

1 David A. Straite (admitted *pro hac vice*)
 2 **KAPLAN FOX & KILSHEIMER LLP**
 3 850 Third Ave., 14th Floor
 4 New York, NY 10022
 5 Telephone: (212) 687-1980
 6 Facsimile: (212) 687-7714
 7 *dstraite@kaplanfox.com*

Plaintiffs' Steering Committee

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

Case No.: 5:12-MD-02314-EJD

11 IN RE: FACEBOOK INTERNET
12 TRACKING LITIGATION

13 **DECLARATION OF DAVID STRAITE IN**
 14 **SUPPORT OF MOTION FOR**
 15 **ADMINISTRATIVE RELIEF TO AMEND**
 16 **CONSOLIDATION ORDER**

17 Judge: The Honorable Edward J. Davila
 18 Court Room: 4

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1 I, David A. Straite, declare as follows:

2 1. I am an attorney at the law firm of Kaplan Fox & Kilsheimer LLP, and am admitted
3 to practice *pro hac vice* before this Court.

4 2. Movants and plaintiffs Matthew Vickery, Perrin Davis, Brian Lentz and Cynthia
5 Quinn move this Court for an Order modifying the previous order of consolidation and appointment
6 of lead counsel.

7 3. I respectfully submit this Declaration in support of Movants' motion. If called as a
8 witness, I could and would competently testify thereto all facts within my personal knowledge.

9 4. Attached hereto as **Exhibit A** is a true and correct copy of the firm resume for Kaplan
10 Fox & Kilsheimer LLP.

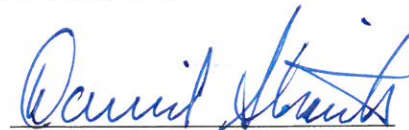
11 5. Attached hereto as **Exhibit B** is a true and correct copy of an article appearing in the
12 *National Law Journal* honoring Kaplan Fox & Kilsheimer LLP as one of the country's top 10 "hot"
13 litigation boutiques.

14 6. Attached hereto as **Exhibit C** is a true and correct copy of an article co-authored by
15 Laurence King and David Straite, "Google and the Digital Privacy Perfect Storm" which appeared
16 last year in the UK's *E-Commerce Law Reports*.

17 7. Pursuant to Civil Local Rule 7-11, I personally contacted counsel for Defendant
18 Facebook, Inc. via email on March 5, 2015 regarding the pendency of this motion attempting to
19 stipulate under Civil Local Rule 7-12, and asking to let us know if Facebook would oppose today's
20 motion. I received no indication of any intent to oppose.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is
22 true and correct.

23 Executed this 10th day of March, 2015, in New York, NY.

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25 David A. Straite
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Exhibit A



KAPLAN FOX & KILSHEIMER LLP
FIRM PROFILE AND ATTORNEY BIOGRAPHIES

CELEBRATING 60 YEARS

Leo Kaplan and James Kilsheimer founded “Kaplan & Kilsheimer” in 1954, making the firm one of the most established litigation practices in the country. James Kilsheimer was a celebrated federal prosecutor in the late 1940s and early 1950s in New York who successfully tried some of the highest profile cases in the country (including co-prosecuting Julius and Ethel Rosenberg in 1951), and also handled the U.S. Attorney’s Office’s criminal appeals to the Second Circuit. Co-founder Leo Kaplan was a well-known antitrust lawyer and in 1967 was appointed by the Southern District of New York to oversee the distribution of all ASCAP royalties under the 1950 antitrust consent decree in *United States v. American Society of Composers, Authors and Publishers*, 41-CV-1395 (SDNY), a role he held for 28 years until his passing in 1995.

Now known as “Kaplan Fox & Kilsheimer LLP,” the early commitment to high-stakes litigation continues to define the firm sixty years after its founding. In September 2014, the National Law Journal included Kaplan Fox in its inaugural list of the country’s top 50 “elite” plaintiff firms. In March 2013, the National Law Journal included Kaplan Fox on its list of the top 10 “hot” litigation boutiques, a list that includes both plaintiff and defense firms. In July 2014, the firm was one of only five plaintiff firms to be recognized by the Legal 500 2014 US Edition as a top-ranked firm in more than one practice area. Half of the firm’s litigation partners are ranked as Thompson-Reuters “Super Lawyers” and the firm now has primary offices in New York and San Francisco, and branch offices in Chicago, Los Angeles, Washington, D.C., and New Jersey.

OVERVIEW OF PRACTICE AREAS

The firm has four practice areas: Antitrust Litigation, led by Robert Kaplan and Gregory Arenson; Securities Litigation, led by Frederic Fox; Consumer Protection and Data Privacy, led by Laurence King; and Private Client Services, led by Sotheby’s former General Counsel Theodore Kaplan.

Consumer Protection and Data Privacy Litigation

The Consumer Protection and Data Privacy Litigation Practice is headquartered in Kaplan Fox’s San Francisco office, which opened in 2000, and is led by Laurence King, an experienced

trial lawyer and former prosecutor. Mr. King also recently served as a Vice-Chair, and then Co-Chair, of the American Association for Justice's Class Action Litigation Group. Mr. King and our other effective and experienced consumer protection litigators regularly champion the interests of consumers under a variety of state and federal consumer protection laws. Most frequently, these cases are brought as class actions, though under certain circumstances an individual action may be appropriate.

Kaplan Fox's consumer protection attorneys have represented victims of a broad array of misconduct in the manufacturing, testing, marketing and sale of a variety of products and services, and have regularly been appointed as lead or co-lead counsel, or as a member of a committee of plaintiffs' counsel, in consumer protection actions by courts throughout the nation. Among our significant achievements are highly recognized cases including *In re Baycol Products Litigation*, MDL 1431-MJD/JGL (D. Minn.) (victims have recovered \$350 million recovered to date); *In re Providian Financial Corp. Credit Card Terms Litigation*, MDL No. 1301-WY (E.D. Pa.) (\$105 million recovered); *In re Thomas and Friends Wooden Railway Toys Litig.*, No. 07-cv-3514 (N.D. Ill.) (\$30 million settlement obtained for purchasers of recalled "Thomas Train" toys painted with lead paint); *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, No. 4:09-md-2086 (W.D. Mo.) (settlements obtained where consumers will receive substantially in excess of actual damages and significant injunctive relief); and *Berry v. Mega Brands Inc.*, No. 08-CV-1750 (D.N.J.) (class-wide settlement obtained where consumers will receive full refunds for defective products).

Kaplan Fox is an emerging leader in data privacy litigation. For example, Laurence King filed and successfully prosecuted one of first online data breach cases, *Syran v. LexisNexis Group*, No. 05-cv-0909 (S.D. Cal.). In addition to the case at bar, Kaplan Fox is currently co-lead counsel in the Horizon Blue Cross data breach litigation, see *Diana, et al. v. Horizon Healthcare Svcs., Inc.*, 2:13-cv-7418-CCC (D.N.J.), co-lead counsel in *In re: Yahoo Mail Litigation*, 13-cv-4980-LHK (N.D. Cal.), liaison counsel in a data breach case against LinkedIn, see *In re: LinkedIn User Privacy Litigation*, 12-cv-3088-EJD (N.D. Cal.) (preliminary approval of settlement granted), and court-appointed steering committee member advising lead counsel on the appeal of *In re: Google Inc. Cookie Placement Consumer Privacy Litigation*, No. 13-4300 (3d Cir.), addressing whether URLs can contain "content" as defined in the Wiretap Act and whether the theft of PII confers Article III standing. Finally, the firm is also leading an internet tracking case in New York against PulsePoint, Inc., an online advertising company accused of hacking Safari's privacy protections. See *Mount v. PulsePoint, Inc.*, No. 13-cv-6592 (SDNY) (Buchwald, J.).

Securities Litigation

Kaplan Fox has been a leader in prosecuting securities fraud for 40 years. In 2009, Portfolio Media's Law360 ranked Kaplan Fox's securities litigation practice as one of the top five in the country (plaintiff side). In 2014, the Legal500 recognized Kaplan Fox as one of the country's top eight securities class action practices (plaintiff side).

Some of the firm's most significant securities recoveries include *In re Bank of America Corp. Sec., Deriv., and ERISA Litig.*, MDL 2058 (S.D.N.Y.) (\$2.425 billion recovered), *In re Merrill Lynch & Co., Inc. Sec. Litig.*, Master File No. 07-CV-9633 (JSR) (S.D.N.Y.) (\$475 million recovered), and *In re 3Com Sec. Litig.*, No. C-97-21083-EAI (N.D. Cal.) (\$259 million recovered). On October 24, 2014, the firm announced the \$170 million settlement of claims against Fannie Mae related to its risk management, finances and mortgage exposure, a settlement which is pending approval. *In re: Fannie Mae 2008 Securities Litigation*, No. 08-07831 (SDNY).

Antitrust Litigation

Kaplan Fox has been at the forefront of significant private antitrust actions, and we have been appointed by courts as lead counsel or member of an executive committee for plaintiffs in some of the largest antitrust cases throughout the United States. Members of the firm have also argued before federal Courts of Appeals some of the most significant decisions in the antitrust field in recent years. For example, Robert Kaplan, son of co-founder Leo Kaplan, argued the appeal in *In re Flat Glass Antitrust Litigation*, 385 F. 3d 350 (3d Cir. 2004), and Greg Arenson argued the appeal in *In re High Fructose Corn Syrup Antitrust Litigation*, 295 F. 3d 651 (7th Cir. 2002). In a recent survey of defense counsel, in-house attorneys and individuals involved in the civil justice reform movement, both were named among the 75 best plaintiffs' lawyers in the country based on their expertise and influence. In 2014, the Legal 500 ranked Kaplan Fox as one of the top 12 antitrust litigation firms in the United States (plaintiff side).

Over the years, Kaplan Fox has recovered over \$2 billion for our clients in antitrust cases. Some of the larger more recent antitrust recoveries include *In re High Fructose Corn Syrup Antitrust Litigation*, MDL No. 1087, Master File No. 95-1477 (C.D. Ill.) (\$531 million recovered), *In re Brand Name Prescription Drugs Antitrust Litigation*, MDL 997 (N.D. Ill.) (\$720 plus million recovered), *In re Air Cargo Shipping Services Antitrust Litigation*, MDL 1775 (E.D.N.Y.) (\$278 million recovered from settling defendants; case still pending), and *In re Infant Formula Antitrust Litigation*, MDL 878 (N.D. Fla.) (\$126 million recovered).

The following are the attorneys of the firm who regularly engage in complex litigation:

PARTNERS

ROBERT N. KAPLAN has been with Kaplan Fox for more than 40 years, joining in 1971. Mr. Kaplan is widely recognized as a leading securities litigator and has led the prosecution of numerous securities fraud class actions and shareholder derivative actions, recovering billions of dollars for the victims of corporate wrongdoing. Recently, he was listed by defense and corporate counsel as one of the top 75 plaintiffs' attorneys in the United States for all disciplines. Mr. Kaplan was listed as one of the top five attorneys for securities litigation. He was also recognized by Legal 500 as one of the top six securities litigators in the United States for 2011, 2012 and 2013. He also has earned a reputation as a leading litigator in the antitrust arena. Mr. Kaplan has a peer review rating of 5 in Martindale-Hubbell.

Mr. Kaplan has played a significant role in most of the firm's major cases, both securities and antitrust matters, including: *In re Bank of America Corp. Sec., ERISA & Der. Litig.*, No. 09-MDL-2058 (S.D.N.Y.); *In re Merrill Lynch & Co., Inc. Sec., Deriv. & ERISA Litig.*, No. 07-cv-9633 (S.D.N.Y.); *In re High Fructose Corn Syrup Antitrust Litigation*, MDL 1087 (C.D. Ill.); *In re 3Com Securities Litigation* No. C-97-21083 (N.D. Ca.); *AOL Time Warner Cases I & II*; *In re Informix Securities Litigation*, C-97-129 (N.D. Ca.); and *In re Flat Glass Antitrust Litigation*, MDL 120 (W.D.P.), among others. Recently, he was appointed as one of two co-lead counsel in the Sandridge Energy Inc. Shareholder Derivative Litigation pending in the United States District Court for the Western District of Oklahoma.

Mr. Kaplan honed his litigation skills as a trial attorney with the U.S. Department of Justice. There, he gained significant experience litigating both civil and criminal actions. He also served as law clerk to the Hon. Sylvester J. Ryan, then Chief Judge of the U.S. District Court for the Southern District of New York.

Mr. Kaplan's published articles include: "Complaint and Discovery In Securities Cases," *Trial*, April 1987; "Franchise Statutes and Rules," *Westchester Bar Topics*, Winter 1983; "Roots Under Attack: *Alexander v. Haley* and *Courlander v. Haley*," *Communications and the Law*, July 1979; and "Israeli Antitrust Policy and Practice," *Record of the Association of the Bar*, May 1971.

In addition, Mr. Kaplan served as an acting judge of the City Court for the City of Rye, N.Y., from 1990 to 1993.

Mr. Kaplan sits on the boards of several community organizations, including the Board of Directors of the Carver Center in Port Chester, N.Y., the Board of Directors of the Rye Free Reading Room in Rye, N.Y. and the Board of Directors of the Carver Center Member Visiting Committee for Thoracic Oncology at the Dana Farber Cancer Center in Boston, Massachusetts.

Education:

- B.A., Williams College (1961)
- J.D., Columbia University Law School (1964)

Bar affiliations and court admissions:

- Bar of the State of New York (1964)
- Bar of the District of Columbia (2013)
- U.S. Supreme Court
- U.S. Courts of Appeals for the First, Second, Third, Seventh, Ninth, and Eleventh Circuits
- U.S. District Courts for the Southern, Eastern, and Northern Districts of New York, the Central District of Illinois, and the District of Arizona

Professional affiliations:

- National Association of Securities and Commercial Law Attorneys (past President)
- Committee to Support the Antitrust Laws (past President)
- Member of the Advisory Group Committee of the U.S. District Court for the Eastern District of New York
- American Bar Association
- American Association for Justice (Chairman, Commercial Litigation Section, 1985-86)
- Association of the Bar of the City of New York (served on the Trade Regulation Committee; Committee on Federal Courts)

Mr. Kaplan can be reached by email at: rkaplan@kaplanfox.com

FREDERIC S. FOX first associated with Kaplan Fox in 1984, and became a partner of the firm in 1991. He has concentrated his work for 30 years in the area of class action litigation and individual securities litigation. Mr. Fox has played important roles in many major securities class action cases, including as a senior member of the litigation and trial team in *In re Bank of America Corp. Sec., ERISA & Der. Litig.*, No. 09-MDL-2058 (S.D.N.Y.) (“*In re Bank of America*”) arising out of Bank of America’s acquisition of Merrill Lynch, which recently settled for \$2.425 billion. Mr. Fox was also a member of the litigation and trial team for one of the first cases tried to verdict under the Private Securities Litigation Reform Act of 1995.

Mr. Fox is actively involved in maintaining and establishing the firm’s relationships with institutional investors and oversees the Portfolio Monitoring and Case Evaluation Program for the firm’s numerous public pension funds and other institutional investors. Mr. Fox currently represents many institutional investors including governmental entities in both class actions and individual litigation, including serving as lead or co-lead counsel on behalf of major public pension funds in pending securities litigation involving Bank of America, Fannie Mae, SunPower Corporation and Gentiva Health Services Inc. Mr. Fox is also Lead Counsel to a large public

pension fund system in a derivative action against the directors of Wal-Mart Stores Inc. (“Wal-Mart”) involving alleged bribery and fraud at Wal-Mart’s Mexican subsidiary. In the past, Mr. Fox has served as the lead attorney in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, which was settled for \$475 million, *In re Merrill Lynch Research Reports Securities Litigation* (S.D.N.Y.) (arising from false and misleading analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* (S.D.N.Y.) and *In re Salomon Focal Litigation* (S.D.N.Y.) (both actions stemming from false and misleading analyst reports issued by Jack Grubman). Mr. Fox is a frequent speaker and panelist in both the U.S. and abroad on a variety of topics including securities litigation and corporate governance.

In the consumer protection area, he served on the Plaintiffs’ Steering Committee in the *Baycol Products Litigation* where there have been more than \$350 million in settlements. Additionally, he served as one of the Co-lead Counsel in *In re RC2 Corp. Toy Lead Paint Products Liability Litigation* in the Northern District of Illinois.

Mr. Fox is listed in the current editions of New York *Super Lawyers* and was recognized in Benchmark Litigation 2010 as a New York “Litigation Star.”

Mr. Fox is the author of “Current Issues and Strategies in Discovery in Securities Litigation,” ATLA, 1989 Reference Material; “Securities Litigation: Updates and Strategies,” ATLA, 1990 Reference Material; and “Contributory Trademark Infringement: The Legal Standard after *Inwood Laboratories, Inc. v. Ives Laboratories*,” University of Bridgeport Law Review, Vol. 4, No. 2.

During law school, Mr. Fox was the notes and comments editor of the University of Bridgeport Law Review.

Education:

- B.A., Queens College (1981)
- J.D., Bridgeport School of Law (1984)

Bar affiliations and court admissions:

- Bar of the State of New York (1985)
- Bar of the District of Columbia (2013)
- U.S. Courts of Appeals for the First, Second, Fourth, Fifth, Sixth and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York and for the District of Columbia.

Professional affiliations:

- American Bar Association
- Association of the Bar of the City of New York
- American Association for Justice (Chairman, Commercial Law Section, 1991-92)

Mr. Fox can be reached by email at: ffox@kaplanfox.com

RICHARD J. KILSHEIMER first associated with Kaplan Fox in 1976 and became a partner of the firm in 1983. His practice is concentrated in the area of antitrust litigation. During his career, Mr. Kilsheimer has played significant roles in a number of the largest successful antitrust class actions in the country, and he is serving as co-lead counsel for plaintiffs in several currently pending cases. He also practices in the areas of securities fraud and commercial litigation.

In December 2007, Mr. Kilsheimer was a featured speaker on the subject “Elevated Standards of Proof and Pleading: Implications of *Twombly* and *Daubert*” at the American Antitrust Institute Symposium on the Future of Private Antitrust Enforcement held in Washington, D.C. Mr. Kilsheimer has also served on the Antitrust and Trade Regulation Committee of the Association of the Bar of the City of New York (2004-2007).

Prior to joining the firm, Mr. Kilsheimer served as law clerk to the Hon. Lloyd F. MacMahon (1975-76), formerly Chief Judge of the U.S. District Court for the Southern District of New York.

Mr. Kilsheimer is co-author of “Secondary Liability Developments,” ABA Litigation Section, Subcommittee on Secondary Liability, 1991-1994.

Education:

- A.B., University of Notre Dame (1972)
- J.D., *cum laude*, St. John's University (1975)

Bar affiliations and court admissions:

- State of New York (1976)
- U.S. Court of Appeals for the Second Third, Sixth and D.C. Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York and the Northern District of Indiana

Professional affiliations:

- Association of the Bar of the City of New York
- Federal Bar Council
- Committee to Support the Antitrust Laws
- American Association for Justice

Mr. Kilsheimer can be reached by email at: rkilsheimer@kaplanfox.com

LAURENCE D. KING first joined Kaplan Fox as an associate in 1994. He became a partner of the firm in 1998. While Mr. King initially joined the firm in New York, in 2000 he relocated to San Francisco to open the firm’s first West Coast office. He is now partner-in-charge of the firm’s San Francisco and Los Angeles offices.

Mr. King practices primarily in the areas of securities litigation, with an emphasis on institutional investor representation and consumer protection litigation. He has also practiced in

the area of employment litigation. Mr. King has played a substantial role in cases that have resulted in some of the largest recoveries ever obtained by Kaplan Fox, including *In re 3Com Securities Litigation* (N.D. Ca.), *In re Informix Securities Litigation* (N.D. Ca.), and *AOL Time Warner Cases*. In addition, Mr. King was a member of the trial team for two securities class actions tried to verdict, as well as numerous other cases where a favorable settlement was achieved for our clients on or near the eve of trial.

An experienced trial lawyer, prior to joining Kaplan Fox Mr. King served as an assistant district attorney under the legendary Robert Morgenthau in the Manhattan (New York County) District Attorney's Office, where he tried numerous felony prosecutions to jury verdict.

Education:

- B.S., Wharton School of the University of Pennsylvania (1985)
- J.D., Fordham University School of Law (1988)

Bar affiliations and court admissions:

- Bar of the State of New York (1989)
- Bar of the State of California (2000)
- U.S. District Courts for the District of New Jersey, the Eastern District of Pennsylvania, the Southern and Eastern Districts of New York, and the Northern, Central, and Southern Districts of California

Professional affiliations:

- New York State Bar Association
- New Jersey State Bar Association
- San Francisco Bar Association
- American Bar Association
- American Association for Justice
- San Francisco Trial Lawyers' Association

Mr. King can be reached by email at: lking@kaplanfox.com

JOEL B. STRAUSS first associated with Kaplan Fox in 1992, and became a partner in the firm in 1999. He practices in the area of securities and consumer fraud class action litigation, with a special emphasis on accounting and auditing issues. He has been repeatedly selected for inclusion to the New York *Super Lawyers* list (Securities Litigation) (2007-2010, 2014).

Prior to joining Kaplan Fox, Mr. Strauss served as a senior auditor at the international accounting firm of Coopers & Lybrand (n/k/a PricewaterhouseCoopers). Combining his accounting background and legal skills, he has played a critical role in successfully prosecuting numerous securities class actions across the country on behalf of shareholders. Mr. Strauss was one of the lead trial lawyers for the plaintiffs in the first case to go to trial and verdict under the Private Securities Litigation Reform Act of 1995.

More recently, Mr. Strauss has been involved in representing the firm's institutional clients in the following securities class actions, among others: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* (S.D.N.Y.) (\$475 million settlement); *In re Prestige Brands Holdings Inc. Securities Litigation* (S.D.N.Y.) (\$11 million settlement); *In re Gentiva Securities Litigation* (E.D.N.Y.); and *In Re SunPower Securities Litigation* (N.D.Cal) (\$19.7 million settlement). He has also served as lead counsel for lead plaintiffs in *In re OCA, Inc. Securities Litigation* (E.D. La.) (\$6.5 million settlement) and *In re Proquest Company Securities Litigation* (E.D. Mich.) (\$20 million settlement). Mr. Strauss also played an active role for plaintiff investors in *In Re Countrywide Financial Corporation Securities Litigation* (C.D.Cal), which settled for more than \$600 million.

Although currently practicing exclusively in the area of law, Mr. Strauss is a licensed Certified Public Accountant in the State of New York.

Mr. Strauss has also been a guest lecturer on the topics of securities litigation, auditors' liability and class actions for seminars sponsored by the Practicing Law Institute and the Association of the Bar of the City of New York and is an adjunct instructor in the Political Science department at Yeshiva University.

In June 2014 Mr. Strauss was appointed to serve as a member of the New York State Bar Association's Committee on Legal Education and Admission to the Bar.

Among his various communal activities, Mr. Strauss currently serves on the Board of Directors of Yavneh Academy in Paramus, NJ, is a member of Yeshiva University's General Counsel's Council, and serves as Chair of the Career Guidance and Placement Committee of Yeshiva University's Undergraduate Alumni Council.

In March 2001 the New Jersey State Assembly issued a resolution recognizing and commending Mr. Strauss for his extensive community service and leadership.

Education:

- B.A., Yeshiva University (1986)
- J.D., Benjamin N. Cardozo School of Law (1992)

Bar Affiliations and Court Admissions

- Bar of the State of New Jersey
- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey
- U.S. Court of Appeals for the First, Second and Third Circuits

Professional Affiliations:

- Association of the Bar of the City of New York
- New York State Bar Association
- American Institute of Certified Public Accountants

Mr. Strauss can be reached by email at: jstrauss@kaplanfox.com

DONALD R. HALL has been associated with Kaplan Fox since 1998, and became a partner of the firm in 2005. He practices in the areas of securities, antitrust and consumer protection litigation. Mr. Hall is actively involved in maintaining and establishing the firm's relationships with institutional investors and oversees the Portfolio Monitoring and Case Evaluation Program for the firm's numerous institutional investors.

Mr. Hall currently represents a number of the firm's institutional investor clients in securities litigation actions including *In re Bank of America Corp. Litigation*, which recently settled for \$2.425 billion, *In re Fannie Mae 2008 Securities Litigation* and *In Re Credit Suisse – AOL Securities Litigation*. Recently, Mr. Hall successfully represented institutional clients in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, which settled for \$475 million; *In re Majesco Securities Litigation*; *In re Escala Securities Litigation*; and *In re Ambac Financial Group, Inc. Securities Litigation*. Additionally, he was a member of the litigation team in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.), an opt-out action brought by institutional investors that settled just weeks before trial. This action, stemming from the 2001 merger of America Online and Time Warner, resulted in a recovery of multiples of what would have been obtained if those investors had remained members of the class action.

Mr. Hall has played a key role in many of the firm's securities and antitrust class actions resulting in substantial recoveries for the firm's clients, including *In re Merrill Lynch Research Reports Securities Litigation* (arising from false and misleading analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* and *In re Salomon Focal Litigation* (both actions stemming from false and misleading analyst reports issued by Jack Grubman); *In re Flat Glass Antitrust Litigation*; and *In re Compact Disc Antitrust Litigation*.

Mr. Hall graduated from the College of William and Mary in 1995 with a B.A. in Philosophy and obtained his law degree from Fordham University School of Law in 1998. During law school, Mr. Hall was a member of the Fordham Urban Law Journal and a member of the Fordham Moot Court Board. He also participated in the Criminal Defense Clinic, representing criminal defendants in federal and New York State courts on a pro-bono basis.

Education:

- B.A., College of William and Mary (1995)
- J.D., Fordham University School of Law (1998)

Bar affiliations and court admissions:

- Bar of the State of Connecticut (2001)
- Bar of the State of New York (2001)
- U.S. Supreme Court
- U.S. Court of Appeals for the Second and Eleventh Circuits

- U.S. District Courts for the Southern and Eastern Districts of New York

Professional affiliations:

- Executive Committee of the National Association of Securities and Commercial Law
- American Bar Association
- American Association for Justice
- New York State Bar Association

Mr. Hall can be reached by email at: dhall@kaplanfox.com

HAE SUNG NAM first associated with Kaplan Fox in 1999 and became a partner of the firm in 2005. She practices in the areas of securities and antitrust litigation, mainly focusing in the firm's securities practice.

Since joining the firm, Ms. Nam has been involved in all aspects of securities practice, including case analysis for the firm's institutional investor clients. She is also a key member of the litigation teams prosecuting the firm's highest profile cases, including securities and derivative actions against Bank of America that recently settled for \$2.425 billion, Wal-Mart, and Fannie Mae, among others. She also has a focus in prosecuting opt-out actions on behalf of the firm's clients and has played a significant role in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.) and *State Treasurer of the State of Michigan v. Tyco International, Ltd., et al.* The recoveries for the firm's institutional clients in both of these cases were multiples of what they would have received had they remained members of the class action.

Prior to joining the firm, Ms. Nam was an associate with Kronish Lieb Weiner & Hellman LLP, where she trained as transactional attorney in general corporate securities law and mergers and acquisitions.

Ms. Nam graduated, *magna cum laude*, with a dual degree in political science and public relations from Syracuse University's Maxwell School and S.I. Newhouse School of Public Communications. Ms. Nam obtained her law degree, with honors, from George Washington University Law School. During law school, Ms. Nam was a member of the George Washington University Law Review. She is the author of a case note, "Radio – Inconsistent Application Rule," 64 Geo. Wash. L. Rev. (1996). In addition, she also served as an intern for the U.S. Department of Justice, Antitrust Division.

Education:

- B.A., *magna cum laude*, Syracuse University (1994)
- J.D., with honors, George Washington University Law School (1997)

Bar affiliations and court admissions:

- Bar of the State of New York (1998)
- U.S. Court of Appeals for the Eleventh Circuit

- U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Wisconsin

Professional affiliations:

- New York State Bar Association
- Asian American Bar Association of New York
- National Association of Women Lawyers

Ms. Nam can be reached by email at: hnam@kaplanfox.com

JEFFREY P. CAMPISI joined Kaplan Fox in 2004 and became partner of the firm in 2012. He practices in the area of securities litigation. Mr. Campisi has been involved in all aspects of securities practice, including case analysis for the firm's numerous public pension fund and institutional investor clients.

Mr. Campisi currently represents public pension funds in *In re 2008 Fannie Mae Securities Litigation* (08cv7831) (S.D.N.Y.) and *In re 2008 Gentiva Securities Litigation*, No. 10-cv-5064 (E.D.N.Y.). Mr. Campisi recently represented institutional investors in the following securities class actions: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* (07cv9633) (S.D.N.Y.) (\$475 million settlement) and *In re Sequenom, Inc. Securities Litigation* (S.D. Cal.) (09cv921) (more than \$60 million in cash and stock recovered).

Mr. Campisi served as law clerk for Herbert J. Hutton, United States District Court Judge for the Eastern District of Pennsylvania.

Education:

- B.A., *cum laude*, Georgetown University (1996)
- J.D., *summa cum laude*, Villanova University School of Law (2000), Member of Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2001)
- U.S. District Court for the Southern and Eastern Districts of New York

Professional affiliations:

- American Bar Association
- New York State Bar Association
- American Association for Justice
- Nassau County Bar Association

Mr. Campisi can be reached by email at: jcampisi@kaplanfox.com

MELINDA CAMPBELL has been associated with Kaplan Fox since September 2004 and became a partner of the firm in 2012. She represents investors and institutions in securities fraud class action litigation.

Ms. Campbell's current noteworthy cases include: *In re Bank of America Corp. Securities Litigation*, No. 09-md-2058(DC) (S.D.N.Y.); *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08-cv-411(NRB) (S.D.N.Y.); *In re Fannie Mae 2008 Securities Litigation*, No. 08-cv-7831(PAC) (S.D.N.Y.), and *In re Credit Suisse-AOL Securities Litigation*, No. 02-cv-12146(NG) (D. Mass.).

Ms. Campbell obtained her J.D. from the University of Pennsylvania Law School. While attending law school, she successfully represented clients of the Civil Practice Clinic of the University of Pennsylvania Law School, and provided pro bono legal services through organizations including the Southern Poverty Law Center. Ms. Campbell obtained her undergraduate degree from the University of Missouri (*cum laude*).

Ms. Campbell is an active member in the Federal Courts Committee of the New York County Lawyers Association and served as a panelist in a continuing legal education course offered by the Committee concerning waiver of attorney-client privilege under Federal Rule of Evidence 501. Additionally, Ms. Campbell is a member of the New York State Bar Association, the National Association of Women Lawyers, and the New York Women's Bar Association.

Education:

- B.A., University of Missouri (2000)
- J.D., University of Pennsylvania Law School (2004)

Bar affiliations and court admissions:

- Bar of the State of New York (2005)
- U.S. Court of Appeals for the First and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York and Massachusetts

Professional affiliations:

- American Bar Association
- New York State Bar Association
- New York County Lawyers Association
- New York Women's Bar Association
- National Association of Women Lawyers

Ms. Campbell can be reached by email at: mcampbell@kaplanfox.com

GREGORY K. ARENSON is a seasoned business litigator with experience representing clients in a variety of areas, including antitrust, securities, and employee termination. His economics background has provided a foundation for his recognized expertise in handling complex economic issues in antitrust cases, both as to class certification and on the merits.

Prior to joining Kaplan Fox, Mr. Arenson was a partner with Proskauer Rose. Earlier in his career, he was a partner with Schwartz Klink & Schreiber, and an associate with Rudnick & Wolfe (now Piper Marbury).

Mr. Arenson writes frequently on discovery issues and the use of experts. Recently published articles include: "Who Should Bear the Burden of Producing Electronic Information?" 7 *Federal Discovery News*, No. 5, at 3 (April 2001); "Work Product vs. Expert Disclosure – No One Wins," 6 *Federal Discovery News*, No. 9, at 3 (August 2000); "Practice Tip: Reviewing Deposition Transcripts," 6 *Federal Discovery News*, No. 5, at 13 (April 2000); and "The Civil Procedure Rules: No More Fishing Expeditions," 5 *Federal Discovery News*, No. 9, at 3 (August 1999). He was also co-author of "The Good, the Bad and the Unnecessary: Comments on the Proposed Changes to the Federal Civil Discovery Rules," 4 *NYLitigator* 30 (December 1998); co-author of "The Search for Reliable Expertise: Comments on Proposed Amendments to the Federal Rules of Evidence," 4 *NYLitigator* 24 (December 1998); co-editor of *Federal Rules of Civil Procedure, 1993 Amendments, A Practical Guide*, published by the New York State Bar Association; and a co-author of "Report on the Application of Statutes of Limitation in Federal Litigation," 53 *Albany Law Review* 3 (1988).

Mr. Arenson's pro bono activities include being a co-chair of the New York State Bar Association Task Force on the State of Our Courthouses, whose report was approved June 20, 2009, and a member of the New York State Bar Association Special Committee on Standards for Pleadings in Federal Litigation. He also serves as a mediator in the U.S. District Court for the Southern District of New York. In addition, he is an active alumnus of the Massachusetts Institute of Technology, having served as a member of the Corporation, a member of the Corporation Development Committee, vice president of the Association of Alumni/ae, and member of the Alumni/ae Fund Board (of which he was a past chair).

Education:

- S.B., Massachusetts Institute of Technology (1971)
- J.D., University of Chicago (1975)

Bar affiliations and court admissions:

- Bar of the State of Illinois (1975)
- Bar of the State of New York (1978)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third and Seventh Circuits
- U.S. District Courts for the Northern and Central Districts of Illinois, and the Southern and Eastern Districts of New York
- U.S. Tax Court

Professional affiliations:

- New York State Bar Association, Task Force on the State of Our Courthouses, Co-chair
- New York State Bar Association, Federal Litigation Section, Committee on Federal Procedure (Chairman since 1997)
- Association of the Bar of the City of New York
- American Bar Association
- Member, advisory board, Federal Discovery News (1999 – present)

Mr. Arenson can be reached by email at: garensen@kaplanfox.com

ASSOCIATES

ELANA KATCHER has been associated with Kaplan Fox since July 2007. She practices in the area of complex commercial litigation.

Education:

- B.A. Oberlin College (1994)
- J.D., New York University (2003)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2004)
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association
- New York City Bar Association

Ms. Katcher can be reached by email at: ekatcher@kaplanfox.com

MATTHEW P. McCAHILL was associated with Kaplan Fox from 2003 – 2005 and rejoined the firm in 2013 after working at a prominent plaintiffs' firm in Philadelphia. He practices primarily in antitrust, securities and complex commercial litigation. Mr. McCahill's *pro bono* work includes representing Army and Marine Corps veterans in benefits proceedings before the U.S. Department of Veterans' Affairs. During law school, Mr. McCahill was a member of the *Fordham Urban Law Journal*.

Education:

- B.A., History, *summa cum laude*, Rutgers College (2000)
- J.D., Fordham Law School (2003)

Bar Affiliations and Court Admissions:

- Bars of the State of New York and the Commonwealth of Pennsylvania
- U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania

Professional Affiliations:

- New York State Bar Association
- American Bar Association
- Association of the Bar of the City of New York

Mr. McCahill can be reached by email at: mmccahill@kaplanfox.com

MARIO M. CHOI is a resident of the San Francisco office of Kaplan Fox and practices in the area of complex civil litigation. Prior to joining the firm in February 2009, Mr. Choi was a litigation associate at Pryor Cashman LLP and a law clerk to the Hon. Richard B. Lowe, III, Justice of the New York Supreme Court, Commercial Division.

Education:

- B.A., Boston University (2000)
- M.A., Columbia University (2001)
- J.D., Northeastern University (2005)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2006)
- Bar of the State of California (2006)
- U.S. Courts of Appeals for the Ninth Circuits
- U.S. District Courts for the Northern, Southern and Central Districts of California and the Southern District of New York

Professional Affiliations:

- American Bar Association
- New York State Bar Association
- Asian American Bar Association – Bay Area, New York

Mr. Choi can be reached by email at: mchoi@kaplanfox.com

PAMELA MAYER has been associated with Kaplan Fox since February 2009. She practices in the area of securities litigation.

Prior to joining Kaplan Fox, Ms. Mayer was a securities investigation and litigation attorney for a multinational investment bank. Utilizing her combined legal and business background, including her M.B.A., Ms. Mayer focuses on the research and analysis of securities claims on behalf of our firm's individual and institutional clients and is dedicated full-time to the firm's Portfolio Monitoring and Case Evaluation Program. Ms. Mayer also has substantial litigation experience in the area of intellectual property.

Education:

- B.S., The University of Rochester
- J.D., The George Washington University
- M.B.A., Finance, The University of Michigan

Bar Affiliations and Court Admissions:

- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association

Ms. Mayer can be reached by email at: pmayer@kaplanfox.com

LAUREN I. DUBICK joined Kaplan Fox in 2013. She practices in the areas of antitrust and securities litigation, as well as complex commercial litigation. Prior to joining Kaplan Fox, Ms. Dubick served as a trial attorney with the Antitrust Division of the United States Department

of Justice where she investigated and prosecuted violations of civil and criminal antitrust laws. During her tenure at the Justice Department, Ms. Dubick played significant roles on some of the Division's largest investigations and litigations and led two software merger investigations.

Ms. Dubick also served as a Special Assistant U.S. Attorney in the Eastern District of Virginia where she gained substantial trial experience prosecuting white collar crimes and other offenses. During that time, she first-chaired two trials, both of which led to verdicts for the government. Earlier in Ms. Dubick's career, she clerked for the late Hon. Ann Aldrich of the U.S. District Court for the Northern District of Ohio.

Ms. Dubick has been a guest lecturer on judicial discretion and co-authored an article on consumer protection, "*Perspective on Marketing, Self-Regulation and Childhood Obesity: FTC and HHS Call on Industry to Market More Responsibly*," 13.2 *American Bar Association Consumer Protection Update* 19 (2006). She is admitted to practice in the state courts of New York and Ohio as well as the Fourth Circuit Court of Appeals. Prior to law school, Ms. Dubick spent several years working in software and new media.

Education:

- B.A., *cum laude*, Harvard College (2000)
- J.D., *magna cum laude*, The Ohio State University Moritz College of Law (2007), Editor of *The Ohio State Law Review* and Member of the Order of the Coif

Bar Affiliations and Court Admissions:

- Bar of the State of Ohio (2007)
- Bar of the State of New York (2013)
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Southern and Eastern Districts of New York

Ms. Dubick can be reached by email at: ldubick@kaplanfox.com

DAMIEN H. WEINSTEIN has been associated with Kaplan Fox since September 2011. He practices in the areas of securities, antitrust, and other areas of civil litigation. During law school, Mr. Weinstein was an Associate Editor on both the *Fordham Law Review* and Moot Court programs.

Education:

- B.A., *summa cum laude*, University of Massachusetts Amherst (2007)
- J.D., *cum laude*, Fordham University School of Law (2011)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey (2011)
- Bar of the State of New York (2012)
- U.S. District Courts for the Southern and Eastern Districts of New York

Mr. Weinstein can be reached by email at: dweinstein@kaplanfox.com

OF COUNSEL

W. MARK MCNAIR has been associated with Kaplan Fox since 2003. He practices in the area of securities litigation. Mr. McNair is actively involved in maintaining and establishing the Firm's relationship with institutional investors and is active in the Firm's Portfolio Monitoring and Case Evaluation Program for the Firm's numerous institutional investors.

Mr. McNair is a frequent speaker at various institutional events, including the National Conference of Public Employee Retirement Systems and the Government Finance Office Association.

Prior to entering private practice, Mr. McNair was Assistant General Counsel to the Municipal Securities Rulemaking Board where he dealt in a wide range of issues related to the trading and regulation of municipal securities. Previously, he was an attorney in the Division of Market Regulation at the Securities and Exchange Commission. At the Commission his work focused on the regulation of the options markets and derivative products.

Education:

- B.A. with honors, University of Texas at Austin (1972)
- J.D. University of Texas at Austin (1975)
- L.L.M. (Securities) Georgetown University (1989)

Bar Affiliations and Court Admissions:

- Bar of the States of Texas
- Bar of the State of Maryland
- Bar of the State of Pennsylvania
- Bar of the District of Columbia

Mr. McNair can be reached at mmcnair@kaplanfox.com

JUSTIN B. FARAR practices in the area of securities litigation and antitrust litigation with a special emphasis on institutional investor involvement. He is located in the Los Angeles office. Prior to working at Kaplan Fox, Mr. Farar was a litigation associate at O'Melveny & Myers, LLP and clerked for the honorable Kim McLane Wardlaw on the Ninth Circuit Court of Appeals. Mr. Farar also currently serves as a Commissioner to the Los Angeles Convention and Exhibition Authority.

Education:

- J.D., order of the coif, University of Southern California Law School (2000)
- B.A., with honors, University of California, San Diego

Bar Affiliations and Court Admissions:

- Bar of the State of California (2000)
- U.S. Supreme Court

- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the Central of California

Awards:

- The American Society of Composers, Authors and Publishers' Nathan Burkan Award Winner, 2000 for article titled "Is the Fair Use Defense Outdated?"

Mr. Farar can be reached by email at: jfarar@kaplanfox.com

LINDA FONG practices in the areas of general business and consumer protection class action litigation. She joined Kaplan Fox in 2001, and is resident in the firm's San Francisco office. Ms. Fong served on the Board of the San Francisco Trial Lawyers Association from 2000 to 2011. She was selected for inclusion to the California *Super Lawyers* list for 2011.

Education:

- J.D., University of San Francisco School of Law
- B.S., with honors, University of California, Davis
- Elementary Teaching Credential, University of California, Berkeley

Bar Affiliations and Court Admissions:

- Bar of the State of California
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Courts for the Northern, Central, Eastern and Southern Districts of California

Professional Affiliations:

- San Francisco Trial Lawyers Association
- Asian American Bar Association
- American Association for Justice

Awards:

- Presidential Award of Merit, Consumer Attorneys of California, 2000

Ms. Fong can be reached by email at: LFong@kaplanfox.com

GARY L. SPECKS practices primarily in the area of complex antitrust litigation. He has represented plaintiffs and class representatives at all levels of litigation, including appeals to the U.S. Courts of Appeals and the U.S. Supreme Court. In addition, Mr. Specks has represented clients in complex federal securities litigation, fraud litigation, civil RICO litigation, and a variety of commercial litigation matters. Mr. Specks is resident in the firm's Chicago office.

During 1983, Mr. Specks served as special assistant attorney general on antitrust matters to Hon. Neil F. Hartigan, then Attorney General of the State of Illinois.

Education:

- B.A., Northwestern University (1972)

- J.D., DePaul University College of Law (1975)

Bar affiliations and court admissions:

- Bar of the State of Illinois (1975)
- U.S. Courts of Appeals for the Third, Fifth, Seventh, Ninth and Tenth Circuits
- U.S. District Court for the Northern District of Illinois, including Trial Bar

Professional affiliations:

- Illinois Bar Association
- Chicago Bar Association

Mr. Specks can be reached by email at: gspecks@kaplanfox.com

WILLIAM J. PINILIS practices in the areas of commercial, consumer and securities class action litigation. He has been associated with Kaplan Fox since 1999, and is resident in the firm's New Jersey office.

In addition to his work at the firm, Mr. Pinilis has served as an adjunct professor at Seton Hall School of Law since 1995, and is a lecturer for the New Jersey Institute for Continuing Legal Education. He has lectured on consumer fraud litigation and regularly teaches the mandatory continuing legal education course Civil Trial Preparation.

Mr. Pinilis is the author of "Work-Product Privilege Doctrine Clarified," *New Jersey Lawyer*, Aug. 2, 1999; "Consumer Fraud Act Permits Private Enforcement," *New Jersey Law Journal*, Aug. 23, 1993; "Lawyer-Politicians Should Be Sanctioned for Jeering Judges," *New Jersey Law Journal*, July 1, 1996; "No Complaint, No Memo – No Whistle-Blower Suit," *New Jersey Law Journal*, Sept. 16, 1996; and "The *Lampf* Decision: An Appropriate Period of Limitations?" *New Jersey Trial Lawyer*, May 1992.

Education:

- B.A., Hobart College (1989)
- J.D., Benjamin Cardozo School of Law (1992)

Bar affiliations and court admissions:

- Bar of the State of New Jersey (1992)
- Bar of the State of New York (1993)
- U.S. District Courts for the District of New Jersey, and the Southern and Eastern Districts of New York

Professional affiliations:

- Morris County Bar Association
- New Jersey Bar Association
- Graduate, Brennan Inn of Court

Mr. Pinilis can be reached by email at: wpinilis@kaplanfox.com

DAVID STRAITE joined Kaplan Fox in 2013. He focuses on securities, corporate governance, hedge fund, antitrust and digital privacy litigation and is resident in the firm's New York office. Prior to joining the Firm, Mr. Straite helped launch the US offices of London-based Stewarts Law LLP, where he was the global head of investor protection litigation, the partner in residence in New York, and a member of the US executive committee. He also worked in the Delaware office of Grant & Eisenhofer and the New York office of Skadden Arps.

Mr. Straite is a frequent speaker and panelist in the U.S. and abroad. Most recently, he spoke on the hedge fund panel at the February 6, 2013 meeting of the National Association of Public Pension Attorneys in Washington, D.C. ("Structuring Investments – Do I Get to Go to the Cayman Islands?"); debated the General Counsel of Meetup, Inc. during 2013 Social Media Week ("David vs. Goliath: the Global Fight for Digital Privacy"); and gave a guest lecture on the Legal Talk Network's "Digital Detectives" podcast. He has also given interviews to Channel 10 (Tel Aviv), BBC World News (London), Channel 2 (New York) and SkyNews (London).

Mr. Straite's recent work includes representing investors in the Harbinger Capital hedge fund litigation and the Citigroup CSO hedge fund litigation in New York federal court; pursuing digital privacy claims as court-appointed co-lead counsel in *In re: Facebook Internet Tracking Litigation* and *In re Yahoo Mail Litigation* in California and *In re: Google Inc. Cookie Placement Consumer Privacy Litigation* in Delaware; pursuing corporate governance claims in Delaware Chancery Court in *In re: Molycorp Derivative Litigation*; and helping to develop the first multi-claimant test of the UK's new prospectus liability statute in a case against the Royal Bank of Scotland in the English courts. Mr. Straite has also co-authored *Google and the Digital Privacy Perfect Storm*, E-Commerce Law Reports (UK) (2013), authored *Netherlands: Amsterdam Court of Appeal Approves Groundbreaking Global Settlements Under the Dutch Act on the Collective Settlement of Mass Claims*, in The International Lawyer's annual "International Legal Developments in Review" (2009), and was a contributing author for Maher M. Dabbah & K.P.E. Lasok, QC, *Merger Control Worldwide* (2005).

Education:

- B.A., Tulane University, Murphy Institute of Political Economy (1993)
- J.D., *magna cum laude*, Villanova University School of Law (1996), Managing Editor, Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2000)
- Bar of the State of Delaware (2009)
- Bar of the State of Pennsylvania (1996)
- Bar of the State of New Jersey (1996)
- Bar of the District of Columbia (2008)

- U.S. District Courts for the Southern and Eastern Districts of New York; Eastern District of Pennsylvania; and the District of Delaware
- U.S. Court of Appeals for the Third Circuit

Professional affiliations:

- American Bar Association (Section of Litigation and Section of Business Law)
- Delaware Bar Association
- New York American Inn of Court (Master of the Bench)
- Royal Society of St. George (Delaware Chapter)
- Internet Society

Mr. Straite can be reached by email at: dstraite@kaplanfox.com

DEIRDRE A. RONEY joined the San Francisco office of Kaplan Fox as Of Counsel in 2013. Deirdre's focus is in the area of institutional investor participation in securities litigation.

Prior to joining Kaplan Fox, Deirdre represented governmental entities in public finance and public-private partnership transactions as an associate at Hawkins, Delafield & Wood in New York. Before that, she served as a Law Clerk in the U.S. Court of International Trade and a trial attorney for the U.S. Federal Maritime Commission.

Education:

- J.D., George Washington University School of Law (2003)

Bar affiliations and court admissions:

- Bar of the State of New York
- Bar of the State of California

Ms. Roney can be reached by email at: droney@kaplanfox.com

GEORGE F. HRITZ joined Kaplan Fox in 2014. He has extensive experience in both New York and Washington D.C. handling sophisticated litigation, arbitration and other disputes for well-known corporate clients and providing crisis management and business-oriented legal and strategic advice to a broad range of U.S. and international clients, including those with small or no U.S. legal departments, often acting as de facto U.S. general counsel. Mr. Hritz has tried, managed and otherwise resolved large-scale matters for major financial and high-tech institutions and others in numerous venues throughout the U.S. and overseas. While he never hesitates to take matters to trial, he regularly looks for solutions that go beyond expensive victories. He has had great success in resolving disputes creatively by effectively achieving consensus among all of the parties involved, often with considerable savings for his clients.

Mr. Hritz clerked for a federal district judge in New York and spent his associate years at Cravath, Swaine & Moore, one of the leading business litigation firms in the world. In 1980, Mr. Hritz became one of the seven original partners in Davis, Markel, Dwyer & Edwards, which

ultimately grew to over 50 lawyers and became the New York litigation group of Hogan & Hartson, then Washington, D.C.'s oldest major law firm. Since 2011, Mr. Hritz has represented both defendants and plaintiffs in resolving international disputes and provided strategic advice and assisted clients on managing of other counsel, including monitoring law firm and consultant performance and billing.

Education:

- A.B., Princeton University, History (1969)
- J.D., Columbia University School of Law (1973) (Harlan Fiske Stone Scholar)

Bar affiliations and court admissions:

- Bars of the State of New York (1974) and District of Columbia (1978)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third, Fourth, Eleventh and D.C. Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York, the District of Columbia and others

Professional affiliations:

- D.C. Bar Association
- Federal Bar Council (2d Circuit)
- Advisory Group of the U.S. District Court for the Eastern District of New York

Mr. Hritz can be reached by email at: hritz@kaplanfox.com

Exhibit B

LITIGATION BOUTIQUE

HOT LIST

They may be small, but they command attention. The 10 law firms on our Litigation Boutiques Hot List, each fielding no more than 50 lawyers, demonstrate that when it comes to high-stakes cases it's all about skill, not size. Whether they're working on the plaintiffs' or defense side of big pharma, big oil, white-collar or agriculture matters, the lawyers practicing at these streamlined shops set precedents, righted wrongs or saved companies during 2012. —LEIGH JONES

A big commitment pays big dividends

KAPLAN FOX & KILSHEIMER

Lawyers at Kaplan Fox & Kilsheimer had deposed Bank of America Corp. chief executive officer Brian Moynihan and submitted a jury questionnaire and verdict form in a high-profile securities case when both sides struck a settlement three weeks before trial. A big one.

"We were basically ready to go," said Robert Kaplan, whose 24-attorney firm was one of three that reached the \$2.43 billion deal to resolve claims that bank directors and officers misled investors about the financial health of Merrill Lynch & Co. Inc. before it acquired that firm in 2008. The agreement, announced on September 28, was the largest securities class action settlement to emerge from the financial crisis. It is awaiting approval by U.S. District Judge Kevin Castel in New York.

The three plaintiffs' firms, including Bernstein Litowitz Berger & Grossmann

and Kessler Topaz Meltzer & Check, are seeking about \$150 million in fees. Kaplan Fox had 10 attorneys on the case. "So this was a tremendous endeavor and a big commitment for us," Kaplan said.

Kaplan Fox, with 10 partners in its New York home office and one in San Francisco, specializes in complex securities, antitrust and consumer litigation. The firm, regularly appointed lead counsel in multidistrict litigation, has a single attorney of counsel each in Chicago; Los Angeles; Morristown, N.J.; and Washington. Kaplan has frequently been named among the top securities litigators in the country.

The firm is co-lead plaintiffs' counsel in the securities litigation against the Federal National Mortgage Association (Fannie Mae) and its former executives. On August 30, 2012, U.S. District Judge Paul Crotty in New York upheld claims that added in March related to subprime and intermediate-risk "alt-A" mortgage loans, rejecting motions to dismiss brought by Fannie former chief executive officer Daniel Mudd and former chief risk officer Enrico Dallavecchia. Kaplan Fox is lead counsel for the preferred shareholders, while Labaton Sucharow and Berman DeValerio are lead counsel for stockholders. Kaplan said the case is being coordinated with a related case brought by the U.S. Securities and Exchange Commission.



FREDERIC FOX, LEFT, AND ROBERT KAPLAN

The firm also has reached agreements in antitrust litigation against two dozen airlines accused of adding fuel surcharges to air cargo shipments. Kaplan Fox and co-counsel have obtained nearly \$500 million in settlements, more than half of them during 2012. "We're still litigating away, so hopefully we'll have more," Kaplan said.

—AMANDA BRONSTAD

Assume every case is going to trial.
Prepare every case for trial.
Convince your adversary you're prepared
to try the case.

FREDERIC FOX, KAPLAN FOX &
KILSHEIMER

Exhibit C

03 PRIVACY

In three unrelated class actions, Google Inc. is defending wiretap claims related to web tracking, email scanning, and Wi-Fi sniffing.

07 ADVERTISING

The German Federal Court of Justice ruled on the issues surrounding emails sent via the tell-a-friend function and whether this form of communication is deemed inadmissible spam.

08 COPYRIGHT

The Constitutional Court of the Czech Republic refused a constitutional complaint of a minor found guilty of copyright infringement for linking to content protected by copyright.

09 COUNTERFEITING

In re Chloé SAS et al. v. Sawabeh Information Services Co. et al., a federal court in California granted summary judgment to six luxury brands, finding the second largest B2B website liable for facilitating counterfeiting by its members.

12 COPYRIGHT

In re Wood v. Sergey Kapustin, et al., a US District Court granted a preliminary injunction ordering the redirection of traffic from websites containing allegedly infringing material.

13 JURISDICTION

The CJEU considered whether Article 15 of the Brussels Regulation, which allows consumers to bring proceedings in their country of domicile, requires a causal link between the means used to direct commercial activity to a consumer's country.

14 DEFAMATION

The South African Internet Service Providers' Association's spam 'Hall of Shame,' a list of companies engaging in spamming, which features on its website, received a seal of approval from the South Gauteng High Court.

16 SELECTIVE DISTRIBUTION

The Berlin Kammergericht held that a brand manufacturer is not allowed to require its distribution partners to refrain from selling its products via internet platforms such as eBay.

17 SALES TAX

The Illinois Supreme Court ruled that the 'click through' nexus law is a 'discriminatory tax' under the federal Internet Tax Freedom Act and the State is thus preempted from imposing it, in a ruling that conflicts with other court decisions on 'click through' nexus laws.

19 NET NEUTRALITY

The Cologne Regional Court declared void the general terms and conditions of Deutsche Telekom to the extent that the incumbent reserved the right to limit the speed of data transmission for heavy users.

21 LIABILITY

In re Max Mosley v. Google Inc., the Paris Court of First Instance ordered Google to ban pictures infringing on Mosley's right to privacy.

23 DEFAMATION

In re Bewry v. Reed Elsevier Ltd and Reed Business Info. Ltd, the High Court granted Bewry an extension to bring defamation proceedings outside the limitation period of one year.

Editorial: SAS v. WPL

The UK Court of Appeal ruled on 21 November in the dispute between SAS Institute Inc. and World Programming Ltd. (WPL) that the functionality and programming of a computer program is not protected by copyright, finding, as the English High Court did, in WPL's favour.

The litigation began when WPL developed a software system that was functionally equivalent to components of programs developed by SAS. Both systems allow users to write applications; SAS' system requires that this is done in SAS programming language while WPL's system allows the use of other programming languages such as C++. WPL, which had a customer licence from SAS, was aided by a 'Learning Edition' provided by SAS – designed for customers' use in understanding SAS products – and a SAS user manual; both were utilised by WPL alongside the SAS system to observe and test how the SAS programs worked and to thus aid in WPL's own design.

SAS litigated against WPL on a

number of copyright claims both in terms of the system and the manual. These included the claim that WPL, in producing a system heavily based on the functionality of SAS' program, infringed SAS' system copyright.

Following a judgment in the English High Court by Arnold J and a referral to the CJEU, before Arnold J maintained his position in a second instance judgment, SAS brought the matter to the attention of Lewison LJ in the Court of Appeal. Lewison LJ found that software functionality could not be protected by copyright since functionality does not represent the expression of an intellectual creation. Instead, such expression remains with the source code for the program, which WPL had not been privy to. WPL's functional recreation of SAS' system instead was born from studying the program, as well as the literature SAS provided to its customers. Had WPL been able to access the source code and then copied it, this would have been an infringement of copyright.

The Court ruled that insofar as

the ideas in the user manual were concerned, the manual described through its keywords, formulae and so on the functionality of the system it was produced to aid with – and the system's functionality was not an expression of an intellectual creation.

Those involved in software will need to consider the consequences of this decision. For a start, the extent to which copyright can be found in a program is clearer than ever before. This will present opportunities for developers provided that they merely study and test a program's functionality as WPL did here. Meanwhile, developers will want to avoid finding themselves in a position akin to that of SAS. Will functionally very similar programs become more common? If so, given that the challenge of proving infringement of copyright in a software system is now a more difficult one without a provable infringement of a source code, developers may find themselves in a more competitive market.

CECILE PARK PUBLISHING

Managing Editor Lindsey Greig
lindsey.greig@e-comlaw.com
Editor Sophie Cameron
sophie.cameron@e-comlaw.com
Associate Editor Simon Fuller
simon.fuller@e-comlaw.com
Subscriptions Adelaide Pearce
adelaide.pearce@e-comlaw.com
telephone +44 (0)20 7012 1387
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www.madeinearnest.com

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Monthly: launched February 1999
E-Commerce Law & Policy is a unique source of analysis and commentary on global developments in e-business legislation. The journal was nominated for the prestigious British & Irish Association of Law Librarians (BIALL) Serial Publication of the Year Award in 2001, 2004 and 2006.
PRICE: £480 (£500 overseas).

E-Commerce Law Reports

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The reports are authoritative, topical and relevant, the definitive practitioners' guide to e-commerce cases. Each case is summarised, with commentary by practising lawyers from leading firms specialising in e-commerce.
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JOHN ENSER

Olswang
John is a partner at Olswang and provides advice to clients active in all aspects of the media and communications business. His clients include record companies, broadcasters, surviving dotcoms, and household name retailers, as well as ISPs, portals, software developers and suppliers of interactive TV technology.
john.enser@olswang.com

DAWN OSBORNE

Palmer Biggs Legal
Dawn has been a Partner at Palmer Biggs Legal since June 2009, having previously worked at Rouse & Co. Dawn specialises in IP litigation, including copyright and trade marks on the internet and was involved in the reported Pitman and Prince domain name litigation. Her expertise in online alternative dispute resolution mechanisms has led her to be a panellist for the WIPO and NAF deciding domain name disputes under the ICANN procedure and for Nominet and .eu for their procedures.
dawn.osborne@pblegal.co.uk

MARK OWEN

Taylor Wessing
Mark Owen is a partner in the Trade Mark, Copyright and Media Group at Taylor Wessing. He is a leading IP and

information law litigator and transactional lawyer with over 25 years experience. Mark advises clients in trade mark, copyright, database rights, information law, data privacy, design and image rights matter as well as advising on a range of digital media and commerce issues and content regulatory matters.
m.owen@taylorwessing.com

TIM PENNY

11 Stone Buildings
Tim is a barrister at 11 Stone Buildings, Lincoln's Inn. His practice involves chancery/commercial, intellectual property and IT related issues. Advisory work includes advising a major telecoms provider on European data protection issues. Recommended as junior Counsel in The Legal 500 in connection with Sports Law.
penny@11sb.com

STEVEN PHILIPPSOHN

PCB Litigation LLP
Steven is a leading authority on fraud. He has recently given papers at the International Bar Association, the International Chamber of Commerce and to a UK Government Department. He frequently writes for newspapers and specialist law publications. He is co-editor of the UK Manual of the Association of Certified Fraud Examiners and is a member of the IAAC and the E-Fraud working party of the Fraud Advisory Panel.

snp@poblitigation.com

STEWART ROOM

Field Fisher Waterhouse
Stewart is a partner in Field Fisher Waterhouse's Technology and Outsourcing Group, specialising in data protection, privacy and data security law. Stewart is a dual qualified barrister and a solicitor holding full Higher Court Rights of Audience, with 20 years' experience as a litigator and advocate. Stewart is rated as one of the UK's leading data protection lawyers, with expertise in data protection and data security matters. Stewart's areas of specialisation include representing data controllers in regulatory enforcement action and defending them in litigation, handling data security breaches, the technological aspects of data processing and managing international projects.
stewart.room@ffw.com

STEPHEN SIDKIN

Fox Williams
Stephen is a founding partner of Fox Williams. He specialises in advising on agency and distributorship agreements and competition law. He frequently writes on disintermediation, the effect of e-commerce on agency and distributorship agreements and the competition law aspects of B2B exchanges. Stephen is featured in Mondaq's Survey of Leading Internet & E-Commerce Lawyers.
slsidkin@foxwilliams.com

Google and the digital privacy perfect storm

In three unrelated class actions, Google Inc. is defending wiretap claims related to web tracking, email scanning, and Wi-Fi sniffing. These lawsuits will define digital privacy rights for at least a generation and will test Silicon Valley's guiding spirit.

Background

An evaluation of Google's situation requires an understanding of a number of fundamental and conflicting forces.

1. Advertising is king

When something online is free, you're not the customer, you're the product. In other words, free content brings viewers, and the advertisers pay for the content. As a business model, this bargain is nothing new, but the interactive nature of the internet changes the model. For the first time, content providers have the technological ability to move beyond simply delivering content to the user, and can now collect data on the user - and then correlate, repackage and sell the data.

Many email services are also now free to the user because the webmail interface is a platform to deliver advertising. Social media complicates the picture exponentially because viewing habits can be correlated with sensitive personal information often volunteered by the user. Add to this a network effect producing massive aggregations of data, tumbling e-storage costs, and a new imperative to increase revenues following several recent IPOs, and it becomes nearly impossible for internet companies to resist pressures to push the envelope in efforts to gather ever-detailed personal data.

2. Diverging views of privacy

The second force shaping the digital privacy debate is the sharp divergence in views between industry and the general public. A handful of technology companies now control personal data on almost half the world's population. Google's stated mission is 'to organize the world's information' - an idea once seemingly daft but now eminently believable.

In contrast the public increasingly values privacy. The tipping point in this standoff follows the revelations of surveillance conducted by the US National Security Agency. Although NSA surveillance raises issues of government conduct, it has awoken the public to the issue of surveillance more broadly.

Digital privacy is one of the few issues that cuts across the political spectrum. Internet privacy is now identified by the American Civil Liberties Union ('ACLU') as a 'key issue' - and because government surveillance is now largely built on private surveillance, the ACLU takes the position that e-commerce companies must be the 'first line of defense when it comes to keeping private information private.' The ACLU is taking the lead in court battles over NSA surveillance. On the other end of the spectrum, libertarians and conservatives are quick to note the link between privacy and ordered liberty: 'Civilization is the progress toward a society of privacy.'¹ In this regard, a conservative might agree with Google's Vint Cerf's comments at a recent FTC forum that "it's the industrial revolution and the growth of urban concentrations that led to a sense of anonymity" but would disagree with his belief that such anonymity is a mere historical aberration.

3. Contract-based regulation

The third force shaping the debate is the complex mechanism for protecting privacy in the US. The word 'privacy' appears nowhere in the Constitution. Although the Fourth Amendment preserves the right to be free from search or seizure without a warrant, the right is trespass-based; privacy as its own right came later. In 1853, Francis Lieber, advisor to President Lincoln, wrote 'No one can imagine himself free if his communion with his fellows is

interrupted or submitted to surveillance.² In 1890, two young lawyers, Samuel Warren and Louis Brandeis argued for a common-law right of privacy in an influential Harvard Law Review - no state recognised such a right in 1890.

In the Olmstead case of 1928, the US Supreme Court refused to extend the Fourth Amendment to wiretaps, on the theory that there was no trespass³. But the case is more famous for the dissent of Justice Brandeis, who predicted the rise of electronic surveillance: 'Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home . . . Can it be that the Constitution affords no protection against such invasions of individual security?'

Forty years later, Justice Brandeis' dissent was adopted by the Court in the landmark Katz decision⁴. Constitutional notions of privacy were now de-linked from 'trespass' and defined by the public's 'reasonable expectations of privacy.' Congress responded by passing the Omnibus Crime Control and Safe Streets Act⁵, otherwise known as the 'Wiretap Law,' which promulgated rules governing the interception of telephone communications. In 1986, the Wiretap Law was amended by the Electronic Communications Privacy Act of 1986 ('ECPA') to include a broader range of communications. Title I of the ECPA includes an amended Wiretap Act, and Title II provides a new Stored Communications Act ('SCA') providing protections to communications in temporary storage. Congress also passed the Computer Fraud and Abuse Act ('CFAA').

The original Wiretap Law and the

ECPA amendments were meant to accommodate the Katz court's 'reasonable expectations of privacy,' but the laws went further - Congress explicitly adopted a consent-based regime. Thus, if no party to a telephone or email communication consents to the interception of voice or data, federal law forbids the interception without a warrant or other similar protections.

In 1993, the internet went mainstream. Immediately recognising its transformative potential, the Clinton White House promulgated principles to govern its future growth and regulation in 'A Framework for Global Economic Commerce,' or the 'Clinton-Gore Framework.' The Clinton-Gore Framework extends the consent-based model of the ECPA, and adopts a free-market and self-regulation approach to e-commerce, including contract-based privacy rights. Although the Framework is not a law *per se*, its logic has been implicitly adopted by courts ever since. Thus, the ECPA's prohibitions against interceptions of electronic data depend on the interception being non-consensual even in the internet age; if one party contractually consents to the intercept, it is lawful.

Web-tracking

As originally conceived by Sir Tim Berners-Lee (the inventor of the web) cookies were meant to facilitate the conversation between the user and the website, nothing more. However, websites offering 'free' content quickly realised that they could contract with third-party 'ad serving' companies to write persistent cookies that, when synchronised with other cookies, allowed for the tracking of each web users' internet usage and other sensitive personal information. In exchange for allowing this tracking,

the website would receive money. The third party would build a digital dossier on the user with detailed personal information gleaned from the tracking. That information could then be used to target advertising to the user.

One of the first internet ad-serving companies was DoubleClick, founded in 1995. Because DoubleClick's third-party tracking cookies essentially enabled the interception of users' communications with external websites, a consumer class action was filed in New York in 2000 alleging that the tracking violated the SCA, the Wiretap Act and the CFAA, along with various common law rights. In what is largely considered the most important internet privacy judicial opinion ever written, Judge Buchwald dismissed the case largely on the theory of consent. Because browsers can be set to block third-party cookies, a user consents to the tracking if the blocking feature is not enabled⁶. Judge Buchwald's opinion thus implicitly adopted the Clinton-Gore Framework. If a user consents to the interception, it cannot violate any contract-based privacy laws.

But what happens if a user does not consent, and is tracked anyway? Three class actions are exploring this very question⁷.

1. Google, Inc. cookie placement consumer privacy litigation (2013 WL 5582866 (9 Oct 2013)).

This class action followed revelations in 2012 that Google's DoubleClick subsidiary and three online advertising companies were circumventing the privacy settings of Apple's Safari browser. In 2004, Apple decided to enable cookie-blocking protection by default, and marketed the product as better protected against unwanted tracking. Starting in 2010, however,

several companies found a way to hack Safari to trick the browser into accepting third-party cookies. Google admitted to the hacking, but argued that it had merely 'used known Safari functionality.'

The Federal Trade Commission ('FTC') charged that Google's actions violated a previous settlement and violated its own privacy policy, and fined the company \$22.5 million. Although the fine was a record for this type of violation, the enforcement action was largely derided as laughably small. The fine represented less than four hours of revenues for the company and no effort was made to quantify the excess revenues attributable to the violation. None of the fine was distributed to Safari users whose data was taken without permission. Later, 37 states found that Google's actions violated various state consumer protection laws, and fined the company \$17 million.

Safari users filed their own private suits consolidated in Delaware before Judge Robinson. The plaintiffs asserted claims under the ECPA and various California laws. Judge Robinson found Google's actions 'objectionable' and ruled that Google was not an authorised party to the intercepted communications because it did not have consent to circumvent the privacy settings of the browsers. Nevertheless, she dismissed the case in its entirety. It was a near-complete victory for Google, but the decision is on appeal to the Third Circuit Court of Appeals⁸.

The Google 'Safari-Hacking' appeal will address five questions with far-reaching implications. Two of these questions stand out. First, does web tracking involve the interception of 'content' when URLs are tracked? If these URLs are deemed not to contain 'content,' there is no violation under the Wiretap Act nor the

SCA, both of which only prohibit the interception of content. Because URLs can include search terms and other substantive information, they betray far greater information than IP addresses. Judge Robinson held that URLs do not contain content, even if tracking may involve the interception of 'communications.'

Second, are consumers harmed when they are tracked and their personally identifiable information is taken without their consent? Because the Wiretap Act and SCA only provide statutory damages when 'content' is intercepted, many consumers turn to state consumer protection laws and common law remedies. But some state statutes require actual out-of-pocket losses in order for the claim to be cognisable, and Judge Robinson found that the mere theft of personal information - even without consent, and even via hacking - is not sufficient 'harm' under the Constitution to assert any common law claims. Although Judge Robinson's view of 'harm' is supported by other judges, there is other authority that runs counter. The FTC recently charged rent-to-own company Aaron's, Inc. with violations of federal law by secretly installing tracking software on rented laptops without consumer consent. The software tracked sensitive personal information but no consumer suffered any out-of-pocket damages. Nevertheless, the FTC took the position that the unwanted tracking of personal information was harm in and of itself and prosecuted Aaron's.

Interestingly, Google chose not to cross-appeal the one issue it lost. Crucially, the court found lack of consent to the tracking even though the protection was a default setting not affirmatively set by the user. Now that Google has chosen not to appeal this portion of the ruling, what impact does it

have?

This question will have vastly increased importance after 1 January 2014 when web companies doing business in California are required to disclose whether they respect Do Not Track ('DNT') signals. DNT signals are HTTP header fields sent by a user's browser that tell external websites not to track the user. Does a DNT signal negate consent when the browser clearly tells websites that the user does not want to be tracked? Does it matter if the DNT signal is a default setting, or affirmatively chosen by the user? Under Judge Robinson's Google holding, the answer seems to be an unequivocal no to both questions - the third party is not an authorised party to the communication. If the Third Circuit overturns Judge Robinson's 'content' holding, Google's acquiescence on the 'consent' holding will have enormous consequences for DNT and future web tracking liability.

2. Other web tracking cases

There are three other cases currently asking the same questions. In re: Facebook Internet Tracking Litigation, pending in the Northern District of California⁹, Facebook was caught tracking members' internet use beyond the scope of consent. Facebook agreed to stop tracking members post-logout after the practice was disclosed by the press, and users filed claims under Titles I and II of the ECPA, the CFAA and various California state laws. An unrelated case in New Jersey against Viacom (and Google) is also testing many of the same issues, except that the case is brought on behalf of minors¹⁰. Finally, the most recent of the web tracking cases is Mount v. PulsePoint, Inc., pending in New York. PulsePoint was caught hacking Safari's privacy protections, paid a fine, and agreed

to stop the practice. The issues echo the Google case, except that New York claims are asserted instead of California claims¹¹. Importantly, the PulsePoint case has been assigned to Judge Buchwald, the author of the DoubleClick opinion¹².

Email-scanning

The second test of America's digital privacy paradigm is the Google Inc. Gmail Litigation pending in the N. D. Cal¹³. Originally a much smaller case brought on behalf of email users in Texas, it eventually merged with other cases and grew into a multi-billion-dollar headache for Google. Gmail is a 'free' email service, and Google makes money by delivering advertising to users. In 2004, Google announced that it would start scanning emails for content to enable the company to serve tailored ads and charge more to advertisers. Although some privacy advocates such as the Electronic Privacy Information Center objected and asked the California Attorney General's office to investigate, Google won the day with its argument that it obtained user consent in the Terms of Use.

However, not all users believed they consented to the scanning. Other cases were soon filed, and the cases were consolidated in California. In a landmark opinion a federal court held that the gmail Terms of Use were insufficient to obtain valid consent from any gmail subscriber - and no attempt was made to obtain consent from non-subscribers who emailed subscribers¹⁴. The court held that the Terms of Use must be explicit and understandable, and must state the purpose of the scanning. Google informed gmail users that emails might be scanned for content, but the Terms of Use did not say it would be scanned, did not disclose the purpose or that

user profiles would be created. Google has requested permission for interlocutory appeal, and the request is under consideration.

The 'gmail' case will have implications far beyond Google. In a consent-based system involving e-commerce, contracts are often formed by users clicking 'yes' in a box following or preceding the phrase 'I accept the Terms of Use.' When users visit websites as visitors and not registered users, the website simply notes in small print that use of the website is conditioned on acceptance of a Terms of Use, and consent is assumed even without the affirmative action. Almost no one ever reads the terms of use governing the privacy policies of websites, including the Chief Justice of the US Supreme Court, raising the question of their enforceability and the viability of the Clinton-Gore Framework.

And the difficulty extends beyond wiretapping. Some companies are burying non-disparagement clauses in their Terms of Use that no reasonable consumer would ever read or accept. KlearGear included a clause in the Terms of Use penalising consumers \$3,500 for making negative comments about the company; when one customer posted a negative review following the failure to deliver a product, the customer was sued. Although not a wiretap case, the question of whether a valid contract was formed mirrors the 'consent' issue in the gmail case.

Wi-Fi sniffing

The third wiretap case involving Google is the Street View case¹⁵, a fascinating illustration of the difficulty applying outdated statutes to new technology. In 2007, Google launched its 'street view' feature. Between 2007 and 2010, while photographing the public from public streets, Google

surreptitiously captured data leaking from unencrypted Wi-Fi networks. Such data included personal emails, usernames, and passwords. As with other privacy violations, Google agreed to stop the practice after it was caught, and was fined \$25,000 by the FTC and €145,000 by the German privacy regulator. Consumers also sued under the Wiretap Act and various California laws, arguing that confidential communications were intercepted without consent. There is no doubt that the payload data are 'communications' within the meaning of the Wiretap Act, and there is no doubt that the users of the unencrypted Wi-Fi networks never explicitly gave Google consent to gathering the data. However, Google argued that the law did not apply - the communications could not be 'private' if unencrypted and leaking beyond the property lines, and there is a statutory exception for radio communications readily accessible to the public.

A federal court in California rejected Google's defences. Because the Wiretap Act provides \$100 statutory damages to each person whose communications were intercepted, Google could face more than \$1 billion in damages. The exposure increased when a three-judge panel of the Ninth Circuit Court of Appeals affirmed the lower court's decision to reject the 'readily accessible' defence¹⁶. Google has requested *en banc* review, which is pending. Google's mission will depend on a statutory reading of an exception to the prohibition against intercepting electronic communications. The only way Google can prevail is if a group of judges interpret the term 'radio' to encompass a technology that did not exist when the ECPA was enacted.

Conclusion

The push for ever-larger online advertising revenues requires ever-increasing surveillance of internet users, while at the same time the public is becoming uncomfortable with the concomitant loss of privacy rights. Add to that dynamic a largely contract-based regime built on 'consent,' a government enforcement effort largely viewed as impotent, and a judiciary increasingly open to privacy-related class actions, and a perfect legal storm has formed that will define digital privacy rights in the US for the next generation. And Google is at the centre.

David Straite Of Counsel
Laurence King Partner
 Kaplan Fox & Kilsheimer LLP
 DStraite@kaplanfox.com
 LKing@kaplanfox.com

A longer version of this article is featured online. David and Larry represent consumers in digital privacy cases.

1. Ayn Rand, *The Fountainhead* at p. 715 (1943).
2. Francis Lieber, *On Civil Liberty and Self-Government*, ch. IX (1853).
3. *Olmstead v. United States*, 277 U.S. 438 (1928).
4. *Katz v. United States*, 389 U.S. 347 (1967).
5. Codified at 42 USC 3711.
6. *DoubleClick Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001).
7. Google is defending an additional wiretap class action, *Google, Inc. Privacy Policy Litig.*, 12-cv-01382-PSG (N.D. Cal.), related to Google's decision to unify the privacy policies of all Google platforms and to co-mingle data.
8. Co-author D. Straite has been court-appointed to a committee advising lead counsel for the plaintiffs on this appeal.
9. 5:12-md-02314-EJD (N.D. Cal.).
10. *Nickelodeon Consumer Privacy Litigation*, MDL 2443 (D.N.J.).
11. The authors are co-counsel to the Plaintiffs in the *PulsePoint* litigation.
12. *PulsePoint* has moved to transfer the case to Delaware to be consolidated and/or coordinated with the Google case. The motion is pending.
13. 5:13-md-02430 (N.D. Cal.).
14. *Google Inc. Gmail Litigation*, 2013 WL 5423918 (N.D. Cal. Sept. 26, 2013).
15. *Google Inc. Street View Elec. Comm. Litig.*, 10-cv-02184-JW (N.D. Cal.).
16. *Aff'd sum nom.*, *Joffe v. Google, Inc.*, 729 F.3d 1262 (9th Cir., 10 Sept 2013).

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 10, 2015.

DATED: March 10, 2015

Respectfully Submitted,

KIESEL LAW LLP

By: /s/ Paul R. Kiesel
Paul R. Kiesel
kiesel@kiesel-law.com
8648 Wilshire Boulevard
Beverly Hills, California 90211
Tel.: (310) 854-4444
Fax: (310) 854-0812