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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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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

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