

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**FPX, LLC, (d.b.a. FIREPOND),
Individually and on Behalf of All Others
Similarly Situated,**

Civil Action No. 2:09-cv-00142

Plaintiff,

v.

(1) GOOGLE, INC.;
(2) YOUTUBE, LLC;
(3) AOL, LLC;
**(4) TURNER BROADCASTING
SYSTEM, INC.;**
(5) MYSPACE, INC., and
(6) IAC/INTERACTIVECORP

Defendants.

**DECLARATION OF DAVID WHITTLESEY
IN SUPPORT OF CLASS ACTION CERTIFICATION**

1. My name is David Whittlesey. I am over the age of eighteen, have never been convicted of a felony, and am fully qualified to make this declaration. The following facts are within my personal knowledge and are true and correct.

2. I am a partner at Andrews Kurth LLP, which is counsel of record for Plaintiff FPX, LLC, Individually and on behalf of all others similarly situated, in the above styled and numbered causes before this Court.

3. Given the resources, qualifications, and experience of the counsel at Andrews Kurth LLP that are working on this representation, including myself and Ronald Casey Low, the interests of Plaintiff and all of those similarly situated are adequately represented in these causes.

4. I am a member of the Texas bar and this Court and have been practicing law in Texas and federal courts inside and outside of Texas for 16 years. My practice focuses on complex commercial, business and technology litigation. I have litigated numerous cases involving mergers and acquisitions, license agreements, software and systems design, systems integration, telecommunications, professional malpractice, trade secrets, real estate, insurance, banking, construction, oil and gas, health care, unfair competition and trademark matters. As part of my practice, I have been involved in numerous class actions, including representing both plaintiffs and defendants.

5. Ronald Casey Low is an associate at Andrews Kurth LLP and is responsible for assisting me in the representation of Plaintiff and others similarly situated. Mr. Low is a member of the Texas bar and this Court and has been practicing law in Texas and federal courts inside and outside of Texas for 7 years. Mr. Low also focuses his practice on complex commercial, business and technology litigation.

6. Andrews Kurth LLP is a 108 year old law firm based in Houston, Texas with Texas offices in Houston, Dallas, and Austin and has more than 400 attorneys internationally. Numerous class actions have been handled by Andrews Kurth lawyers and the firm is well equipped to handle litigation involving numerous class members.

7. Based upon the resources, qualifications, and experience of myself, Mr. Low, and my firm, it is my opinion and belief that Plaintiff and their counsel will provide more than adequate representation of the interests of the proposed class.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 17, 2010.

/s/David Whittlesey _____
David Whittlesey