

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JUSTIN DUFOE, on Behalf of Himself and All  
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,  
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

Honorable Judge Denise J. Casper

**LEAD PLAINTIFF’S RESPONSE TO LATE CLAIMANT NYREE HINTON’S *PRO SE*  
PETITION FOR ACCEPTANCE OF UNTIMELY CLAIM**

Court-appointed Lead Plaintiff<sup>1</sup> Justin Dufoe, individually and on behalf of the Settlement Class, hereby responds to Late Claimant Nyree Hinton’s *Pro Se* Petition for Acceptance of Untimely Claim (“Hinton Motion,” ECF No. 125) pursuant to Federal Rule of Civil Procedure 23(e) and § 59 of the Settlement Agreement.<sup>2</sup>

As addressed in Lead Plaintiff’s Response to Late Claimant David Kipe’s *Pro Se* Motion for Equitable Tolling and Acceptance of Late Filed Claim (“Kipe Response,” ECF No. 116) and the Consolidated Response to Late Claimants’ *Pro Se* Motions for Equitable Tolling and to Accept Late Filed Claims (“Consolidated Response,” ECF No. 117), after the full and robust notice program approved by the Court was implemented by the Settlement Administrator, Mr. Hinton

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<sup>1</sup> Unless otherwise indicated, defined terms shall have the definitions set forth in the Stipulation of Settlement (“Settlement” or “Settlement Agreement”), which was filed on February 26, 2025 (ECF No. 87-2). Citations to the Settlement Agreement are abbreviated as “§ \_\_\_\_.”

<sup>2</sup> “The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for . . . the distribution of the Net Settlement Fund to Settlement Class Members.”

seeks permission to allow his settlement claim, which was received after the July 21, 2025, claim deadline and after the July 30, 2025, Settlement Hearing to be accepted by the Court.

As addressed in the Kipe Response and Consolidated Response, under the Settlement Agreement, neither Class Counsel nor the Settlement Administrator can accept late claims filed after the Settlement Hearing held on July 30, 2025, and such requests fall solely within the power and discretion of this Court. *See* § 32.<sup>3</sup>

For the reasons discussed in the Kipe Response and the Consolidated Response, and the declarations filed in support of both, Lead Plaintiff and Class Counsel do not take a position on whether this Court should exercise its equitable powers to toll the period of time for Mr. Hinton's late-filed claim or accept other late claims filed in this case after the July 30, 2025 Settlement Hearing. This Response incorporates by reference the Kipe Response and Consolidated Response and informs the Court of facts specific to Mr. Hinton's late claim.

## **I. BACKGROUND**

As reported in the Kipe Response, as of October 31, 2025, A.B. Data received 80 late claims submitted after the July 30, 2025, Settlement Hearing that totaled \$1,537,641.79 in recognized losses. Declaration of Kathleen M. Brauns Regarding Late Claims Received (ECF No. 116-1) ("Brauns Late Claims Decl.") ¶ 14. As of December 1, 2025, A.B. Data has received five additional late claims since October 31, 2025. Second Supplemental Declaration of Eric A. Nordskog Regarding Late Claims Received ("Second Suppl. Late Claims Decl.") ¶ 3. All claimants who submitted late claims with recognized losses had been sent an Email Notice using the information provided by DraftKings pursuant to the Court's Preliminary Approval Order. Brauns Late Claims Decl. ¶ 15. If only timely claims and late claims received on or before the Settlement

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<sup>3</sup> Pursuant to the Settlement Agreement, Defendants have no interest in the relief sought by this Motion. *See* § 27.

Hearing of July 30, 2025, are accepted, these Settlement Class Members would recover 65.4% of their individual recognized loss. *Id.* ¶ 16; Second Suppl. Late Claims Decl. ¶ 4. If all late claims received after July 30, 2025, are accepted, including Mr. Hinton's, the estimated recovery percentage for each Settlement Class Member would decrease to 56.38%. *Id.* ¶ 5. If only the claims of the ten late claimants who have filed motions before this Court, David Kipe (ECF No. 107), Jerrod Burbank (ECF No. 108), Steve Rodems (ECF No. 109), Steven McKosky (ECF No. 110), Eric Chan (ECF No. 111), Michael Syme (ECF No. 112),<sup>4</sup> Jakub Kornafel (ECF No. 113), Michael Camizzi (ECF Nos. 114, 124), Alex Lowen (ECF No. 115), and Nyree Hinton, and no other late claims received after July 30, 2025, are accepted the estimated recovery percentage for each Settlement Class Member would decrease to 59.63%. *Id.* ¶ 6.

## II. MR. HINTON'S LATE CLAIM

On April 1, 2025, A.B. Data caused the Email Notice to be emailed to Nyree Hinton using the information provided by DraftKings pursuant to the Court's Preliminary Approval Order. *Id.* ¶ 7. A.B. Data has received a report from the email vendor confirming that this email was sent successfully without a notification of a bounce. *Id.*

On August 4, 2025, A.B. Data received a Claim Form submitted by Mr. Hinton. *Id.* ¶ 8. Mr. Hinton listed his email address as the same email address used by A.B. Data to send the original Email Notice. *Id.* On October 7, 2025, A.B. Data mailed an Untimely Claim Notice to Mr. Hinton. *Id.* ¶ 9. Mr. Hinton responded to this Untimely Claim Notice on October 24, 2025. *Id.* A.B. Data has calculated Mr. Hinton's individual recognized loss to be \$6,952.20. *Id.* ¶ 10.

On November 20, 2025, Mr. Hinton filed the Hinton Motion stating he did not receive direct notice of the Settlement by mail or email and did not learn of the Settlement until after the

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<sup>4</sup> Mr. Syme subsequently withdrew his motion on October 24, 2025. ECF No. 118.

July 22, 2025 deadline had passed. Hinton Motion at 1-3. Mr. Hinton argues that his late claim would only “infinitesimally dilute the recovery of other claimants,” that his delay had no impact on the settlement, that he did not receive the initial notice of the settlement and encountered technical barriers in accessing his DraftKings account, and that he acted in good faith. *Id.* at 4-5.

### III. CONCLUSION

For the reasons stated in the Kipe Response and Consolidated Response, Lead Plaintiff and Class Counsel take no position on whether the late claim submitted by Nyree Hinton should be accepted. Additionally, Lead Plaintiff and Class Counsel respectfully submit that if the Court is inclined to accept late claims, the Court should set a deadline for late claims motions, to allow for the prompt resolution of the claims process.

Dated: December 4, 2025

Respectfully submitted,

**KIRBY McINERNEY LLP**

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**CERTIFICATE OF SERVICE**

I, Sarah E. Flohr, hereby certify that on December 4, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of the foregoing document will be served upon interested counsel via transmission of Notices of Electronic Filing generated by CM/ECF, served upon Nyree Hinton and the *pro se* filers listed in the Certificate of Service for Lead Plaintiff's Response to Late Claimant David Kipe's *Pro Se* Motion for Equitable Tolling and Acceptance of Late Filed Claim (ECF No. 116), by mail and email, and will be uploaded to the Settlement website

Dated: December 4, 2025

/s/ Sarah E. Flohr  
Sarah E. Flohr

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CLASS ACTION

Honorable Judge Denise J. Casper

**SECOND SUPPLEMENTAL DECLARATION OF ERIC A. NORDSKOG  
REGARDING LATE CLAIMS RECEIVED**

I, Eric A. Nordskog, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Director with A.B. Data, Ltd. (“A.B. Data”),<sup>1</sup> the Court appointed Settlement Administrator in the above-captioned matter. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. This declaration is to supplement the declarations of Kathleen M. Brauns regarding late claims received dated November 3, 2025 (ECF No. 116-1), and November 6, 2025 (ECF No. 117-1), and provide the Court with claims administration information for the late claim filed by Nyree Hinton (ECF No. 125) and the impact on the recovery percentage for Settlement Class Members if his and other late claims are accepted.

3. As of December 1, 2025, A.B. Data has received five additional late claims since October 31, 2025.

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4. If only timely claims and late claims received on or before the Settlement Hearing of July 30, 2025, are accepted, these Settlement Class Members would recover 65.4% of their individual recognized loss.

5. If all late claims received after July 30, 2025, are accepted the estimated recovery percentage for each Settlement Class Member would decrease from 65.4% to 56.38%.

6. If the late claims filed by David Kipe, Jerrod Burbank, Steve Rodems, Steven McKosky, Eric Chan, Michael Syme, Jakub Kornafel, Michael Camizzi, Alex Lowen, and Nyree Hinton, and no other late claims received after July 30, 2025, were accepted the estimated recovery percentage for each Settlement Class Member would decrease from 65.4% to 59.63%.

#### **NYREE HINTON'S LATE CLAIM**

7. On April 1, 2025, A.B. Data caused the Email Notice to be emailed to Nyree Hinton using the information provided by DraftKings pursuant to the Court's Preliminary Approval Order. A.B. Data has received a report from the email vendor confirming that this email was sent successfully without a notification of a bounce.

8. On August 4, 2025, A.B. Data received a Claim Form submitted by Mr. Hinton. Mr. Hinton listed his email address as the same email address used by A.B. Data to send the original Email Notice.

9. On October 7, 2025, A.B. Data mailed an Untimely Claim Notice to Mr. Hinton. Mr. Hinton responded to this Untimely Claim Notice on October 24, 2025.

10. Mr. Hinton has \$6,952.20 in individual recognized loss.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2025 in Milwaukee, Wisconsin.

*/s/ Eric A. Nordskog*  
Eric A. Nordskog