

General Docket
US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 97-16070

Filed: 6/18/97

Nsuit: 3850 SEC (Fed)

Zeid, et al, et al v. Kimberley, et al, et al

Appeal from: Northern District of California (San Jose)

Case type information:

- 1) civil
- 2) private
- 3)

Lower court information:

District: 0971-5 : CV-96-20136-SW(PVT)
presiding judge: Spencer M. Williams, Senior Judge
Date Filed: 2/23/96
Date order/judgment: 5/6/97
Date NOA filed: 6/3/97

Fee status: paid

Prior cases:

None

Current cases:

None

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RICHARD ZEID, on behalf of
themselves and all others
similarly situated
Plaintiff - Appellant

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SIOM MISRAHI, on behalf of
themselves and all others
similarly situated
Plaintiff - Appellant

Reed R. Kathrein, Esq.
(See above)
[COR LD NTC ret]

Richard Bemporad, Esq.
(See above)
[COR LD NTC ret]

Leonard B. Simon, Esq.

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(See above)
[COR NTC ret]
William S. Lerach, Esq.
(See above)
[COR LD NTC ret]
Eric A. Isaacson
(See above)
[COR LD NTC ret]

Daniel W. Krasner, Esq.
(See above)
[COR LD NTC ret]

v.

JOHN A. KIMBERLEY
Defendant - Appellee

Shirli F. Weiss
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[COR LD NTC ret]
GRAY, CARY, WARE AND
FREIDENRICH
401 B Street
San Diego, CA 92101-4297

FRANK M. RICHARDSON
Defendant - Appellee
Shirli F. Weiss
(See above)
[COR LD NTC ret]

MARK A. ROWLINSON
Defendant - Appellee
Shirli F. Weiss
(See above)
[COR LD NTC ret]

FIREFOX COMMUNICATIONS, INC.
Defendant - Appellee
Shirli F. Weiss
(See above)
[COR LD NTC ret]

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RICHARD ZEID, on behalf of themselves and all others
similarly situated; SIOM MISRAHI, on behalf of themselves
and all others similarly situated

Plaintiffs - Appellants

v.

JOHN A. KIMBERLEY; FRANK M. RICHARDSON; MARK A. ROWLINSON;
FIREFOX COMMUNICATIONS, INC.

Defendants - Appellees

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6/18/97 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS
SENT (Y/N): n. setting schedule as follows: appellant's
designation of RT is due 6/13/97, ; appellee's designation
of RT is due 6/23/97,, ; appellant shall order transcript
by 7/3/97, ; court reporter shall file transcript in DC by
8/4/97; certificate of record shall be filed by 8/11/97 ;
appellant's opening brief is due 9/19/97, ; appellees'
brief is due 10/20/97,, ; appellants' reply brief is due
11/3/97, ; [97-16070] (mhf)

6/18/97 Filed attorney for Appellant Civil Appeals Docketing
Statement served on 6/2/97 (to CONFATT) [97-16070]
[97-16070] (mhf)

7/2/97 Case released from Pre-Briefing Conference program. (mlm)

8/11/97 Filed certificate of record on appeal RT filed in DC
2/14/97 [97-16070] (gail)

8/14/97 Received ltr dated 7/31/98 from aty Shirli F. Weiss for
aples re: order dated 7/30/98 (FAXED > PANEL) [97-16070]
(gail)

9/17/97 Filed motion and deputy clerk order :(Deputy Clerk: cag)
Aplts mtn for an extension of time in which to file the
opening brief is granted. The opening brief is due

10/10/97. The answering brief is due 11/10/97. The optional reply brief is due 14 days from service of the answering brief. [3304429-1] Motion recvd 9/12/97) [97-16070] (crw)

- 10/14/97 Filed original and 15 copies Appellants' opening brf (Informal: no) 49 pages and five excerpts of record; served on 10/10/97 [97-16070] (gail)
- 10/20/97 Filed original and 15 copies Amicus Curiae Securities Exchange Commission's brief of 29 pages in support of aplts; served on 10/14/97 [97-16070] (gail)
- 11/4/97 14 day oral extension by phone of time to file Appellee John A. Kimberley, Appellee Frank M. Richardson, Appellee Mark A. Rowlinson, Appellee Firefox Communicat's brief. [97-16070] appellees' brief due 11/24/97 ; the optional reply brief is due 14 days from service of the ans. brief. (terr)
- 11/24/97 Filed mtn of amicus curiae American Institute of Certified Public Accountants to become amicus curiae in support of aples [97-16070] served on 11/24/97 (****RECORDS FOR MERITS PANEL****) (Note: Mtn and amicus brf are included in the same volume) [3347010] (gail)

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- 11/24/97 Received original and 15 copies amicus curiae AICPA's brief of 37 pages in support of aples; served on 11/24/97 (mtn pending) (Note: Mtn and brf are included in same volume) [97-16070] (gail)
- 11/25/97 Filed amicus curiae American Electronics Association's motion for leave to file brf amicus curaie in support of aples; served on 11/24/97 (****RECORDS FOR MERITS PANEL****) [97-16070] [3348088] (gail)
- 11/25/97 Received original and 15 copies amicus curiae American Electronics Association's brief of 23 pages; served on 11/24/97 (**** 6 COPIES SENT TO RECORDS FOR MERITS PANEL****) [97-16070] (gail)
- 11/28/97 Filed original and 15 copies aples' ans brf of 54 pages and 5 supp'l excerpts of record in 2 vols.; served on 11/24/97 (dfcy: excerpts have red covers instead of tan). Notified counsel. [97-16070] (gail)
- 12/1/97 Filed aplts' opposition to AICPA's mtn to file a brf as amicus curiae [3347010-1] served on 12/1/97 (** RECORDS FOR MERITS PANEL **) [97-16070] (gail)
- 12/1/97 Filed aplts' opposition to AEA's mtn for leave to file a brf as amicus curiae [3348088-1] served on 12/1/97 (** RECORDS FOR MERITS PANEL **) [97-16070] (gail)
- 12/2/97 Received aples' satisfaction of (minor) brief deficiency (tan covers for 2 vols. of supp'l excerpts filed with ans brf on 11/28/97) [97-16070] (gail)

12/5/97 14 day oral extension by phone of time to file 's reply
brief. [97-16070] appellants' reply brief due 12/26/97, ;
(king)

12/10/97 Filed letter dated 12/10/97 from aty Jonathan C. Dickey for
Amicus American Electronics in reply to response from aplts
to motion for leave to file amicus brf; served on 12/10/97
(** RECORDS FOR MERITS PANEL **) [97-16070] (gail)

12/15/97 Rec'd errata to brief from aplts, served 12/11/97 (copy of
labels to be inserted in aplt's opening brf filed 10/14/97)
(RECORDS) [97-16070] (Note: I did insert the labels to pg.
24 of all copies of aplt's opening brf on this date.) (gail)

12/17/97 Filed aples' response to pltf-aplts' opp to mtns to file
amicus curiae brfs; served on 12/16/97 (** RECORDS FOR
MERITS PANEL **) [97-16070] (gail)

12/18/97 Rec'd errata to brief from aples (5 pages to be included in
supp'l excerpts) (RECORDS) [97-16070] (gail)

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12/27/97 Received original and 15 copies aplts' rpy brf of 35 pages
(Informal: no); served on 12/24/97 (rcvd because ovz; mtn
pending) [97-16070] (gail)

12/29/97 Received letter dated 12/29/97 from aty Joseph P. Daley for
aplts re: error in mtn for enlarged brf (copy to PROMO)
[97-16070] (gail)

12/29/97 Filed aplts' Rule 32(g) mtn for leave to file an enlarged
rpy brf, and decl of Eric A. Isaacson in support thereof
[97-16070] served on 12/24/97 (WIP/PROMO) [3371179]
[97-16070] (gail)

1/7/98 Rec'd notice of change of address from Jonathan C. Dickey
for Amicus American Electronics Association dated 12/30/97
(new address: Gibson, Dunn & Crutcher LLP, 1530 Page Mill
Road, Palo Alto, CA 94304-1125 Tel: (650) 849-5300)
(CASEFILE) [97-16070] (gail)

1/23/98 Filed, as of 08/11/97, certified record on appeal in 8
Vols.(total): 6 Clerks Rec 2 RTs (Original) [97-16070] (sm)

1/26/98 Filed order (Appellate Commissioner) aplts' motion for
leave to file an oversize rpy brf is granted. [3371179-1]
The previously rec'd brf is ordered filed. (PRO MO)
[97-16070] (jr)

1/26/98 Filed original and 15 copies aplts' rpy brf (Informal: no)
35 pages; served on 12/24/97. [97-16070] (jr)

4/16/98 Calendar check performed [97-16070] (mw)

5/11/98 Calendar materials being prepared. [97-16070] [97-16070]
(uk)

5/18/98 CALENDARED: SF 7/14/98 9:00 am Courtroom 1 [97-16070] (uk)

6/1/98 Filed order (Deputy Clerk: gb) For the convenience of the ct, this case has been removed from the July calendar and will be rescheduled for oral argument on the next available calendar. (PHONED OUT AT 9:55 A.M.) [97-16070] (gail)

6/11/98 Calendar materials being prepared. [97-16070] [97-16070] (uk)

6/17/98 CALENDARED: SF 8/11/98 9:00 am Courtroom 1 [97-16070] (uk)

6/23/98 Filed aplts' (Richard Zeid and Siom Misrahi)'s Rule 34-2 mtn to continue oral argument [97-16070] served on 6/22/98 (FAXED TO PANEL) [3475287] [97-16070] (gail)

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6/29/98 Filed order (Deputy Clerk: gb) Aplt's unopposed mtn to continue oral argument is granted. The case is removed from the 8/11/98, argument calendar. The Clerk shall reset this case for oral argument on the next available San Francisco calendar. (PHONED OUT AT 12:01 P.M.) [3475287-1] [97-16070] (gail)

7/7/98 Calendar materials being prepared. [97-16070] [97-16070] (uk)

7/10/98 CALENDARED: SAN FRAN Sep 14 1998 1:30 pm Courtroom 1 [97-16070] (aw)

7/27/98 Filed order (Deputy Clerk: ah) The American Institute of CPA's for leave to file brf amicus curiae in support of aples is GRANTED. The brf tendered 11/24/97, is ordered filed. The American Electronics Association's mtn for leave to file brf amicus curiae in support of aples is GRANTED. The brf tendered 11/25/97, is ordered filed. (PHONED OUT AT 12:00 NOON) [3347010-1] [3348088-1] [97-16070] (gail)

7/30/98 Filed order (Deputy Clerk: ah) Please be advised that the question whether the Private Securities Litigation Reform Act of 1995 created a heightened standard for pleading is under submission in Janas v. McCracken, No. 97-16204, which was argued on 6/11/98. Accordingly, the ct asks cnsl to be prepared to address issues that are not likely to be controlled by a decision in Janas and any features that may distinguish this case from Janas. (PHONED/FAXED OUT AT 9:15 A.M.) [97-16070] (gail)

8/18/98 Filed Amicus Curiae Securities Exchange's motion for leave to participate in oral argument [97-16070] served on 8/17/98 (FAXED > PANEL) [3509439] (gail)

8/20/98 Filed order (Deputy Clerk: eu) The mtn of the SEC, amicus curiae, for leave to participate in oral argument is denied. (PHONED OUT AT 12:10 P.M.) [3509439-1] [97-16070] (gail)

9/4/98 Received Richard Zeid, Siom Misrahi additional citations, served on 9/3/98 (PANEL) [97-16070] (sm)

9/4/98 Filed aples' (John A. Kimberley, et al.) additional citations, served on 9/4/98 (FED EXED TO PANEL ON 9/8/98) [97-16070] (gail)

9/8/98 Filed aplts' additional citations, served on 9/4/98 (FED EXED TO PANEL) [97-16070] (gail)

9/14/98 ARGUED AND SUBMITTED TO William C. CANBY, Andrew J. KLEINFELD, Susan P. GRABER [97-16070] (ah)

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9/14/98 Received Leonard B. Simon for Appellants Misrahi and Zeid letter dated 9/14/98 re: requesting case be heard first on calendar. (presiding judge) [97-16070] (ah)

9/23/98 Received ltr dated 9/22/98 from aty Leonard B. Simon for aplts re: oral argument on 9/14/98 (PANEL) (Note: See order dtd 10/22/98: "All portions of the pltfs-aplts' letter of 9/22/98, except the supp'l citations apply, are STRICKEN." [97-16070] (gail)

9/24/98 Filed order (William C. CANBY, Andrew J. KLEINFELD, Susan P. GRABER) Submission of this case is deferred until the mandate of this court issues in Janas v. McCracken, No. 97-16204, and Brody v. McCracken, No. 97-16240 (consolidated as In re Silicon graphics, Inc. Sec. Litig.). [97-16070] (gail)

9/24/98 Received aples' (John A. Kimberley, et al.) mtn for judl ntc; mtn for leave to file supp'l letter brf; decl of Shirli Fabri Weiss in support [97-16070] (recvd because no date of svc indicated) (PANEL) [3533840] (gail)

9/30/98 Filed aplts' (Richard Zeid and Siom Misrahi) opp to defts-aples' mtn for leave to file supp'l letter brf; served on 9/29/98 (PANEL) [97-16070] (gail)

9/30/98 Filed aples' rpy in opp to defts-aples' mtn for leave to file supp'l letter brf; served on 9/30/98 (PANEL) [97-16070] (gail)

10/22/98 Filed order (William C. CANBY, Andrew J. KLEINFELD, Susan P. GRABER): Defts-aples' mtn for judicial ntc is GRANTED. All portions of the pltfs-aplts' letter of 9/22/98, except the supp'l citations and references to pages in the brf to which the citations apply, are STRICKEN. See FRAP 28(j). Defts-aples' mtn for leave to file a supp'l letter brf is DENIED. [3533840-1] [97-16070] (gail)

1/4/99 Filed Amicus SEC's req for leave to file supp'l memorandum; supp'l memorandum; served on 12/17/98 (PANEL) [97-16070] [3596011] (gail)

1/13/99 Filed aples' (John A. Kimberley, et al.) mtn for leave to file supp'l brf in response to supp'l memo of SEC [97-16070] served on 1/12/99 (PANEL) [3598119] (gail)

1/13/99 Received original and 15 copies Appellees' (John A. Kimberley, et al.) supplemental brief of 9 pages, served on 1/12/99 (Mtn Pending) (PANEL) [97-16070] (gail)

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1/21/99 Filed order (William C. CANBY, Andrew J. KLEINFELD, Susan P. GRABER): The Req of the SEC, Amicus Curiae, for leave to file supp'l memorandum is GRANTED. The supp'l memorandum tendered 1/4/99 is ordered filed. Aples' mtn for leave to file supp'l brf in response to supp'l memorandum of the SEC is GRANTED. Aples' supp'l brf in response tendered 1/13/99, is ordered filed. [3596011-1] [3598119-1] [97-16070] (gail)

1/21/99 Filed Amicus SEC's supp'l memorandum (PRVSLY RECVD ON 1/4/99; FILED PER 1/21/99 ORDER) (COPIES PRVSLY CIRCULATED TO PANEL) [97-16070] (gail)

1/21/99 Filed Appellees' (John A. Kimberley, et al.) supplemental brief in response rcvd on 1/13/99 (PRVSLY RCVD; FILED PER 1/21/99 ORDER) (COPIES PRVSLY CIRCULATED TO PANEL) [97-16070] (gail)

1/21/99 Received Appellants' (Richard Zeid, et al.) opp to defts/aples' mtn for leave to file supp'l brf in response to supp'l memorandum of the SEC [3598119-1], [3596011-1] served on 1/19/99 (rcvd because moot; see 1/21/99 order) (PANEL) [97-16070] (gail)

2/8/99 Filed amicus curiae SEC's additional citations, served on 2/5/99 (PANEL) [97-16070] (gail)

2/10/99 Rec'd errata to supp'l brief filed 1/21/99 from aples (John A. Kimberley, et al.) served 2/9/99 (PANEL) [97-16070] (gail)

3/19/99 Filed aples' (John A. Kimberley, et al.) additional citations, served on 3/18/99 (PANEL) [97-16070] (gail)

5/24/99 Filed notice of appearance of Daniel W. Krasner for aplts Richard Zeid and Siom Misrahi dated 5/18/99 (document is entitled "ntc of chg address"; however csl is not prvsly listed) (Casefile) [97-16070] (gail)

7/9/99 Filed aples' (John A. Kimberley, et al.) mtn for lv to file supp'l brf addressing the court's decision In Re Silicon Graphics, Inc. [97-16070] served on 7/9/99 (PANEL) [3709957] (gail)

7/9/99 Filed aples' (John A. Kimberley, et al.) motion for judicial notice [97-16070] served on 7/9/99 (PANEL) [3709971] (gail)

7/9/99 Received original and 15 copies Appellees' (John A. Kimberley, et al.) supplemental brief of 25 pages, served on 7/9/99 (Mtn pending) (PANEL) [97-16070] (gail)

7/19/99 Filed Appellants' response to Deft/Aples' mtn for lv to file supp'l brf addressing Silicon Graphics [3709957-1]

served on 7/19/99 (PANEL) [97-16070] (gail)

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7/21/99 Received aples' additional citations, served on 7/20/99 (PANEL) [97-16070] (gail)

8/3/99 Filed order (William C. CANBY, Andrew J. KLEINFELD, Susan P. GRABER): The mtn for lv to file supp'l brf addressing the effect of In re Silicon Graphics Inc. Sec. Litig., Nos. 97-16204, 97-16240, slip op. at 7203 (9th Cir. July 2, 1999), on this case is denied w/o prejudice to renewal after this ct disposes of any petitions for rhrg in Silicon Graphics. The mtn to take judl ntc of the complaint in Silicon Graphics is GRANTED. [3709957-1] [3709971-1] [97-16070] (gail)

11/1/99 FILED MEMORANDUM DISPOSITION: The jdgmt of the dc is VACATED, and the case is REMANDED for reconsideration in the light of Janas v. McCracken (In re Siligon Graphics Inc. Sec. Litig.), 183 F.3d 970 (9th Cir. 1999). (Terminated on the Merits after Oral Hearing; Remanded; Written, Unsigned, Unpublished. William C. CANBY; Andrew J. KLEINFELD; Susan P. GRABER, author.) FILED AND ENTERED JUDGMENT. [97-16070] (gail)

11/15/99 [3791688] Filed original and 3 copies Appellants Richard Zeid and Siom Misrahi's petition for rehearing, (PANEL) 3 p.pages, served on 11/15/99 (sm)

11/19/99 Filed Aples' mtn for lv to file an ans to Aplt's pet for rhrg [97-16070] served on 11/18/99 PANEL [3795933] (gail)

11/19/99 Received Appellees' (John A. Kimberley, et al.) ans to to Aplt's petition for rehearing [3791688-1] served on 11/18/99 PANEL [97-16070] (gail)

12/3/99 Filed order (William C. CANBY, Andrew J. KLEINFELD, Susan P. GRABER): Appellee's motion for lv to to file an answer to aplt's pet for rhrg is GRANTED. The answer tendered 11/19/99, is ordered filed. Aplt's pet for rhrg is DENIED. [3795933-1] [3791688-1] [97-16070] (gail)

12/3/99 Filed Aples' (John Kimberley, et al.) response to Aplt's petition for rhrg; served on 11/18/99 (Prvsly rcvd; filed per 12/3/99 order) PANEL [97-16070] (gail)

12/13/99 MANDATE ISSUED [97-16070] (gail)

4/10/00 NO ORIGINAL RECORD (stev)

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