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16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**  
 18 **SAN FRANCISCO DIVISION**

19  
 20 MARC OPPERMAN, et al.,  
 21 Plaintiffs,  
 22 v.  
 23 KONG TECHNOLOGIES, INC., et al.  
 24 Defendants.

Case No. 13-cv-00453-JST

**CLASS ACTION**

**UNOPPOSED ADMINISTRATIVE MOTION  
 FOR DIRECTION REGARDING  
 POTENTIALLY FRAUDULENT CLAIMS;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

**THIS DOCUMENT ALSO RELATES TO:**  
*Hernandez v. Path, Inc.*, No. 12-cv-1515-JST  
 (collectively, the “Related Actions”)

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1 **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 14, 2017, at 2:00 PM, or as soon thereafter  
3 as the matter may be heard, in Courtroom 9, 19th Floor of the United States District Courthouse,  
4 450 Golden Gate Avenue, San Francisco, California, 94102, before the Honorable Jon S. Tigar,  
5 Plaintiffs Allen Beuershausen, Giuliana Biondi, Lauren Carter, Stephen Dean, Stephanie Cooley,  
6 Jason Green, Claire Hodgins, Gentry Hoffman, Rachelle King, Nirali Mandalaywala, Claire  
7 Moses, Judy Paul, and Gregory Varner (hereinafter, "Plaintiffs"), on their own and on behalf of  
8 the Settlement Class, will and hereby do move this Court for an Administrative Order regarding  
9 the disposition of potentially fraudulent claims identified by KCC Class Action Services, LLC  
10 ("KCC").

11 The grounds for this motion are that KCC has sole discretion regarding the allocation of  
12 distributions to Settlement Class Members, and has identified 5,924 claims that it suspects were  
13 not submitted by Settlement Class Members. Pursuant to the Court's discretion to deal with  
14 procedural matters under Federal Rule of Civil Procedure 23(d)(1)(E), Plaintiffs request direction  
15 regarding the procedures, if any, required for KCC to resolve these claims.

16 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum  
17 of Points and Authorities, the declaration of Lana Lucchesi filed concurrently, the previously  
18 filed Settlement Agreement, the other papers and records on file in this Action, and such other  
19 written and oral arguments as may be presented at or before the hearing to the Court.

20  
21 Dated: November 30, 2017

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**ATTORNEYS FOR OPPERMAN PLAINTIFFS  
AND CONDITIONAL CLASS COUNSEL**

1 **I. INTRODUCTION**

2 On July 6, 2017, the Court entered an Order preliminarily approving the parties’  
 3 proposed Settlement Agreement. *See* Preliminary Approval Order (ECF No. 894). That  
 4 Settlement Agreement appointed a claims administrator—KCC Class Action Services, LLC  
 5 (“KCC”)—and made clear that it had sole discretion to identify eligible claims. Class Action  
 6 Settlement Agreement (ECF No. 884) (“Settlement Agreement”) at §§ 1.34 (appointment); 3.2  
 7 (sole discretion). After reviewing the submitted claims, KCC has identified 5,924 potentially  
 8 fraudulent claims.

9 The potentially fraudulent claims all share one feature: they did not use the unique claim  
 10 numbers provided with the email notice. In addition, each of the potentially fraudulent claims  
 11 shares one or more of the following features:

- 12
- More than one claim appeared to be filed by the same person;
  - 13 • The claims indicated attempts at camouflage with minor differences;
  - 14 • The claims had different physical addresses but identical IP addresses;
  - 15 • Numerous claims were submitted for the same physical address or from the same  
 16 IP address.

17 Because the purpose of the Settlement Agreement is to provide a pro-rata distribution to  
 18 eligible claimants, but it does not provide explicit provisions governing potentially fraudulent  
 19 claims, Plaintiffs seek the Court’s direction regarding the appropriate resolution. As set forth  
 20 more fully below, Plaintiffs believe an order allowing KCC to immediately deny potentially  
 21 fraudulent claims pursuant to its authority under the Settlement Agreement is appropriate. In the  
 22 alternative, Plaintiffs offer a mechanism to provide notice to the potentially fraudulent claimants.

23 **II. RELEVANT FACTS**

24 **A. TERMS OF THE SETTLEMENT AGREEMENT**

25 As relevant here, the Settlement Agreement defines an Eligible Claimant as “a  
 26 SETTLEMENT CLASS MEMBER who submitted an ELECTRONIC CLAIM FORM pursuant  
 27 to the instructions on the Notice by the CLAIM FORM DEADLINE.” Settlement Agreement  
 28 § 1.10. A Settlement Class Member is an individual in the Settlement Class. *Id.* At § 1.35. The

1 Settlement Class is defined in Section 1.36 and has been preliminarily approved by the Court.  
2 *Id.* At § 1.36; ECF No. 894.

3 The Settlement Agreement establishes that KCC “will be solely responsible for . . .  
4 implementing the PLAN OF ALLOCATION.” Settlement Agreement § 3.2. The Plan of  
5 Allocation expressly provides that “The NET SETTLEMENT PROCEEDS shall be distributed  
6 to all ELIGIBLE CLAIMANTS on a pro rata basis in the form selected by the ELIGIBLE  
7 CLAIMANT.” *Id.* At § 7.4.

#### 8 **B. THE POTENTIALLY FRAUDULENT CLAIMS**

9 KCC’s claims administration services include evaluation of submitted claims to identify  
10 potentially fraudulent submissions. Declaration of Lana Lucchesi (“Lucchesi Decl.”) at ¶ 3.  
11 That evaluation uncovered no potential fraud in connection with claims submitted using the  
12 unique emailed claim numbers. However, with respect to the 46,682 claims submitted without  
13 claim numbers, KCC has identified 5,924 claims it believes are likely to be fraudulent. *Id.*

14 The first, and largest, group of claims were 5,419 claims submitted by a single IP  
15 address. Lucchesi Decl. ¶ 5. These claims were submitted from only six addresses, to which the  
16 submitter applied minor variations—such as differing apartment numbers—in an apparent  
17 attempt to avoid detection. *Id.* One example of this is that 976 of the claims from this IP address  
18 were submitted using various apartment numbers, going as high as apartment number 988, for  
19 the address of one single-family home (2422 Evans Street in Toledo, Ohio). These claims  
20 appear highly likely to be fraudulent. *Id.*

21 Beyond this large group, the remaining 505 claims were submitted by only eleven  
22 additional IP addresses. Lucchesi Decl. ¶ 6. KCC identified each of these groups of submissions  
23 as potentially fraudulent based upon five factors. *Id.* **First**, each IP address generated an  
24 unusually-large number of claims—between 16 and 143. *Id.* **Second**, nearly all of the claims  
25 submitted through these eleven IP addresses claimed the maximum number of applications, with  
26 the average exceeding 7.4 apps per claim for seven of them. *Id.* This is in contrast to the larger  
27 universe of claims, where an average of 3.7 apps per claim is claimed. *Id.* **Third**, many of the  
28 claims from one IP address used implausible first names like “NTXMK CHARLES” and

1 “VPVFF CHARLES” and another submitted claims using email addresses containing strings of  
2 seven random characters. *Id. Fourth*, certain IP addresses appear to refer to only one person,  
3 including one that uses the same first name, last name, and street address but incorporates typos  
4 and special characters to avoid detection, including first names such as “DANNY,” “:-  
5 :DANNY,” and “DANNY P.” *Id. Fifth*, certain IP addresses are associated with prior  
6 fraudulent claims and known to KCC for that reason. *Id.*

7 Based upon these factors, KCC has concluded that these 5,924 claims are unlikely to  
8 have been submitted by Settlement Class Members, and therefore the submitting parties are not  
9 Eligible Claimants entitled to participate in the Plan of Allocation. Lucchesi Decl. ¶ 7.

### 10 **III. REQUEST FOR DIRECTION**

11 The Court has broad discretion to manage class actions. *In re Victor Techs. Sec. Litig.*,  
12 792 F.2d 862, 864 (9th Cir. 1986) (“Obviously district courts must have broad discretion, resting  
13 on the specific facts of each case, in framing procedures for class actions under Fed. R. Civ. P.  
14 23.”). Among other purposes, this power exists to protect the integrity of the class certification  
15 process. *O’Connor v. Uber Techs., Inc.*, No. C-13-3826 EMC, 2014 U.S. Dist. LEXIS 61066, at  
16 \*9 (N.D. Cal. May 1, 2014) (“The prophylactic power accorded to the court presiding over a  
17 putative class action under Rule 23(d) is broad; the purpose of Rule 23(d)’s conferral of authority  
18 is not only to protect class members in particular but to safeguard generally the administering of  
19 justice and the integrity of the class certification process.”).

20 The issues identified above regarding the potentially fraudulent claims implicate these  
21 concerns, as payment would reduce the amount available to valid Settlement Class Members,  
22 among other potential harms to the integrity of the class certification process. The Court’s  
23 guidance is therefore required to determine which of the following proposals is best suited to  
24 resolve these claims.

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1           **A.     PROPOSAL ONE: KCC EXERCISES ITS SOLE RESPONSIBILITY TO DENY**  
2           **FRAUDULENT CLAIMS**

3           Pursuant to Sections 3.2 and 7.4 of the Settlement Agreement, KCC has the sole  
4 responsibility to administer the plan of allocation, which requires them to only distribute shares  
5 to Eligible Claimants. An order authorizing KCC to exercise that responsibility by determining  
6 that the potentially fraudulent claims were not made by Eligible Claimants, and denying them on  
7 that basis, would therefore protect the right of all Eligible Claimants to participate fairly in the  
8 plan of allocation. Given KCC's determination that these claims are fraudulent, and its  
9 experience as a claims administrator, justification would exist for denying the suspect claims  
10 outright (and particularly for the 5,419 submitted from one IP address).

11           **B.     PROPOSAL TWO: KCC PROVIDES NOTICE TO POTENTIALLY FRAUDULENT**  
12           **CLAIMANTS AND DENIES UNSUPPORTED CLAIMS**

13           If the Court does not believe Proposal One adequately safeguards the certification  
14 process, Plaintiffs propose an alternate solution: KCC provides a notice to the email address  
15 provided in connection with each potentially fraudulent claim with direction from this Court to  
16 provide proof of identity and residence at the claimed address, as follows:

17           To: \_\_\_\_\_

18           Class Member Identification Number: \_\_\_\_\_

19           From: \_\_\_\_\_

20           Re: LEGAL NOTICE REGARDING IOS APP SETTLEMENT

21           THIS NOTICE IS AUTHORIZED BY THE UNITED STATES DISTRICT COURT:

22           You submitted a claim in the above-referenced litigation. The *Opperman et al v. Kong*  
23 *Technologies* Claims Administrator has reviewed your claim and determined that additional  
24 information is required before it can approve your claim. Specifically, you are required to send  
25 via electronic mail to ADMIN ADDRESS a photocopy of a government issued ID verifying the  
26 name and address you used to submit a claim in this case. If your ID does not contain your  
27 current address, you may submit a copy of a utility bill. **YOU HAVE ONE WEEK FROM**  
28 **RECEIPT OF THIS EMAIL TO SUBMIT THE REQUIRED PROOF (by [DEADLINE**



1 **DATE]). If proof of identity is not received your claim will be denied without further**  
2 **notice.**

3 A copy of the Court's order would also be posted on the Claims Administrator's website.  
4 KCC would be able to evaluate any submissions and approve any bona fide claims within two  
5 weeks of the submission deadline. In this way, all issues regarding the identification of Eligible  
6 Claimants can be resolved within a month of the Court's order on this motion and distribution to  
7 the Class will not be delayed.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs request an order from the Court either (1) approving  
10 KCC's recommendation that the potentially fraudulent claims be denied or (2) approving the  
11 second proposal presented herein requiring verification of identity so that the issue may be  
12 resolved as promptly as possible.

13  
14 Respectfully submitted,

15 Dated: November 30, 2017

**KERR & WAGSTAFFE LLP**

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*(additional counsel listed on signature page)*

16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**  
 18 **SAN FRANCISCO DIVISION**

19  
 20 MARC OPPERMAN, et al.,  
 21 Plaintiffs,  
 22 v.  
 23 KONG TECHNOLOGIES, INC., et al.  
 24 Defendants.

Case No. 13-cv-00453-JST

**CLASS ACTION**

**DECLARATION OF LANA LUCCHESI  
 IN SUPPORT OF ADMINISTRATIVE  
 MOTION**

---

**THIS DOCUMENT ALSO RELATES TO:**  
*Hernandez v. Path, Inc.*, No. 12-cv-1515-JST  
 (collectively, the “Related Actions”)

1 I, LANA LUCCHESI, declare:

2 1. I am a Senior Project Manager at KCC Class Action Services, LLC ("KCC"). I  
3 am over 21 years of age and am not a party to this action. I have personal knowledge of the facts  
4 set forth herein and, if called as a witness, could and would testify competently thereto.

5 2. The purpose of this declaration is to provide the Parties and the Court with  
6 updated details on certain claims.

7 3. KCC performed a review of the 91,734 claim forms submitted, including 46,682  
8 claims submitted through Twitter which did not use unique claim numbers. In the course of this  
9 review, we identified 5,924 potentially duplicative/fraudulent claims. Each of these potentially  
10 duplicative/fraudulent claims were submitted without a unique claim number which would have  
11 been provided on the email notice.

12 4. The individual(s) in question submitted claims via generic website submission  
13 and did not use the unique claim number that was provided to each class member on the email  
14 notice. Each of these claims share one or more of the following:

- 15 • More than one claim appeared to be filed by the same person;
- 16 • The claims indicated attempts at camouflage with minor differences;
- 17 • The claims had different physical addresses but identical IP addresses;
- 18 • Numerous claims were submitted for the same physical address or from the same  
19 IP address.

20 5. KCC found several instances where multiple claims were being filed from a  
21 single IP address. The most notable example of this involved 5,419 claims being filed and  
22 submitted by individual(s) using six different mailing addresses (using variations on name,  
23 address and city to attempt to avoid detection) but the same exact IP address. One example of  
24 this is that 976 of the claims from this IP address were submitted using various apartment  
25 numbers, going as high as apartment number 988, for the address of one single-family home  
26 (2422 Evans Street in Toledo, Ohio).

27 6. The remaining 505 claims were submitted by only eleven additional IP addresses.  
28 KCC identified these as potentially fraudulent using five indicia of fraud:

- a. Each IP address generated a large number of claims—between 16 and 143.
- b. Nearly all of the claims submitted through these eleven IP addresses

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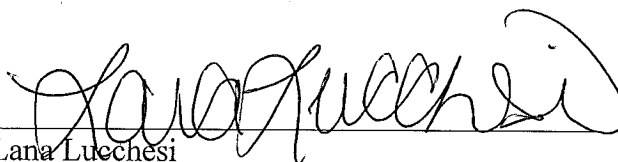
claimed the maximum number of applications, with the average exceeding 7.4 apps per claim for seven of them. By contrast, other applications claimed an average of 3.7 apps.

- c. Many of the claims came from one IP address and used first names like “NTXMK CHARLES” and “VPVFF CHARLES” and another that used email addresses containing strings of seven random characters.
- d. Certain IP addresses appear to refer to only one person, including one that uses the same first name, last name, and street address but incorporates typos and special characters to avoid detection, including first names such as “DANNY,” “:-:DANNY,” and “DANNY P.”
- e. Certain IP addresses and addresses used are associated with prior fraudulent claims and known to KCC for that reason.

7. Based upon the indicia of duplication and/or fraud set forth above, KCC believes these 5,924 claims are very likely not to have been submitted by Settlement Class Members and should be considered invalid for that reason. If authorized by the Court, KCC would therefore exclude them from the Plan of Allocation.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on this 29<sup>th</sup> day of November 2017 at San Rafael, California.

  
 Lana Lucchesi

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14 *Interim Co-Lead Counsel for Plaintiffs*

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 16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**  
 18 **SAN FRANCISCO DIVISION**

19 MARC OPPERMAN, et al.,  
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 v.  
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 23 KONG TECHNOLOGIES, INC., et al.  
 24  
 Defendants.

Case No. 13-cv-00453-JST

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
 UNOPPOSED ADMINISTRATIVE MOTION  
 FOR DIRECTION REGARDING  
 POTENTIALLY FRAUDULENT CLAIMS**

**THIS DOCUMENT RELATES TO ALL  
CASES**

*Hernandez v. Path, Inc.*, No. 12-cv-1515-JST  
(collectively, the “Related Actions”)

**[PROPOSED] ORDER**

1  
2 On December 14, 2017, a hearing was held on the Motion for an Administrative Order  
3 regarding the disposition of potentially fraudulent claims identified by KCC Class Action  
4 Services, LLC (“KCC”).

5 Having received and considered the Motion, the supporting papers filed by the parties,  
6 and the evidence and argument received by the Court at the hearing, and pursuant to its broad  
7 discretion to manage class actions, the Court grants the unopposed motion as follows:

8 *Option 1:*

9 KCC’s recommendation that the potentially fraudulent claims be denied is APPROVED.  
10 KCC is authorized to use its professional discretion to reject claims it believes to be fraudulent.

11 *Option 2:*

12 Plaintiffs’ alternative proposal is APPROVED. KCC is directed to deliver an email  
13 notice in the form set forth in the administrative motion to all potentially fraudulent claimants  
14 within one week of this order. Upon expiration of the one-week period to submit proof of  
15 identity, KCC shall evaluate any submissions and approve any bona fide claims within two  
16 weeks.

17  
18 Dated: \_\_\_\_\_, 2017

19  
20 \_\_\_\_\_  
21 THE HONORABLE JON S. TIGAR  
22 United States District Judge  
23  
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