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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

**PROPOSED INTERVENOR JODI WHITE JONES'S
REPLY IN SUPPORT OF HER MOTION TO INTERVENE**

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

The opposition to Jodi White Jones’s motion to intervene demonstrates why intervention is needed: To protect Class Members who filed valid Claims from Class Counsel who—now that they’ve cashed their \$35 million check for fees—have completely abdicated their duty to protect the Class. For the first time, Class Counsel disclose that they will deny 80% of the Claims made for being, allegedly, “fraudulent.” Ms. Jones, of course, has no interest in splitting the Settlement Fund with fraudsters and thus has no issue denying the Claims affirmatively identified as fraudulent or duplicates (approximately 730,000). This leaves, however, around **1.2 million** Claims that will be denied despite seemingly meeting the Settlement’s requirements to be valid.

The main problem with Class Counsel’s position is that both the brief and the supporting Declaration fail to explain exactly *what* is so suspicious about these Claims that they should be, in effect, denied. Indeed, the number of Claims received—including these 1.2 million—is squarely within the range of Claims that should have been expected for a case of this size. But for all their talk of “bots” and “indicia of fraud” nowhere do Class Counsel tell the Court (and repeatedly refused to tell Ms. Jones’ counsel), what these indicia of fraud are or how many of the proposed denied Claims they suspect of being bots. Regrettably, Proposed Intervenor suspects that the desire to deny these 1.2 million seemingly-valid Claims has far more to do with defending the per-claimant payment range that Class Counsel represented to the Court would occur—\$200-\$400. In reality, the deal they struck was about \$37 a claimant.

Yet Class Counsel continue to defend their unsanctioned and contractually infirm “verification” method, despite the demonstrable failure of their email campaign. To start, the 10-day window for Class Members to “verify” their Claim violates the terms of the Settlement on its face: it requires 14 days. Incredibly, Class Counsel do not contest that nearly all of the 1.2 million “verification” emails went to spam due to Class Counsel’s failure to “whitelist” these

emails with Google ahead of time.¹ And their argument that requiring a photo ID is routine is simply false. None of the scores of BIPA settlements have ever required such a photo ID in any step of the claim process and Simpluris—a non-conflicted settlement administrator—has provided proof that asking for a photo is the opposite of a best practice. (*See* Declaration of Jacob Kamenir (“Kamenir Decl.”) at ¶ 7, attached hereto as Exhibit A.)

Perhaps in recognition of the shortcomings of both the form and function of their verification campaign, Class Counsel now propose conducting a new campaign eliminating the requirements for a photo ID or Google Photo account information. But Class Counsel still have not demonstrated the need for *any* verification campaign and have refused to provide any concrete information about the “indicia of fraud” they claim are attached to the 1.2 million seemingly valid Claims they want to deny. Class Counsel’s job is to make sure that the Class Members they were appointed to represent have their Claims honored. Instead, they seem more concerned with taking shortcuts or favoring certain groups of Class Members for reasons they won’t disclose. Intervention is necessary to protect the interests of Class Members like Ms. Jones, whose Claims Class Counsel intend to baselessly deny.

I. The Amount of Claims Received is Typical for a Case this Size and Class Counsel have Failed to Demonstrate the 1.2 Million Claims are from “Bots” Committing Massive Fraud.

In their opposition, Class Counsel explain that they received around 1.7 million Claims and deemed a mere 480,000 of those Claims valid.² But 1.7 million valid Claims are squarely

¹ “Whitelisting” in this context refers to a process wherein Gmail identifies the sender of an email as a trusted source, and prevents emails sent by a trusted source from being delivered to spam by Gmail’s filtering algorithms.

² This 1.7 million number excludes the 730,000 Claims the Administrator conclusively deemed to be fraudulent or duplicates. (Aldridge Aff. ¶ 17.)

within the range that should have been expected for this case given the actual size of the Class. Class Counsel have failed to explain how the 1.2 million Claims they want to deny—80% of the total Claims submitted—are fraudulent.³

A. The number of Claims received should have been expected, and results in a payment of \$37.

Initially, Class Counsel’s estimate at preliminary approval that there would be just 280,000 Claims—with each Class Member getting between \$200-400—was never realistic. (*See* Ahdoot Aff. in Support of Prelim. Approval ¶ 34.) There are 1.4 million users of Google Photos *alone* in Illinois, yet Class Counsel’s estimate anticipated that just 20% would file Claims. As Class Counsel acknowledge, the Class includes millions more members than just Google Photos users because it “includes Illinois residents who appeared in photos in Google Photos but are not Google Photos users.” (*Id.* ¶¶ 34-35.) Indeed, Google provided the Settlement Administrator with 5.8 million email addresses of “potential settlement class members.” (Schwartz Aff. in Support of Final Approval ¶ 11.) (No one ever explains how Google determined that these email addresses belong to Class Members). But even that number must be underinclusive; the Settlement Administrator mounted a massive (and expensive) ad campaign to reach individuals beyond the e-mail list of the nearly 5.8 million “potential” Class Members provided by Google. (*Id.* ¶¶ 17-21.)

Estimating a 20% claims rate of even the underinclusive list of 5.8 million potential Class Members, Class Counsel should have anticipated getting at least 1,166,741 valid Claims. Such

³ Incredibly, Class Counsel never explain *when* they received the 1.2 million “unverified” Claims. These Claims were not identified in Class Counsel’s Motion for Final Approval. But, presumably, a large percentage of these Claims were made prior to that Motion and these Claims could have been raised to the Court at that time. This is one of the questions that Class Counsel has flatly refused to answer.

an estimate would have been in-line with the Facebook BIPA settlement, which had a similar class size and saw a 22% claims rate (that is, 1,384,659 valid claims). *See In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 620 (N.D. Cal. 2021) (BIPA case settled for \$650 million); *see also id.* at dkt. 578 (post-distribution accounting of claims statistics). It would also have been consistent with the growing trend of increased participation by class members, especially for BIPA cases here in Illinois. *See, e.g., Figueroa v. Kronos, Inc.*, No. 19-cv-01306, dkt. 377 (N.D. Ill. Dec. 15, 2022) (Feinerman, J.) (26.78% claims rate in BIPA case); *LaBarre v. Ceridian HCM, Inc.*, 2019-CH-06489 (Cir. Ct. Cook Cnty. Nov. 30, 2022) (26.2% claims rate in BIPA case); *Neals v. ParTech, Inc.*, No. 19-cv-05660, dkt. 140 (N.D. Ill. July 20, 2022) (23.86% claims rate in BIPA case); *Crumpton v. Octapharma Plasma, Inc.*, No. 19-CV-08402, dkt. 92 (N.D. Ill. Feb. 16, 2022) (20.6% claims rate in BIPA case). Class Counsel's estimate of 280,000 Claims, when properly viewed against the broader (but still underinclusive) 5.8 million Class Members, anticipated an abysmal claims rate of just 4.8%. Had Class Counsel realistically presented the class size and the expected claims rate, Class Counsel would have had to admit that Class Members would likely receive only \$37 each, instead of the \$200-\$400 payments advertised at preliminary approval and the \$132 payment at final approval. Given a class size of around 6 million, the 1.7 million submitted Claims (excluding the 730,000 conclusively fraudulent Claims) were squarely within the range that should have been expected.

B. Class Counsel and P&N have failed to explain why 80% of the filed Claims are fraudulent, particularly in light of the anti-fraud measures they already undertook.

No doubt, bots are a common problem in all aspects of the internet today. *See* 2022 Imperva Bad Bot Report, available at <https://www.imperva.com/resources/resource-library/reports/bad-bot-report> (finding about 27.7% of internet traffic come from "bad bots.").

But upon scrutiny, the representations that most of the Claims in this Settlement are coming from bots isn't explained and, in light of the above, isn't credible (an unfortunately common occurrence).⁴ The only concrete numbers Class Counsel have offered are that, of the 2,415,459 total Claims, about 730,000 could be "definitively identif[ied]" as duplicates or the result of "fraud," including 145,056 Claims associated with a foreign email provider with a history of false claims submissions. (Aldridge Aff. ¶ 17.)

The remaining 1.2 million, Class Counsel and the Administrator contend, fall into a gray area requiring verification. But the explanation for that is vague indeed. The Administrator states that it "*believes ... a significant portion of these purported claims are fraudulent,*" though it's never revealed exactly how these claims were flagged or what "a significant portion" means. (*Id.* (emphasis added).) While the Administrator states that it observed "data patterns that appear[ed] to be related to suspected bot activity," (*id.* ¶ 16), there's no representation about how many of the 1.2 million flagged Claims exhibited any of those data patterns or what they are. Instead, due to the supposed "totality of suspicious claims activity," the Administrator flagged "a segment of claims with potential risk factors for additional verification if the claim could not otherwise be tied to either the list of potential class members provided by Google for direct notice purposes or another valid claim." (*Id.* ¶ 14(f).) Again, it's never explained what the "potential risk factors" were for the 1.2 million Claims.

This is particularly frustrating in light of the fact that Proposed Intervenor posed exactly this question to Class Counsel for months and got completely stonewalled. (Declaration of J. Eli

⁴ See Grace Kay and Kali Hays, *Elon Musk's own data scientists couldn't find many bots on Twitter, and he hid that crucial information, the company says*, BUSINESS INSIDER (Sept. 27, 2022), available at <https://www.businessinsider.com/elon-musk-data-scientists-didnt-find-many-bots-twitter-hid-2022-9>.

Wade-Scott, (“Wade-Scott Decl.”) attached hereto as Ex. B.) Indeed, in the run-up to filing this reply, Proposed Intervenor offered a conference call with Proposed Intervenor, a representative from Simpluris (a non-conflicted administrator), Class Counsel, and P&N to try to understand what the supposed “indicia of fraud” were. (Ex. B-1 to Wade-Scott Decl. at 16.) That, too, was refused. (*Id.* at 16-17.)

Realistically, the fraud *prevention* measures that P&N put in place strongly suggest that the 1.2 million Claims that Class Counsel intend to deny are valid. First, the Administrator required reCAPTCHA for all online claim submissions (no doubt all suspected “bot” claims were online, though Aldridge does not say). (Aldridge Aff. ¶ 11.) Second, anyone selecting an online payment method—again, certainly almost all of the suspected bot claims selected an online payment—had to *double verify* by entering an “additional security code, sent to their email address or phone number in real time, to complete the claim.” (Aldridge Aff. ¶ 12(b).) That is, any large-scale bot operation would have to have an army of functional email addresses and/or phone numbers and the ability to double-verify. Proposed Intervenor asked Class Counsel how many of the supposed bot claims double-verified and how that data was tracked, but Class Counsel refused to respond. (Ex. B-1 to Wade-Scott Decl. at 16.) Finally, the Administrator gathered and analyzed IP addresses for high volumes of claims or otherwise suspicious activity.

All of those defenses allowed the Administrator to (apparently) correctly identify and deny 730,000 fraudulent Claims. (*See* Aldridge Aff. ¶ 17.) But as to the remaining 1.2 million, the Administrator’s conclusion that those Claims came from bots becomes much more fuzzy. Specifically, the Administrator “observed the following data patterns that appear to be related to suspected bot activity,” (*id.* ¶ 16), but every one of these “patterns” would also apply to an entirely valid Claim:

- ¶ 16(a): *Rotating IP addresses to limit the number of submissions that are linked to a common IP address (changing the IP associated with each claim submission so that the same IP address does not appear over and over on different claims).* Different IP addresses would also be a hallmark of legitimate claims, as it is a sign that they are coming from different locations.
- ¶ 16(b): *IP address masking to provide the appearance that the submission is coming from Illinois.* An IP address coming from Illinois is exactly what a legitimate claim would look like.
- ¶ 16(c): *Use of publicly available datasets of actual Illinois residents in combination with other suspicious data points (such as suspicious email addresses, payment accounts, or IP addresses).* A claim matching an identity in a dataset of actual Illinois resident is, again, what you would want. The Administrator is too vague about the remainder.
- ¶ 16(d): *Altering the format of email addresses used to file claims and collect payments to increase the difficulty of distinguishing a legitimate claim from a fraudulent submission.* If this means different e-mail addresses, this would be expected for a legitimate claim.

Reading between the lines of the Administrator’s declaration, it seems that what happened is that every Claim submitted by a person who wasn’t on Google’s list of 5.8 million e-mail addresses (which is underinclusive and unexplained) was flagged for verification. (See Aldridge Aff. ¶ 14(f) (“Based on the totality of suspicious claims activity, P&N flagged a segment of claims with potential risk factors for additional verification if the claim could not otherwise be tied to either the list of potential class members provided by Google for direct notice purposes or another valid claim.”).) Given the number of individuals included in the Class, many of whom are likely not Google account holders, it’s unsurprising that a significant portion of the Class would not appear on either of those lists and is in no way a sign that those Claims are the result of fraud or “bots.”

C. Proposed Intervenor’s Claim is a perfect example of a valid Claim being improperly flagged.

While Class Counsel and the Administrator are not forthcoming about what “indicia of

fraud” were used to flag the 1.2 million Claims, Ms. Jones’s case offers some insight into why so many Claims were flagged. Class Counsel gives three reasons her Claim was flagged: (1) her Claim was submitted before the notice program was implemented; (2) “[h]er claim was submitted from an IP address ... used to submit multiple claims”; and (3) she was not on the list of 5.8 million people provided by Google. (Opp. at 8.)

None of these factors are compelling indicia of fraud. First, news of this Settlement was widely publicized well before the Notice Date and many Class Members likely submitted Claims after seeing that coverage. (*See, e.g.,* Talia Soglin, *Google to pay \$100 million class-action settlement in Illinois biometric privacy lawsuit*, CHICAGO TRIBUNE (Apr. 26, 2022), <https://www.chicagotribune.com/business/ct-biz-google-photos-class-action-privacy-settlement-20220427-qudgj7naiffjfokrvhnxp6ingi-story.html>.) Second, she and her husband both submitted Claims and, presumably, submitted them from their home, meaning multiple Claims came from “the same” IP address. If multiple Claims coming from the same IP address is a sign of fraud, then any household where more than one Class Member submitted a Claim from the same network was presumably flagged for suspicious activity. This is not evidence of a “sophisticated bot attack,” but rather the inevitable outcome of a class definition that includes every member of a household if any member uploaded a photo of the household to Google Photos. Third, nowhere do Class Counsel or the Administrator explain how Google generated the list of 5.8 million “potential” Class Members.

Given the questionable reliability of these “indicia of fraud,” Ms. Jones is concerned that the remaining 1.2 million Claims flagged for fraud similarly belong to real, human Class Members who are owed a Settlement Payment. This concern is bolstered by the fact that the response rate of the individuals that actually opened the e-mails was incredibly high. While the

number of people that opened the e-mails was unremarkable, the number of people that actually acted on the onerous requirements set forth is statistically enormous: more than 20%. (Kamenir Decl. ¶ 8.) That far outstrips a typical response rate to a blast e-mail, even where a list is known to be entirely made up of human beings. The remarkably high response rate on the statistical sample of individuals opening the e-mails supports the theory that the list is made up of primarily legitimate Claims. (*Id.* ¶ 9.)

The Administrator’s “belie[f]” that “a significant portion” of these Claims are the result of fraud or bots is cold comfort, particularly when the Administrator never explains what “a significant portion” means. (Aldridge Aff. ¶ 9.) For example, “a significant portion” could mean the Administrator suspects that 10% of the 1.2 million “flagged” Claims were submitted by bots. But if only 10% of the 1.2 million Claims were from bots, over 1 million Claims from Class Members—like Ms. Jones—would be denied solely because the Administrator believed their Claims had some (still unknown) “indicia of fraud.” While preventing widespread fraud is surely a worthwhile pursuit, it beggars belief that that goal justifies denying Settlement Payments to, potentially, 1.2 million Class Members.

Ultimately, the claims rate in this case was fully in line with claims rates in similarly sized BIPA class actions. Class Counsel and the Settlement Administrator attack this seemingly normal number of claims by raising the specter of “sophisticated, fraudulent bot attacks,” for the only discernible reason of keeping payments high enough to a small number of Class Members. Proposed Intervenor, of course, hopes she’s mistaken, but without clear information about what “indicia of fraud” were used to flag them, Ms. Jones fears that millions of Class Members will be completely denied recovery for no legitimate reason.

II. The “Verification” Process Violated the Settlement Agreement, Was Ineffective, and Was Unreasonable.

Although neither Class Counsel nor the Settlement Administrator can explain why the 1.2 million facially valid Claims were flagged as “fraudulent,” they unilaterally implemented a “verification” program where failure to provide a government issued photo ID and the account information of whose Google Photo Account claimants appeared in a 10-day window over Thanksgiving resulted in an automatic denial of the claim. This plan failed to give Class Members the time to respond set out in the Settlement, failed to “whitelist” emails resulting in most emails going to spam, and required information most people would be uncomfortable providing.

First, the “verification” program failed to provide the time required by the Settlement for Class Members to respond. Class Counsel claim authority for their “verification” campaign derives from Paragraph 5.2 of the Agreement that permits the Administrator to “employ *reasonable* procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud.” (Opp. at 1 (emphasis added).) Tellingly, Class Counsel omit the later part of that paragraph, which requires the Settlement Administrator to afford 14 days for a response. (Settlement Agreement ¶ 5.2, (“In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received . . . fourteen (14) Days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form”); *see also id.* ¶ 7.4 (“The Settlement Class Member must cure the error(s) and/or omission(s) . . . fourteen (14) Days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form”)) The Settlement Administrator’s failure to give any of

the 1.2 million claimants 14 days to respond means that the plain terms of the Settlement Agreement prohibit the Administrator from denying any of those Claims (though 14 days is also a concerning short deadline to respond).

Even if Class Counsel and the Settlement Administrator gave the 1.2 million Class Members the requisite 14 days, Class Counsel and the Administrator do not dispute that most of the 1.2 million “verification” emails wound up in spam folders.⁵ But what the settling parties keep from the Court is *why* those emails went to spam. While Class Counsel dodged most of Ms. Jones’ attempts to uncover what happened and confer about a reasonable resolution, they did say this about spam:

At the outset of the Settlement administration process in this case, every possible effort was made to ensure that no e-mails sent by P&N would be diverted to the spam or junk mail folders of recipients’ gmail.com email accounts. At Class Counsel’s request, Google had its postmaster (and/or other relevant personnel) ensure that none of the correspondence sent by the Settlement Administrator concerning the Settlement would be diverted to the spam or junk folders of any recipient, including by “whitelisting” the e-mail address to be used by P&N and by working with P&N to accomplish the same. We were vigilant in this regard considering the issue that we understand arose in the Facebook BIPA settlement involving emails from the settlement administrator being diverted to gmail.com recipients’ spam folders.

(Ex. B-1 to Wade-Scott Decl. at 11, quoting Ted Maya.) Because “whitelisting” the verification emails with Google’s Gmail postmaster should have prevented those emails from going to Gmail spam folders (something that undisputedly happened here), we requested Google to confirm that

⁵ Indeed, the spam issue was so pervasive NBC Chicago news ran a story on it and its short deadline. *See Did You Miss This Google Settlement Email? You May Just Have Days to Meet a Deadline* (Dec. 2, 2022), <https://www.nbcchicago.com/news/local/did-you-miss-this-google-settlement-email-you-may-have-just-days-to-meet-a-key-deadline/3011472/> (“While many reported the email had gone into spam folders, questioning the validity of the request, a spokesperson for Postlethwaite and Netterville, the certified public accountant firm listed on the settlement website, told NBC 5 that the request was legitimate. The spokesperson could not provide further information on why certain individuals were being asked for additional documentation, however.”).

such steps were taken. (*Id.* at 13.) No such confirmation was provided, (*id.*), and the silence in the briefs, Administrator’s declaration, and from Google are telling indications that no such “whitelisting” never happened.

To top it all off, requiring Class Members to “verify” otherwise facially valid Claims by providing a copy of a government issued photo ID and the username or email address of the person whose Google Photos account they appeared in was not remotely “reasonable.” As the Court well knows, there have been thousands of BIPA cases filed and over a hundred BIPA settlements. Ms. Jones’s counsel has been appointed Class Counsel in over 15 BIPA cases, and none of those cases requested a photo ID for any purpose, other than to address a transfer of a claim in the event of a decedent or to prove a name change. (Wade-Scott Decl. ¶ 3.) Nor has the submission of a photo ID been requested as part of the claims process in any of the over 100 other BIPA settlements that Ms. Jones’ counsel has reviewed. (*Id.* ¶ 4.) Indeed, well-respected settlement administrator Simpluris states that requiring a photo ID is the opposite of best practices: Simpluris has administered over 8,000 settlements and has never seen a photo ID used this way. (Kamenir Decl. ¶¶ 5, 7.)

Despite implementing an unheard-of method for mass claim verification, Class Counsel attempt to justify its use here by reference to three cases where their Administrator has used it before. But a review of the settlements and dockets for those cases reveals not a word about requiring a photo ID. These cases appear to be more instances where this Settlement Administrator, without the approval or knowledge of the courts handling those cases, have improperly imposed roadblocks to class members’ recovery. The Court should put an end to this practice now.

In a glaring display of whataboutism, Class Counsel then claim their requiring 1.2 million

otherwise valid claimants to upload a photo ID is equivalent to an instance where the Settlement Administrator in one of Ms. Jones' counsel's cases required a Photo ID (and a marriage license or divorce decree) if a class member wanted to change the name on a previously issued check. Such a comparison doesn't pass the laugh test. Instead, that's a rare instance when an individualized request for a photo ID is appropriate (and never in a mass-upload setting).

Requiring Class Members to provide the username or email address of a Google account was similarly unreasonable. As laid out in Ms. Jones' Motion for Order Preserving Claimants' Rights, many Class Members likely don't know, and may have no means of finding out, the username or email address of a Google account that hosted a photo of them. Class Counsel's only response is to offer generic arguments about deference to claims administrators. (Opp. at 12.) But that deference does not entitle a claims administrator to implement any process it wants on the grounds of combatting fraud, without any oversight or justification. In *Mullins v. Direct Digital, LLC*, 795 F.3d 654 (7th Cir. 2015), the court noted that fraud prevention techniques should be "tailored by the parties and the court to take into account . . . an empirical assessment of the likelihood of fraud or inaccuracy." *Id.* at 667. There is no evidence that "an empirical assessment of the likelihood of fraud or inaccuracy" has happened here. And Class Counsel and the Administrator continue to withhold crucial information and data that would permit any empirical assessment to take place. Accordingly, Ms. Jones should be permitted to intervene and ensure that any fraud prevention measures, if even needed, are tailored to the facts of this case.

Finally, if the Court determines that some sort of verification process is necessary, Class Members who do not "verify" their Claims should not be subject to the Settlement's release. Class Members were never alerted that they would be required to clear these additional hurdles to be paid. Class Members who cannot meet these hurdles, for whatever reason, would be

coerced into releasing Google for nothing, violating Class Members' rights to object or exclude themselves based on the requirements imposed. *See Mortimer v. River Oaks Toyota, Inc.*, 278 Ill. App. 3d 597, 603 (1st Dist. 1996) (noting that due process requires opportunity "to appear and object or to opt out of the class."). Any release obtained from Class Members who cannot verify their Claim should be voided.

III. Intervention Should Be Granted to Ensure Class Members that Filed Claims Are Properly Identified and Paid.

Class Counsel should have been up front with the Court about all of this. It is quite likely that they knew about this problem before final approval, and regardless, they should have raised this with the Court. If they had been upfront about this issue, they might have some standing to now cast aspersions—by name—on one of Ms. Jones' attorneys for not calling Class Counsel before moving to intervene: they claim that if Mr. Wade-Scott had just called ahead of time, all would have been explained. Experience now proves that demonstrably false. For months, Class Counsel actively hid from the Court what they now describe as a claims process rife with fraud, and almost succeeded in denying what appear likely to be 1.2 million valid Claims. And when Mr. Wade-Scott asked for answers to a handful of basic questions ahead of a phone call, Class Counsel stonewalled every step of the way. (Ex. B-1 to Wade-Scott Decl.) As set out above, Class Counsel is still hiding the ball about what happened and how many people are impacted (if they are even capable of making that determination), and intervention should be granted.

With a Claims Deadline of September 24, 2022, Class Counsel and the Settlement Administrator must have been aware that 2,415,420 Claims were filed both when they moved for final approval, and certainly by the hearing on September 28. But Class Counsel kept the number of Claims, and their plan to deny over a million of them via an unsupervised "verification" campaign, a secret. Instead, Class Counsel told the Court that there were 418,676 valid Claims,

that each claimant would get \$142, and that while “[t]he total payment to each participating Class Member will depend on the final number of valid Claim Forms submitted[,] [they] do[] not anticipate the final Settlement Payment amount to substantially differ from this estimate.” (Mot. Final Approval at 5 (citing Schwartz Aff. ¶ 24, 32).) Further, despite telling the Court that “P&N will provide a supplemental Affidavit to the Court regarding the status of the Notice Plan upon completion of the claims period (the Claim Deadline is September 24, 2022) and prior to the final fairness hearing,” (Schwartz Aff. ¶ 5), an update that they intended to deny 80% only surfaced when Ms. Jones intervened and demanded information.

Instead, apparently recognizing the failure of their “verification” campaign, Class Counsel and the Administrator propose a revamped plan that omits the problematic Photo ID and other user account information. But that is still putting the cart before the horse. Class Counsel and the Administrator haven’t demonstrated with any reasonable clarity that any “verification” campaign is even necessary. Every effort should be made to identify valid Claims before resorting to a “verification” process that will force Class Members who submitted valid Claims to release their Claims in exchange for nothing.

CONCLUSION

The Court should grant intervention and order that the 1.2 million Claims subject to additional “verification” be honored or, in the alternative, order that Class Counsel describe with particularity what “indicia of fraud” they observed (including providing the underlying data supporting those observations to Simpluris) to assist in determining which, if any, of the Claims can be denied as actually fraudulent, along with any other relief it deems equitable and just.

Date: February 3, 2023

Respectfully Submitted,

JODI WHITE JONES

By: /s/ J. Eli Wade-Scott
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CERTIFICATE OF SERVICE

I, J. Eli Wade-Scott, an attorney, hereby certify that on February 3, 2023, I served the above and foregoing ***Proposed Intervenor Jodi White Jones' Reply In Support Of Her Motion to Intervene*** on all counsel of record by causing true and accurate copies of such paper to be filed through the Court's electronic filing system.

/s/ J. Eli Wade-Scott

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

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EXHIBIT A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

DECLARATION OF JACOB KAMENIR

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true:

1. My name is Jacob J. Kamenir. I have personal knowledge of the matters stated herein, and I believe them to be true and accurate.
2. I am the Senior Director of Notice at Simpluris, Inc. (“Simpluris”). Simpluris is a national full-service class action notice and claims administrator whose principal office is located at 3194-C Airport Loop Drive, Costa Mesa, California 92626.
3. I am an attorney licensed to practice in Minnesota and hold a Master of Science in Industrial Administration (a variant of an MBA) from Purdue University. I have an extensive background in data analytics and legal marketing, and lead Simpluris’ legal noticing team. During my time in the US Army’s presidential honor guard, I held Top Secret security clearance.
4. I submit this Declaration based on my personal knowledge and information provided to me by my colleagues in the course of business at Simpluris.

5. Simpluris has been administering class action settlements for over fifteen years, in which time we have been appointed in over 8,000 cases and distributed over \$7 billion in funds. Our leadership team has nearly 150 years of combined industry experience that includes some of the largest class action administrations in the United States, including *In re: Equifax, Inc., Customer Data Security Breach*, Case No. 1:17-md-2800 (N.D. Ga.) and *In re: Premera Blue Cross Customer Data Security Breach*, Case No. 3:15-md-2633 (D. Or.). Our experience with BIPA cases includes *Hyster v. Stearns Nursing and Rehabilitation*, Case No. 2020L000417, II. Cir. Ct. (Madison County), *Villagomez v. iSolved HCM, LLC.*, 1:19-cv-08205 (N.D. Il.), *Real v. D.A. Stein Culinary Group, LLC*, Case No. 2016CH14486, II. Cir. Ct. (Cook County), *Farias v. R.R. Donnelley & Sons, Co.*, 1:20-cv-07468 (N.D. Il.). Other recent representative cases include *Cordova et al v. United Education Institute et al*, Case No. 37-2012-00083573, Cal. Sup. Ct. (San Diego); *Shuts v. Covenant Holdco, LLC*, Case No. RG10551807, Cal. Sup. Ct. (Alameda); *Hamilton et al v. Suburban Propane Gas Corp.*, Case No. BC433779, Cal. Sup. Ct. (Los Angeles); *Upadhyay et al v. Prometheus Real Estate Group*, Case No. 1-08-CV-118002, Cal. Sup. Ct. (Santa Clara); *Starke v. Stanley Black & Decker Inc.*, Case No. C-03-CV-21-001091, Md. Cir. Ct. (Baltimore); and *Hale v. Manna Pro Products LLC*, Case No. 2:18-cv-00209 (E.D. Cal.).

6. I have reviewed the “Affidavit of Ryan Aldridge Regarding the Status of Claims and Claim Validation” dated January 18, 2023.

7. At the request of Edelson, PC, I consulted internally with colleagues regarding their experience with using Photo ID at the time of claim submission or as a general requirement for claim verification other than in extremely rare circumstances affecting a proportionately

small number of claims (e.g., in the event of a claim transfer due to a death, or to prove a name change). Our unanimous consensus is that we have never seen Photo ID used in this way.

8. My understanding from the Aldridge Affidavit is that 237,295 individuals opened the deficiency e-mail and, of that group, 51,582 actually responded. The response rate of 21.7% of individuals that opened the e-mail is extraordinarily high, especially considering the requirements that a class member had to meet to respond: providing a Photo ID and identifying a Google account that their photo appeared in.

9. The extraordinary response rate suggests that the recipient list—the 1.2 million people that received this e-mail—were primarily real people, not bots.

10. The information supplied by the Aldridge Affidavit does not allow Simpluris to provide an actual estimate of the number of claims submitted by bots, if any, or to propose an alternative method of identifying such claims.

* * *

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

Executed this third day of February, 2023.



Jacob J. Kamenir, Esq.

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
2/3/2023 12:49 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
21329788

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

EXHIBIT B

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

DECLARATION OF J. ELI WADE-SCOTT

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true:

1. I am a partner at the law firm Edelson PC and am admitted to practice before the Supreme Court of the State of Illinois. I am entering this Declaration in support of Proposed Intervenor Jodi White Jones's Reply in Support of Her Motion to Intervene. This Declaration is based upon my personal knowledge except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. After the December 19, 2022 presentment of Proposed Intervenor's Motion to Intervene, I exchanged a series of emails with Robert Ahdoot and Ted Maya, counsel for Plaintiffs. A true and accurate copy of those e-mails is attached hereto as Exhibit B-1. The e-mails have been edited only to remove lengthy quoted text, and appear in chronological order

3. I have been appointed Class Counsel in more than fifteen BIPA settlements, and a photo ID has never been requested for any purpose in any of those cases, other than to address a transfer of a claim in the event of a decedent or to prove a name change.

4. Our firm has reviewed more than 100 BIPA settlements and, to our knowledge, none requested a photo ID as part of the claims process.

* * *

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

Executed on February 3, 2022 at Chicago, Illinois.

By: /s/ J. Eli Wade-Scott
J. Eli Wade-Scott

EXHIBIT B-1

Rivera-Google Proposed Order and Discussion

28 messages

Eli Wade-Scott <ewadescott@edelson.com>

Mon, Dec 19, 2022 at 10:18 AM

To: twolfson@ahdootwolfson.com, rahdoot@ahdootwolfson.com, SBali@perkinscoie.com

Cc: Jay Edelson <jedelson@edelson.com>, Ryan Andrews <randrews@edelson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>

All:

Please see attached a proposed order following today's hearing. Please let us know when you will be able to respond to the motions.

We should start the meet and confer process promptly. I've included some basic questions below that will allow us to see if there is a satisfactory way to resolve this more quickly.

1. You said that the cause of the e-mail campaign was fraud prevention after a bot attack. Please provide (A) the information that the settlement administrator has provided you about this bot attack, (B) when you found out about the bot attack, and (C) the ways that you/the administrator considered addressing it before adopting the drivers' license/account name strategy.
2. You said that none of the 418,676 previously-approved claims were targeted for fraud prevention. Were none of these individuals sent the e-mail? What allowed the administrator to approve those claims without sending them e-mails?
3. How many e-mails were sent? Did these e-mails go to all individuals that didn't have Google Photos accounts?
4. What efforts did you make to ensure that the e-mails didn't hit spam?
5. How many class members responded to the e-mails?
6. How many people reached out to the Administrator with questions following the e-mails?

Thanks,

Eli

--

Edelson^{PC}**J. Eli Wade-Scott**

350 N LaSalle St, 14th Floor, Chicago, IL 60654

d 312.242.0859 · t 312.589.6370 · edelson.com

**Rivera-Google Proposed Order.docx**

23K

Robert Ahdoot <rahdoot@ahdootwolfson.com>

Mon, Dec 19, 2022 at 11:45 AM

To: Eli Wade-Scott <ewadescott@edelson.com>

Cc: jedelson <jedelson@edelson.com>, Ryan Andrews <randrews@edelson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, "SBali@perkinscoie.com" <SBali@perkinscoie.com>, Joseph Marchese <jmarchese@bursor.com>, Phil Fraietta <pfraietta@bursor.com>, "Scott A. Bursor" <sbursor@bursor.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Ted Maya <tmaya@ahdootwolfson.com>, Frank Hedin <fhedin@hedinhall.com>

Eli,

We propose January 23, 2023 as the deadline to file the oppositions. The attached proposed order is otherwise fine. Also, please include all counsel in the case on future emails (they are included in the cc field above).

Given the various holiday schedules, I think it makes sense to schedule a call sometime after December 25, but before the new year to meet and confer and respond to your inquires. Let us know whether sometime during December 27-29 works for you.

Thanks,

Robert R. Ahdoot



2600 W. Olive Avenue | Suite 500

Burbank, California 91505-4521

Tel (310) 474-9111

Fax (310) 474-8585

rahdoot@ahdootwolfson.com

Eli Wade-Scott <ewadescott@edelson.com>

Mon, Dec 19, 2022 at 12:15 PM

To: Robert Ahdoot <rahdoot@ahdootwolfson.com>

Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, "SBali@perkinscoie.com" <SBali@perkinscoie.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

Robert -

Thanks for getting back. That's quite a long time (you've had our motions since December 13) and won't give us long to reply. What I'm concerned about is that an extended deadline will delay our getting a substantive understanding of the facts and your position until the last minute. (That concern is unfortunately well-founded; for instance, it's very surprising that your team did not have an answer this morning as to how many of these emails went out.)

Relatedly, I think it would be best that you give us answers to those questions in writing, because I don't want anything to be lost in translation from a call. In any event, that will allow us to get the ball rolling regardless of everyone's holiday schedules. When do you think we can have that? If you can get it to us by the time frame you suggested for a call, we'll have more confidence that we're going to crystallize the issues here and we'd be able agree to your proposed briefing schedule.

Eli

[Quoted text hidden]

Bali, Sunita (SFO) <SBali@perkinscoie.com>

Mon, Dec 19, 2022 at 12:22 PM

To: Eli Wade-Scott <ewadescott@edelson.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>

Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>

Adding the rest of defense counsel.

[Quoted text hidden]

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Eli Wade-Scott <ewadescott@edelson.com>

Mon, Dec 19, 2022 at 1:52 PM

To: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>

Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

All - we have to get this order in by 4:30 CT. Can we agree consistent with my email below?

Eli

[Quoted text hidden]

Robert Ahdoot <rahdoot@ahdootwolfson.com>

Mon, Dec 19, 2022 at 2:17 PM

To: Eli Wade-Scott <ewadescott@edelson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

January 23 is appropriate given the holidays and the fact that you will have 10-days to reply. It also provides us time to meet and confer, which the Court requested. Do you have an alternative date in mind?

How we conduct our meet and confer, whether by calls or in writing, is something that I am certain others would like to weigh in on and that won't occur today. I am personally in favor of conducting the meet and confer as soon as possible in whatever form is most productive and expedient.



Eli Wade-Scott <ewadescott@edelson.com>

Mon, Dec 19, 2022 at 2:29 PM

To: Robert Ahdoot <rahdoot@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Robert:

I think we need to make a plan today in light of the fact that we need to submit an order. I am willing to agree to January 23rd for the brief provided you agree to answer the questions below by the time you suggested for a call (which is December 27-29, so let's call it December 29). That strikes me as giving your team a great deal of time, consistent with what you proposed, while also advancing the ball on the meet and confer process substantively. Does this work for you?

If your request is that we just agree to a response date of January 23 without any commitment from you, we are not amenable to that. We need to get information about what happened and your position, and if the brief is the only operative deadline, we will need to do that earlier. (I don't think that's the route the Court wants us to go, but that's what I see as the alternative.)

Eli
[Quoted text hidden]

Bali, Sunita (SFO) <SBali@perkinscoie.com> Mon, Dec 19, 2022 at 3:07 PM
To: Eli Wade-Scott <ewadescott@edelson.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>
Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringier, Susan (SEA)" <SFahringier@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

All parties and counsel need an opportunity to consider your request, and a number of our team members (including lead counsel) are currently traveling. So I don't think we can realistically commit to anything today. But that should not prevent us from submitting an order today, with a proposed briefing schedule, as requested by the court. I share Robert's sentiment that a January 23 deadline makes sense. It will give us sufficient time to meet and confer in advance, and still gives the proposed intervenor sufficient time to file a reply. But if there's another date you'd like us to consider, please let us know.

Sunita
[Quoted text hidden]
[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com> Mon, Dec 19, 2022 at 3:35 PM
To: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>
Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringier, Susan (SEA)" <SFahringier@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Sunita -

Is Google going to be responding to the motions or these questions as well? That would be helpful to understand so that I can factor in your team's needs.

My understanding from this thread is that no one is able to consider our request that there be a substantive response by December 29 (a date that Plaintiffs proposed to confer). I am somewhat confused by that, as it is no more complicated than deciding a briefing schedule. In any event, if we can't do that, let's just move the briefing date forward to January 16, which is more than a month after you have received our motions in any event.

Eli
[Quoted text hidden]

Robert Ahdoot <rahdoot@ahdootwolfson.com> Mon, Dec 19, 2022 at 3:54 PM
To: Eli Wade-Scott <ewadescott@edelson.com>

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

January 16 is fine on this side. Thank you

Sent from a mobile device. Pardon the brevity and errata.

[Quoted text hidden]

Bali, Sunita (SFO) <SBali@perkinscoie.com>

Mon, Dec 19, 2022 at 4:01 PM

To: Robert Ahdoot <rahdoot@ahdootwolfson.com>, Eli Wade-Scott <ewadescott@edelson.com>

Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

That works for us as well. Thanks.

Sunita

[Quoted text hidden]

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Mon, Dec 19, 2022 at 4:02 PM

To: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>

Cc: Robert Ahdoot <rahdoot@ahdootwolfson.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Attached is the filled order that I will submit. Once everyone has a chance to think about when we can get substantive answers to our questions—surely this shouldn't take more than a day or so—please let me know.

Eli

[Quoted text hidden]

 **Rivera-Google Proposed Order [rff].docx**
23K

Eli Wade-Scott <ewadescott@edelson.com>

Wed, Dec 21, 2022 at 8:45 AM

To: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>

Cc: "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Menaldo, Nicola C. (SEA)" <NMenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Ted Maya <tmaya@ahdootwolfson.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

All - I am following up on when you expect to be able to provide us with answers to our questions below. We can't have a meaningful meet and confer process unless we get that. I'm not asking for answers today, just a firm date we will receive them.

You'd previously proposed December 27-29 for a call - does December 29 work as the deadline to provide answers? We can then have a productive call quickly afterward.

[Quoted text hidden]

Ted Maya <tmaya@ahdootwolfson.com>

Thu, Dec 22, 2022 at 3:09 PM

To: Eli Wade-Scott <ewadescott@edelson.com>, "Bali, Sunita (SFO)" <SBali@perkinscoie.com>

Cc: "David P. Milian" <dmilian@careyrodriguez.com>, "Fahringier, Susan (SEA)" <SFahringier@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriguez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

We're happy to meet and confer with you by telephone. Once again, are you available sometime during December 27-29 for a conference call?

Thanks,

Ted

Theodore Maya

Ahdoot & Wolfson, PC

[2600 W. Olive Avenue | Suite 500](#)

[Burbank, California 91505-4521](#)

[Tel \(310\) 474-9111](#)

[Fax \(310\) 474-8585](#)

tmaya@ahdootwolfson.com

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

Eli Wade-Scott <ewadescott@edelson.com>

Thu, Dec 22, 2022 at 3:11 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted - thanks for following up. I'm happy to talk by phone. But concrete answers in writing to these basic questions are going to move things forward far more efficiently before we talk. Can you get us those answers before a call? If the answer is yes, I will make myself available in that timeframe.

Eli

[Quoted text hidden]

Ted Maya <tmaya@ahdootwolfson.com>

Wed, Dec 28, 2022 at 11:06 AM

To: Eli Wade-Scott <ewadescott@edelson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

Several of your questions are unclear and others don't seem to be relevant to any pending issues. We will not be providing written responses to your questions at this time. However, we remain willing to discuss a resolution of your motion during a telephonic meet-and-confer, as the Court suggested.

Are you available in the coming week for a conference call? I have covid but will do my best to join.

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Wed, Dec 28, 2022 at 11:18 AM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey"

<JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted:

I'm sorry to hear you have COVID. I certainly don't need you on a call at any particular time. But can you, or anyone on this thread, tell me which of the questions are not clear or irrelevant? Maybe I can help explain.

Candidly, they all seem very self-explanatory to me, so the blanket refusal to respond with a broadside like that suggests you intend to scuttle the meet and confer process before we've even started. That's incredibly concerning. More broadly, your group's refusal to engage here is also ensuring that we can't try to find a solution any more quickly than contested motion practice would produce. Please shed some light here.

Eli

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Wed, Dec 28, 2022 at 11:21 AM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted - I got out of office emails from nearly half the people on this thread. I want to emphasize that I'm not asking you to answer these questions over the holidays. But I need to know that you're going to answer—which you've now said you won't, but I'm hoping you'll reconsider—and when.

Eli

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Mon, Jan 9, 2023 at 8:37 AM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

All - we're now well into the new year, with no response to any of our questions and, instead, your clear statement that you intend to stonewall them. I've also invited you to reverse course, and have heard radio silence. We will accordingly be filing a motion with the Court at close of business today to address your refusal to meet and confer. If you have a change of heart, please let me know by 4:30 CT.

Eli

[Quoted text hidden]

Ted Maya <tmaya@ahdootwolfson.com>

Mon, Jan 9, 2023 at 11:59 AM

To: Eli Wade-Scott <ewadescott@edelson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>,

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

"Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

We believe that it is you who have failed to meet and confer by failing to respond to our multiple attempts to schedule a telephone conference. We remain open to conducting a telephonic meet and confer, and do not understand your refusal to participate in one — both before and after the filing of your original motion.

In any event, now that we have all had a chance to return to work after the holidays, we write in a further attempt to meet and confer with you in order to try to resolve the issue.

None of the 418,676 claims that previously had been approved were sent a validation email. The Settlement Administrator, P&N, reports that these claims did not present indicators of fraud, nor did they show patterns of robotic process automation (“bot”) submissions.

The Settlement Administrator sent 1,212,191 validation emails for fraud-prevention purposes and to protect the interest of bona fide Class Members. Settlements of this size and type often are targeted by fraudsters. In this case, P&N advises that multiple, particularly sophisticated bot operations targeted the Settlement website. In addition to the bot-submitted claims, P&N found that other strong indicia of fraud also existed for a substantial number of the claims submitted. P&N informs us that the email validation procedure they employed is their standard practice to reasonably regulate and prevent fraud in a scenario like the one here, and it was implemented in this case on their advice and recommendation and in consideration of their vast experience in these matters. As a result, P&N considered the validation email a reasonable and necessary measure to protect the interests of bona fide Class Members. Photo IDs have been required in previous class settlement claim processes. P&N is still finalizing the statistics regarding the responses to validation emails, but I understand they received approximately 49,000 validations and thousands of additional inquiries to which they responded.

To ensure that the validation emails did not hit spam boxes, P&N sent the validation email to the email account which the purported claimants provided on the respective Claim Form.

In addition, prior to sending the validation emails, P&N put the e-mails through a hygiene and verification process to protect the integrity of the e-mail campaign. P&N sent e-mails batched into groups transmitted out over multiple days to ensure IPs are “warm” and to avoid hitting rate limits by inbox providers. E-mail content was checked for known spam triggers and sent without tables, graphs, or other content that may increase the likelihood of the e-mail landing in SPAM folders and/or being blocked by ISP. P&N followed e-mail best practices, including “unsubscribe” links, Administrator contact information, and maintaining multiple IP addresses with strong sender reputations. P&N also worked with third parties to monitor their sending IP addresses to maintain those addresses’ reputation and monitor for block listing.

At the outset of the Settlement administration process in this case, every possible effort was made to ensure that no e-mails sent by P&N would be diverted to the spam or junk mail folders of recipients’ [gmail.com](https://www.gmail.com) email accounts. At Class Counsel’s request, Google had its postmaster (and/or other relevant personnel) ensure that none of the correspondence sent by the Settlement Administrator concerning the Settlement would be diverted to the spam or junk folders of any recipient, including by “whitelisting” the e-mail address to be used by P&N and by working with P&N to accomplish the same. We were vigilant in this regard considering the issue that we understand arose in the Facebook BIPA settlement involving emails from the settlement administrator being diverted to [gmail.com](https://www.gmail.com) recipients’ spam folders.

As stated, we remain open to discussing your motion by telephone. Please let us know what dates and times work for you.

Thank you,

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Mon, Jan 9, 2023 at 5:37 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey"

<JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo"

<nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan

Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>,

"Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant

<zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted -

Thanks for the response. As a general note, I think that we have a different idea of what a productive meet-and-confer is. A generic offer of a phone call with no information provided to us doesn't accomplish anything—other than, perhaps, being able to report to the Court that a phone call was had. This substantive information is actually helpful and allows us to move things forward.

Below, I've mapped your responses onto my original questions so that you can easily see where you still aren't providing information. I also have a few follow-up questions below. Now that we're all back from the holidays, I am hoping that things can start moving much more quickly. When do you think you will be able to respond?

1. You said that the cause of the e-mail campaign was fraud prevention after a bot attack. Please provide (A) the information that the settlement administrator has provided you about this bot attack, (B) when you found out about the bot attack, and (C) the ways that you/the administrator considered addressing it before adopting the drivers' license/account name strategy.

Settlements of this size and type often are targeted by fraudsters. In this case, P&N advises that multiple, particularly sophisticated bot operations targeted the Settlement website. In addition to the bot-submitted claims, P&N found that other strong indicia of fraud also existed for a substantial number of the claims submitted. P&N informs us that the email validation procedure they employed is their standard practice to reasonably regulate and prevent fraud in a scenario like the one here, and it was implemented in this case on their advice and recommendation and in consideration of their vast experience in these matters. As a result, P&N considered the validation email a reasonable and necessary measure to protect the interests of bona fide Class Members. Photo IDs have been required in previous class settlement claim processes.

This is partially responsive, but it just doesn't answer Part B or C of this question. I ask again: when did you find out about the bot attack(s)? The reason I am asking this is the remarkably short time period that you gave Class Members to respond to the validation e-mails and how close to the payment deadline you sent them. I also asked what other potential routes you explored to prevent fraud short of requiring people to upload a drivers' license and account name. This is critical because there are typically other ways of handling a bot attack rather than sending more than a million deficiency e-mails.

You also gave us a new piece of information, which is that there were non-bot fraudulent claims. What were the "strong indicia of fraud" that the Administrator used to identify those claims?

2. You said that none of the 418,676 previously-approved claims were targeted for fraud prevention. Were none of these individuals sent the e-mail? What allowed the administrator to approve those claims without sending them e-mails?

None of the 418,676 claims that previously had been approved were sent a validation email. The Settlement Administrator, P&N, reports that these claims did not present indicators of fraud, nor did they show patterns of robotic process automation ("bot") submissions.

This partially answers this question, but does not answer what fraud indicators were originally used to identify the fraudulent claims or the indicators you used to show patterns of bot submissions. As an example, what were the "indicators of fraud" for Ms. White Jones's claim?

3. *How many e-mails were sent? Did these e-mails go to all individuals that didn't have Google Photos accounts?*

The Settlement Administrator sent 1,212,191 validation emails for fraud-prevention purposes and to protect the interest of bona fide Class Members.

This does not answer the second half of the question, which was whether these e-mails were just sent to everyone that didn't have a Google Photos account. If the validation e-mails were not just sent to everyone without a Google Photos account, what indicators of (1) robotic process automation and (2) fraud were used to identify the potentially fraudulent claims?

4. *What efforts did you make to ensure that the e-mails didn't hit spam?*

To ensure that the validation emails did not hit spam boxes, P&N sent the validation email to the email account which the purported claimants provided on the respective Claim Form.

In addition, prior to sending the validation emails, P&N put the e-mails through a hygiene and verification process to protect the integrity of the e-mail campaign. P&N sent e-mails batched into groups transmitted out over multiple days to ensure IPs are "warm" and to avoid hitting rate limits by inbox providers. E-mail content was checked for known spam triggers and sent without tables, graphs, or other content that may increase the likelihood of the e-mail landing in SPAM folders and/or being blocked by ISP. P&N followed e-mail best practices, including "unsubscribe" links, Administrator contact information, and maintaining multiple IP addresses with strong sender reputations. P&N also worked with third parties to monitor their sending IP addresses to maintain those addresses' reputation and monitor for block listing.

At the outset of the Settlement administration process in this case, every possible effort was made to ensure that no e-mails sent by P&N would be diverted to the spam or junk mail folders of recipients' [gmail.com](mailto:) email accounts. At Class Counsel's request, Google had its postmaster (and/or other relevant personnel) ensure that none of the correspondence sent by the Settlement Administrator concerning the Settlement would be diverted to the spam or junk folders of any recipient, including by "whitelisting" the e-mail address to be used by P&N and by working with P&N to accomplish the same. We were vigilant in this regard considering the issue that we understand arose in the Facebook BIPA settlement involving emails from the settlement administrator being diverted to [gmail.com](mailto:) recipients' spam folders.

This sounds right, but it's confusing to see that so many e-mails hit spam in light of these steps, particularly in Google accounts. In fact, every Gmail user we've spoken to had this validation e-mail hit spam. Sunita -- can you confirm that Google implemented the steps in the last paragraph?

5. *How many class members responded to the e-mails?*

6. *How many people reached out to the Administrator with questions following the e-mails?*

P&N is still finalizing the statistics regarding the responses to validation emails, but I understand they received approximately 49,000 validations and thousands of additional inquiries to which they responded.

Does this 4% response rate track your estimation of how many fraudulent/bot claims the Administrator believes they received? Our concerns are, obviously, that (1) the onerous compliance process, (2) the e-mails hitting spam and, (3) the short response time and holiday weekend drove down the response rate. With 418,676 valid claims plus 49,000 responses (assuming they are all valid), what is the overall claims rate here?

Eli

[Quoted text hidden]

Ted Maya <tmaya@ahdootwolfson.com>

Wed, Jan 11, 2023 at 4:00 PM

To: Eli Wade-Scott <ewadescott@edelson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <rands@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

In our experience, phone calls can be very productive in moving the ball forward and to achieve a resolution, if one is possible. This is why Judge Loftus instructed us to meet and confer by phone. She wanted us to talk and if possible present her with a resolution.

We disagree with your apparent understanding that we are required to answer written interrogatories from you. Nevertheless, we've answered your questions—only to receive more. Although we continue to believe that a phone call would be the best way to conduct this meet and confer, we provide additional, written information here.

As we have said before, we would be happy to discuss the factors concerning Ms. White Jones's claim that caused P&N to send her a validation email, as well as the other indicia of fraud identified by P&N, and the bot issue, by phone. We also will share with you P&N's declaration on these issues, which the Court asked for, once it is ready.

Regarding your question about whether validation emails were sent to everyone that didn't have a Google Photos account, the answer is no.

P&N advises that the 10-day time limit to respond to the validation email is their standard practice. P&N also advises that it has received a large volume of inquiries regarding when the money will be paid (which also was the concern of class members who appeared at the final approval hearing). Alternative methods of validation were discussed, however, P&N advised that in this context requiring a photo ID was the best solution to protect bona fide Class Members in this context, and not the first time this method has been utilized to validate a claim.

You stated: "there are typically other ways of handling a bot attack." What are the other typical ways of responding to fraud or handling a bot attack are you referring to?

Finally, when Robert agreed to your suggestion of a January 16 deadline to file our opposition papers he did not realize that it was MLK day. Our office will be honoring it.

Will you agree to an extension until January 18 for us to file our response to your motion? If you and Google agree, we can circulate a joint motion and proposed order to that effect. Please let us know.

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Wed, Jan 11, 2023 at 4:48 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo"

FILED DATE: 2/3/2023 12:49 PM 2019CH00990

<nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted -

Thanks. I've wanted to have this initial conversation in writing for two reasons. The first was my concern that you would simply report to the Court that you'd satisfied your meet and confer obligations by engaging in a substance-less phone call with us. That suspicion was confirmed by the fact that you refused to give us any substantive information until I told you I would involve the Court this week.

Second, we should have precision on the basic, working set of facts in the case. That is far harder to accomplish on the phone and, again, my concerns have been confirmed by the fact that you are now outright refusing to answer basic questions in writing. When we have precision on the basic facts, I'm sure we'll have plenty to discuss live. Until then, we should proceed in writing.

Fundamentally, we need to understand what the "indicia of fraud" for both the non-bot and bot claims were. That drives the appropriate response. That's also why I've asked what other methods for addressing the fraudulent claims you considered, which you now say exist but which you continue to refuse to put in writing. Strange, too, is the refusal to tell us when you learned about this problem to begin with. There is no legitimate reason not to put that information in writing.

In fact, the only new piece of information you have provided is that not everyone without a Google Photos account received a deficiency email. That's helpful, but leaves every other question I've identified below unanswered.

I'm confused whether you intend to file on the 16th or not, just due to the wording of your email. An extension is fine with us provided you agree to actually answer our questions this week.

Eli

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Wed, Jan 18, 2023 at 6:27 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted - e-filing will not serve us with a copy of your brief when you file it at this point in the day. Please send us an as-filed copy of the brief, even if unstamped, when you file it.

Eli

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Eli Wade-Scott <ewadescott@edelson.com>

Wed, Jan 25, 2023 at 7:43 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted -

We've had a chance to review your filing and would like to, once again, attempt to substantively confer with you. Unfortunately, many of the basic questions we've been posing for weeks are not answered by your filing—exactly what I was trying to avoid. I do not want to be in a situation where we are still trying to get information from you at a hearing, which will only delay things further. Here are some follow-up questions prompted by the filing, and I'd like to set up a group

call with a representative from another administrator, who can help drill down on some of these questions once you are able to answer them.

1. *What are the precise indicia of fraud that were used to identify the bot claims?*

Aldridge discusses the indicia of fraud in his declaration at paragraphs ¶¶ 14–16. But the indicia of fraud in ¶ 16 do not make a tremendous amount of sense: they suggest, for instance, that claims that were flagged were coming from different IP addresses (not a red flag) or from IP addresses associated with Illinois (not a red flag). What specific criteria or website-captured data points were used to define a "likely bot generated" claim? How do those criteria/data differ from the claims that were approved?

2. *What alternative methods for validating claims were considered?*

Aldridge identifies a number of methods that were used to prevent potential fraud that would seem to have a very high likelihood of success, summarized in ¶ 11. Particularly, the "double-verification" required for digital payments would create a significant hurdle even for bot-generated claims. How was the collected payment data for electronic payments analyzed and associated to the "likely bot generated" claims? How did this payment data differ from the approved claims? Was there a payment selection verification step completed for any/all of the 1.2 million "likely bot generated" claims? If so, how many of the 1.2 million claimants completed the additional payment verification step?

If you are able to gather answers to these questions, I think we will have gotten granular enough to have a productive discussion with your group, our firm, a representative from P&N, and a representative from another administrator, Simpluris. Can we set up a conference call, with the expectation that you will be prepared to discuss these?

Best,

Eli

[Quoted text hidden]

[Quoted text hidden]

Eli Wade-Scott <ewadescott@edelson.com>

Fri, Jan 27, 2023 at 7:07 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randroids@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

All - our deadline to reply in support of our motions is February 3. Please let me know when you are available to speak on or before February 1 on these topics.

Eli

[Quoted text hidden]

Ted Maya <tmaya@ahdootwolfson.com>

Fri, Jan 27, 2023 at 7:25 PM

To: Eli Wade-Scott <ewadescott@edelson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randroids@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Eli,

Our papers provide answers to the relevant questions you've asked. We **remain open** to **scheduling** a telephonic meet and confer with you, to discuss your position on the additional email distribution suggested in our opposition brief and potential withdrawal of your motion to intervene. We do not believe it would be productive to have P&N or other claims

administrators on a meet and confer call. We are available on or before Feb 1 to discuss these matters. Would you be able to please propose a couple of times and we will try to make one of them work?

Thanks,

Ted

Theodore Maya

Ahdoot & Wolfson, PC

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Eli Wade-Scott <ewadescott@edelson.com>

Fri, Jan 27, 2023 at 7:35 PM

To: Ted Maya <tmaya@ahdootwolfson.com>

Cc: "Bali, Sunita (SFO)" <SBali@perkinscoie.com>, "David P. Milian" <dmilian@careyrodriquez.com>, "Fahringer, Susan (SEA)" <SFahringer@perkinscoie.com>, Frank Hedin <fhedin@hedinhall.com>, "John C. Carey" <JCarey@careyrodriquez.com>, Joseph Marchese <jmarchese@bursor.com>, "Nicola C. Menaldo" <nmenaldo@perkinscoie.com>, Phil Fraietta <pfraietta@bursor.com>, Robert Ahdoot <rahdoot@ahdootwolfson.com>, Ryan Andrews <randrews@edelson.com>, Schuyler Ufkes <sufkes@edelson.com>, "Scott A. Bursor" <sbursor@bursor.com>, "Spear, Ryan (SEA)" <RSpear@perkinscoie.com>, Tina Wolfson <twolfson@ahdootwolfson.com>, Zoë Seaman-Grant <zseaman-grant@edelson.com>, jedelson <jedelson@edelson.com>

Ted:

Your filing does not answer these questions, which is why I asked them. That deficiency is also what I'm trying to remedy with this meet and confer, rather than have us arrive at the hearing without all the facts—what I've been concerned about from day one of this discussion. I appreciate your acknowledgment, at least, that these questions are relevant.

Your offer of a call, without a representative of P&N and, evidently, only for the purpose of discussing our complete agreement with you, is not a productive one. Instead, this continues the pattern of hide-the-ball that has been the hallmark of this discussion. It's critical for a representative from P&N be on so that we can get actual answers to these questions and any necessary follow-ups. I'm certain that an attorneys-only call will not accomplish that, and I expect you are too. Please confirm that you are refusing to ask P&N to join us on a conference call.

Eli