy had been operating in New York from July 16, 2020 through December 21, 2022 in contravention of Racing Law sections 1402(1)(a) and (b) and 1412.
2. Since December 22, 2022, Underdog Fantasy has been offering some IFS contests within the meaning of the terms and conditions set forth in a temporary permit the Commission issued to Synkt and has been offering some IFS contests that are not within the meaning of the terms and conditions set forth in a temporary permit the Commission issued to Synkt.
3. Synkt has never remitted taxes to the Commission based on its IFS offerings, despite the tax remittance required by Racing Law section 1407.
4. All of the IFS contests offered by Synkt through December 21, 2022, as well as some of the IFS contests offered by Synkt after December 21, 2022, were permissible IFS contests, for which tax pursuant to Racing Law section 1407 is owed.
5. Within 90 days of this fully executed Stipulation of Settlement, Underdog Fantasy will complete, on behalf of Synkt, IFS tax reporting forms supplied by the Commission and remit to the Commission all taxes required by Racing Law section 1407 with respect to games expressly authorized by the Synkt temporary permit, along with appropriate interest and penalties.
6. Underdog Fantasy agrees to cease and desist on or before March 14, 2025 (the "Effective Date") any operations and offerings in New York that Underdog Fantasy characterizes as IFS that are not expressly authorized by the Synkt temporary permit and provide proof to the Commission of such cessation and desistance.



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7. After participating in an opportunity to be heard by the Commission, Underdog Fantasy now agrees to the terms of this Stipulation of Settlement and waives its right to contest any part of this Stipulation as against the Commission, its members, the State of New York, and the officers, employees, departments, divisions, agencies, and subdivisions of the Commission and the State of New York, however styled. Underdog Fantasy agrees to pay, in addition to tax, interest, and penalties that are owed pursuant to the permissible IFS contests agreed to within paragraph 5 within "Findings of the Commission and Remedies," *supra*, a settlement amount of \$17,539,073.04 ("Settlement Amount") in the aggregate, based on the revenue Underdog Fantasy generated through purported IFS contests from New York contestants for the period of July 16, 2020 through the Effective Date that the Commission has found were not expressly permitted by the temporary permit the Commission issued to Synkt, and the number of days the Commission has found that Underdog Fantasy offered purported IFS contests to New York contestants that were not expressly permitted by the temporary permit the Commission issued to Synkt for the period of July 16, 2020 through the Effective Date, in contravention of Article 14 of the Racing Law, accepting only for purposes of this Stipulation of Settlement Underdog Fantasy's assertion that all of its offerings were IFS contests.

Underdog Fantasy shall remit the Settlement Amount, which shall be considered to be a "debt" within the meaning of New York State's State Finance Law § 18, to the New York State Gaming Commission on or before April 1, 2025, which shall be the due date for purposes of interest calculation on the debt, provided, however, that the Commission shall refrain from making collection efforts on the debt so long as Underdog Fantasy makes at least each installment payment in the amounts and at the times set forth in the table below, any of which Underdog Fantasy may prepay in whole or in part, in the discretion of Underdog Fantasy. Underdog Fantasy's execution of this Stipulation shall constitute its notice of this debt and receipt of such notice, waiving its right to receive the same via mail, for purposes of State Finance Law § 18. The rate of interest set forth in State Finance Law § 18 as of the date of this Stipulation is 7% per annum, compounded daily (the "§ 18 Rate"). Prepayment of any payment amount below will not accelerate the date of the next scheduled due date set forth in the table below:

Amount of payment	Due date of payment
7.5% of the Settlement Amount	April 1, 2025
7.5% of the Settlement Amount, plus interest on the unpaid portion of the	July 1, 2025



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Settlement Amount as of this due date at the § 18 Rate.	
7.5% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	October 1, 2025
7.5% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	January 1, 2026
10% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	April 1, 2026
10% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	July 1, 2026
10% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	October 1, 2026
10% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	January 1, 2027
7.5% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	April; 1, 2027
7.5% of the Settlement Amount, plus interest on the unpaid portion of the	July 1, 2027



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Settlement Amount and accrued interest as of this due date at the § 18 Rate.	
7.5% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	October 1, 2027
7.5% of the Settlement Amount, plus interest on the unpaid portion of the Settlement Amount and accrued interest as of this due date at the § 18 Rate.	January 1, 2028

Underdog Fantasy understands and agrees that the New York State Gaming Commission will not approve any pending or new Underdog Fantasy or Synkt applications submitted to the Commission until the settlement amount set forth herein (and, if applicable, interest thereon) has been paid in full, or in lieu thereof, Underdog Fantasy secures a bond satisfactory to the New York State Gaming Commission guaranteeing payment of any outstanding amounts. Funds must be wired to the New York State Gaming Commission. Underdog Fantasy shall notify RevenueAudit@gaming.ny.gov at the time of payment, that payment has been made, including "NYSGC Case Number UND-IFS-001-2023" in the email subject line. Payments not made timely will be subject to interest and collection fees pursuant to New York State's State Finance Law § 18.

Underdog Fantasy agrees that Underdog Fantasy shall not effect a change in control of any of the entities within Underdog Fantasy or Synkt, nor sell all or substantially all of the assets of Underdog Fantasy and/or Synkt, without the written assent of the Commission, which Underdog Fantasy understands and agrees will not be given by the Commission unless the Settlement Amount is first paid in full either before, or from the proceeds of, any such transaction.

Underdog Fantasy agrees to not pledge or encumber any revenue of Underdog Fantasy that would have a material adverse effect on Underdog Fantasy's ability to make payment of the Settlement Amount in its entirety, plus interest owed as set forth herein.

Underdog Fantasy agrees that Underdog Fantasy shall not make any distributions to its or Synkt's owners or members, whether characterized as dividends or otherwise, unless the Settlement Amount is first paid in full to the Commission.



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Underdog Fantasy agrees that Underdog Fantasy (and its successors and assigns) shall not pay any extraordinary cash bonuses, distribute shares of revenue, or make extraordinary cash payments of any kind, however characterized, to any employees of Underdog Fantasy and/or Synkt unless the Settlement Amount is first paid in full to the Commission.

The Commission and Underdog Fantasy, also on behalf of Synkt, additionally hereby agree to the following conditions:

1. Underdog Fantasy and the Commission acknowledge that each has had an opportunity to retain an attorney to review the terms and conditions of this Stipulation of Settlement. No provision hereof shall be interpreted against the interests of one party solely because such provision was drafted by such party or by the attorney for such party.
2. Underdog Fantasy waives any right it has to bring, and hereby agrees not to bring, a judicial challenge to any of the actions of the Commission, its members, agents, or employees, with respect to the matters set forth in this Stipulation of Settlement or with respect to the validity of the adoption of the IFS Regulations or any facial challenge to the substance or content thereof as adopted as of the Effective Date, in any state or federal court or other forum. Underdog Fantasy reserves the right to challenge the Commission's application of the IFS Regulations (including how the IFS Regulations may be applied to any contests not previously offered in New York) or the Commission's promulgation of any regulations or regulation amendments that occur after the Effective Date.
3. Underdog Fantasy has authorized the individual identified below, to execute this Stipulation of Settlement on behalf of Underdog Fantasy, representing Underdog Fantasy's agreement with the terms herein.
4. Nothing in this Stipulation of Settlement shall prevent Underdog Fantasy from applying for registration or licensure by the Commission.
5. This Stipulation of Settlement may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Stipulation of Settlement may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.
6. If any term of this Stipulation of Settlement is declared by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Stipulation of Settlement did not contain that term.



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7. This Stipulation of Settlement represents the full, final and complete agreement between Underdog Fantasy and the Commission and the resolution of the issues outlined herein for the dates set forth in section A, *supra*.

**Underdog Sports, LLC d/b/a
"Underdog Fantasy" (operating as or
through Underdog Fantasy and/or
Underdog Sports, Inc., Underdog Sports
Holdings, Inc. and/or Synkt Games, Inc.)**


By: 

Name: Nicholas G. Green

Title: General Counsel

Date: March 14, 2025

New York State Gaming Commission

By: 

Name: Robert Williams

Title: Executive Director

Date: March 14, 2025