

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 DAVID KIPE’S *PRO SE*
MOTION FOR EQUITABLE TOLLING AND ACCEPTANCE OF LATE FILED CLAIM**

Court-appointed Lead Plaintiff¹ Justin Dufoe, individually and on behalf of the Settlement Class, hereby responds to Late Claimant David Kipe’s *Pro Se* Motion for Equitable Tolling and Acceptance of Late Filed Claim (ECF No. 107) (the “Motion”) pursuant to Federal Rule of Civil Procedure 23(e) and § 59 of the Settlement Agreement.²

After a full and robust notice program that sent notice to well over one million potential settlement class members, Mr. Kipe 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.

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.”

Pursuant to 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* § 32.³

Given the conflicting interests between Settlement Class Members, 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. Kipe’s late-filed claim or accept other late claims filed in this case.⁴ If late claims are not accepted, Mr. Kipe and similarly situated Settlement Class Members will receive no recovery. If late claims are accepted, Settlement Class Members who filed timely claims will receive a lower recovery. While the Settlement Administrator executed a robust, multi-faceted notice program, despite this diligence—as is not uncommon—late claims were filed. This Response informs the Court of the relevant facts, details the scope of the Notice Program, and provides clarity on the law applicable to the pending request.

Lead Plaintiff and Class Counsel respectfully submit that if the Court is inclined to accept late claims by Mr. Kipe and/or others, it should set a final, fixed claim deadline, to allow for the prompt resolution of the claims process so that Settlement Class Members with valid claims may receive their *pro rata* distribution in a timely manner. The Settlement Agreement provides a mechanism by which Class Counsel will raise any unresolved disputes regarding late claims for the Court’s review. *See* § 25.

³ Pursuant to the Settlement Agreement, Defendants have no interest in the relief sought by this Motion. *See* § 27 (“No Defendant . . . shall be permitted to review, contest, or object to any Proof of Claim, or any decision of the Settlement Administrator or Class Counsel with respect to accepting or rejecting any claim for payment.”).

⁴ As of October 31, 2025, 8 additional motions seeking similar relief have been filed. Class Counsel will respond to the remainder of these motions by the applicable deadlines.

I. BACKGROUND

Pursuant to the Settlement Agreement, Defendants agreed to pay, or cause to be paid, \$10,000,000 to settle the claims asserted in the Action. § 1(uu). The Court granted preliminary approval of the Settlement and notice plan by an Order entered February 28, 2025 (ECF No. 89) and granted final approval of the Settlement by an Order and Final Judgment dated July 30, 2025 (ECF No. 106) (the “Final Approval Order”). Pursuant to the Settlement Agreement and Preliminary Approval Order, the claims filing deadline of July 21, 2025, was 120 days after the Notice Date. § 15; ECF No. 89 at 8.

A. Court-Approved Notice Program and Claims Process

In connection with seeking preliminary and final approval, Lead Counsel submitted details of the robust notice program that was proposed, and later executed, in this matter. After a review of the notice program, this Court found: “The form, manner, and content of the Email Notice, Long-Form Notice, and Publication Notice were the best notice practicable under the circumstances” and “the Notice Program in all respects satisfied due process, provided adequate information to the Settlement Class of all matters relating to the Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23[], [the Due Process Clause of the U.S. Constitution], and the Private Securities Litigation Reform Act[], Massachusetts law, and all other applicable law and rules.” Final Approval Order ¶ 7.

Pursuant to the Court’s Preliminary Approval Order, Settlement Administrator A.B. Data (“A.B. Data”) caused a copy of the Email Notice to be emailed to all potential Settlement Class Members based on the lists it received from Lead Counsel and DraftKings. Declaration of Kathleen M. Brauns Regarding Late Claims Received (“Brauns Late Claims Decl.”) ¶ 3. A.B. Data caused the Email Notice to be emailed to 1,554,528 potential Settlement Class Members. *Id.* ¶ 4. A.B. Data received a report from the email vendor identifying which emails were sent successfully

without a notification of a bounce and which emails were not successfully delivered. *Id.* For potential Settlement Class Members whose email address was not provided or in instances where the Email Notice was undeliverable, A.B. Data provided direct notice utilizing the Postcard Notice. *Id.* ¶ 5. A.B. Data caused the Postcard Notice to be mailed to 12,284 potential Settlement Class Members. *Id.* ¶ 6. The Email Notice and Postcard Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Claim Forms no later than July 21, 2025. *Id.* ¶ 7.

A.B. Data established and maintained the Settlement Website (www.DraftKingsNFTSettlement.com), email box (info@DraftKingsNFTSettlement.com), toll-free helpline (877-833-9186), and P.O. Box (DraftKings NFT Settlement, c/o A.B. Data, Ltd., P.O. Box. 173039, Milwaukee, WI 53217) to assist Settlement Class Members. *Id.* ¶ 8. On April 4, 2025, A.B. Data caused the Publication Notice to be transmitted once over the *PR Newswire*. *Id.* ¶ 9. The Settlement Website and Publication Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Claim Forms no later than July 21, 2025. *Id.* ¶ 10. If a Settlement Class Member contacted A.B. Data via email, mail, or called the toll-free helpline, they were informed of the requirement to submit Claim Forms no later than July 21, 2025. *Id.* ¶ 11.

The Settlement Agreement, which is accessible on the Settlement Website, allows Class Counsel the right, but not the obligation, to accept untimely Proofs of Claim received *prior* to the Settlement Hearing. § 27. As of the claims filing deadline, July 21, 2025, A.B. Data received 14,540 timely claims that totaled \$9,650,126.10 in recognized losses.⁵ Brauns Late Claims Decl.

⁵ All Settlement Class Members who submitted claims were provided an opportunity to dispute A.B. Data's calculation of their recognized loss. A.B. Data is currently reviewing challenges raised by Settlement Class Members to their individual calculations of recognized loss. Brauns Late

¶ 12. Between July 22, 2025, and the date of the Settlement Hearing on July 30, 2025, A.B. Data received 88 late claims that totaled \$46,270.16 in recognized losses. *Id.* ¶ 13.

B. Late Claims Submitted After the Settlement Hearing

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. *Id.* ¶ 14. 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. *Id.* ¶ 15.

The total recognized loss for late claimants who submitted claims following the Settlement Hearing is substantial and will, if accepted, decrease the recovery of Settlement Class Members who submitted timely claims by a nontrivial amount. ¶¶ 16-17, 19, 24. Specifically, 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. *Id.* ¶ 16. If all late claims received after July 30, 2025, are accepted the estimated recovery percentage for each Settlement Class Member would decrease to 56.4%. *Id.* ¶ 17.

On October 7, 2025, A.B. Data caused a Notice of Untimely Claim (“Untimely Claim Notice”) to be mailed to the 67 individuals who submitted claims on or after July 31, 2025, and before October 7, 2025. *Id.* ¶ 18 and Exhibit B.⁶ The Untimely Claim Notice informed the recipient that their claim had been submitted after the claims filing deadline. *Id.* The Untimely Claim Notice stated that, if the recipient believes the untimeliness of their claim should be excused, the late

Claims Decl. ¶ 12 n.2. Therefore, the recognized loss calculations within this Response are subject to change.

⁶ Following the mailing of the Untimely Claim Notice on October 7, 2025, A.B. Data received 13 additional untimely claims. A.B. Data provided an email communication to each claimant indicating their Untimely Claim status and the steps required if the claimant believed the untimeliness should be excused. *Id.* ¶ 18, n.3.

claimant must send a signed written statement to A.B. Data within 21 days of the Untimely Claim Notice dated October 7, 2025. *Id.* The Untimely Claim Notice also informed late claimants of their right to directly petition the Court to accept their claim. *Id.*

As of October 31, 2025, 26 claimants who received an Untimely Claim Notice have responded to A.B. Data and requested that the untimeliness of their claims should be excused. *Id.* ¶ 19. A.B. Data is reviewing the statements submitted by these claimants. *Id.* Pursuant to § 25 of the Settlement Agreement, these statements will be submitted for the Court’s review before or contemporaneously with Class Counsel’s forthcoming motion for a Class Distribution Order. Separate from communications with A.B. Data, Lead Counsel has received phone calls and email correspondence from Mr. Kipe and other Settlement Class Members who submitted claims after July 30, 2025, requesting that their late claims be accepted. Declaration of Cormac H. Broeg in Support of Lead Plaintiff’s Response to Late Claimant David Kipe’s *Pro Se* Motion for Equitable Tolling and Acceptance of Late Filed Claim (“Broeg Decl.”) ¶ 2.

Lead Counsel has also received phone calls and email correspondence from multiple Settlement Class Members who submitted timely claims requesting that late claims not be accepted and stating the acceptance of late claims would be unfair and prejudicial to timely claimants. *Id.* ¶ 3. On October 14, 2025, one of these Settlement Class Members informed Lead Counsel that at least one individual discussed the Settlement in online forums before the July 21, 2025, deadline and advised others not to submit claims, and that this same individual learned after the Settlement Hearing from another Settlement Class Member that the recovery percentage was over 60%, and subsequently posted in an online forum that they now planned to submit a late claim. *Id.* ¶ 4. The reporting Settlement Class Member did not provide Lead Counsel with the name of this individual. *Id.* Also on October 14, 2025, this same reporting Settlement Class Member informed Lead

Counsel about the existence of a Discord channel in which individuals had been discussing the submission of late claims motions and the content of those motions. *Id.* The Settlement Class Member emailed Lead Counsel screenshots of messages from this Discord channel, which are attached to the Broeg Declaration as Exhibit A.

C. David Kipe's Late Claim

On March 29, 2025, A.B. Data caused the Email Notice to be emailed to David Kipe using the information provided by DraftKings pursuant to the Court's Preliminary Approval Order. Brauns Late Claims Decl. ¶ 20. This is the same email address Mr. Kipe includes in his motion. *See* Motion at 3. A.B. Data has received a report from the email vendor confirming that this email was sent successfully without a notification of a bounce. Brauns Late Claims Decl. ¶ X.

On August 8, 2025, A.B. Data received a Claim Form submitted by Mr. Kipe. *Id.* ¶ 21. Mr. Kipe 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. Kipe. *Id.* ¶ 22. Mr. Kipe responded to this Untimely Claim Notice on October 13, 2025. *Id.* This response, submitted by Mr. Kipe to the Court as an exhibit to his Motion (ECF No. 107-1), appears identical to the letter included in a post attributed to username Epikdk22 and dated October 13, 2025, in the Discord screenshots emailed to Lead Counsel. Broeg Decl. ¶ 5 and Ex. A.

A.B. Data has calculated Mr. Kipe's individual recognized loss to be \$107,136.67. Brauns Late Claims Decl. ¶ 23. If Mr. Kipe's untimely claim, and no other claim submitted after July 30, 2025, were accepted the recovery percentage for Settlement Class Members with accepted and timely claims would decrease to 64.7%. *Id.* ¶ 24.

On October 20, 2025, Mr. Kipe filed the Motion stating he did not receive direct notice of the Settlement by mail or email. Motion at 2. Mr. Kipe requests this Court exercise its equitable

powers and allow his late-filed claim using support from three Ninth Circuit cases. *Id. Silber v. Mabon*, is miscited in the Motion. The correct citation is: 18 F.3d 1449 (9th Cir. 1994). Class Counsel has found no case matching the citation: *In re Cent. States Health & Life Co. of Omaha*, 504 F.3d 869 (9th Cir. 2007). Mr. Kipe argues he did not have actual notice of the filing deadline, that his late claim does not prejudice the timely filed claims because his losses could be absorbed “without material impact,” that he acted diligently upon notice, and that acceptance promotes the interests of fairness and due process. Motion at 2. Neither the Motion nor his included Declaration state when or how Mr. Kipe learned of the Settlement.

II. STATEMENT OF LAW

Under the Settlement Agreement, Class Counsel has the responsibility for supervising and administering the Settlement and disbursement of the Net Settlement Fund subject to the Court’s approval. § 27. Class Counsel has “the right, but not the obligation, to accept untimely Proofs of Claim received prior to the Settlement Hearing or to waive what it deems to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.” *Id.* However, neither Class Counsel nor A.B. Data have the right under the Settlement Agreement to accept untimely claims received after the Settlement Hearing. This right resides with the Court. *See* § 32 (“All proceedings with respect to the administration, processing and determination of Proofs of Claim and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Proofs of Claim, shall be subject to the jurisdiction of the Court.”).

A. The Court Has the Equitable Power To Accept Late Claims

A district court retains the equitable power to accept late claims to the settlement fund. *In re Oxford Health Plans, Inc.*, 383 Fed. App’x 43, 45 (2d Cir. 2010) (citing *Zients v. LaMorte*, 459 F.2d 628, 630 (2d Cir. 1972)). When asked to do so, courts “should permit such claims only when

the equities, on balance, favor claimants.” *In re Sears, Roebuck and Co. Front-Loading Washer Products Liab. Litig.*, No. 06 Civ. 7023, 2018 WL 1138541, at *2 (N.D. Ill. Mar. 2, 2018) (citing *Burns v. Elrod*, 757 F.2d 151, 155 (7th Cir. 1985)). This inquiry can be conducted on an individual basis; the Court’s decision to accept some late claims does not require it to accept all late claims. *See In re Valdez*, 289 Fed. App’x 204, 206 (9th Cir. 2008) (affirming district court’s decision to allow late claimants with “plausible excuses for not filing timely” and disallowing claimants who offered no plausible excuse).

In weighing the equities, courts apply the *Pioneer* standard for determining “excusable neglect,” which takes into account “[r]elevant considerations includ[ing] ‘the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.’” *Tubens v. Doe*, 976 F.3d 101, 104-05 (1st Cir. 2020) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). In regard to the third factor, courts have generally recognized a lack of actual notice as an excusable reason for delay. *See Jones v. City of New York*, No. 17 Civ. 7577, 2024 WL 4307774, at *6 (S.D.N.Y. Sept. 26, 2024) (collecting cases).

B. Lead Plaintiff and Class Counsel Take No Position on the Acceptance of Late Claims by Settlement Class Members Attesting to Lack of Actual Notice

Under the Settlement Agreement, a Settlement Class Member means “each person and entity that is a member of the Settlement Class and that does not timely opt out of the Settlement.” § 1(rr). Thus, Class Counsel represents all Settlement Class Members, including both timely and late claimants. Given the conflicting interests between Settlement Class Members, Lead Plaintiff and Class Counsel take no position on whether late claims submitted after July 30, 2025, by

bonafide Settlement Class Members attesting to a lack of actual notice of the Settlement before the claims deadline should be accepted.

III. CONCLUSION

For the forgoing reasons, Lead Plaintiff and Class Counsel take no position on whether the late claim submitted by David Kipe 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: November 3, 2025

Respectfully submitted,

KIRBY McINERNEY LLP

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jsaif@bermantabacco.com

Local Counsel for Lead Plaintiff Dufoe

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bth@hannafanlaw.com

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Chicago, Illinois 60602
312.854.8300
george.dowd@gdowd.law

Additional Counsel for Lead Plaintiff Dufoe

CERTIFICATE OF SERVICE

I, Sarah E. Flohr, hereby certify that on November 3, 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 the *pro se* filers listed below by mail and email, and will be uploaded to the Settlement website

Dated: November 3, 2025

/s/ Sarah E. Flohr
Sarah E. Flohr

David Kipe
7 Hilton Avenue
Northport, NY 11768

Jerrod Burbank
2201 Sweetgrass Cir.
Edmond, OK 73013

Michael Camizzi
11807 Britain Way
Henrico, VA 23238

Eric Chan
10159 Lodestone Way
Parker, CO 80134

Jakub Kornafel
22 Miller St.
Wallington, NJ 07057

Alex Lowen
905 Oceanview Boulevard
Pacific Grove, CA 93950

Steven McKosky
9310 Glen Meadow Court
Frisco, TX 75033

Steve Rodems
14472 Kentfield Pl.
Poway, CA 92064

Michael Syme
16308 SW 14th Street
Pembroke Pines, FL 33027

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

DECLARATION OF KATHLEEN M. BRAUNS REGARDING
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”),¹ 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. The Court appointed A.B. Data to serve as the Settlement Administrator for the class settlement in *Dufoe v. DraftKings Inc., et al.*, No. 23-cv-10524-DJC (D. Mass.). ECF No. 89 at 9. Pursuant to that role, A.B. Data designed and implemented the settlement notice program authorized by the Court (the “Notice Program”) to inform Settlement Class Members about their rights and options under the Settlement. Details about the Notice Program and A.B. Data’s experience were included in the Motion for Preliminary Approval. ECF No. 87, Ex. 2.

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 “§ ____.”

NOTICE PROGRAM

3. In accordance with the Court's Preliminary Approval Order, A.B. Data caused a copy of the Email Notice to be emailed to all potential Settlement Class Members based on the lists it received from Lead Counsel and DraftKings.

4. A.B. Data caused the Email Notice to be emailed to 1,554,528 potential Settlement Class Members. A.B. Data received a report from the email vendor identifying which emails were sent successfully without a notification of a bounce and which emails were not successfully delivered.

5. For potential Settlement Class Members whose email address was not provided or instances where the Email Notice was undeliverable, A.B. Data provided direct notice utilizing the Postcard Notice.

6. A.B. Data caused the Postcard Notice to be mailed to 12,284 potential Settlement Class Members.

7. The Email Notice and Postcard Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Claim Forms no later than July 21, 2025.

8. A.B. Data established and maintained the Settlement Website (www.DraftKingsNFTSettlement.com), email inbox (info@DraftKingsNFTSettlement.com), toll-free helpline (877-833-9186), and P.O. Box (DraftKings NFT Settlement, c/o A.B. Data, Ltd., P.O. Box. 173039, Milwaukee, WI 53217) to assist Settlement Class Members.

9. On April 4, 2025, A.B. Data caused the Publication Notice to be transmitted once over the *PR Newswire*.

10. The Settlement Website and Publication Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Claim Forms no later than July 21, 2025.

CLAIMS ADMINISTRATION

11. If a Settlement Class Member contacted A.B. Data via email, mail, or called the toll-free helpline, they were informed of the requirement to submit Claim Forms no later than July 21, 2025.

12. As of the claims filing deadline, July 21, 2025, A.B. Data received 14,540 timely claims that totaled \$9,650,126.10 in recognized losses.²

13. Between July 22, 2025, and the date of the Settlement Hearing on July 30, 2025, A.B. Data received 88 late claims that totaled \$46,270.16 in recognized losses.

14. As of October 31, 2025, A.B. Data received 80 late claims submitted after July 30, 2025, Settlement Hearing, that totaled \$1,537,641.79 in recognized losses.

15. All the 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.

CLAIM CALCULATION NOTICES

16. On October 7, 2025, A.B. Data caused a Notice of Claim Calculation to be mailed to Settlement Class Members who submitted non-duplicative claims on or before the July 30, 2025 Settlement Hearing. *See* Exhibit A. The claims of these Settlement Class Members totaled \$9,696,396.26 in recognized losses. Based on this calculation, if no other claims were accepted,

² All Settlement Class Members who submitted claims were provided an opportunity to dispute A.B. Data's calculation of their recognized loss. A.B. Data is currently reviewing challenges raised by Settlement Class Members to their individual calculations of recognized loss.

these Settlement Class Members would recover approximately 65.4% of their individual recognized loss.

17. If A.B. Data were to add the \$1,537,641.79 recognized losses for late claims received after the July 30, 2025 Settlement Hearing, the estimated recovery percentage would decrease to 56.4%.

UNTIMELY CLAIMS NOTICES

18. On October 7, 2025, A.B. Data also caused a Notice of Untimely Claims (“Untimely Claim Notice”) to be mailed to the 67 individuals who submitted claims on or after July 31, 2025 and before October 7, 2025.³ *See* Exhibit B. The Untimely Claim Notice informed the recipients that their claims had been submitted after the claims filing deadline. The Untimely Claim Notice stated that, if the recipient believes the untimeliness of their claim should be excused, the late claimant must send a signed written statement to A.B. Data within 21 days of the Untimely Claim Notice dated October 7, 2025. The Untimely Claim Notice also informed late claimants of their right to directly petition the Court to accept their claim.

19. As of October 31, 2025, 26 claimants who received an Untimely Claim Notice or filed a claim after October 7, 2025, have responded to A.B. Data and requested that the untimeliness of their claims should be excused. A.B. Data is reviewing the statements submitted by these claimants. These 26 late claimants have a total recognized loss of \$1,389,342.88. If all 26 untimely claims were accepted, the recovery percentage for all Settlement Class Members would decrease to 57.2%.

³ Following the mailing of the Untimely Claim Notice on October 7, 2025, A.B. Data received 13 additional untimely claims. A.B. Data provided an email communication to each claimant indicating their Untimely Claim status and the steps required if the claimant believed the untimeliness should be excused.

DAVID KIPE'S LATE CLAIM

20. On March 29, 2025, A.B. Data caused the Email Notice to be emailed to David Kipe 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.

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

22. On October 7, 2025, A.B. Data mailed an Untimely Claim Notice to Mr. Kipe. Mr. Kipe responded to this Untimely Claim Notice on October 13, 2025.

23. Mr. Kipe has \$107,136.67 in individual recognized loss.

24. If Mr. Kipe's untimely claim, and no other claim submitted after July 30, 2025, were accepted the recovery percentage for Settlement Class Members with accepted and timely claims would decrease to 64.7%.

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

Executed on November 3, 2025 in Milwaukee, Wisconsin.



/s/ Kathleen Brauns
Kathleen M. Brauns

EXHIBIT A

DRAFTKINGS NFT SETTLEMENT
SETTLEMENT ADMINISTRATOR
C/O A.B. DATA, LTD.
P.O. BOX 173039
MILWAUKEE, WI 53217

FIRST CLASS MAIL
US POSTAGE
PAID
MILWAUKEE, WI
PERMIT 3780



NOTICE OF CLAIM CALCULATION

DATE: October 07, 2025
RE: DraftKings NFT Settlement
INDIVIDUAL RECOGNIZED LOSS: \$ [REDACTED]
CLAIM NUMBER: [REDACTED]
RESPONSE DEADLINE: October 28, 2025

Dear Claimant:

We have processed your Proof of Claim and Release Form (“Claim”) submitted in connection with the DraftKings NFT Settlement. Each Claim’s Individual Recognized Loss (“IR”) was calculated in accordance with the Court-approved Plan of Allocation utilizing the following formula.

$$IR = [PP + SP] - [SR + CR + PR]$$

Your Claim’s IR is \$ [REDACTED]. The transactional information used to calculate your Claim’s IR is listed below. This data was provided directly to the Settlement Administrator by DraftKings. More information on the Plan of Allocation is found in the Settlement Notice available at www.DraftKingsNFTSettlement.com.

Primary Market Payments (PP):
Secondary Market Payments (SP):
Secondary Market Receipts (SR):
Closure Receipts (CR):
Prize Receipts (PR):

[REDACTED]
\$
\$
\$
\$
\$

If you believe the calculation of your IR set forth above is incorrect, you must, within twenty-one (21) days of the date of this notice, send us a signed written statement that states your reasons for contesting this determination, along with documentation supporting a different Recognized Net Loss amount under the Plan of Distribution.

The Settlement Administrator will review any information you submit in response to this determination. If there remains a dispute concerning the Settlement Administrator’s determination of your Claim, such dispute will be presented to the Court for binding resolution.

To determine your Claim's final award, the Settlement Administrator will divide your Claim's IR by the "Aggregate Recognized Loss" (*i.e.*, all Settlement Class Member's recognized losses combined) with the resulting percentage multiplied against the "Net Settlement Fund" (*i.e.*, the balance remaining in the Settlement Fund after the payment of: (i) any and all Notice Costs; (ii) any and all Administration Costs; (iii) any and all Taxes; (iv) any Fee and Expense Award; (v) any Service Award; and (vi) any other fees, costs, or expenses approved by the Court).

Class Counsel will file a motion for Court approval to distribute the Net Settlement Fund after claimants have had an opportunity to respond to the determination from the Settlement Administrator and all Claims have been finalized. The distribution motion will be posted on the Settlement website (www.DraftKingsNFTSettlement.com). Claimants may file objections to the determination of their claim or otherwise make submissions to the Court in response to the distribution motion.

If you have any questions about this notice or if you want to confirm the status of your Claim after you submit a response to this notice, please contact us at 1-877-883-9186 or email us at info@DraftKingsNFTSettlement.com. Please reference the Claim number listed above in any communication. If you would like to view or download the Settlement Notice, which contains the Plan of Distribution, you may do so by visiting www.DraftKingsNFTSettlement.com. Additionally, in order to ensure that you receive further communications regarding this settlement, please make sure that all of your contact information is correct and up to date.

Sincerely,

A.B. DATA, LTD.
Settlement Administrator

EXHIBIT B

DRAFTKINGS NFT SETTLEMENT
SETTLEMENT ADMINISTRATOR
C/O A.B. DATA, LTD.
P.O. BOX 173039
MILWAUKEE, WI 53217

FIRST CLASS MAIL
US POSTAGE
PAID
MILWAUKEE, WI
PERMIT 3780



NOTICE OF CLAIM REJECTION

DATE: October 07, 2025
RE: DraftKings NFT Settlement
INDIVIDUAL RECOGNIZED LOSS: \$0.00
CLAIM NUMBER: [REDACTED]
RESPONSE DEADLINE: October 28, 2025

Dear Claimant:

We are writing to inform you that your Proof of Claim and Release Form (“Claim”) submitted in connection with the DraftKings NFT Settlement was received after the court-approved filing deadline of July 21, 2025, and after the final approval hearing date of July 30, 2025. Under the terms of the Settlement Agreement, Class Counsel and the Settlement Administrator do not have the authority to accept untimely claims received after the final approval hearing on July 30, 2025. Because your Claim was submitted after July 30, 2025, it is untimely and ineligible for a payment from the settlement fund unless the Court determines that it should be accepted in an exercise of its equitable powers.

If you believe this untimeliness determination is incorrect and that your Claim was received by the Settlement Administrator on or before July 30, 2025, you must, within twenty-one (21) days of the date of this notice, send the Settlement Administrator a signed written statement that states your reasons for contesting this determination, along with any supporting documentation. The Settlement Administrator will review any information you submit in response to the determination of your Claim. If there remains a dispute concerning the timeliness of your Claim, such dispute will be presented to the Court for binding resolution.

If you believe that the untimeliness of your Claim should be excused, you must, within twenty-one (21) days of the date of this notice, send the Settlement Administrator a signed written statement that states the reasons why you believe your Claim should be excused. If you fail to submit a signed written statement within twenty-one (21) days of the date of this notice, Class Counsel will report to the Court in its motion for Court approval to distribute the Net Settlement Fund that you declined the opportunity to contest the rejection of your untimely Claim.

You have the right to petition the Court to accept your Claim, and you have the right to retain separate counsel of your choice to represent you in this matter. Any counsel you retain will be at your own expense. Class Counsel cannot represent you in petitioning the Court to accept your individual Claim or provide you with legal advice relating to that petition.

Class Counsel will file a motion for Court approval to distribute the Net Settlement Fund after claimants have had an opportunity to respond to the determination from the Settlement Administrator and all Claims have been finalized. The distribution motion will be posted on the Settlement website (www.DraftKingsNFTSettlement.com). Claimants may file objections to the determination of their claim or otherwise make submissions to the Court in response to the distribution motion.

If you have any questions about this notice or if you want to confirm the status of your Claim after you submit a response to this notice, please contact us at 1-877-883-9186 or email us at info@DraftKingsNFTSettlement.com. Please reference the Claim number listed above in any communication. If you would like to view or download the Settlement Notice, which contains the Plan of Distribution, you may do so by visiting www.DraftKingsNFTSettlement.com. Additionally, in order to ensure that you receive further communications regarding this settlement, please make sure that all of your contact information is correct and up to date.

Sincerely,

A.B. DATA, LTD.
Settlement Administrator

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

**DECLARATION OF CORMAC H. BROEG IN SUPPORT OF LEAD PLAINTIFF'S
RESPONSE TO LATE CLAIMANT DAVID KIPE'S *PRO SE* MOTION FOR
EQUITABLE TOLLING AND ACCEPTANCE OF LATE FILED CLAIM**

I, Cormac H. Broeg, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney at the law firm Kirby McInerney LLP and am counsel of record for Lead Plaintiff¹ in the above-captioned matter. I am admitted to practice *pro hac vice* before this Court. I have been actively involved in the prosecution and resolution of this action, am familiar with the proceedings, and have personal knowledge of the matters set forth herein based on my active participation in this action and, if called as a witness, could and would testify competently thereto.

2. Since the Settlement Hearing on July 30, 2025, Lead Counsel has received phone calls and email correspondence from David Kipe and other Settlement Class Members who submitted claims after July 30, 2025, requesting that their late claims be accepted.

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 “§ ____.”

3. Lead Counsel has also received phone calls and email correspondence from multiple Settlement Class Members who submitted timely claims requesting that late claims not be accepted and stating the acceptance of late claims would be unfair and prejudicial to timely claimants.

4. On October 14, 2025, one of these Settlement Class Members informed Lead Counsel that at least one individual discussed the Settlement in online forums before the July 21, 2025, deadline and advised others not to submit claims, and that this same individual learned after the Settlement Hearing from another Settlement Class Member that the recovery percentage was over 60%, and subsequently posted in an online forum that they now planned to submit a late claim. The reporting Settlement Class Member did not provide Lead Counsel with the name of this individual. Also on October 14, 2025, this same reporting Settlement Class Member informed Lead Counsel about the existence of a Discord channel in which individuals had been discussing the submission of late claims motions and the content of those motions. The Settlement Class Member emailed Lead Counsel screenshots of messages from this Discord channel, which are attached to the Broeg Declaration as Exhibit A.

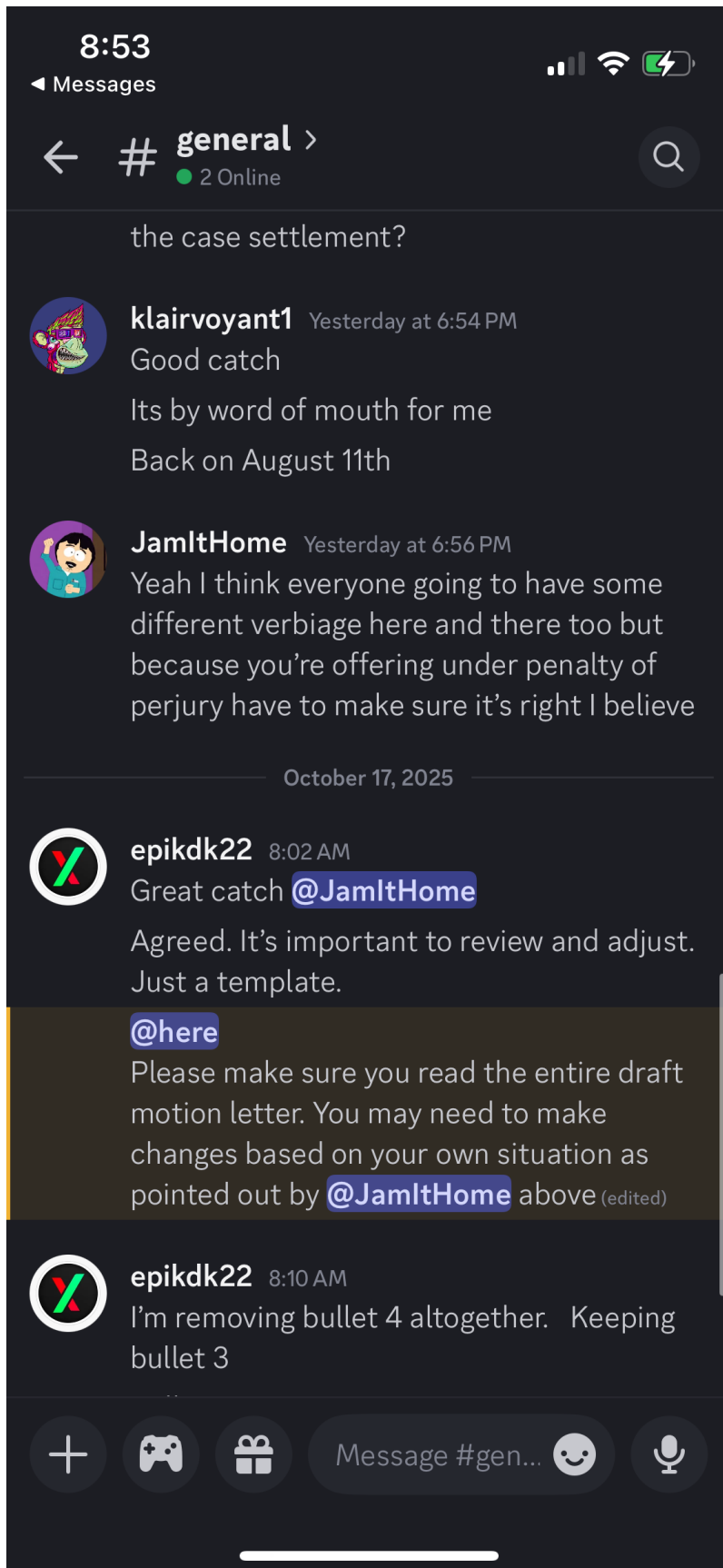
5. Mr. Kipe's response submitted to the Court as an exhibit to his Motion (ECF No. 107-1), appears identical to the letter included in a post attributed to username Epikdk22 and dated October 13, 2025 in the Discord screenshots emailed to me. *See* Ex. A.

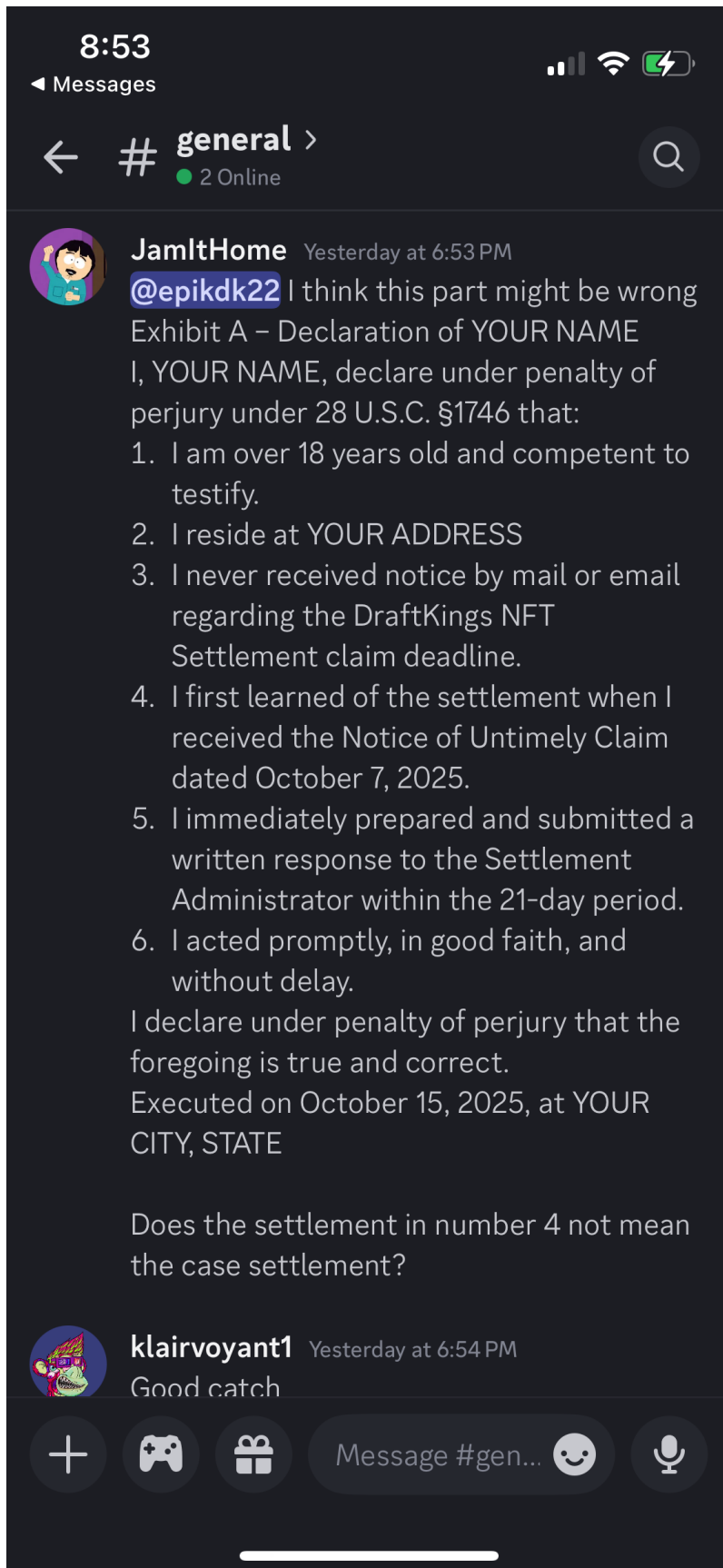
I declare under penalty of perjury that the foregoing is true and correct.

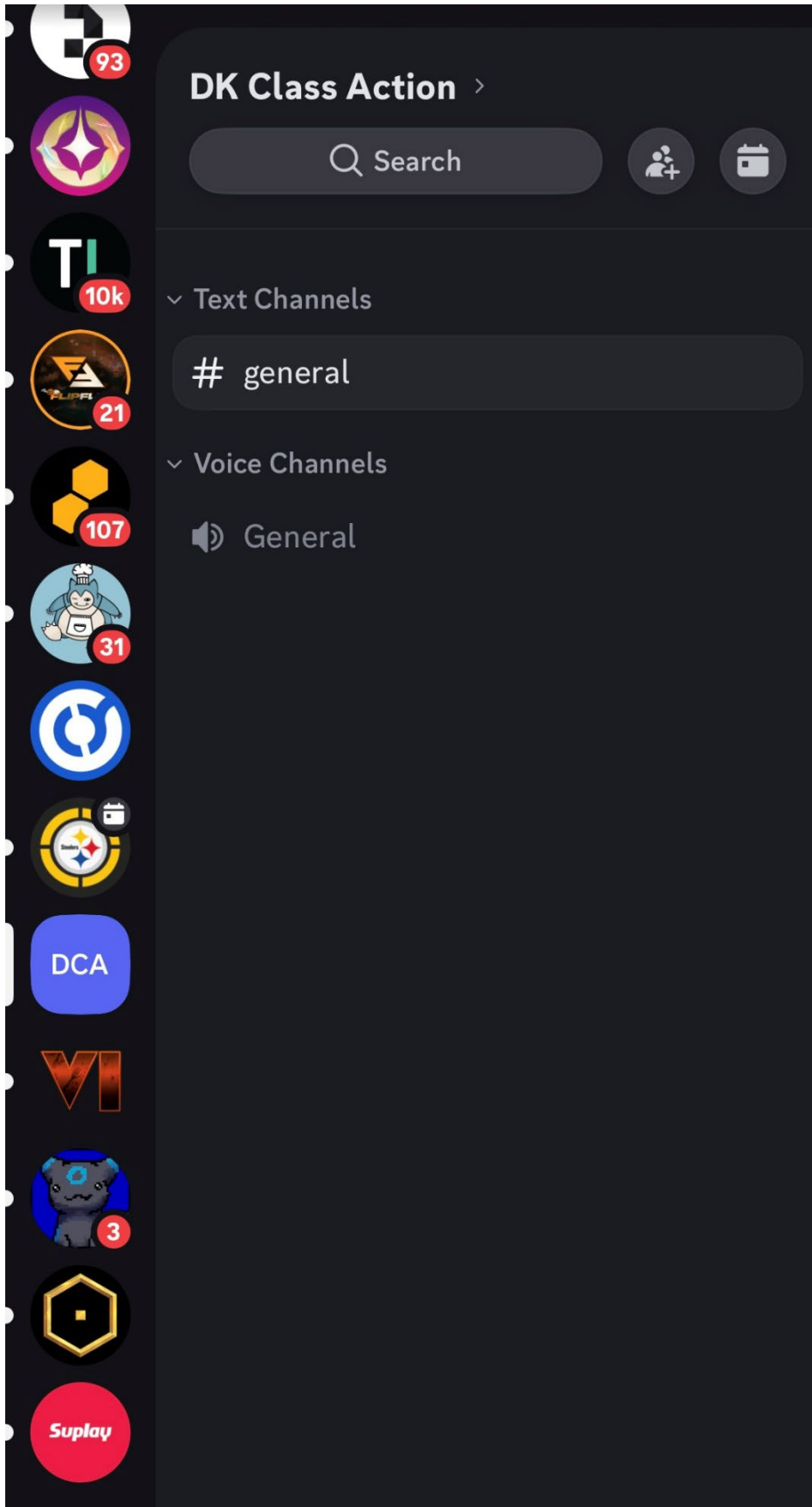
Executed on November 3, 2025 in Chicago, Illinois.

/s/ Cormac H. Broeg
Cormac H. Broeg

Exhibit A








8:45



← # general >
99 1 Online




 **@epikdk22** Guys if you can, send via email and postal mail. Certified is even better.



klairvoyant1 Yesterday at 11:05 AM

If I don't get a response in the next few days saying they reviewed and accept me I'm going to file a motion with the court to accept my petition

 **@klairvoyant1** If I don't get a response in the next few days saying they reviewed and accept me ...



epikdk22 Yesterday at 12:27 PM


I'll do the same. Great idea.



klairvoyant1 Yesterday at 12:36 PM

Like literally Monday afternoon

So it gets to the court on time. It's also my understanding that you don't have to pay any fees to file a motion since the case is already on the docket. And, they're also pretty lenient with the formatting. Just try and follow the rules, like double spacing, listing the page numbers, the case law, and then how you served the other parties. (edited)

 **@epikdk22** I'll do the same. Great idea.



klairvoyant1 Yesterday at 12:44 PM

I sent you a dm



Prompt Action Upon Awareness

The moment I became aware of the settlement and claims process, I submitted my completed claim form without delay. My submission reflects good faith and a genuine intent to comply with the process, with no attempt to disregard court deadlines.

Equitable Grounds for Acceptance

Federal courts have consistently held that deadlines in class action settlements may be tolled or relaxed under equitable principles where a claimant:

- (a) did not receive actual notice,
- (b) acted promptly upon discovering the settlement,
- (c) caused no prejudice to the settlement administration or other class members, and
- (d) seeks relief consistent with fairness and due process.

This principle has been upheld in numerous cases, including *in re Gypsum Antitrust Cases*, 565 F.2d 1123 (9th Cir. 1977); *Silber v. Mobon*, 18 F.3d 1449 (9th Cir. 1994); *in re Orthopedic Bone Screw Prods. Litig.*, 246 F.3d 315 (3d Cir. 2001); and *in re Cordant Corp. Prides Litig.*, 233 F.3d 188 (3d Cir. 2000). My circumstances align directly with the equitable exceptions recognized in these decisions.

No Prejudice to the Settlement

Accepting my claim will not prejudice other Settlement Class Members or disrupt the administration of the settlement. The settlement fund and distribution mechanism can readily accommodate my claim without any meaningful impact on others.

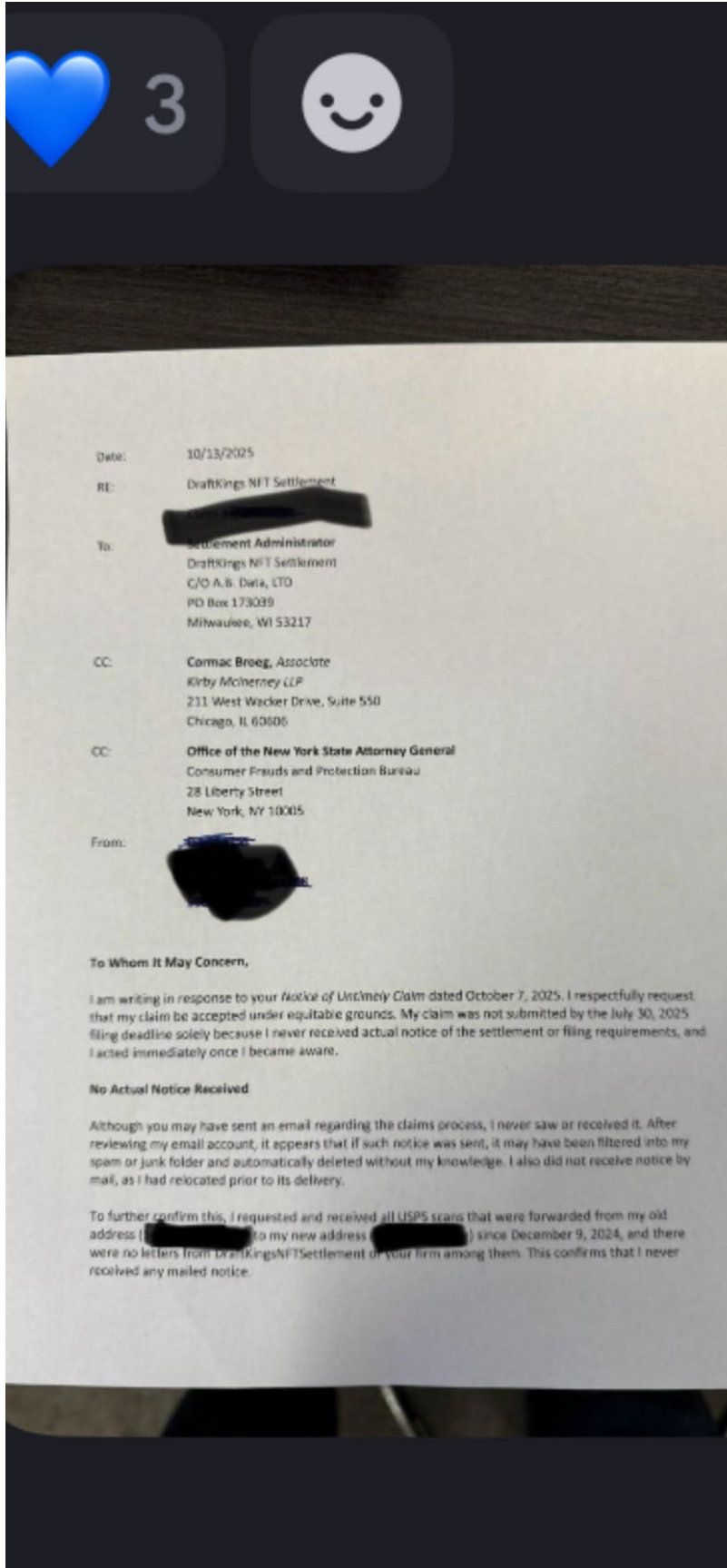
Conclusion

Given these facts, the equities clearly favor inclusion. Denying my claim would be inconsistent with both the purpose of the settlement and the principles of fairness and due process that govern class action administration.

I therefore respectfully request that my claim be accepted and processed as timely filed under equitable grounds. Please confirm receipt of this letter and advise if any further documentation or information is required.

Sincerely,





Date: 10/13/2025
RE: DraftKings NFT Settlement
[Redacted]
To: Settlement Administrator
DraftKings NFT Settlement
C/O A.B. Dwa, LTD
PO Box 173039
Milwaukee, WI 53217
CC: Cormac Broeg, Associate
Kirby McInerney LLP
211 West Wacker Drive, Suite 550
Chicago, IL 60606
CC: Office of the New York State Attorney General
Consumer Frauds and Protection Bureau
28 Liberty Street
New York, NY 10005
From: [Redacted]

To Whom It May Concern,

I am writing in response to your Notice of Unclearly Claim dated October 7, 2025. I respectfully request that my claim be accepted under equitable grounds. My claim was not submitted by the July 30, 2025 filing deadline solely because I never received actual notice of the settlement or filing requirements, and I acted immediately once I became aware.

No Actual Notice Received

Although you may have sent an email regarding the claims process, I never saw or received it. After reviewing my email account, it appears that if such notice was sent, it may have been filtered into my spam or junk folder and automatically deleted without my knowledge. I also did not receive notice by mail, as I had relocated prior to its delivery.

To further confirm this, I requested and received all USPS scans that were forwarded from my old address [Redacted] to my new address [Redacted] since December 9, 2024, and there were no letters from DraftKingsNFTSettlement or your firm among them. This confirms that I never received any mailed notice.

9:06



← # general >
1 Online



100% same here

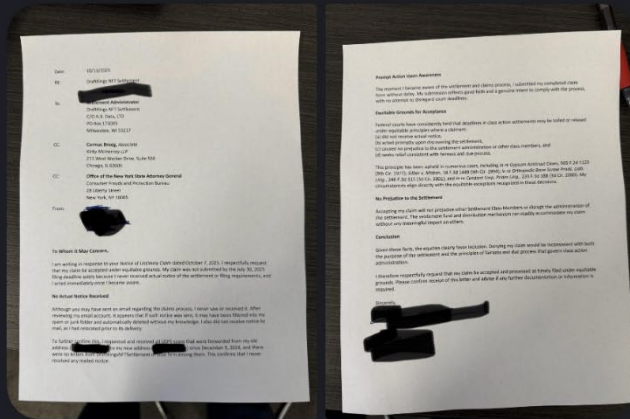


epikdk22 10/13/25, 11:46 AM

I'm posting my letter here. Please do not share another channels. I think consistency in response is important. I also think we're either all going to be included or none of us be included. So it's best to have strength in numbers.



3

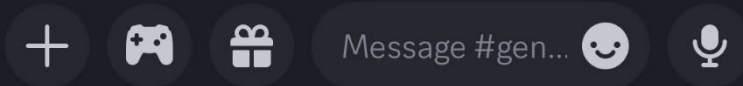


InFirst.eth 10/13/25, 11:47 AM

Epik letter gonna get all our money back 🔥



200% payout 😂



8:59



← # general >
● 3 Online



← Welcome, SeaSickMutant.eth. We hope you brought pizza.



Waunamatt1 10/11/25, 2:18 PM



motfot 10/11/25, 4:20 PM

Are we all late submissions? I got my letter yesterday and plan to write back and contend that I was never contacted.



InFirst.eth 10/11/25, 4:20 PM

Hey guys

Yes **@motfot** that is this group

Please add anyone that is in same situation



motfot 10/11/25, 4:20 PM

On it.



InFirst.eth 10/11/25, 4:20 PM

A few I couldn't add bc I wasn't friends with them



Message #gen...

