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 RYAN A. SPENCE'S *PRO SE* MOTION FOR ACCEPTANCE OF LATE CLAIM

Court-appointed Lead Plaintiff[1] Justin Dufoe, individually and on behalf of the Settlement Class, by and through Court-appointed Class Counsel, hereby responds to Late Claimant Ryan A. Spence's *Pro Se* Motion for Acceptance of Late Claim ("Spence Motion," ECF No. 140) pursuant to Federal Rule of Civil Procedure 23(e) and § 59 of the Settlement Agreement.[2]

NOTICE AS IT RELATES TO MR. SPENCE

During the pendency of the litigation, Mr. Spence emailed with Class Counsel. On February 28, 2025, Class Counsel provided the Court-approved settlement administrator, A.B. Data, with the email address that Mr. Spence had used to communicate with Class Counsel. Fourth Declaration of Kathleen M. Brauns Regarding Post Distribution Motion Late Claims Received,

[1] 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 "§ ___."

[2] "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."

attached hereto as Exhibit A ("Brauns Decl.") ¶ 3. On March 21, 2025 at 3:39 PM CDT, A.B. Data sent the class notice to Mr. Spence's email address using the information provided by Lead Counsel pursuant to the Court's Preliminary Approval Order, and A.B. Data did not receive a bounce back or error message. *Id*. On March 29, 2025 at 11:23 PM CDT, A.B. Data sent a second class notice to the same email address for Mr. Spence using the information provided by DraftKings pursuant to the Court's Preliminary Approval Order, and A.B. Data did not receive a bounce back or error message. *Id.* ¶ 4. Mr. Spence does not dispute that the class notices were attempted and recorded as successful. Spence Motion at 2. On September 17, 2026, A.B. Data received an email from Mr. Spence requesting information regarding the settlement. Brauns Decl. ¶ 5. Mr. Spence listed his email address as the same email address used by A.B. Data to send the original two email notices. *Id*.

CURRENT STATUS OF THE CASE

On July 27, 2026, this Court issued orders on the pending motions for acceptance of late claims and authorized distribution of the net settlement fund to authorized claimants ("Distribution Orders"). ECF Nos. 136-139. The Court held that no claims would be accepted after January 26, 2026, the date on which the motion for distribution of net settlement funds was filed. ECF No. 136. The Distribution Orders became final on August 26, 2026. A.B. Data was prepared to issue checks to all authorized Class members by the end of September 2026. Brauns Decl. ¶ 2. The Spence Motion was filed on September 24, 2026. ECF No. 140. In light of Mr. Spence's motion, A.B. Data was instructed to hold off on distributing the settlement funds pending the Court's resolution of the motion. Brauns Decl. ¶ 2. As of today, Mr. Spence has not filed a claim with A.B. Data. *Id*. ¶ 6.

As stated in the Lead Plaintiff's Motion for Authorization to Distribute Net Settlement Fund to Authorized Claimants and Supporting Memorandum of Law ("Distribution Motion," ECF No. 130) and subsequent filings, 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. § 32.[3] Lead Plaintiff and Class Counsel have taken no position as to whether previously submitted late claims should be accepted and take no position on the Spence Motion.

Once the Distribution Orders became final on August 26, 2026, A.B. Data began preparing for the funds to be distributed to the class by the end of September 2026. *See* Brauns Decl. ¶ 2. Out of an abundance of caution, Class Counsel instructed A.B. Data to not proceed with distribution until the Spence Motion is resolved, as the Court's decision may affect the amount to be paid to the previously authorized class members. Lead Plaintiff and Class Counsel respectfully request that the Court expeditiously rule on the Spence Motion so that distribution may begin for eligible class members who submitted timely claims in this case.

CONCLUSION

For the reasons stated in the Distribution Motion and other filings, Lead Plaintiff and Class Counsel take no position on the Spence Motion. Lead Plaintiff and Class Counsel respectfully request that the Court expeditiously rule on the Spence Motion so that distribution may begin for eligible class members who submitted timely claims in this case.

[3] Pursuant to the Settlement Agreement, Defendants have no interest in the relief sought by this Motion. § 27.

Dated: September 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sarah E. Flohr, hereby certify that on September 28, 2026, 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 Ryan A. Spence, by mail and email, and will be uploaded to the Settlement website.

Dated: September 28, 2026

/s/ Sarah E. Flohr
Sarah E. Flohr

EXHIBIT A

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DISTRICT OF MASSACHUSETTS

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FOURTH DECLARATION OF KATHLEEN M. BRAUNS REGARDING POST DISTRIBUTION MOTION LATE CLAIMS RECEIVED

I, Kathleen M. Brauns, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Project Manager with A.B. Data, Ltd. ("A.B. Data"), 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.[1]

2. Once the Distribution Orders became final on August 26, 2026, A.B. Data began preparing for the funds to be distributed to the class by the end of September 2026. A.B. Data was prepared to issue checks to all authorized Class members by the end of September 2026. On September 24, 2026, Ryan Spence filed a motion to have his late claim allowed by the Court. In light of Mr. Spence's motion, A.B. Data was instructed to hold off on distributing the settlement funds pending the Court's resolution of the motion. This declaration addresses A.B. Data's notice to Mr. Spence pursuant to the Court-approved class notice plan.

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3. On February 28, 2025, Class Counsel provided A.B. Data with the email address that Mr. Spence had used to communicate with Class Counsel. On March 21, 2025 at 3:39 PM CDT, A.B. Data sent the class notice to Mr. Spence's email address using the information provided by Lead Counsel pursuant to the Court's Preliminary Approval Order, and A.B. Data did not receive a bounce back or error message.

4. On March 29, 2025 at 11:23 PM CDT, A.B. Data sent a second class notice to the same email address for Mr. Spence using the information provided by DraftKings pursuant to the Court's Preliminary Approval Order, and A.B. Data did not receive a bounce back or error message.

5. On September 17, 2026, A.B. Data received an email from Mr. Spence requesting information regarding the settlement. Mr. Spence listed his email address as the same email address used by A.B. Data to send the original two email notices.

6. As of the date of this declaration, Mr. Spence has not filed a claim with A.B. Data.

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

Executed on September 28, 2026 in Milwaukee, Wisconsin.

/s/ Kathleen Brauns
Kathleen M. Brauns