

2023-1526

**United States Court of Appeals
for the Federal Circuit**

CELLSPIN SOFT, INC.,

Plaintiff-Appellant,

v.

FITBIT LLC, NIKON AMERICAS, INC., NIKON, INC.,

Defendants-Appellees,

*Appeal from the United States District Court for the Northern District of California
in case nos. 4:17-cv-05928, Judge Yvonne Gonzalez Rogers*

CORRECTED JOINT APPENDIX

Michael Scott Fuller
Randall Garteiser
Christopher A. Honea
GARTEISER HONEA, PLLC
119 W Ferguson St.
Tyler, TX 75702
Telephone: (903) 705-7420
sfuller@ghiplaw.com
rgarteiser@ghiplaw.com
chonea@ghiplaw.com

*Attorneys for Plaintiff-Appellant
CELLSPIN SOFT, INC.*

August 30, 2023

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United States District Court
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CELLSPIN SOFT, INC.,

Plaintiff,

vs.

FITBIT, INC.,

NIKE, INC.,

UNDER ARMOUR, INC.,

FOSSIL GROUP, ET AL.,

GARMIN INTERNATIONAL, INC.,

NIKON AMERICAS, INC., ET AL.,

Defendants.

**ORDER DENYING MOTION FOR RECUSAL
PURSUANT TO SECTION 455**

Case No. 4:17-CV-05928-YGR

Case No. 4:17-CV-05931-YGR

Case No. 4:17-CV-05932-YGR

Case No. 4:17-CV-05933-YGR

Case No. 4:17-CV-05934-YGR

Case No. 4:17-CV-05936-YGR

Pending before the Court is a futile attempt to evade the Federal Circuit’s review of this Court’s June 7, 2022, 83-page comprehensive order granting defendants’ motions for summary judgment. (Dkt. No. 331.)¹ Plaintiff’s chosen vehicle is a motion for recusal of the undersigned under 28 U.S.C. §§ 455(a)-(d). (Dkt. No. 366.)

¹ These defendants include Fitbit, Inc. (“Fitbit”), Nike, Inc. (“Nike”), Under Armour, Inc. (“Under Armour”), Fossil Group (“Fossil”), Garmin International, Inc. (“Garmin”), and Nikon Americas, Inc. (“Nikon”). Plaintiff’s caption also extends its motion to defendant Moov, Inc. (“Moov”). Judgment was not entered as to Moov.

All docket references are to Case No. 4:17-cv-5928-YGR unless otherwise indicated.

1 In short, plaintiff's attack on the integrity of the judiciary, through the undersigned,² not
2 only demonstrates a measure of desperation, but is divorced from the law and the facts. Reduced
3 to its essence, and extended to its illogical conclusion, the motion would seek to have federal
4 judges recuse after the appeal of their objective findings, based upon nothing but speculation and
5 attenuation. The argument is extreme and meritless.

6 Notably, plaintiff's motion is also plagued by myriad procedural deficiencies. While the
7 Court is under no obligation to address the meritless assertions in detail, it does so at exacting
8 length to increase transparency³ and reassure the public that members of the judiciary take
9 seriously their obligation to be impartial and objective. Unfortunately, the judiciary cannot predict
10 when lawyers and parties will grasp to bypass the normal avenues of appellate review hoping for
11 the proverbial second bite at the apple.

12 Simply put, the undersigned has no material financial stake in the outcome of this case and
13 there is no other reason why her impartiality might reasonably be questioned to justify recusal.
14 Evidence does not exist to support a contrary result. Nor do bald attorney arguments divorced
15 from law and fact compel a different finding. For the following reasons, the motion for recusal is
16 **DENIED.**⁴

17
18 ² Through convoluted allegations, the plaintiff also seeks to attack the business affiliations
19 of the undersigned's husband. The undersigned's husband is only affiliated with this case by way
20 of the undersigned's role as an officer of the court. While his name has been extensively
21 highlighted in the record, the Court finds no reason to inject it further into this dispute.

22 ³ Plaintiff baldly suggests that the Court has been derelict by failing to submit its 2021 and
23 2022 financial disclosures. This attack on the Court's integrity is inconsistent with fact. The 2022
24 deadline has not passed. As to the 2021 fiscal year, the Court did timely submit a disclosure. Its
25 public release has been temporarily stayed because the Administrative Office of the U.S. Courts,
26 not the undersigned, found that the undersigned and her husband actually **over-disclosed**, further
27 demonstrating the Court's commitment to transparency. That disclosure will ultimately be
28 released and will not change the outcome of this motion.

⁴ Fitbit, Nike, Under Armour, Fossil, and Nikon all filed briefs opposing the motion in
their respective cases or the docket concerning Fitbit. Garmin filed an unopposed request for
leave to file its opposition, which is granted. All oppositions are considered.

Since plaintiff failed to notice the motion for hearing consistent with Civil Local Rule 7-2,
Fitbit noticed the motion for hearing on February 28, 2023. Pursuant to Federal Rule of Civil
Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that the motion is appropriate for
decision without oral argument. Therefore, the hearing noticed for February 28, 2023 is

United States District Court
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I. BACKGROUND

The Court assumes the parties’ familiarity with the factual underpinnings of this lawsuit, which are largely irrelevant to the pending motion.

This lawsuit was commenced in 2017 when plaintiff filed over a dozen complaints alleging infringement of one or more patents. In December 2017, the undersigned related fourteen cases. (Dkt. No. 18.) Subsequently, on April 10, 2018, the Court dismissed plaintiff’s claims finding that the asserted patents at issue were directed to unpatentable subject matter pursuant to 35 U.S.C. § 101. (Dkt. No. 79, 81.) That order was appealed and subsequently reversed by the Federal Circuit. (Dkt. No. 108.) Following remand, the cases proceeded through claim construction and discovery.

Relevant to the pending motion, on February 3, 2021, Fitbit submitted an Amended Corporate Disclosure Statement and Amended Certification of Interested Parties disclosing that “it is a subsidiary of Google LLC, which is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company.” (Dkt. No. 165.) According to plaintiff’s pending motion, Google’s⁵ introduction into these proceedings via Fitbit gave rise to publicly known circumstances which plaintiff now claims, over – months later, required the undersigned to recuse herself from these patent cases. Plaintiff did not move for disqualification and proceedings continued.

In January 2022, the defendants moved for summary judgment of noninfringement. A joint hearing on the motions was held on April 22, 2022, where the nuances of the various motions were addressed extensively. After taking the motions for summary judgment under submission, the Court issued a comprehensive omnibus order on June 7, 2022. (Dkt. No. 331.) That order addressed the particularities of each motion brought by the defendants. Where the order addressed all pending claims, judgment was entered in favor of the defendants on June 15, 2022.

VACATED.

⁵ Plaintiff broadly uses “Google” to refer to myriad projects, investments, entities, partnerships, and services. Through this shotgun tactic, plaintiff has substantially failed to articulate the legal foundation throughout the vast majority of its filings.

1 Approximately one month later, plaintiff filed its notice of appeal on July 13, 2022. (Dkt.
2 No. 346.) Taking judicial notice of the appellate record, the appeal was docketed on July 15,
3 2022, and plaintiff filed an opening brief on December 16, 2022.

4 Nearly seven months after entry of judgment and after substantial progress on appeal,
5 plaintiff has now moved to recuse the undersigned pursuant to 28 U.S.C. §§ 455(a)-(d) and
6 requests that the Court vacate the entry of summary judgment in favor of the defendants due to the
7 alleged violations of section 455. In short, the motion asserts that the Court has an appearance of
8 bias in favor Google or financial interests in Google. Plaintiff bases these allegations on at least
9 three reasons: (1) the undersigned’s husband’s employment with McKinsey & Company, Inc.
10 (“McKinsey”); (2) the undersigned’s husband’s employment with Ajax Strategies Venture Capital
11 as an Operating Partner (“Ajax”) where he purportedly handles over eight companies funded
12 and/or in partnership with Google; and (3) the undersigned’s purported investments in Google and
13 the defendants through the Vanguard 500 Index Fund, Vanguard Total International Stock Index
14 Fund, and the McKinsey Special Situations Aggressive Long-Term fund (“Special Situations
15 Fund”). While plaintiff’s motion attaches over 1500 pages of exhibits, the Court notes that
16 plaintiff does not cite to the documents with any degree of particularity. As addressed below, the
17 accusations are frivolous and devoid of any evidentiary merit. While unnecessary, this order
18 provides detail to support transparency and any appellate review.

19 **II. LEGAL STANDARDS**

20 The standard for recusal is not in serious dispute. The Court’s duty to recuse here is
21 governed by 28 U.S.C. § 455.

22 First, a judge “shall disqualify [her]self in any proceeding in which [her] impartiality might
23 reasonably be questioned.” 28 U.S.C. § 455(a). In analyzing the Court’s impartiality, the Ninth
24 Circuit “employ[s] an objective test: ‘whether a reasonable person with knowledge of all the facts
25 would conclude that the judge’s impartiality might reasonably be questioned.’” *Clemens v. U.S.*
26 *Dist. Ct.*, 428 F.3d 1175, 1178 (9th Cir. 2005) (quoting *Herrington v. County of Sonoma*, 834 F.2d
27 1488, 1502 (9th Cir. 1988)). It is well-known that “the ‘reasonable person’ is not someone who is
28 ‘hypersensitive or unduly suspicious,’ but rather is a ‘well-informed, thoughtful observer.’ The

1 standard must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is
 2 mandated upon the merest unsubstantiated suggestion of personal bias or prejudice.” *United*
 3 *States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008) (internal citations omitted).

4 Second, a judge “shall also disqualify [her]self . . . [when she] knows that [s]he,
 5 individually or as a fiduciary, or [her] spouse . . . has a financial interest in the subject matter in
 6 controversy or in a party to the proceeding, or any other interest that could be substantially
 7 affected by the outcome of the proceeding.” 28 U.S.C. § 455(b)(4). A “financial interest” is
 8 statutorily defined as “ownership of a legal or equitable interest, however small, or a relationship
 9 as director, adviser, or other active participant in the affairs of a party.” 28 U.S.C. § 455(d)(4).
 10 However, “[o]wnership in a mutual or common investment fund that holds securities is not a
 11 ‘financial interest’ in such securities unless the judge participates in the management of the fund.”
 12 28 U.S.C. § 455(d)(4)(i).

13 Notably, “[j]udges are presumed to be impartial and, accordingly, parties seeking recusal
 14 bear the substantial burden of proving otherwise.” *Stebbins v. Polano*, No. 21-cv-04184-JSW,
 15 2021 WL 8532245, at *1 (N.D. Cal. Oct. 22, 2021) (internal quotations and citations omitted); *see*
 16 *also Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992) (“A party introducing a
 17 motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party
 18 seeking disqualification bears the substantial burden of proving otherwise.”).

19 **III. DISCUSSION**

20 **A. Jurisdiction**

21 Before diving into the merits of the pending motion, the Court addresses jurisdictional
 22 matters. It is well-established that “[t]he filing of a notice of appeal is an event of jurisdictional
 23 significance—it confers jurisdiction on the court of appeals and divests the district court of its
 24 control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer*
 25 *Disc. Co.*, 459 U.S. 56, 58 (1982). As acknowledged by the Ninth Circuit, this is a “judge-made
 26 doctrine designed to avoid the confusion and waste of time that might flow from putting the same
 27 issues before two courts at the same time.” *Kern Oil & Refining Co. v. Tenneco Oil Co.*, 840 F.2d
 28 730, 734 (9th Cir. 1988) (internal quotation marks and citation omitted). Since judgment has been

1 entered and plaintiff has filed an appeal, this Court has been divested of jurisdiction over the
2 summary judgment order. Jurisdiction continues to exist over post-judgment proceedings
3 ancillary to issues raised on appeal.

4 To the extent plaintiff is seeking to disqualify the undersigned from post-judgment
5 proceedings such as cost motions that have not been decided, that request is properly before the
6 Court. However, plaintiff asks for much more. Plaintiff “moves to vacate entry of the joint
7 Summary Judgment Order in favor of all Defendants and all subsequent orders thereto.” (Dkt. No.
8 366 at 1.) Procedurally, the request to vacate the summary judgment order is defective for at least
9 two reasons.

10 First, the summary judgment order is before the Federal Circuit. The Court has no
11 authority to vacate the order because the appeal divested it of jurisdiction. Plaintiff should have
12 filed a motion for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1. That rule
13 would permit this Court to defer consideration of the motion, deny it, or state that it would grant it.
14 Notably, the rule and relevant standard is nowhere within plaintiff’s motion. Even though plaintiff
15 is not pro se and is proceeding through counsel, the Court generously construes a request for an
16 indicative ruling into plaintiff’s filing to promote judicial economy for the Court and parties.

17 Second, requests to vacate are made pursuant to Federal Rule of Civil Procedure 60.
18 Under Rule 60, a district court “may relieve a party or its legal representative from a final
19 judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or
20 excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have
21 been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously
22 called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the
23 judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an
24 earlier judgment that has been reversed or vacated; or applying it prospectively is no longer
25 equitable; or (6) any other reason that justifies relief.” Plaintiff’s vague gestures to Rule 60 in its
26 motion fails to identify the precise basis upon which it relies to vacate the summary judgment.
27 Once more, the Court generously construes counsel’s motion as a request to vacate the judgment
28 “as void” in light of the conflicts asserted.

1 For the reasons addressed below, the motion fails. No conflict or extraordinary
 2 circumstances exist to void the judgment. The Court would also deny the motion if jurisdiction
 3 existed over the summary judgment order.

4 **B. The Motion is Untimely**

5 Another threshold issue, separate and apart from the jurisdictional issues identified, the
 6 Court considers whether plaintiff's motion pursuant to section 455 is timely. *United States v.*
 7 *Rogers*, 119 F.3d 1377, 1380 (9th Cir. 1997). The Court has little difficulty determining that it is
 8 not. This on its own is a sufficient basis to deny plaintiff's motion.

9 Section 455 does not have a statutory deadline. Nevertheless, as the Ninth Circuit has
 10 instructed, "[a]bsent a timeliness requirement, parties would be encouraged to withhold recusal
 11 motions, pending a resolution of their dispute on the merits, and then if necessary invoke section
 12 455 in order to get a second bite at the apple." *Rogers*, 119 F.3d at 1380. Such an open-ended
 13 approach without any measure of deterrence "would result in increased instances of wasted
 14 judicial time and resources and a heightened risk that litigants would use recusal motions for
 15 strategic purposes." *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991). Notably,
 16 "[w]here unexplained delay in filing a recusal motion suggests that the recusal statute is being
 17 misused for strategic purposes, the motion will be denied as untimely." *United States v. Mikhel*,
 18 889 F.3d 1003, 1027 (9th Cir. 2018). Further, "[w]hile no per se rule exists regarding the time
 19 frame in which recusal motions should be filed after a case is assigned to a particular judge, if the
 20 timeliness requirement is to be equitably applied, recusal motions should be filed with reasonable
 21 promptness after the ground for such a motion is ascertained." *Preston*, 923 F.2d at 733. Courts
 22 have also long recognized that waiting to raise the issue until after an unfavorable order was on
 23 appeal is sufficient grounds to deny a motion. *See, e.g., Oglala Sioux Tribe of Pine Ridge Indian*
 24 *Rsrv. v. Homestake Min. Co.*, 722 F.2d 1407, 1414 (8th Cir. 1983) ("[A] timeliness requirement is
 25 appropriate, especially in this case where the Oglala Sioux were aware of the alleged grounds for
 26 disqualification at the time the case was assigned to Judge Bogue, but the suggestion for
 27 disqualification was not raised until this appeal."); *In re United Shoe Mach. Corp.*, 276 F.2d 77,
 28 79 (1st Cir. 1960) ("One of the reasons for requiring promptness in filing is that a party, knowing

1 of a ground for requesting disqualification, cannot be permitted to wait and decide whether he
2 likes subsequent treatment that he receives.”).

3 Plaintiff’s motion is not reasonably prompt as demonstrated by plaintiff’s own filings.
4 According to plaintiff’s motion, Fitbit disclosed its affiliation with Google on February 3, 2021
5 after a well-known merger, by filing its amended certification on the docket. Plaintiff is charged
6 with knowledge of this document as a user of ECF. Notably, plaintiff’s allegations concerning the
7 Court’s financial interests and affiliations with Google are based on the undersigned’s 2020
8 Financial Disclosure. That disclosure was available through the balance of 2021 and 2022. While
9 plaintiff highlights the 2020 Financial Disclosure, the investments at issue in the motion have been
10 publicly known since the 2012 Financial Disclosure and have not changed. Remarkably, plaintiff
11 also extensively relies upon this Court’s Questionnaire for Judicial Nominees to criticize
12 affiliations with McKinsey. That questionnaire was submitted and has been publicly available
13 since 2011. Both sources of public information predate Fitbit’s disclosure. While an affiliation
14 with Ajax developed after that disclosure was filed, plaintiff’s own motion and evidence
15 demonstrate that the undersigned’s husband was in the position nine months prior to the motion
16 being brought and that at a minimum plaintiff knew of the position in November (roughly one
17 month prior to substantially commencing appeal). As set forth below, this is immaterial since
18 there are no financial interests or affiliations related to these proceedings.

19 Despite these public disclosures, plaintiff sat on the motion and strategically litigated this
20 case through summary judgment. This is a dispositive fact the reply brief ignores in its entirety.⁶
21 After appealing that ruling, filing an opening brief on appeal, and triggering the defendants’
22 obligation to respond to the appeal, plaintiff then filed the present motion before the Court. There
23 is little doubt that filing the motion nearly seven months after judgment was entered and after an
24 appeal has been substantially commenced is gamesmanship. Indeed, plaintiff’s blanket request to
25 vacate the judgment as to *all defendants*, not just Fitbit, illuminates plaintiff’s true intention of

26
27 ⁶ Plaintiff raises a futile argument that it did not know the Federal Circuit was going to
28 decide *Centripetal Networks* until 2022. The inference plaintiff seeks to make is that the decision
substantially altered the legal landscape. As explained *infra*, that decision has no bearing on this
motion.

1 securing an unwarranted second bite at the apple.

2 The procedural deficiencies of the motion are replete. First, it was only filed in the action
3 concerning Fitbit even though separate judgments were issued as to each defendant in each
4 underlying action and relief was sought against all. Second, the motion also fails to include a
5 notice of motion as required by Civil Local Rule 7-2(b).⁷ This requirement exists to alert non-
6 movants of their rights and obligations with respect to the movant's assertions. Failing to comply
7 is significant. Consideration of the defendants' oppositions highlight the concern.

8 Third, proper motion practice requires identification of supporting evidence, not present
9 here. Throughout these proceedings, plaintiff has cited extensively to voluminous documents
10 without explanation and proper pincites. The Court noted as much in the summary judgment
11 order: "Cellspin's citations to swaths of documents without explanation does not create a genuine
12 dispute of material fact." (Dkt. No. 331 at 2:12-13.) Despite the admonishment, plaintiff's
13 counsel has once again submitted approximately 1500 pages in connection with the motion.
14 Plaintiff makes broad string cite references to its exhibits without any pincites. This sends the
15 Court and defendants on a fishing expedition to identify the relevance of a document that is not
16 always apparent. As noted below, some of the documents cited do not exist, others are illegible
17 copies,⁸ and many more do not stand for the proposition asserted even under a liberal construction.
18 Finally, plaintiff has not submitted any declaration to justify its lack of diligence, and instead,
19 once again relies upon misplaced attorney argument divorced from fact and law.

20 For these reasons, the motion is untimely and can be denied.

21 **C. Purported Bases for Recusal**

22 Substantial justification exists to deny the motion on procedural grounds and the Court
23

24 ⁷ Under controlling rules, motions in this District must contain a notice that includes the
25 date and time of a hearing, as well as "a concise statement of what relief or Court action the
26 movant seeks." Civ. L.R. 7-2(b)(1)-(3).

27 ⁸ Plaintiff appreciated that substantial portions of its initial filing were illegible and filed a
28 correction without withdrawing the original set of exhibits. (Dkt. No. 371.) Rather than create a
legible filing in the first instance, plaintiff's correction required the Court to evaluate two sets of
exhibits to verify the information being provided and discern why they were being corrected.

1 does not need to reach the accusations raised. Nonetheless, to promote transparency and maintain
 2 the Court’s credibility in light of plaintiff’s sweeping assertions, the Court addresses the plaintiff’s
 3 accusations and evidentiary submission at great lengths. In short, the accusations have no merit.
 4 The order addresses affiliations with McKinsey and Ajax that are unrelated to these proceedings,
 5 as well as the Court’s independent financial investments.

6 *1. Affiliations with McKinsey*

7 The Court begins by addressing whether the undersigned’s prior familial affiliations with
 8 McKinsey have created financial interests in this case or create a reasonable appearance of
 9 impartiality to justify recusal in this case. They do not.

10 Plaintiff writes that the undersigned’s husband consults in the oil, gas, and energy sectors
 11 as a Senior Partner at McKinsey, where he has authored over 20 articles related to the oil and gas
 12 industries. From there, plaintiff asserts that McKinsey has a strategic partnership with Google and
 13 has teamed up with Google to assist clients in the oil, gas, and energy sectors as demonstrated by
 14 various McKinsey blog postings. Highlighting one such partnership, which is not directly tied to
 15 the undersigned’s husband (even on information and belief), plaintiff alleges that McKinsey
 16 assisted an energy sector client in avoiding more forest fires and associated power outages in
 17 California after the wake of the Dixon Fire in 2021.⁹ According to the plaintiff “being a senior
 18 partner at McKinsey & Company . . . doing substantial business with Google looks inappropriate
 19 for Google to appear before [the undersigned]. Google and [the undersigned’s] husband’s firm
 20 provide for profit joint solutions to their clients, which creates the objective appearance that [the
 21 undersigned] would be biased in favor of Google.” (Dkt. No. 366 at 8.) For the first time in reply,
 22 plaintiff asserts that the undersigned’s husband sells Google services and that “his pay and bonus
 23 is dependent on his client’s satisfaction and success through the use of Google services.” (Dkt.
 24 No. 375 at 12.) Plaintiff’s evolving theory for recusal is nothing but unsubstantiated speculation
 25

26
 27 ⁹ The Court notes that the motion references Exhibit 5a to support this factual assertion.
 28 This appears to be missing from the record. Ultimately, this is immaterial because plaintiff has
 not demonstrated that the undersigned’s husband had any involvement with this project, nor is the
 Court aware of any of the work alleged.

1 divorced from any evidence.

2 First, the Court clarifies that the undersigned’s husband has not been a Senior Partner at
3 McKinsey since July 31, 2021. This is eleven months prior to the summary judgment order being
4 issued in this case. Plaintiff’s selective quote of the undersigned’s nomination disclosures to
5 justify recusal does not persuade. The May 2011 disclosure provided in full: “[m]y husband is a
6 senior partner at McKinsey. Matters relating to McKinsey and, more broadly, *to my husband’s*
7 *primary clients* would also likely require recusal.” (Emphasis supplied.) This disclosure differs
8 significantly from plaintiff’s reconstruction in its motion which claims that the undersigned
9 “disclosed that if a ‘primary’ client of her husband’s consulting firm, McKinsey, became a party
10 before her, she would have to recuse herself.” (Dkt. No. 366 at 4.) In short, McKinsey has never
11 been a party to these proceedings. Despite the substantial commentary available online that the
12 plaintiff leverages in its motion, the plaintiff did not, *and cannot*, point to a single instance tying
13 the undersigned’s husband to a Google project or partnership, including without limitation any
14 related to Fitbit or a party in these proceedings. None exists. Nor has plaintiff proffered any
15 admissible evidence that Google was a client, let alone a primary client or partner, of the
16 undersigned’s husband and that he profited from such a relationship. No such evidence exists.
17 Nor does any evidence exist that the parties to this infringement action were clients of my husband
18 in any capacity that would support recusal.¹⁰

19 In short, plaintiff carries a heavy burden to justify disqualification. It has failed to
20 demonstrate that the undersigned or her husband have a material financial stake in the outcome of
21 this case due to McKinsey’s affiliations with Google and there is no other reason why the
22 undersigned’s impartiality might reasonably be questioned.¹¹ The motion is denied on this basis.

23
24 ¹⁰ As a matter of practice, the Court consistently recuses on all matters that have
concerned my husband’s clients and this case would be no exception were there any basis to do so.

25
26 ¹¹ The motion sets forth essentially no foundation for alleged partnerships or projects
concerning the undersigned’s husband. At most, it appears that Google was one of several cloud-
27 based service providers for McKinsey, providing services as part of the regular course of business.
Consistent with Advisory Opinion 107, when a “service provider’s transactions with the judge’s
28 spouse or the spouse’s business are in the regular course of business, routine in nature, and are

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2. *Affiliations with Ajax*

Next, plaintiff alleges that the undersigned’s husband has obtained financial benefits from Google since at least March of 2022 through his role as Operations Partner at Ajax. The motion as presented raises two categories of affiliations to suggest that recusal is proper. First, the motion alleges that the undersigned’s husband has overseen the operations of three start-up companies funded by Google since at least March of 2022. This specifically includes: (1) Planet Labs, Inc. (“Planet Labs”); (2) Natel Energy (“Natel”); and (3) Ripple Foods. Second, the motion alleges that the undersigned’s husband has handled several strategic partnerships with Google in his role as Operations Partner. These partnerships include (1) Lime; (2) Voltus; (3) Streetlight Data; (4) Descartes Lab; and (5) Regrow. Again, this argument is frivolous, lacks any merit, and makes substantial misrepresentations of the record provided.

To begin, it is true that the undersigned’s husband has been an Operations Partner at Ajax since April 2022. However, plaintiff seeks to create an inference that the undersigned’s husband has equity in Ajax based solely on the title “Operations Partner.” Plaintiff is wrong. The undersigned’s husband is a contractor for Ajax with no equity in any Ajax portfolio.

In his role as an Operations Partner, he represents Ajax’s interests by serving on the board of Natel and as a board advisor to another company not implicated in the motion.¹² These are his only engagements. Despite plaintiff’s bald accusations, the undersigned’s husband has no interest or relationship with Lime, Voltus, Streetlight Data, Descartes Lab, Regrow, and Ripple Foods. Planet Labs, which is identified in the motion, is one of approximately sixty customers of Natel’s software business. He has no equity interest in Planet Labs, at most his affiliation is attenuated.¹³

unaccompanied by special circumstances suggesting that the selection of the spouse or spouse’s business may have been influenced by the judge’s position, recusal is ordinarily not required.” This applies with equal force here. Adopting plaintiff’s contrary theory would mean the undersigned is required to recuse anytime a business integrates something as simple as a Google search into its internal platforms. No authority supports such a grasping theory.

¹² In furtherance of transparency, the company is Ojjo. The undersigned knows of no affiliations with Google, Ojjo, and other parties in this case that would justify recusal.

¹³ While the foregoing is sufficient to dispense of the motion with respect to all Ajax

1 Other evidentiary submissions are similarly deficient. One, to create the appearance of a
 2 non-existent personal interest to Ripple Foods, plaintiff relies upon a July 14, 2016, article from
 3 AgFunder Network Partners to note that Ripple Foods raised \$30 million from Google and other
 4 investors. Per plaintiff’s own evidence, this alleged conduct pre-dates the undersigned’s
 5 husband’s tenure by approximately six years. No evidence supports any personal affiliation
 6 because none exists. Two, with respect to Streetlight Data, the sole exhibit relied upon is from
 7 April 7, 2020, which would predate any personal affiliation with Ajax by two years. No evidence
 8 supports any personal affiliation because none exists. Three, with respect to Lime’s nexus to
 9 Ajax, plaintiff relies upon a blog post from Lime that apparently touts the benefits it obtains from
 10 Google. No evidence supports any personal affiliation because none exists. Four, as to Descartes
 11 Lab, Regrow, and Voltus, no evidence supports any personal affiliation because none exists.

12 Once more, plaintiff carries a heavy burden to justify disqualification. Relying on nothing
 13 but speculation, it has failed to demonstrate that the undersigned or her husband have a material
 14 financial stake in the outcome of this case due to Ajax’s affiliations and there is no other reason
 15 why the undersigned’s impartiality might reasonably be questioned. The motion is denied on this
 16 basis.

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 21 affiliations, the Court makes note of additional attenuated arguments for recusal that fail to
 22 persuade. First, plaintiff speculates that Natel’s foundation was improper and bears on this
 23 litigation. This is false. Natel was funded in 2009 by a grant from the U.S. Department of Energy
 24 (“DOE”), which overlaps with the undersigned’s husband’s tenure as senior advisor to the U.S.
 25 Secretary of Energy. The undersigned’s husband had no personal involvement with awarding a
 26 grant to Natel. However, the DOE’s funding of Natel from a decade prior is so attenuated, recusal
 27 is not warranted, and the nexus to these proceedings is speculative at best. Attenuated speculation
 28 is insufficient to support recusal.

29 Second, plaintiff relies on a “Power Technology” article to suggest that Natel was funded
 30 by Google in November 2019. Not only was the article dated over two years before any
 31 connection to Ajax, plaintiff misrepresents the substance of the article. As noted, plaintiff
 32 represents that Google funded Natel as shown by the article. However, the article only indicates
 33 that Google funded eleven start-ups. Unrelated to this funding, the article then proceeds
 34 generically to describe five companies that received funding during the COVID-19 pandemic,
 35 including Natel. According to the article, Natel secured funding from two venture funds. It does
 36 not establish that Google invested in Natel. The undersigned and her husband have no knowledge
 37 of any investment by Google into Natel.

3. *Financial Investments*

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Lastly, plaintiff criticizes the Court for three investments that the undersigned has disclosed since her nomination to the bench in 2011. These include a Vanguard 500 Index Fund, a Vanguard Total International Stock Index Fund, and the Special Situations Fund. Each is addressed in turn.

a. Vanguard Funds

Given the substantial overlap concerning the Vanguard 500 Index Fund and Vanguard Total International Stock Index Fund, the Court addresses both together. According to the plaintiff, Google is a Top 10 holding in the Vanguard Index Fund and public sources confirm that it includes significant shares of Nike, Under Armour, Garmin, and Fossil. As to the Vanguard Total International Stock Index, plaintiff alleges that it is publicly known that Samsung and Nikon are significant holdings, and this is significant since Under Armour's accused devices are made by Samsung. With respect to each fund, plaintiff argues that the undersigned somehow actively manages the investments. Ultimately, this argument is divorced from law and fact, and does not justify recusal.¹⁴

As set forth above, judges must disqualify themselves from a case where it is known that the judge or his or her spouse has "a financial interest in the subject matter in controversy or in a party to the proceeding[.]" 28 U.S.C. § 455(b)(4). However, the same statutory scheme expressly provides that "[o]wnership in a mutual or common investment fund that holds securities is not a 'financial interest' in such securities unless the judge participates in the management of the fund." 28 U.S.C. § 455(d)(4)(i). Similarly, Canon 3C(1)(c) of the Judicial Code of Conduct applicable to judges requires disqualification when the judge knowingly "has a financial interest in the subject matter in controversy or in a party to the proceeding," or when the judge has "any other interest that could be affected substantially by the outcome of the proceeding." Again, pursuant to Canon

¹⁴ Plaintiff argues in reply that the defendants should have affirmatively denied the undersigned's financial relationships to aid public perception. Again, the attorney argument, which is devoid of any citation to legal authority, is inconsistent with law placing a heavy burden on plaintiff as the party seeking recusal. Despite having no obligation to respond, defendants went to great lengths to debunk plaintiff's new conspiracy to evade appeal. The truth prevalent in those oppositions is one the plaintiff ignores in lodging new criticism at the defendants.

1 3C(3)(c)(i), “ownership in a mutual or common investment fund that holds securities is not a
2 ‘financial interest’ in such securities unless the judge participates in the management of the fund.”
3 What qualifies as a “mutual or common investment fund” is not defined. While not binding, the
4 Committee on Codes of Conduct Advisory Opinion No. 106 is instructive.¹⁵ That opinion lists six
5 factors for consideration: “(1) the number of participants in the fund; (2) the size and diversity of
6 fund investments; (3) the ability of participants to direct their investments; (4) the ease of access to
7 and frequency of information provided about the fund portfolio; (5) the pace of turnover in fund
8 investments; and (6) any ownership interest investors have in the individual assets of the fund.”
9 Moreover, “most mutual funds that are registered with the Securities and Exchange Commission
10 and sold to the public as mutual funds will likely meet the criteria above.” (*Id.*)

11 Based upon undisputed facts,¹⁶ the Vanguard investments at issue are prototypical
12 examples falling into the safe harbors for mutual or common investment funds. Both are
13 registered with the SEC and are sold as mutual funds. Each has separate portfolio managers. Both
14 funds are also diversified and extremely large. For instance, the Vanguard 500 Index Fund
15 investments in over 500 stocks across different sectors of the economy. The reach of the
16 Vanguard Total International Stock Index Fund is global, with almost 8,000 stocks across myriad
17 markets and sectors. Investors in both funds do not obtain any ownership interests in the funds’
18 underlying assets, including by directly holding the stocks. Furthermore, despite plaintiff’s bald
19 and self-serving suggestion, the undersigned does not manage, direct, or control the funds’
20 investments. Both funds clearly fall within the safe harbor exemption.

21 Plaintiff has not proffered any legal authority to support its illusory assertion that the
22 investments at issue here are somehow not exempt, especially considering that the undersigned
23 has no control over the management of the large and extremely diversified portfolios. Instead,
24 plaintiff places substantial reliance on the Federal Circuit’s recent decision in *Centripetal*

25 _____
26 ¹⁵ See Guide to Judiciary Policy, Vol. 2, Pt. B, Sec. 106,
https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02_0.pdf.

27 ¹⁶ To the extent the parties’ papers ask for the Court to take judicial notice of public
28 information concerning the funds at issue, those requests are granted. The documents are given
their appropriate weight.

1 *Networks, Inc. v. Cisco Systems, Inc.*, 38 F.4th 1025 (2022), which is far removed from the
 2 circumstances here. In *Centripetal Networks*, a spouse of the judge *directly* held stock in one of
 3 the parties to the case and the judge continued to preside over the case once it became known that
 4 the spouse had a *direct* interest. *Id.* at 1028-30. Disclosing that interest and placing the stocks in a
 5 blind trust *after the fact* did not spare the judge from recusal. *Id.* The Federal Circuit had no issue
 6 finding that the direct stock ownership was a financial interest that required disqualification or
 7 divestment, and that the district court ran afoul of its statutory obligations by continuing to hold
 8 that known interest during the proceedings. Here, there is no “financial interest” within the
 9 meaning of section 255 because the investments are exempt funds precluding the undersigned
 10 from directly holding stocks of any party to these proceedings.¹⁷ Notably, plaintiff’s papers ignore
 11 that courts have been in accord in reaching the same finding with respect to Vanguard funds.¹⁸
 12 There is no reason to reach a contrary result now.

13 Echoing prior findings, the undersigned has no material financial stake in the outcome of

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 16 ¹⁷ Plaintiff argues that the Court must hold stocks in its investments because the Court
 17 recused itself without explanation in *Geographic Location Innovations, LLC v. Health Mart*
 18 *Systems, Inc.*, No. 21-cv-05155-YGR, Dkt. No. 21 (N.D. Cal. 2021). According to the plaintiff,
 the Court must have recused because a defendant disclosed that it was owned by McKesson
 Corporation and McKesson is listed in the funds. The prior recusal did not concern any financial
 interest.

19 ¹⁸ See, e.g., *David v. GMAC Mortg., LLC*, No. C11-2914 PJH, 2011 WL 6078272, at *1
 20 (N.D. Cal. Dec. 6, 2011) (concerning Vanguard 500 Index Fund); *Arunachalam v. Pazuniak*, No.
 21 14-cv-05051-JST, Dkt. Nos. 57 at 6 and 57-2 (N.D. Cal. Jan. 08, 2015) (identifying Vanguard
 22 investments in motion papers); *Arunachalam v. Pazuniak*, No. 14-cv-05051-JST, 2015 WL
 23 12839126, at *1-2 (N.D. Cal. Feb. 9, 2015) (finding funds within safe harbor); *Pi-Net Int’l, Inc. v.*
 24 *Citizens Fin. Grp., Inc.*, No. 12-cv-355-RGA, 2015 WL 1283196, at *4 (D. Del. Mar. 18, 2015)
 (concerning Vanguard Institutional Index); *Bank of Am., N.A. v. Martinson*, No. 10-cv-10-WMC,
 2013 WL 12234207, at *1 (W.D. Wis. Jan. 3, 2013) (concerning Vanguard Institutional Index);
 25 *Huebner v. Midland Credit Mgmt.*, No. 14-6046, 2015 WL 1966280, at *3 (E.D.N.Y. May 1,
 2015) (concerning Vanguard Group, Inc. portfolios).

26 In order to create an impression that judicial ethics have been substantially over-hauled to
 27 cast doubt on this line of authority, plaintiff relies upon the passage of the Courthouse Ethics and
 28 Transparency Act, Pub. L. No. 117-125, 136 Stat. 1205 (2022), which generally modified the
 accessibility and timeliness of financial disclosures and potential conflicts of interest. The
 backdrop to this law was the failure of certain judges to disclose direct stock holdings in cases
 where they presided. However, the law did not change section 455. The undersigned holds no
 such interests that would have required further disclosure in these proceedings and has timely filed
 financial disclosures consistent with the undersigned’s obligations.

1 this case because of the Vanguard investments and there is no other reason why her impartiality
2 might reasonably be questioned. The motion for recusal is denied on this basis.

3 *b. Special Situations Fund*

4 Finally, plaintiff notes that the undersigned's 2020 Financial Disclosure identifies the
5 Special Situations Fund as an investment. In short, plaintiff asserts that the Special Situations
6 Fund is opaque and that "[a] huge portion of this opaque investment could be in Big Tech stocks
7 like the defendants in this case." (Dkt. No. 366 at 23.) Because of this investment, plaintiff
8 argues that the Court should be recused from this case and all other "Big Tech" cases. Again, this
9 argument fails.

10 To begin, the Court sets aside the obvious point that plaintiff does not have standing to
11 challenge the undersigned's ability to preside over other cases. While plaintiff has no actual
12 evidence and proffers only speculation, the Court notes for transparency purposes that the Special
13 Situations Fund is managed by the McKinsey Investment Office ("MIO") and functions in essence
14 like a mutual fund where the undersigned has no knowledge or control of the investments being
15 made. The only choice is deciding how much to invest.

16 Pursuant to MIO's public website, it is "a subsidiary of McKinsey & Company and a
17 registered investment adviser regulated by the Securities and Exchange Commission in the US,"
18 and it "invest[s] the retirement assets for the global McKinsey pension plans."¹⁹ Of note, "MIO's
19 investment operations are intentionally separated from McKinsey's consulting operations. *MIO*
20 *does not trade individual stocks or bonds of any public or private company anywhere in the world,*
21 *except in the specific case of credit-default swaps for counterparty hedging. Our macro trading*
22 *strategies involve trading in major asset classes such as sovereign debt, commodities, foreign*
23 *exchange, equity indices, and credit indices." (Emphasis supplied.) Thus, investors such as the*
24 *undersigned do not directly own stocks, however, like the Vanguard funds discussed above,*
25 *individual unknown funds within the Special Situations Fund may separately hold securities.*
26 *Investors do not directly hold public stocks, do not have knowledge of the particular assets that the*

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28 ¹⁹ See <https://miopartners.com/>.

United States District Court
Northern District of California

1 fund invests in, are denied access to that information when requested, and have no influence on the
2 assets that are pursued. The undersigned and her husband have no control over the fund, have no
3 reason to question the public representations made by MIO on its website, and have no knowledge
4 of any underlying assets directly being held in our names. Thus, plaintiff’s suggestion that the
5 fund lacks any public transparency and is comprised of the defendants’ stock is misplaced.²⁰ The
6 examples outlined in Advisory Opinion No. 106 further demonstrate that investments into a
7 mutual fund such as this is appropriate where there is no information available to investors about
8 the assets and there is no direct control in the investments.

9 Again, the undersigned has no material financial stake in the outcome of this case because
10 of the Special Situations Fund and there is no other reason why her impartiality might reasonably
11 be questioned. The motion for recusal is denied on this basis.

12 **IV. CONCLUSION**

13 As is demonstrated by this Order, the pending motion lacks any substantive basis tethered
14 to law or fact to support recusal or vacatur. Thus, one can only surmise that plaintiff and its
15 lawyers brought the motion for tactical advantage. The Court will not reward such conduct. The
16 motion is denied.

17 This Order terminates Docket Number 366.

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19 **IT IS SO ORDERED.**

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21 Dated: February 15, 2023


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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26 ²⁰ Plaintiff suggests that holding this investment is improper because a nominee agreed to
27 divest her interest in the fund in connection with her confirmation to the Office of Management
28 and Budget (“OMB”). The relevance for plaintiff’s theory is attenuated. OMB personnel are not
governed by section 455 or the Judicial Code of Conduct, a point plaintiff concedes in reply. In
fact, the evidence relied upon confirms that the nominee was not provided with information
concerning assets when requested.

1 Randall T. Garteiser (CA State Bar No. 231821)
2 rgarteiser@ghiplaw.com
3 Christopher A. Honea (CA State Bar No. 232473)
4 chonea@ghiplaw.com
5 M. Scott Fuller (TX State Bar No. 24036607)
6 sfuller@ghiplaw.com
7 GARTEISER HONEA
8 95 Third St., Floor 2, San Francisco, CA 94103
9 119 W Ferguson, Tyler, TX 75702
10 Tel: (888) 908-4400

11 Attorneys For Plaintiff,
12 CELLSPIN SOFT INC.

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 CELLSPIN SOFT, INC.,

16 Plaintiff

17 v.

18 FITBIT LLC.,
19 MOOV, INC.,
20 NIKE, INC.,
21 UNDER ARMOUR, INC.,
22 FOSSIL GROUP, ET AL.,
23 GARMIN INTERN., INC., ET AL.,
24 NIKON AMERICAS, INC.,

25 Defendants.

26 **Motion for Recusal Pursuant to**
27 **Section 455**

28 Case No. 4:17-CV-05928-YGR
Case No. 4:17-CV-05929-YGR
Case No. 4:17-CV-05930-YGR
Case No. 4:17-CV-05932-YGR
Case No. 4:17-CV-05933-YGR
Case No. 4:17-CV-05934-YGR
Case No. 4:17-CV-05936-YGR

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I. INTRODUCTION

Pursuant to Title 28 U.S.C. §§ 455(a), (b), (c), and (d), Plaintiff Cellspin moves for an Order recusing the Honorable Yvonne Gonzalez Rogers from the Google (Fitbit, Inc.) litigation, and its related cases. As a result of Section 455 violations, Plaintiff Cellspin moves to vacate entry of the joint Summary Judgement Order in favor of all Defendants and all subsequent orders thereto. In February 2021, it was reported to the Court in a Rule 7.1 disclosure that Google had acquired all of Fitbit, Inc., a defendant in this litigation. Meanwhile, Judge Gonzalez Rogers' husband had substantial business ties with Google as an Operating Partner at Ajax Strategies Inc., a Venture Capital Firm taking Google funding to operate three start-ups and having a strategic partnerships with Google for five of his other startups. Further, Mr. Rogers had a role as Senior Executive at McKinsey and Company ("McKinsey"), which has a strategic partnership to profit for itself and its clients through the use of Google Cloud. Still further, Judge Gonzalez Rogers had investments in S&P Index funds via Vanguard, and it is commonly known that Google (Alphabet), Apple, Microsoft, Amazon and Facebook make up 17.5% of the S&P. So akin to putting Cisco stock in a blind trust, was not divestiture under Section 455(f), here, placing money into an Index fund, ensures a direct financial interest in Big Tech, including Defendant Alphabet (Google). The opaque investment holding of "McKinsey & Company Special Situations Aggressive Long-Term" of anywhere between \$5Million - \$25 Million. "McKinsey & Company Special Situations Aggressive Long-Term" investment is not a mutual fund or a common investment fund and public does not know the stock holdings in this investment.

Here, Section 455(a) (b) (c) and (d) requires recusal. *See* 28 U.S.C. § 455. It provides, in relevant part: "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Id.*

Cellspin had independent patent infringement reports prepared after extensive testing of the accused instrumentalities by its technology expert. But the Court failed to credit such reports. The Court also ignored the judicial standard of the Ninth Circuit to deny motions for

1 summary judgment where material factual disputes, here among technical experts, exists and
2 are credible over whether citations to the source code performing the claim limitation was
3 sufficient or conclusory.

4 It was improper for Judge Gonzalez Rogers to weigh the evidence herself due to her
5 bias. In doing so, she took away the due process of Cellspin to be afforded by an objective
6 fact-finding weighing the material factual disputes to come to an independent ruling on the
7 question of patent infringement. Upon learning of this Court's conflicts of interests that
8 explain her rulings in hindsight, Cellspin now moves to vacate or void her summary
9 judgment order and recuse herself from this litigation going forward. *See* Fed.R.Civ.P. 60;
10 28 U.S.C. § 455.

11 12 **II. LEGAL STANDARD.**

13 A judge “shall disqualify himself in any proceeding in which his impartiality might
14 **reasonably be questioned.**” 28 U.S.C. § 455(a) (emphasis added). “To determine under
15 Section 455(a) whether a district judge should be removed for possible bias or prejudice, the
16 court should ‘ask whether a reasonable person with knowledge of all the facts would
17 conclude that the judge’s impartiality might reasonably be questioned.’” *United States v.*
18 *Holland*, 519 F.3d 909, 913 (9th Cir. 2008) (citations and internal quotation marks omitted).

19 “[F]ederal judges must maintain the appearance of impartiality” because “[d]eference
20 to the judgments and rulings of courts depends upon public confidence in the integrity and
21 independence of judges.” *United States v. Microsoft Corp.*, 253 F.3d 34, 115 (D.C. Cir.
22 2001) (quoting Code of Conduct Canon 1 cmt.).

23 A “bright-line rule that a federal judge is disqualified ‘based on a known financial
24 interest in a party.’” *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 127 (2d
25 Cir. 2003). “Section 455(f) stands as the only exception.” *Centripetal Networks, Inc. v. Cisco*
26 *Sys., Inc.*, 38 F.4th 1025, 1030 (Fed. Cir. 2022). “What must be ‘divested’ under § 455(f) is
27 ‘the financial interest’ giving rise to the disqualification.” *Id.* at 1032. “The statute defines
28 ‘financial interest’ as ‘ownership of a legal or equitable interest, however small.’” *Id.* (citing

1 § 455(d)(4)). “Thus, it logically follows that to ‘divest’ oneself of ‘ownership’ of a legal or
 2 equitable interest is possible **only if** one is ‘deprived or dispossesse[d]’ of ownership—
 3 something that is possible **only if the interest is sold or given away.**” *Centripetal*, 38 F.4th
 4 at 1032 (emphasis added).

5 “Also telling is Congress’s use of the present tense in § 455(b)(4), providing that a
 6 **judge should not sit when he or she ‘has a financial interest’ in a party.** That verb usage
 7 suggests that **selling or donating the stock is the only cure envisioned under § 455(f).**”
 8 *Centripetal*, 38 F.4th at 1032 (emphasis added).

9 Title 28 U.S.C. § 455(b) requires that a judge disqualify herself in certain
 10 circumstances in which her impartiality might be reasonably questioned. The provision is
 11 **self-enforcing on the part of the judge.** *See United States v. Pearson*, 203 F.3d 1243, 1276
 12 (10th Cir. 2000). Simply put, “[w]hat matters is not the reality of bias or prejudice but its
 13 **appearance.**” *Liteky v. United States*, 510 U.S. 540, 548 (1994) (explaining perception is
 14 reality when judicial ethics are at issue).

15 **III. ARGUMENT**

16 Judge Gonzalez Rogers had a financial interest in Defendant Google (Fitbit) through
 17 three separate bases. First, her husband has a financial interest in Google through his
 18 employment at McKinsey. Second, her husband has a financial interest in his employment
 19 as Operating “Partner” at Ajax Strategies Venture Capital firm where he handles over eight
 20 (8) companies funded and/or in partnership with Google. Third, Judge Gonzalez Rogers and
 21 her husband together have stock investments in Google through Index funds that objectively
 22 include controlling an investment in Google stock ownership by selecting an Index Fund as
 23 Google is a major proportion of any Index Fund.

24 25 **A. Google buys Defendant Fitbit in 2021 – Exchanges Delists Fitbit (only stock 26 ticker GOOG publicly traded henceforth).**

27 On January 14, 2021, the very publicly disclosed Google acquisition of Fitbit that
 28 began to be publicized in mid-2020 became complete. *See* Exhibit 36. On February 3, 2021,
 Google submitted for Judge Gonzalez Rogers’ review of any conflicts a supplemental

1 disclosure of interested parties listing Google as its acquirer of all Fitbit’s stock. *See Cellspin*
 2 *Soft v. Fitbit, Inc.*, 4:17-cv-05928-YGR (N.D. Cal. Feb. 3, 2021), Dkt. No. 165 (“FitBit
 3 further discloses that it is a subsidiary of Google LLC, which is a subsidiary of XXVI
 4 Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company.
 5 [hereinafter collectively referred to as ‘Google’]”), Exhibit 37. Google’s acquisition of Fitbit
 6 was big news covered around the world, including in the media, Google blogs and Fitbit
 7 blogs. *See e.g.* Exhibit 36.

8 **B. Judge Gonzalez Rogers Understood Her Obligations for Recusal.**

9 In her Senate confirmation responses, The Honorable Yvonne Gonzalez Rogers
 10 disclosed that if a ‘primary’ client of her husband’s consulting firm, McKinsey, became a
 11 party before her, she would have to recuse herself. *See* Exhibit 1, p. 35.

12 **24. Potential Conflicts of Interest:**

- 13 a. Identify the family members or other persons, parties, categories of litigation, and
 14 financial arrangements that are likely to present potential conflicts-of-interest
 15 when you first assume the position to which you have been nominated. Explain
 16 how you would address any such conflict if it were to arise.

17 As a former partner at Cooley LLP, I do have some investments in two Venture
 18 Capital Investment Funds. If confirmed, and given that there is no “de minimus”
 19 exception for recusal based on financial interest, I anticipate that I would need to
 20 divest myself of those interests even though I have no role in the management of
 21 the funds or any involvement with the companies. I do not anticipate any other
 22 likely financial conflicts.

23 My husband is a senior partner with McKinsey & Company. Matters relating to
 24 McKinsey and, more broadly, to my husband’s primary clients would also likely
 25 require recusal. In addition, he served as the Senior Advisor to Secretary Chu in
 26 the Department of Energy from February 2009 through September 2010. In that
 27 capacity he oversaw the Department of Energy’s \$32.7 billion in grant and
 28 contract authority and \$136 billion in loan guarantees. Any cases regarding the
 granting of those funds and/or guarantees would also likely require recusal.

24 **Yvonne Gonzalez Rogers Answers to United States Senate Committee on the Judiciary,** 25 **Questionnaire for Judicial Nominees, Exhibit 1, Excerpt from Page 35.**

26 Here, Judge Gonzalez Rogers husband’s company, McKinsey, has a strategic
 27 partnership with Google, a defendant adverse to Cellspin in this litigation. McKinsey even
 28 partners with Google on joint business initiatives relating to assisting their clients with

1 logistics, manufacturing optimization (including in the **oil and gas** sector), cloud storage and
2 even using Google’s satellite imagery to predict problems with high voltage transmission
3 lines. Also, Judge Gonzalez Rogers owns and has not divested stock market index funds
4 investing in Defendant Google, which definitely qualifies as much more than a “*de minimus*”
5 amount given the 2020 holdings indicate more than \$5 million invested.

6 Not only is her husband’s financial interest in Google through his job at McKinsey, he
7 appears to have taken on an additional position as an Operating “Partner” for Google
8 financed startups through Ajax Strategies Venture Capital firm starting in March 2022. *See*
9 Exhibit 2.

10 Thus, the reasonable and objective perception is that Judge Gonzalez Rogers is biased
11 in favor of Defendant Google (appearing as Fitbit) and, or at a minimum, she is biased
12 against any company that would make accusations against Google. But here the perception
13 is the reality as her financial interests in Google and other big technology companies like
14 Apple and Samsung are explained below.

15 **C. Judge Gonzalez Roger’s Husband, a Senior Partner at McKinsey, Benefits**
16 **from McKinsey’s Partnership with Google.**

17 Judge Gonzalez Rogers’ husband, Matt Roger, is a Senior Partner at McKinsey. *See*
18 Exhibit 1 at 35 (“My husband is a senior partner at McKinsey & Company”). He consults in
19 the oil, gas, and energy sector. McKinsey works with Google in the oil, gas, and energy
20 sector, among others. *See e.g.* Exhibits 2, 3, 4, 5, 6. Google and McKinsey teamed up to
21 assist their oil, gas, and energy sector clients with logistics.

22 For an **oil and gas** client, McKinsey used Google Cloud to improve refinery
23 performance. As a senior partner in McKinsey’s energy group, he has authored well over 20
24 articles related to oil and gas for McKinsey. Here for their oil and gas client, McKinsey used
25 Google Cloud to achieve “[r]educed energy consumption and enabled predictive
26 maintenance through real-time alerts to managers based on digitally integrating more than
27 300 variables in refinery management.” Exhibit 5.
28

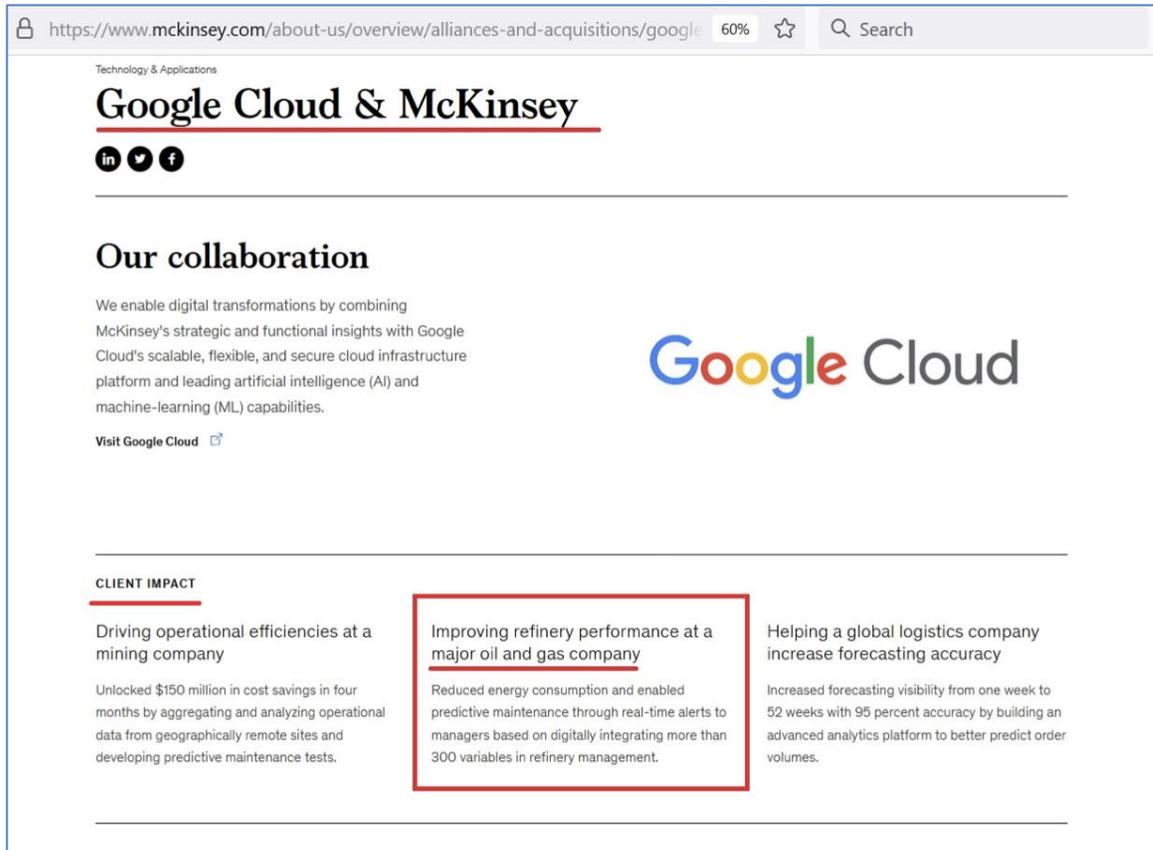


Exhibit 5 excerpt from McKenzie website.¹

Google being a client and partner of McKinsey is well-known and openly promoted by McKinsey through its naming of Google in its “open ecosystem of alliances and acquisitions.” Exhibit 3 at 1. McKinsey explains its collaboration with Google as follows: “We enable digital transformations by combining McKinsey’s strategic and functional insights with Google Cloud’s scalable, flexible, and secure cloud infrastructure platform and leading artificial intelligence (AI) and machine-learning (ML) capabilities.” Exhibit 5 at 1.

¹ Last visited on January 18, 2023, at <https://www.mckinsey.com/about-us/overview/alliances-and-acquisitions/google-cloud-and-mckinsey> (Exhibit 5).



Exhibit 5 - McKinsey website Promoting Google Cloud with Its Services.²

Indeed, McKinsey articles promoting itself and Google Cloud go as far as providing a link to “Visit Google Cloud.” See e.g. Exhibit 5 at 2.

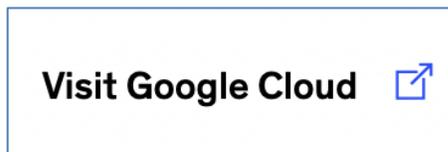
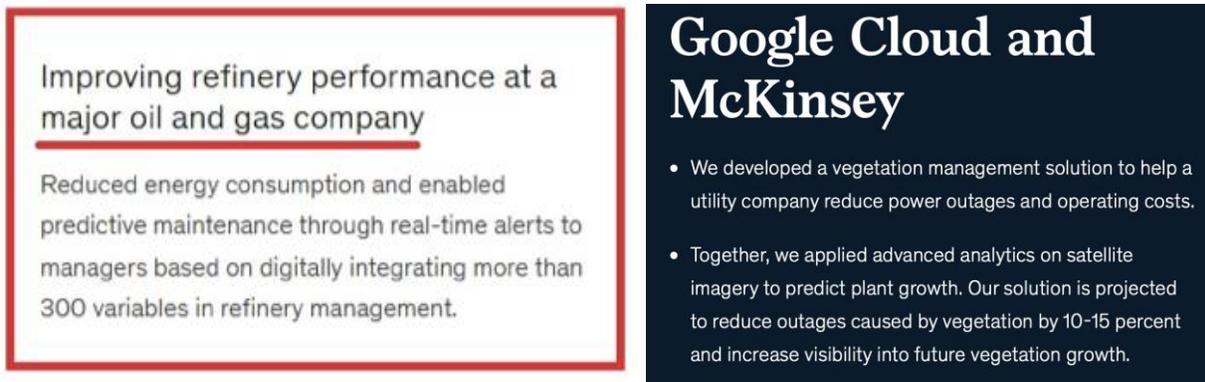


Exhibit 5 - McKinsey website hyper-linking to the Google Cloud website.

“McKinsey’s open ecosystem of alliances and acquisitions, a dynamic and continuously evolving group of leading organizations—including AWS, **Google**, Microsoft, and SAP—that **helps our clients** keep up with the rapid pace of change and stay resilient in times of uncertainty.” Exhibit 3 at 1.



Excerpts from McKinsey websites (Exhibits 5 and 4)³

² Last visited on January 18, 2023 at <https://www.mckinsey.com/about-us/overview/alliances-and-acquisitions/google-cloud-and-mckinsey> (Exhibit 5).

³ Last visited on January 18, 2023, at <https://www.mckinsey.com/about-us/overview/alliances-and-acquisitions/google-cloud-and-mckinsey> (Exhibit 5a).

1 McKinsey assisted its Energy Sector client in avoiding more forest fires and
2 associated power outages in California. This was in the wake of the 2021 Dixon Fire that
3 destroyed 1,300 homes in Northern California. *See* Exhibit 5a (“Our [McKinsey] solution is
4 projected to reduce outages caused by vegetation . . .”).

5 “W]hat matters is not the reality of bias or prejudice but its appearance.” *Liteky v.*
6 *United States*, 510 U.S. 540, 548 (1994). Here, the husband of Judge Gonzalez Rogers being
7 a senior partner at McKinsey & Company (with a salary plus bonus speculated to be more
8 than \$1,000,000.00 a year) doing substantial business with Google looks inappropriate for
9 Google to appear before Judge Gonzalez Rogers. Google and her husband’s firm provide for
10 profit joint solutions to their clients, which creates the objective appearance that she would
11 be biased in favor of Google. *See United States v. Holland*, 519 F.3d 909, 913 (9th Cir.
12 2008); *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, 38 F.4th 1025, 1030 (Fed. Cir. 2022).
13 This objective appearance becomes even more pronounced in view of Judge Gonzalez
14 Rogers’ rulings against Cellspin and in favor of Google (including the earlier reversal by the
15 Federal Circuit on the § 101 issue).

16 **D. Judge Gonzalez Roger’s Husband, an Operations Partner at Ajax Strategies,**
17 **Obtains Financial Benefits from Defendant Google.**

18 Since at least March of 2022, **Matt Rogers** oversees the operations of three start-up
19 companies funded by Google, as an Operations Partner at Ajax Strategies. *See* Exhibit 6.
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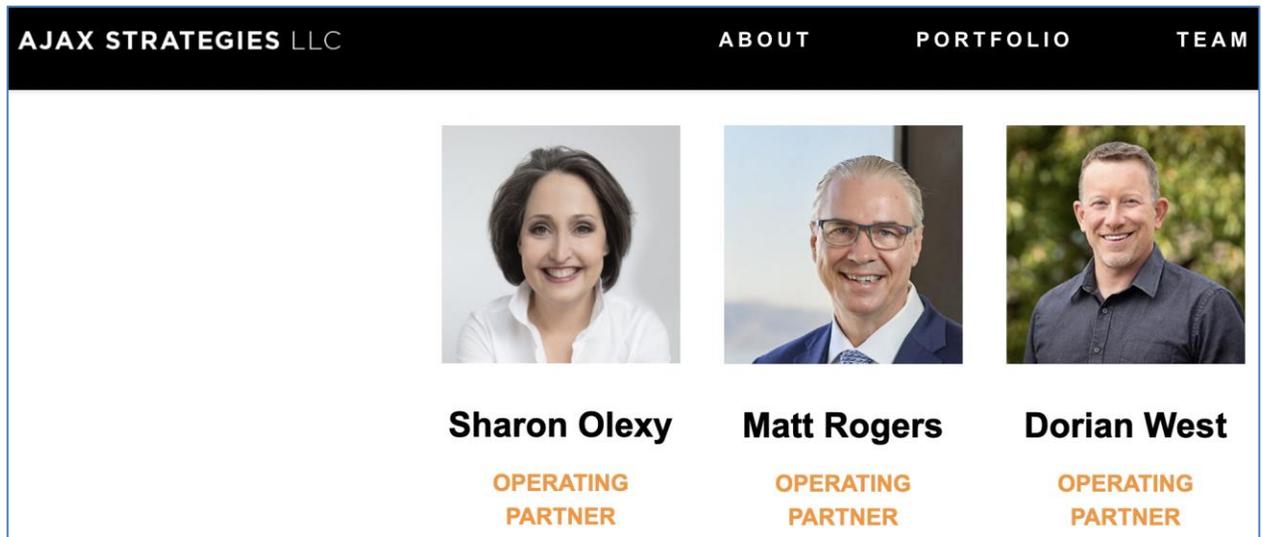


Exhibit 2 – Excerpt from Ajax Strategies LLC’s Website.⁴

“Ajax Strategies is a Venture Capital and Private Equity Firm in San Francisco, CA.” *Id.* Ajax Strategies indicates it is “[i]nvesting in next generation technologies to solve climate change.” *Id.*, see also Exhibit 7. This is a financial interest in Defendant Google that cannot be divested. It involves both (1) Google funding three start-up companies being operated by Ajax Strategies with *operating partner* Matt Rogers and (2) Google having a partnership with five other Ajax Strategies start-up companies. See Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16. It is a “bright-line rule that a federal judge is disqualified ‘based on a known financial interest in a party.’” *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 127 (2d Cir. 2003). “Section 455(f) stands as the only exception.” *Centripetal Networks, Inc. Cisco Sys., Inc.*, 38 F.4th 1025, 1030 (Fed. Cir. 2022). Here, Judge Gonzalez Rogers has not and cannot divest these financial interests she has in Defendant Google, which acquired Fitbit during this litigation in 2021.

⁴ Last Visited on January 18, 2023 at <https://www.ajaxinvestmentstrategies.com/home/#team> (Exhibit 6).

Experience

Ajax Strategies
Operating Partner
April 2022 - Present (10 months)
San Francisco Bay Area

McKinsey & Company
12 years 4 months
Senior Partner Emeritus
August 2021 - Present (1 year 6 months)
San Francisco Bay Area

Focused on energy, sustainability and the energy transition

Exhibit 2 – Excerpt from Matt Rogers LinkedIn Account Profile.

1. Operating Partner Matt Rogers Works with Three Google Funded Start-Ups.

As an Operating Partner at Ajax Strategies, Rogers works directly with at least Google funded Planet Labs, Inc., Natel Energy, and Ripple Foods.

a. Google Funded Planet Labs, Inc.

“Planet will have more than \$500 million on its balance sheet,” after private investment in public equity joined by Google. Exhibit 8. Ajax Consulting has had and appears to maintain a relationship with Planet, which benefits its Partners, including Rogers. See Exhibit 9.⁵



Satellite imagery company Planet goes public, with \$300 million ‘war chest’ aft...

Closing its merger nets Planet more than \$590 million in gross proceeds, with capital from dMY as well as a PIPE round – or private investment in public equity – led by BlackRock and joined by Google , Koch, and Marc Benioff’s TIME Ventures. After SPAC transaction fees and paying off debt, Johnson said Planet will have more than \$500 million on its balance sheet.

⁵ Last visited on January 19, 2023, at <https://www.ajaxinvestmentstrategies.com/news> (Exhibit 9).

1 *CNBC Notice of Funding by Google among others in Planet Labs, Inc. (Exhibit 8⁶).*

2 **b. Operating Partner Rogers Oversees Google Funded Natel Energy.**

3 In November 2019, Google announced its investment in Natel Energy, a company
4 designed to the United Nations Sustainable Development Goals (SDGs). *See* Exhibit 10.
5 Rogers has a financial interest in this Google funded Natel Energy that originally started
6 apparently from a U.S. Energy Grant when Rogers worked with government. *See*



8 *Excerpt from Natel Energy Website.⁷*

9 Ajax Strategies maintains a relationship with Natel Energy. *See* Exhibit 7.

10 **c. Operating Partner Rogers Overseas Google Funded Ripple Foods.**

11 “Ripple Foods Raises \$30m from Google Ventures, Khosla, S2G, Tao Capital.” *See*
12 Exhibit 11. “Ripple Foods, which makes non-dairy milk products with eight times the
13 protein as almond milk and half the sugar of dairy milk, has closed a \$30 million Series B
14 round” with investment by Google among others. (Exhibit 11).



16 *Ripple Foods*, which makes non-dairy milk products with eight times the protein as almond milk and half the
17 sugar of dairy milk, has closed a \$30 million Series B round led by *GV*, Google’s venture investment arm.

18 **2. Operating Partner Rogers Partners With Google on Five Ajax**

19 ⁶ Last visited on January 18, 2023, at [https://www.cnbc.com/2021/12/08/satellite-imagery-company-planet-](https://www.cnbc.com/2021/12/08/satellite-imagery-company-planet-begins-trading-on-the-nyse.html)
20 [begins-trading-on-the-nyse.html](https://www.cnbc.com/2021/12/08/satellite-imagery-company-planet-begins-trading-on-the-nyse.html) (Exhibit 8).

21 ⁷ Last visited on January 18, 2023, at <https://www.natelenergy.com/about>.

Strategies Start-Ups.

As an Operating Partner at Ajax Strategies, Matt Rogers has handled several strategic partnerships with Google, separate from his involvement with Google funded start-ups. These Google partnerships involving Ajax Strategies' companies, include at a minimum (1) Lime, (2) Voltus, (3) Streetlight Data, (4) Descartes Lab, and (5) Regrow.

a. Roger's Ajax Company "Lime" has a Partnership with Google.

As an Operating Partner at Ajax Strategies LLC, its startup Lime relies exclusively on Google Maps to locate Lime scooters or Lime bikes. *See* Exhibit 12. "Lime's integration with Google Maps last December was an industry first, extending the reach of micromobility to one of the world's most popular GPS mapping services." *Id.* Lime touts the benefits from its collaborative efforts with Google. *Id.*

Ajax Operating Partner Rogers has a financial interest in Lime. And Lime bases about half of its entire business model on Google. Ajax's startup Lime is heavily dependent upon the financial viability of Google, which demonstrates Section 455(b) financial interest that Rogers has in Google, which has not been divested by Judge Gonzalez Rogers.

b. Roger's Ajax Company "Voltus" has a Partnership with Google.

As an Operating Partner at Ajax Strategies LLC, its startup Voltus in April 2022 jointly launched software products with Google. *See* Exhibit 13. "Voltus, Resideo, and Google Nest to Launch First Bring-Your-Own-Thermostat Program That Delivers Grid Support During Unplanned Power Plant Outages and Periods of Peak Demand"

The press release on 6th of April 2022 states that "**Voltus, Inc.** ("Voltus"), the leading distributed energy resource (DER) **software technology platform**, together **with Google Nest**, today announced the launch of the first bring-your-own-thermostat program".

Ajax Operating Partner Matt Rogers has a financial interest in Voltus and Voltus has joint product partnership with Google.

c. Roger's Ajax Company "Streetlight Data" has a Partnership with

1 **Google.**

2 As an Operating Partner at Ajax Strategies LLC, its startup Streetlight Data CTO
3 discussed its Google partnership and how Google partnership is critical to business
4 success. *See* Exhibit 14.

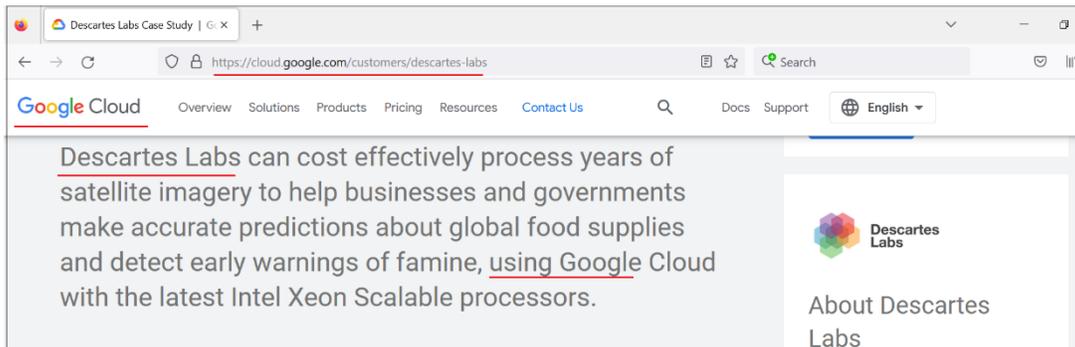
5 “Paul Friedman, CTO of Streetlight Data, discusses how Google Cloud’s
6 infrastructure and power is critical to their ability to process and offer DAAS to
7 government organizations of all sizes.

8 “Streetlight Data decided to go with Google Cloud”

9 Ajax Operating Partner Matt Rogers has a financial interest in Streetlight Data
10 and Streetlight Data has partnership with Google.

11 **d. Roger’s Ajax Company “Descartes Lab” has a Partnership with**
12 **Google.**

13 As an Operating Partner at Ajax Strategies LLC, its startup Descartes Lab had deep
14 partnership and customer relations with Google. Google is critical to Descartes Lab business
15 success. *See* Exhibit 15. Google’s own website shows “Descartes Lab” as an important
16 partner and a customer and how they benefit each other.

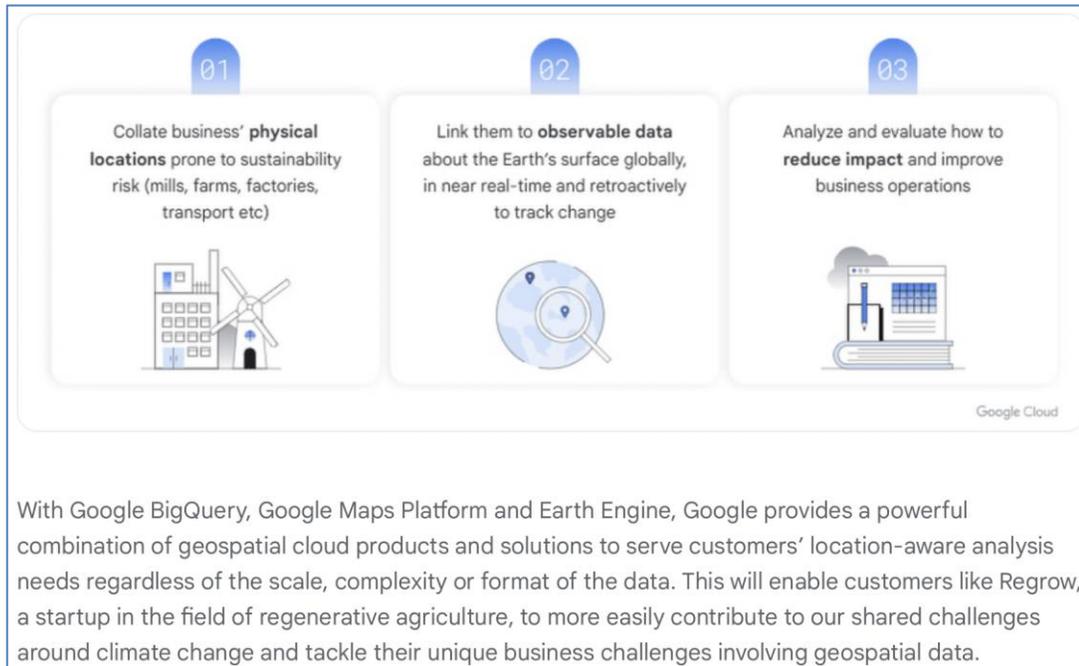


23 Ajax Operating Partner Matt Rogers has a financial interest in Descartes Lab and
24 Descartes Lab has deep partnership with Google.

25 **e. Rogers’ Ajax company “Regrow” has a partnership with Google.**

26 As an Operating Partner at Ajax Strategies LLC, its startup Regrow relies exclusively
27 on Google to provide its business platform. As Regrow’s Chief Technology Officer
28 explained, “Regrow aims to make regenerative agriculture ubiquitous across the globe with

1 an overall mission to mitigate climate change. That job has been made easier by Google
 2 Earth Engine, a platform which has allowed us to scale our technology and increase
 3 confidence in our data and reports.” *See* Exhibit 16.



15 *Excerpt from Google Cloud Website Related to Ajax Startup Regrow (Exhibit 16).*⁸

17 Ajax Operating Partner Rogers has a financial interest in Regrow. And Regrow bases
 18 its entire business model on Google. Ajax's startup Regrow fails without Google, which
 19 demonstrates Section 455(b) financial interest that Rogers has in Google, which has not been
 20 divested by Judge Gonzalez Rogers.

22 **E. Judge Gonzalez Roger's 2020 Financial Disclosure Stock Holdings.**

23 According to Judge Gonzalez Roger's 2020 Financial Disclosure her total Vanguard
 24 Fund Investments are more than \$9.4 Million and less than \$43.6 Million. *See* Exhibit 17.

25 In the "Vanguard 500 Index Fund," she has invested between \$1 Million to \$5
 26 Million. *Id.* Defendant Google is in Top 10 Holdings of "Vanguard 500 Index Fund" along

27 ⁸ Last visited on January 18, 2023, at [https://cloud.google.com/blog/topics/sustainability/new-programs-and-](https://cloud.google.com/blog/topics/sustainability/new-programs-and-tools-for-sustainable-transformation)
 28 [tools-for-sustainable-transformation](https://cloud.google.com/blog/topics/sustainability/new-programs-and-tools-for-sustainable-transformation) (Exhibit 16).

with Apple. See Exhibit 18. It also includes significant shares of Defendants Nike, Under Armour, Garmin, and Fossil Group. See e.g. Exhibit 19, 20, 21, 22, 23.

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Rogers, Yvonne G.	Date of Report 10/27/2021
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div, rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)

1. Citibank Checking and Money Market Accounts	A	Interest	M	T					
2. Bank of America Checking	A	Interest	J	T					
3. Trust No. 1									
4. -Vanguard CA IT Tax Exempt	D	Dividend	O	T					
5. -Vanguard Total International Stock Index	G	Dividend	P2						
6. -Vanguard 500 Index Fund	F	Dividend	P1						
7.									
8. -Vanguard Extended Markets Index	E	Dividend	P1						
9. -Vanguard Emerging Markets Index	E	Dividend	P1						
10. -Vanguard IRA: Inflation Protect Sec Adm	D	Dividend	O						
11. -Vanguard: Total Bond Market Index (variable annuity)		None	M						
12. -Vanguard 500 Index Fund (retirement)	A	Dividend	J						
13. -Vanguard 529-Aggressive Growth Port-Age-Based 25		None	M	T	Sold (part)	02/18/20	J		
14. -Vanguard 529-Aggressive Growth Port - Age 22		None	K	T	Sold (part)	01/06/20	K		
15. -Vanguard 529 - Moderate Growth- Port Age-Based 19		None	N	T	Sold (part)	09/02/20	K		
16. -Wells Fargo Money Market Account	A	Interest	P1	T					
17. -Rental Prop, San Antonio, TX (assessment 12/20: \$145,970)	D	Rent	M	S					

Total Dollar Range for Vanguard Fund Investments is:
O + P2 + P1 + P1 + P1 + O + M + J + M + K + N
J = \$15,000 or less K = \$15,001 - \$50,000
M = \$100,001 - \$250,000 N = \$250,001 - \$500,000
O = \$500,001 - \$1,000,000
P1 = \$1,000,001 - \$5,000,000
P2 = \$5,000,001 - \$25,000,000
YGR has anywhere between
\$9.465 Million – \$43.65 Million dollars invested in Vanguard Investments alone.

1 Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$500,001 - \$1,000,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2 Value Codes (See Column C2)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

Vanguard 500 Index Fund (VFINX)

Top 10 Holdings Get Quotes for Top Holdings
(27.43% of Total Assets)

Name	Symbol	% Assets
Apple Inc	AAPL	5.92%
Microsoft Corp	MSFT	5.62%
Amazon.com Inc	AMZN	4.06%
Facebook Inc Class A	FB	2.29%
Alphabet Inc Class A	GOOGL	2.02%
Alphabet Inc Class C	GOOG	1.97%
Berkshire Hathaway Inc Class B	BRK.B	1.44%
Tesla Inc	TSLA	1.44%
NVIDIA Corp	NVDA	1.37%
JPMorgan Chase & Co	JPM	1.30%

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The Company's only outstanding class of equity securities is its Common Stock. The following table sets forth information regarding the beneficial ownership of Common Stock as of March 24, 2021 by (i) each Named Executive Officer (as defined in "Compensation Discussion and Analysis"); (ii) each director and director nominee of the Company; (iii) all present executive officers and directors of the Company as a group; and (iv) each other person known to the Company to own beneficially more than five percent (5%) of the Common Stock as of March 24, 2021. The address of each officer and director is c/o Fossil Group, Inc., 901 S. Central Expressway, Richardson, Texas 75080.

NAME OF BENEFICIAL OWNER	SHARES BENEFICIALLY OWNED (1) (2)	
	NUMBER	PERCENT
Randy C. Belcher	140,596 (3)	*
Jeffrey N. Boyer	272,402 (4)	*
Darren E. Hart	67,731 (5)	*
Kosta N. Kartsotis	3,260,837	6.3%
Greg A. McKeivney	841,810 (6)	1.6%
Mark R. Belgya	19,644 (7)	*
William B. Chlason	60,889 (8)	*
Kim Harris Jones	11,466 (9)	*
Kevin Mansell	14,703 (10)	*
Diane L. Neal	40,927 (11)	*
Marc R. Y. Rey	-	*
Gail B. Tifford	22,869 (12)	*
All executive officers and directors as a group (14 persons)	4,834,920 (13)	9.4%
BlackRock, Inc.	7,114,841 (14)	13.8%
Contrarius Investment Management Limited	4,256,762 (15)	8.3%
Dimensional Fund Advisors LP	2,766,401 (16)	5.4%
FMR, LLC	7,621,318 (17)	14.8%
State Street Corporation	2,662,356 (18)	5.2%
The Vanguard Group	3,155,129 (19)	6.1%

* Less than 1%

24 WWW.FOSSILGROUP.COM

SEC Monitor

Home / Issuers / Recent N-port Filings /

Holders of Garmin Ltd (GRMN)

The following registered management investment companies and exchange-traded funds (ETFs) had Garmin Ltd (GRMN) in their portfolio at the time when they filed the latest portfolio reports (Form N-PORT) with the U.S. Securities and Exchange Commission (SEC). Also see [Insider Trading at GRMN](#).

Fund Name	Shares	Filing Date
VANGUARD TOTAL STOCK MARKET INDEX FUND (VTSMX, VTSAX, VITX, VTI, VSMPX, VSTX)	4,290,241	2020-12-31
VANGUARD MID-CAP INDEX FUND (VIMSX, VIMAX, VMCIX, VO, VMCPIX)	3,440,627	2021-03-31
VANGUARD 500 INDEX FUND (VFINX, VFIAX, VOQ, VFFSX)	3,059,996	2021-03-31
SPDR S&P 500 ETF TRUST	1,533,565	2021-03-31
Fidelity 500 Index Fund (FXAIX)	1,354,210	2020-11-30
VANGUARD INSTITUTIONAL INDEX FUND (VINIX, VIII)	1,193,950	2021-03-31
VANGUARD MID-CAP VALUE INDEX FUND (VMVIX, VOE, VMVAX)	1,163,878	2020-12-31

SEC Monitor

Home / Issuers / Recent N-port Filings /

Holders of NIKE Inc (NKE)

The following registered management investment companies and exchange-traded funds (ETFs) had NIKE Inc (NKE) in their portfolio at the time when they filed the latest portfolio reports (Form N-PORT) with the U.S. Securities and Exchange Commission (SEC). Also see [Insider Trading at NKE](#).

Fund Name	Shares	Filing Date
VANGUARD TOTAL STOCK MARKET INDEX FUND (VTSMX, VTSAX, VITX, VTI, VSMPX, VSTX)	35,308,087	2020-12-31
VANGUARD 500 INDEX FUND (VFINX, VFIAX, VOQ, VFFSX)	26,035,658	2021-03-31
Parnassus Fund (PARNX, PFPRX)	22,847,970	2020-03-31
SPDR S&P 500 ETF TRUST	13,049,179	2021-03-31
Fidelity 500 Index Fund (FXAIX)	11,301,693	2020-11-30

SEC Monitor

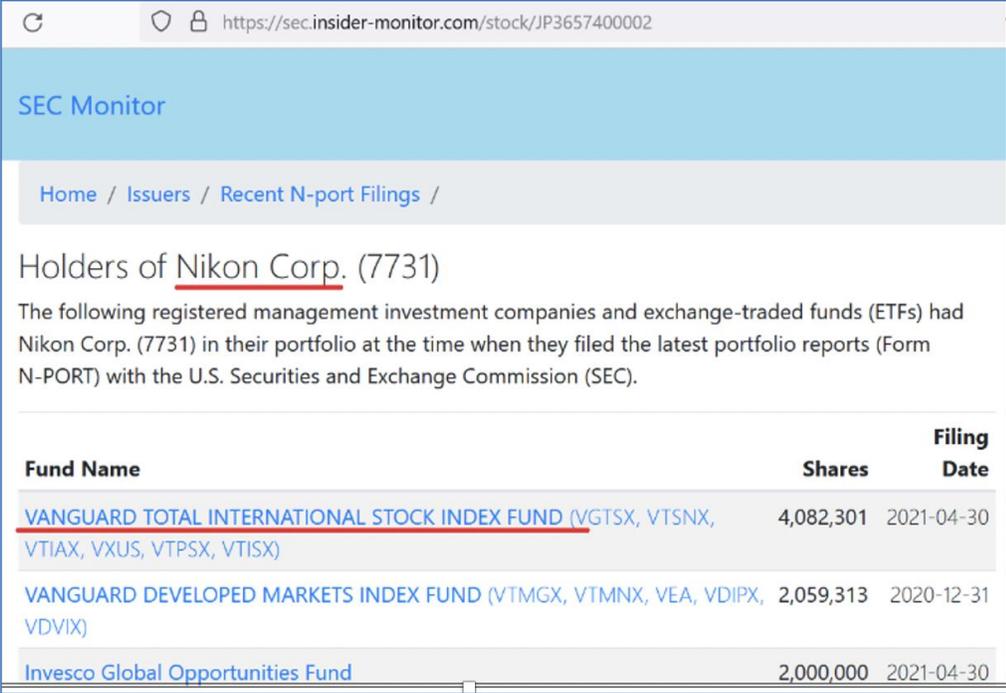
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Holders of Under Armour Inc (UA)

The following registered management investment companies and exchange-traded funds (ETFs) had Under Armour Inc (UA) in their portfolio at the time when they filed the latest portfolio reports (Form N-PORT) with the U.S. Securities and Exchange Commission (SEC).

Fund Name	Shares	Filing Date
VANGUARD TOTAL STOCK MARKET INDEX FUND (VTSMX, VTSAX, VITX, VTI, VSMPX, VSTX)	5,197,887	2020-12-31
VANGUARD SMALL-CAP INDEX FUND (NAESX, VSMAX, VSCIX, VB, VSCPIX)	4,575,260	2021-03-31
VANGUARD 500 INDEX FUND (VFINX, VFIAX, VOQ, VFFSX)	3,867,718	2021-03-31
VANGUARD SMALL-CAP VALUE INDEX FUND (VISVX, VSIX, VBR, VSIAX)	2,770,910	2021-03-31
SPDR S&P 500 ETF TRUST	1,939,817	2021-03-31
Fidelity 500 Index Fund (FXAIX)	1,713,857	2020-11-30

1 Also, Judge Gonzalez Rogers has a “Vanguard Total International Stock Index” Fund
 2 with \$5 Million to \$25 Million invested. *See* Exhibit 17. She and the general public knows
 3 that Samsung and Nikon are significant holdings of “Vanguard Total International Stock
 4 Index” Fund. *See* Exhibits 24, 25. Some of Defendant Under Armour’s accused
 5 instrumentalities are watches made by Samsung. These facts were not hidden in the
 6 litigation and came up in the summary judgment order made by the Court.



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Fund Name	Shares	Filing Date
<u>VANGUARD TOTAL INTERNATIONAL STOCK INDEX FUND</u> (VGTSX, VTSNX, VTIA, VXUS, VTPSX, VTISX)	4,082,301	2021-04-30
VANGUARD DEVELOPED MARKETS INDEX FUND (VTMGX, VTMNX, VEA, VDIPX, VDVIX)	2,059,313	2020-12-31
Invesco Global Opportunities Fund	2,000,000	2021-04-30

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20 Like Samsung, Defendant Nikon is also part of this international stock index fund
 21 offered by Vanguard. *See* Exhibits 17, 24, 25. Judge Gonzalez Rogers’ investments in
 22 “Vanguard Total International Stock Index” Fund are anywhere between \$5 Million to \$25
 23 Million based upon her disclosures. *See* Exhibit 17.

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VTIAX Vanguard Total International Stock Index Fund
Admiral Shares

Buy Compare

Overview Performance & fees Price **Portfolio composition** Distributions Fund management Fund literature

as of 11/30/2022

Equity Fixed income Short-term reserve

Ticker	Holdings	Shares	Market value
2330	Taiwan Semiconductor Manufacturing Co. Ltd.	320,754,748	\$5,151,274,311
NESN	Nestle SA	36,022,003	\$4,287,468,611
ASML	ASML Holding NV	5,382,103	\$3,285,882,366
005930	Samsung Electronics Co. Ltd.	63,130,030	\$3,033,331,765
700	Tencent Holdings Ltd.	80,197,140	\$3,032,760,369
ROG	Roche Holding AG	9,232,605	\$3,015,589,390
SHEL	Shell plc	97,777,341	\$2,861,531,371
AZN	AstraZeneca plc	19,739,972	\$2,671,620,729
NOVO B	Novo Nordisk A/S Class B	20,889,241	\$2,620,307,328
MC	LVMH Moet Hennessy Louis Vuitton SE	3,327,227	\$2,582,023,989

13 It is public knowledge that financial investments in stock held by Samsung and Nikon
14 make up significant percentage of the “Vanguard Total International Stock Index” Fund.
15 See e.g. Exhibit 24, 25.

16 **Unlike mutual funds, “index funds” invest in a specific list of securities.** Mutual
17 funds invest in a changing list of securities chosen by an investment manager. See e.g.
18 Exhibits 29, 30. The Section 455(d)(4)(1) exception only applies to ownership in a mutual
19 funds or common investment fund, unless the judge participates in the management of the
20 fund. An **Index Fund is NOT a “common investment fund.”** See Exhibit 31. A common
21 investment fund (“CIF”) is a means of pooling the investments of a number of pension
22 schemes to centralize management of those investments and provide economies of scale in
23 running costs. The participating schemes must all be registered pension schemes of the same
24 employer or associated employers.

25 Judge Gonzalez Rogers’ investments in “Vanguard 500 Index Fund” and “Vanguard
26 Total International Stock Index” should NOT qualify under mutual funds or common
27 investment fund exception. Both the Vanguard website and Vanguard Fact Sheet say that
28 Vanguard Index funds *are not actively managed*. See Exhibit 32, 33.

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Investment objective

Vanguard 500 Index Fund seeks to track the performance of a benchmark index that measures the investment return of large-capitalization stocks.

Investment strategy

The fund employs a “passive management”—or indexing—investment approach designed to track the performance of the Standard & Poor’s 500 Index, a widely recognized benchmark of U.S. stock market performance that is dominated by the stocks of large U.S. companies. The fund attempts to replicate the target index by investing all, or substantially all, of its assets in the stocks that make up the index, holding each stock in approximately the same proportion as its weighting in the index.

The screenshot shows a user interface for selecting a fund's management style. Under the 'Management style' section, there are two radio button options: 'Active' and 'Index'. The 'Index' option is selected. A tooltip window titled 'What's a management style?' is overlaid on the right side of the screen. The tooltip text reads: 'Management style is the method used to select a fund's investments. Indexing seeks to match, rather than outperform, the return and risk characteristics of an index, by holding all, or a representative sample of, the securities that make up the index. Active management seeks to outperform the average returns of the financial market. Active managers rely on research, market forecasts, and their own judgment and experience in selecting securities to buy and sell.'

Index Funds employ “*Passive Management*” and “holding each stock in approximately the same proportion as the weighting of the index.” **Index funds just “Hold” the securities that make up the Index.** Whereas for “Active” mutual funds, managers rely on research to “buy and sell” to outperform the average returns. Index funds just “hold” the stocks. Owning Index funds is just another way to HOLD/Own Google and Apple Stocks. It is just by another name.

As the Vanguard Index 500 fact sheet says: it employs “**Passive Management**” –

1 which means that NO ONE is actively managing the Index fund. If nobody is managing the
2 fund, then everybody is managing it (including Judge Gonzalez Rogers), because everyone
3 knows what stocks are part of the Index fund (and especially the top ten holdings of the
4 index fund). That means index funds belong to the exception and fall in the category of U.S.
5 Code § 455 exception (d) (4) (1) “unless the judge participates in the management of the
6 fund”.

7 Again, in the case of Vanguard 500 Index Fund, there is **NO active buying and**
8 **selling** of the stocks. Thus, because Judge Gonzalez Rogers knows what the “Stock
9 Holdings” of the Index fund are at all times, she has not divested herself from owning stocks
10 in the Defendants, including Google. *This is akin knowingly putting Cisco stock into a blind*
11 *trust, which does not amount to the required divestment because the government employee*
12 *(here an Article III Judge) still knows of the specific stock ownership.* Thus, investing in an
13 Index funds in the millions of dollars provides a foreseeable investment in Google, and other
14 Defendants, like Nike, Nikon, and Under Armour.

15 For example, trillion-dollar companies like Google and Apple have been the
16 “Holdings” of the Vanguard 500 Index Fund for last 10 years. Overall Google (2.5%) and
17 Apple (5.1%) are among the Top 10 stock holdings of Vanguard Investments. NOTE:
18 Percentage share of each of the Top 10 Vanguard investments can be found on the web. *See*
19 *Exhibit 26.*

20 Accordingly, for her total Vanguard Holdings of anywhere between \$9.465 Million
21 and \$43.65 Million dollars, Judge Gonzalez Rogers with her husband owns a financial
22 interest as follows of relevance: (1) between \$240,000 – \$1,050,000 worth of Google Stock,
23 where Google is a Defendant; (2) between \$482,000 - \$2,220,000 worth of Apple Stock,
24 where Apple provides the watch accused as part of the accused instrumentality sold by Nike.
25 Indeed, Gonzalez Rogers owns stocks in all defendants (Garmin, Google, Nikon, Nike, and
26 Fossil Group) in much higher amounts than the recently vacated Federal Circuit *Centripetal*
27 *– Cisco decision* involving Cisco stock worth \$4,687.99. *See Centripetal Networks*, 38 F.4th
28 at 1028. Here, Judge Gonzalez Rogers has a financial interest in the Defendants most

1 notably, Google, and she has not divested any of these stocks based upon public disclosures.⁹

2 Also, Judge Gonzalez Rogers has an objective perception of bias in favor of
3 Defendants, who she has a financial interest in, which she has not divested.

4 “What must be ‘divested’ under § 455(f) is ‘the financial interest’ giving rise to the
5 disqualification.” *Id.* at 1032. “The statute defines ‘financial interest’ as ‘ownership of a legal
6 or equitable interest, however small.’” *Id.* (citing § 455(d)(4)). “Thus, it logically follows
7 that to ‘divest’ oneself of ‘ownership’ of a legal or equitable interest is possible **only if** one is
8 ‘deprived or dispossesse[d]’ of ownership—something that is possible **only if the interest is**
9 **sold or given away.**” *Centripetal*, 38 F.4th at 1032 (emphasis added).

10 Judge Gonzalez Roger should apply the same standard established by the Federal
11 Circuit regarding financial interests in the recently vacated *Centripetal*’s \$2.75 billion award
12 against Cisco. *See Centripetal*, 38 F.4th at 1039. The Federal Circuit held that Judge Henry
13 C. Morgan, Jr. of the United States District Court for the Eastern District of Virginia violated
14 Section 455(b) due to his wife’s ownership of just \$4,687.99 in Cisco stock. *Centripetal*, 38
15 F.4th at 1038.

16 “It is seriously inimical to the credibility of the judiciary for a judge to preside over a case in
17 which he has a known financial interest in one of the parties and for courts to allow those
18 rulings to stand.” *Centripetal*, 38 F.4th at 1039. The direct financial conflicts of her owning
19 anywhere between \$9.465 Million and \$43.65 Million dollars in Vanguard Investments
20 violate Cellspin’s rights and undermine the integrity of the Article III ruling, and the public’s
21 confidence in the judicial process.

22 It simply cannot be objectively reconciled that an Article III judge’s wife’s holding of
23 \$4,687.99 Cisco stock can nullify his judgment but Judge Gonzalez Rogers owning millions
24 of dollars in defendants’ stocks would not. Investing in an index funds allowed her actual
25 knowledge of her investments, which plainly includes stock ownership in the Defendants.

26 Additionally, it is difficult to reconcile Judge Gonzalez Rogers past recusal with her
27

28 ⁹ Although

1 present non-recusal in the present case with Google. A search of prior recusals indicates just
 2 one found related to Judge Gonzalez Rogers. On September 2, 2021, Judge Gonzalez
 3 Rogers recused herself from *Geographic Location Innovations, LLC v. Health Mart Systems,*
 4 *Inc.*, Case No. 5:21-cv-05155-YGR, Dkt. No. 21 (N.D. Cal. 2021). The Court provided no
 5 reason for the recusal. (Case No. 5:21-cv-05155-YGR, Dkt. No. 21 (N.D. Cal. 2021)). In
 6 that case, Defendant Health Mart Systems, Inc. disclosed under Rule 7.1 that it was owned
 7 by McKesson Corporation. McKesson is a company held by The Vanguard Group, Inc., in
 8 several of its mutuals funds, including, Vanguard Total Stock Market Index, the Vanguard
 9 500 Index fund, the Vanguard Mid Cap Index Fund, and Vanguard Value Index Fund. *See*
 10 Exhibit 2.¹⁰

11
 12 **F. Judge Gonzalez Rogers Has Opaque Investment Holding of “McKinsey &
 13 Company Special Situations Aggressive Long-Term” of Anywhere between \$5
 14 Million - \$25 Million.**

15 According to Judge Gonzalez Roger’s 2020 Financial Disclosure she has investment
 16 holding of “McKinsey & Company Special Situations Aggressive Long-Term” of anywhere
 17 between \$5 Million - \$25 Million. *See* (Exhibit 17).

18
 19
 20
 21
 22
 23
 24
 25 ¹⁰ Exhibit 38 is a true and correct copy of a screenshot taken from the CNN Business website
 26 listing, among other things, the mutual fund holdings in McKesson Corporation at
 27 [https://money.cnn.com/quote/shareholders/shareholders.html?symb=MCK&subView=institu](https://money.cnn.com/quote/shareholders/shareholders.html?symb=MCK&subView=institutional)
 28 [tional](https://money.cnn.com/quote/shareholders/shareholders.html?symb=MCK&subView=institutional), as last visited on January 18, 2023.

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting		Date of Report					
Page 5 of 7		Rogers, Yvonne G.		10/27/2021					
VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)									
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div, rent, or int)	(1) Value Code 2 (J-P)	(2) Value Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. McKinsey & Company Special Situations Aggressive Long-Term	G	Dividend	P2		Total Dollar Range of Opaque Investments in McKinsey & Company Special Situations Aggressive Long-Term Fund is: P2 + P1 <i>P1 = \$1,000,001 - \$5,000,000</i> <i>P2 = \$5,000,001 - \$25,000,000</i> YGR has anywhere between \$6 Million – \$30 Million dollars invested in Opaque McKinsey investment instruments.				
19. McK Spec Sit Retirement (Ind)		None	P1						
20.									
21.									
22. McKinsey Partnership Shares	A	Dividend	O						
23. McKinsey Partnership Debt	E	Interest	O						
24. McKinsey Cash Balance Plan		None	O	T					
25. Residuary Estate Trust No. 1 Checking (Wells Fargo; 1/4 interest)		None	J	T	Buy	11/04/20	J		
26. Fidelity Government Cash Reserve FDRXX (IRA)		None	J	T	Buy	11/21/20	J		

There is NO transparency in the holdings of at least \$5 Million of “McKinsey & Company Special Situations Aggressive Long-Term”. “McKinsey & Company Special Situations Aggressive Long-Term” investment is NOT a mutual fund or a common investment fund and does not fall in the category of U.S. Code § 455 exception (d)(4)(1). The public does not know the stock/bond/other details of this investment. A huge portion of this opaque investment could be in Big Tech stocks like the defendants in this case. The public does not know if any of these opaque investment holdings of \$5-25 Million, has any of Defendant’s Stock positions.

Someone in a similar situation at the US “Office of Management and Budget” was faced with a same “McKinsey & Company Special Situations Aggressive Long-Term”

1 investment. Beth F. Cobert in her “Ethics Agreement” with “Office of Management and
2 Budget” during her confirmation had to agree to recuse herself and divest from her
3 “McKinsey & Company Special Situations Aggressive Long-Term” investment holdings.
4 See (Exhibit 34)
5

I have disclosed in my financial disclosure report financial interests in the following funds:

1. Compass Special Situations Fund, LLC;
2. Compass Global Private Equity Capital Fund;
3. Compass European Private Equity Capital Plan;
4. Special Situations Investment Fund, L.P.; and
5. Special Situations Aggressive Long-Term Portfolio.

However, the funds’ managers declined to provide me with sufficient information to enable me to disclose the funds’ underlying assets in my financial disclosure report. Therefore, I will divest my financial interests in these funds within 90 days of my confirmation. With regard to each of these funds, until I have divested the fund, I will not participate personally and substantially in any particular matter in which to my knowledge I have a financial interest, if the particular matter has a direct and predictable effect on the financial interests of that fund, or its underlying assets, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

Upon confirmation, I will resign from all of my positions with McKinsey & Company (“McKinsey” or the Firm”), including my positions as a McKinsey Director, as Co-leader of the Firm’s

21 Judge Gonzalez Roger should recuse herself from this case and other Big Tech cases
22 and should divest her opaque investment holdings. Public trust in judiciary is undermined
23 by judges holding opaque investments in any amount, much less the substantial amount of
24 \$5-25 Million.
25

26
27 **G. Judge Gonzalez Rogers Violation of Section 455(c) Because She Failed To**
28 **Keep Apprised of Her Investments.**

1
2 Section 455(c) requires to a judge to be informed about her investments. Here, there is
3 no transparency to know if a conflict exists in 2020, and there is no availability of any
4 disclosures from 2021 or 2022.

5
6 **H. Judge Gonzalez Rogers’ Violation of Section 455(a), (b) and (c) Was Not**
7 **Harmless Error.**

8 Judge Gonzalez Rogers’ violations of Section 455 were not harmless error; thus the
9 proper remedy is vacatur of her summary judgment order. *See Liljeberg v. Health Servs.*
10 *Acquisition Corp.*, 486 U.S. 847, 862 (1988) (“If we conclude that the requirements of §
11 455(f) were not satisfied, the second question is the proper remedy, which turns in large part
12 on whether Judge Morgan's failure to disqualify himself was harmless error.”). “As we
13 explained in *Shell*, to determine whether vacatur is the appropriate remedy for a violation of
14 § 455(b), we apply the harmless error analysis set forth by the Supreme Court in *Liljeberg*.

15 Under that test, “mandatory recusal does not require mandatory vacatur.” *Shell*, 672
16 F.3d at 1293; *see also Williamson v. Ind. Univ.*, 345 F.3d 459, 464–65 (7th Cir. 2003)
17 (finding vacatur “is not automatically justified” for a violation of § 455 “if [the] error was
18 harmless”). Although *Liljeberg* involved a violation of § 455(a), it is now well-recognized
19 that the harmless error analysis applies equally to violations of § 455(b). *See Centripetal*, 38
20 F.4th at 1034 (citations omitted).

21 “Under *Liljeberg*, there are three factors courts should consider when deciding
22 whether to vacate a judgment: (1) ‘the risk of injustice to the parties in the particular case’;
23 (2) ‘the risk that the denial of relief will produce injustice in other cases’; and (3) ‘the risk of
24 undermining the public’s confidence in the judicial process.’” *Centripetal*, 38 F.4th at 1034
25 (citing 486 U.S. at 864, 108).

26 Here, each of these factors weighs against a finding of harmless error in this case.
27 Plainly, injustice has been done to Cellspin in the form of this Court’s summary judgment
28 orders. Notwithstanding the likelihood of reversal by the Court of Appeals for the Federal

1 Circuit, the damage has already been done. Equally important is the fact that the public's
2 confidence in the judicial process will be severely undermined if these facts are allowed to
3 stand: a Silicon Valley Judge issuing favorable rulings to tech companies with whom the
4 Judge has substantial financial interests cannot possibly result in anything less than public
5 distrust in the process.

6 7 **I. Recusal and Relief for Every Defendant**

8 1. Judge Gonzalez Rogers should recuse herself from these cases because of Matt
9 Roger's McKinsey Google strategic partnership and especially McKinsey selling
10 Google products/services to Matt Roger's McKinsey OIL and GAS clients. Judge
11 Gonzalez rogers should have recused herself after Google became a party to the
12 lawsuit in 2021.

13
14
15 2. Even if such facts do not warrant recusal, then Judge Gonzalez Roger should
16 have recused herself from the cases in April 2022. According to Matt Roger's
17 LinkedIn profile he is an *operating partner* Ajax Strategies VC firm and started
18 working there in April 2022. Ajax Strategies has at least eight portfolio companies
19 that have been funded or have strategic partnership with Google.

20
21 4. Google is also a party through Fossil, because Fossil accused products use
22 Google OS for several accused products.

23
24 5. Google is a party through Nikon, because accused Nikon Image Services use
25 Google services for user data.

26
27 6. All cases involve Google products because all defendants use Google Android
28 ecosystem for the mobile applications and all defendants use Google play App store for

1 mobile app distribution and usage. ALL defendants have infringing “Google” Android
 2 Mobile Apps.

3
 4 7. Recusal is required for ALL cases because Judge Gonzalez Rogers used the
 5 same rational and reasoning for granting MSJ for all defendants as she used for Fitbit,
 6 Fossil and Nikon. *See* (Exhibit 27)

7
 8 For example all throughout her MSJ ruling she cross references and reapplies Fitbit,
 9 Fossil and Nikon reasonings to other defendants. This fact is illustrated in the footnotes
 10 below:

11
 12 ²⁴ This is the same issue as in *Fitbit*, *see supra* Section III.A.5.a, and *Garmin*, *see infra*
 Section III.E.4.a.

13 ²⁶ This is the same issue contested in *Fitbit*, *see supra* Section III.A.1.d, *Garmin*, *see infra*
 14 Section III.E.1.d, and *Fossil*, *see infra* Section III.D.1.b.i.

15 ²⁷ This is the same issue contested in *Fossil*, *see infra* Section III.D.1.b.iv, and *Garmin*, *see infra* Section
 16 III.E.1.e.

17 ²⁸ This is the same issue contested in *Fitbit*, *see supra* Section III.A.2.b, *Fossil*, *see infra*
 Section III.D.1.b.iii, and *Garmin*, *see infra* Section III.E.1.d.

18 ³² This is the same issue contested in *Nikon*. *See infra* Section III.E.3.a.

19 ³⁸ This is the same issue contested in *Fitbit*, *see supra* Section III.A.1.d, *Nike*, *see supra*
 Section III.B.3, and *Garmin*, *see infra* Section III.E.1.c.

20 ³⁹ This is the same issue contested in *Garmin*. *See infra* Section III.E.1.f.

21 ⁴⁰ This is the same issue contested in *Fitbit*, *see supra* Section III.A.2.b, *Nike*, *see supra*
 Section III.B.5.a, and *Garmin*, *see infra* Section III.E.1.d.

22 ⁴⁸ This is the same issue contested in *Fitbit*, *see supra* Section III.A.1.d, *Nike*, *see supra*
 Section III.B.3, and *Fossil*, *see supra* Section III.D.1.b.i.

23 ⁴⁹ This is the same issue contested in *Fitbit*, *see supra* Section III.A.2.b, *Nike*, *see supra*
 Section III.B.5.a, and *Fossil*, *see supra* Section III.D.1.b.iv.

24 ⁵² This is the same issue contested in *Fossil*. *See supra* Section III.D.1.b.ii.

25
 26 ⁵³ This is the same issue contested in *Fitbit*. *See supra* Section I.A.1.a.

27 ⁵⁴ This is the same issue contested in *Fitbit*, *see supra* Section III.A.3, *Nike*, *see supra*
 Section III.B.2.a, and *Fossil*, *see supra* Section III.D.2.b.

28 ⁵⁵ This is the same issue contested in *Fitbit*, *see supra* Section III.A.5.a, and *Nike*, *see*
supra Section III.B.2.b.i.

1 ⁴⁷ This is the similar to the issue contested in *Fitbit*. See *supra* Section III.A.1.b.

2 ¹² This is similar to the issues contested in *Under Armour*, see *infra* Section III.C.1.b,
3 *Fossil*, see *infra* Section III.D.2.a, and *Nikon*, see *infra* Section III.F.4.a.

4 ¹³ This is similar to the issues contested in *Fitbit*, see *supra* Section III.A.3, and *Fossil*, see *infra* Section
5 III.D.2.b.

6 ⁴⁴ This is similar to the issues contested in *Fitbit*, see *supra* Section III.A.3, and *Nike*, see *supra*
7 Section III.B.2.a.

8 ⁴⁷ This is the similar to the issue contested in *Fitbit*. See *supra* Section III.A.1.b.

9 ⁶⁰ This is similar to the issues analyzed in *Fitbit*, see *supra* Section III.A.1.b, and *Garmin*,
10 see *supra* Section III.E.1.a.i.

11
12
13 Respectfully Submitted,

14 Dated: January 13, 2023

/s/ Randall Garteiser

Randall T. Garteiser (CA State Bar No. 231821)
rgarteiser@ghiplaw.com

Chris A. Honea (CA State Bar No. 232473)
chonea@ghiplaw.com

M. Scott Fuller (TX State Bar No. 24036607)
sfuller@ghiplaw.com

GARTEISER HONEA
95 Third St., Fl. 2, San Francisco, CA 94103
119 W Ferguson, Tyler, TX 75702
Tel: (888) 908-4400

Attorneys For Plaintiff,
CELLSPIN SOFT INC.



Matt Rogers · 2nd

Leading in the Energy Transition

•  Ajax Strategies

•  Princeton University

San Francisco Bay Area · [Contact info](#)

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1 mutual connection: Dan Holliday

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About

I am a global energy and sustainability leader, focusing on the role technologies play in accelerating growth and improving performance in restructuring energy markets. I have spent 35 years serving energy clients around the world: establishing strategic priorities to win in the energy transition, shaping capital investments, defining regulatory and policy approaches, driving operational improvement programs, and building capabilities to accelerate growth

Activity

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Haas School of Business. I serve as a member of the Council on Foreign Relations

Experience



Operating Partner

Ajax Strategies • Part-time
Apr 2022 - Present • 10 mos
San Francisco Bay Area



McKinsey & Company

12 yrs 4 mos
San Francisco Bay Area

- **Senior Partner Emeritus**

Part-time
Aug 2021 - Present • 1 yr 6 mos

Focused on energy, sustainability and the energy transition

- **Senior Partner**

Full-time
Oct 2010 - Aug 2021 • 10 yrs 11 mos

I serve energy and energy technology companies around the world

Contact

www.linkedin.com/in/mattcrogers
(LinkedIn)

Top Skills

Business Strategy
Entrepreneurship
Strategic Planning

Publications

Resource Revolution: Capturing the Biggest Business Opportunity in a Century

Blue Carbon: The potential of coastal and oceanic climate action

How blockchain can help the utility industry develop clean power

Curbing methane emissions: How five industries can counter a major climate threat

How Technology is Reshaping Supply and Demand for Natural Resources

Matt Rogers

Leading in the Energy Transition
San Francisco Bay Area

Summary

I am a global energy and sustainability leader, focusing on the role technologies play in accelerating growth and improving performance in restructuring energy markets. I have spent 35 years serving energy clients around the world: establishing strategic priorities to win in the energy transition, shaping capital investments, defining regulatory and policy approaches, driving operational improvement programs, and building capabilities to accelerate growth.

During my time with McKinsey, I led and grew McKinsey’s Electric Power, Oil and Gas, and Sustainability practices. I have served energy clients ranging from a leading energy technology innovators to Fortune 500 oil companies and electric and gas utilities to National Oil Companies and energy marketers globally.

From 2009 to 2010, I left McKinsey to serve as the Senior Advisor to the US Secretary of Energy, leading the Recovery Act Implementation. I had operational responsibility for the Department of Energy’s \$35B in Recovery Act appropriations: reviewing more than 30,000 applications and funding more than 5,000 projects to accelerate US energy innovation across markets. In this role, I was a public voice on energy and environmental innovation, testifying before Congress and giving hundreds of press interviews and public speeches. I led the DOE efforts on a series of interagency policy and regulatory issues and held a Department of Defense Q clearance to address national security issues.

I have written and spoken extensively on oil, gas, power, sustainability, and energy transitions to boards, investors, and major global forums. My book with Stefan Heck, Resource Revolution: Capturing the Biggest Business Opportunity in 100 years was published in April 2014, arguing that the combination of information technology with industrial technology is changing the way we produce and use natural resources and restructuring energy, agriculture, transportation markets globally. I have built a strong

global network in energy and sustainability based on this combined client service, government service, and public voice contributions.

I graduated magna cum laude from Princeton University and earned an M.B.A. from Yale University's School of Management. I serve on the Board Directors for the United Way of the Bay Area and St Mary's College School of Economics and Business Administration. I teach a course on energy finance at the UC Berkeley, Haas School of Business. I serve as a member of the Council on Foreign Relations and the National Petroleum Council. I am married with three adult children.

Experience

Ajax Strategies
Operating Partner
April 2022 - Present (10 months)
San Francisco Bay Area

McKinsey & Company
12 years 4 months
Senior Partner Emeritus
August 2021 - Present (1 year 6 months)
San Francisco Bay Area

Focused on energy, sustainability and the energy transition

Senior Partner
October 2010 - August 2021 (10 years 11 months)
San Francisco Bay Area

I serve energy and energy technology companies around the world

Mission Possible Partnership
Chief Executive Officer
January 2022 - September 2022 (9 months)

University of California, Berkeley, Haas School of Business
Lecturer
March 2019 - April 2021 (2 years 2 months)
Berkeley, California

Energy and Infrastructure Project Finance for MBA and EMBA



McKinsey partner Liz Ericson and senior partner Peter Dahlstrom.

“McKinsey’s open ecosystem of alliances and acquisitions provides an unparalleled offering, and it is one important ingredient in our ability to partner with our clients for end-to-end impact,” says Peter. “The impact our ecosystem has generated is already compelling—and we are accelerating our journey.”

For example, we worked with AWS to help a global pizza company develop an e-commerce platform and establish a digital team that increased customer conversion by 40 percent, customer satisfaction by 15 percent, and reduced downtime to zero.

We partnered with Google Cloud to help one of our global logistics clients increase their

supply-chain forecasting accuracy by building an advanced analytics platform to better predict order volumes.

By utilizing Microsoft's IoT platform, we helped a wireless equipment manufacturer build a "factory of the future," delivering a use-case strategy, roadmap, and industrial IoT platform in 16 weeks.

And working with SAP, we helped a multinational consumer-packaged goods organization transform their supply chain through tech-enabled autonomous planning. The program reduced inventory by 27 percent, and manual work by 60 percent, by consolidating over 100 data sources into one. It also increased the forecast accuracy by six to ten percent and reaction speed by 400 percent.

Those are just a few cases that illustrate what our collaborations can do. In addition, we work with hundreds of collaborators who bring specific and relevant capabilities across every industry and function where we serve clients. Meanwhile, we're also active in the acquisition space, seeking out strategic, high-caliber organizations that rapidly bolster our internal



INVESTING IN SPACE

Satellite imagery company Planet goes public, with \$300 million 'war chest' after SPAC deal

PUBLISHED WED, DEC 8 2021·9:56 AM EST UPDATED WED, DEC 8 2021·4:06 PM EST



Michael Sheetz
@THESHEETZTWEETZ

WATCH LIVE

KEY POINTS

Satellite imagery and data specialist Planet began trading Wednesday on the New York Stock Exchange.

Planet trades under the ticker PL, with shares previously listed under the special purpose acquisition company dMY Technology Group IV.

The company will have more than \$500 million in capital following the transaction and Planet expects to use about \$200 million for operations, with the remainder "a sizable war chest to really think about strategic moves," CFO and COO Ashley Johnson told CNBC.

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In this article

PL -0.05 (-1.00%)





WATCH LIVE

Satellite imagery and data specialist [Planet](#) began trading Wednesday on the New York Stock Exchange, becoming the latest space company to debut after closing a SPAC deal.

“We have a strong business that’s growing well... and what’s been most exciting about this whole process of going public is that I think there’s increasing awareness of the data set that we’re generating from space and what impact it can have,” Planet CFO and COO Ashley Johnson told CNBC.

Planet trades under the ticker PL, with shares previously listed under the special purpose acquisition company dMY Technology Group IV. The company has about 190 satellites in orbit, and recently [unveiled plans for a new line of satellites called Pelican to further bolster its fleet](#).

The stock rose 5% to close at \$11.35 a share.

Closing its merger nets Planet more than \$590 million in gross proceeds, with capital from dMY as well as a PIPE round – or private investment in public equity – led by BlackRock and joined by [Google](#), Koch, and [Marc Benioff’s](#) TIME Ventures. After SPAC transaction fees and paying off debt, Johnson said Planet will have more than \$500 million on its balance sheet.

“We estimate that for operating capital we need about \$200 million over the next few years until we get to cashflow breakeven, and so that gives us a sizable war chest to really think about strategic moves,” Johnson said.

Johnson emphasized that Planet will use the remaining \$300 million to take advantage of “consolidation in the industry or other opportunities that may present themselves.”

Planet and dMY closed the merger with a 2% redemption ratio, which represents the percentage of shares that investors redeem prior to closing of an acquisition.



University Solar Power Project - Largest On-Campus Solar Energy Project in the US

Renewable Energy Corporation Announces Rights Offering of \$669.5 Million

First Solar Plans to Acquire 5N Plus: A strategic investment to integrate vertically and procure the supply of Cadmium Telluride (CdTe)

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Despite the ongoing coronavirus outbreak, renewable energy start-ups are getting funded. Credit: Martijn Baudoin.

Earlier this month, [Google](#) decided to fund 11 start-ups through its Startups Accelerator, set up in November 2019 to work towards the [UN](#) Sustainable Development Goals (SDGs).

Free Report

Wind Power Market seeing increased risk and disruption

By GlobalData

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The companies selected work on finding solutions to social and environmental issues, including the renewable energy transition.

Around the same time, the Australian Renewable Energy Agency announced AUD480,000 (\$309,000) in funding over the next to start-up acceleration programme EnergyLab to finance energy projects.

In LA, a public-private partnership that included clean energy incubator the Los Angeles Cleantech Incubator proposed an infrastructure package worth \$150bn.

The Los Angeles Cleantech Incubator has also selected 16 start-ups for its incubator programme, offering services and \$20,000 funding for pilot projects in exchange for a 1.5% to 3% stake.

Power Technology takes a look at the top five projects that are being funded during the Covid-19 coronavirus pandemic.

1. Solar Freeze – Kenya

Financed by Google through its accelerator for UN SDGs, the Kenyan start-up is working on mobile cold storage units powered by renewable energy.

The company's aim is to help farmers reduce post-harvest loss, which in developing nations amount to almost 80% as the cold-harvest chain is limited due to the high cost of equipment and unreliable electricity supply.

Solar Freeze is testing its eponymous system that consists of an off-grid portable store powered by photovoltaic panels.

2. Ekwateur – France

Founded in 2015, [ekWateur](#) is collaborative green energy supplier where clients can become part of the company's customer service team.

Ekwateur, which is France's fifth-largest provider of energy, raised €1.5m between January and March. The funds are needed for the company to develop its labs, continue the development of its IT infrastructure and create a data analysis system based on behavioural science.



Lumina Energy – US

Alumina Energy, an energy storage technology start-up, is one of the 16 companies to be funded by the Los Angeles Cleantech Incubator.

Alumina Energy designs energy storage systems that provide high energy density and maximise energy recovery at a low cost. The systems, called Packed Bed Energy Storage (PB-TES), use a ceramic storage material that has high thermal conductivity, recovering up to 1,500°C.

4. InPipe Energy - US

Renewable energy and smart water tech company [InPipe Energy](#) has developed a system where low-cost, clean electricity is derived from the flow of water into a gravity-fed pipeline.

This system, which is expected to improve the costs of water management, was awarded funding by the Los Angeles incubator.

5. Natel Energy - US

California-based hydropower start-up [Natel Energy](#) has updated the design of hydropower turbines, cutting down power plants costs and complying with environmental regulations.

The company, which was founded in 2009, is getting funded by Silicon-Valley venture capital fund [Schneider Electric Ventures](#) and [Breakthrough Energy Ventures](#), founded by Bill Gates in 2015 to foster the development of renewable energy production.

Free Report

Wind Power Market seeing increased and disruption

Wind power market has grown at a CAGR of 14% between 2010 and 2021 to reach 830 GW by end of 2021. This has largely been



AgFunder Network Partners



Fundings-in-Brief: Ripple Foods Raises \$30m from Google, Khosla, S2G, Tao, Soil Disease Testing Kit Raises \$4m, more

July 14, 2016 Lauren Manning

Ripple Foods Raises \$30m from Google Ventures, Khosla, S2G, Tao Capital

Ripple Foods, which makes non-dairy milk products with eight times the protein as almond milk and half the sugar of dairy milk, has closed a \$30 million Series B round led by GV,



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Voltus, Resideo, and Google Nest to Launch First Bring-Your-Own-Thermostat Program That Delivers Grid Support During Unplanned Power Plant Outages and Periods of Peak Demand

PPL Electric Customers with Resideo's Honeywell Home Thermostats or Google Nest Thermostats Can Earn New Incentives

April 6, 2022

Press Release

SAN FRANCISCO & BOSTON--([BUSINESS WIRE](#))--Voltus, Inc. ("Voltus"), the leading distributed energy resource (DER) software technology platform, together with Resideo (NYSE: REZI), a leading global provider of home comfort and security solutions and a distributed energy resource management system (DERMS), and Google Nest, today announced the launch of the first bring-your-own-thermostat program that will deliver both demand response capacity and ancillary services value to PJM Interconnection, the nation's largest electric grid operator. The program is now available to select customers of PPL Electric Utilities in Pennsylvania.

Descartes Labs: Advancing global food security

Descartes Labs can effectively process satellite imagery to help businesses and governments make predictions about crop yields, food supplies and early warnings of food shortages using Google Cloud's latest Intel Xeon Scalable processors.

Tell us your challenge. We're here to help.

Contact us (/contact)

About Descartes Labs



About Descartes Labs

Descartes Labs created a cloud-based supercomputing platform to apply machine intelligence to massive datasets. Its mission is to better understand the planet, for good and for profit. Today, Descartes Labs uses satellite imagery and advanced data and analytics processing in Google Cloud to model complex systems on the planet, like forestry and agriculture, to enable organizations to "see" and understand the world in a whole new way.

Blog

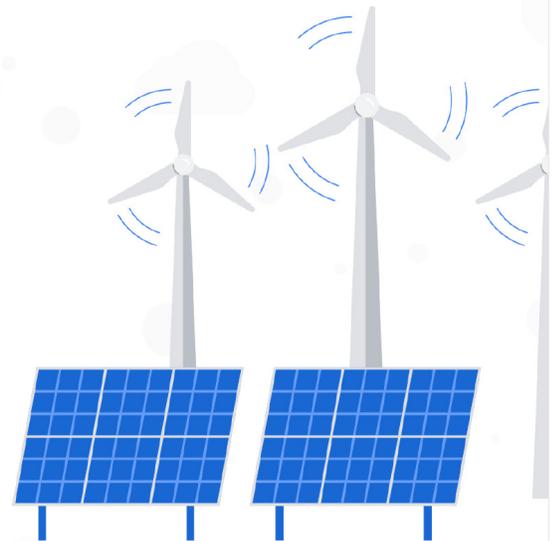
Sustainability

Google Cloud announces new products, partners and programs to accelerate sustainable transformations

June 28, 2022



New programs and tools for sustainable transformation



Google Cloud

Justin Keeble

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Rogers, Yvonne G.	Date of Report 10/27/2021
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period			D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div, rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
	1. Citibank Checking and Money Market Accounts	A	Interest	M	T					
2. Bank of America Checking	A	Interest	J	T						
3. Trust No. 1										
4. -Vanguard CA IT Tax Exempt	D	Dividend	O	T						
5. -Vanguard Total International Stock Index	G	Dividend	P2							
6. -Vanguard 500 Index Fund	F	Dividend	P1							
7.										
8. -Vanguard Extended Markets Index	E	Dividend	P1							
9. -Vanguard Emerging Markets Index	E	Dividend	P1							
10. -Vanguard IRA: Inflation Protect Sec Adm	D	Dividend	O							
11. -Vanguard: Total Bond Market Index (variable annuity)		None	M							
12. -Vanguard 500 Index Fund (retirement)	A	Dividend	J							
13. -Vanguard 529-Aggressive Growth Port-Age-Based 25		None	M	T	Sold (part)	02/18/20	J			
14. -Vanguard 529-Aggressive Growth Port - Age 22		None	K	T	Sold (part)	01/06/20	K			
15. -Vanguard 529 - Moderate Growth- Port Age-Based 19		None	N	T	Sold (part)	09/02/20	K			
16. -Wells Fargo Money Market Account	A	Interest	P1	T						
17. -Rental Prop, San Antonio, TX (assessment 12/20: \$145,970)	D	Rent	M	S						

Total Dollar Range for Vanguard Fund Investments is:
O + P2 + P1 + P1 + P1 + O + M + J + M + K + N
J = \$15,000 or less K = \$15,001 - \$50,000
M = \$100,001 - \$250,000 N = \$250,001 - \$500,000
O = \$500,001 - \$1,000,000
P1 = \$1,000,001 - \$5,000,000
P2 = \$5,000,001 - \$25,000,000
YGR has anywhere between
\$9.465 Million – \$43.65 Million dollars invested in Vanguard Investments alone.

1 Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3 Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

Vanguard 500 Index Fund (VFINX)

Nasdaq - Nasdaq Delayed Price. Currency in USD



Visitors trend 2W ↓ 10W ↑ 9M ↑

Quote Lookup

**368.35** -0.75 (-0.20%)

At close: 08:06AM EST

[Summary](#)
[Chart](#)
[Conversations](#)
[Historical Data](#)
[Profile](#)
[Holdings](#)
[Performance](#)
[Risk](#)
[Purchase info](#)
[Sustainability](#)
Overall Portfolio Composition (%)

Cash	0.37%
Stocks	99.62%
Bonds	0.00%
Others	0.00%
Preferred	0.00%
Convertible	0.00%

Sector Weightings (%)

Sector(s)	VFINX
Basic Materials	2.40%
Consumer Cyclical	10.13%
Financial Services	13.70%
Real Estate	2.75%
Consumer Defensive	7.38%
Healthcare	15.27%
Utilities	2.43%
Communication Ser...	7.43%
Energy	5.11%
Industrials	8.82%
Technology	23.65%

Equity Holdings

Average	VFINX	Category Average
Price/Earnings	18.45	26.32
Price/Book	4.42	4.98
Price/Sales	2.96	2.79
Price/Cashflow	17.57	17.61
Median Market Cap	197,452.45	265,875.19
3 Year Earnings Growth	18.72	19.53

Bond Holdings

Average	VFINX	Category Average
Maturity	N/A	N/A
Duration	N/A	-1.15
Credit Quality	N/A	N/A

Bond Ratings

Sector(s)	VFINX
US Government	0.00%
AAA	0.00%
AA	0.00%
A	0.00%
BBB	0.00%
BB	0.00%
B	0.00%
Below B	0.00%
Others	0.00%

Top 10 Holdings (27.43% of Total Assets)[Get Quotes for Top Holdings](#)

Name	Symbol	% Assets
Apple Inc	AAPL	5.92%
Microsoft Corp	MSFT	5.62%
Amazon.com Inc	AMZN	4.06%
Facebook Inc Class A	FB	2.29%
Alphabet Inc Class A	GOOGL	2.02%
Alphabet Inc Class C	GOOG	1.97%
Berkshire Hathaway Inc Class B	BRK.B	1.44%
Tesla Inc	TSLA	1.44%

Name	Symbol	% Assets
NVIDIA Corp	NVDA	1.37%
JPMorgan Chase & Co	JPM	1.30%

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CELLSPIN SOFT, INC.,

Plaintiff,

vs.

FITBIT, INC.,

NIKE, INC.,

UNDER ARMOUR, INC.,

FOSSIL GROUP, ET AL.,

GARMIN INTERNATIONAL, INC.,

NIKON AMERICAS, INC., ET AL.,

Defendants.

SUMMARY JUDGMENT ORDERS

****REDACTED VERSION****

Case No. 4:17-CV-05928-YGR

Case No. 4:17-CV-05931-YGR

Case No. 4:17-CV-05932-YGR

Case No. 4:17-CV-05933-YGR

Case No. 4:17-CV-05934-YGR

Case No. 4:17-CV-05936-YGR

Plaintiff Cellspin Soft, Inc. brings individual patent infringement actions against Defendants Fitbit, Inc., Nike, Inc., Under Armour, Inc., Fossil Group, Garmin International, Inc., and Nikon Americas, Inc.¹ Cellspin accuses each of the six defendant’s products of infringing U.S. Patent Nos. 8,738,794 (the “794 patent”), 8,892,752 (the “752 patent”), and 9,749,847 (the “847 patent”). These related patents recite methods and systems for the automated distribution of multimedia content (e.g., publishing a photo on social media). Each defendant now files motions

¹ A seventh action has been stayed pending resolution of the first six. *See Cellspin Soft, Inc. v. Moov Inc.*, No. 4:17-CV-05929-YGR, Dkt. No. 182 (N.D. Cal. Oct. 14, 2021).

1 for summary judgment of non-infringement, as well as motions to seal and motions to exclude
2 certain expert testimony. Because Cellspin responds to each summary judgment motion in similar
3 – in some cases, identical – ways, the Court analyzes the motions together in one order and cross-
4 references commonly briefed issues where appropriate. *See infra* pp. 4-24 (Fitbit), 25-37 (Nike),
5 38-46 (Under Armour), 47-60 (Fossil), 61-72 (Garmin), and 73-81 (Nikon).

6 At the outset, the Court concludes that Cellspin fails to marshal the evidence necessary to
7 defeat the defendants’ summary judgment motions. This is perhaps a consequence of Cellspin’s
8 decision to litigate this case with numerous defendants and accused products. While this choice
9 was Cellspin’s right, doing so did not change Cellspin’s burden of proof. However, it is too late
10 now to speculate whether a different tactic would have led to a different outcome.

11 Each of Cellspin’s responses to the summary judgment motions fails for lack of genuine
12 dispute of material fact. Cellspin’s citations to swaths of documents without explanation does not
13 create a genuine dispute of material fact. Nor does Cellspin’s reliance upon its lengthy expert
14 reports short in analysis or explanation for how they reach their conclusions. In particular, the
15 Court has analyzed the bases underlying its expert Rahul Vijh’s opinions and finds them
16 conclusory and lacking substance. The reports contain much repetition and mimic much of
17 Cellspin’s contentions (hence the length), and, ultimately, do not carry evidentiary weight.

18 For the reasons explained below, the Court grants the summary judgment motions and
19 denies as moot the pending motions to exclude certain expert testimony. The sealing motions will
20 be addressed by separate order.

21 **I. BACKGROUND**

22 Cellspin brings patent infringement actions against defendants in six separate actions,
23 accusing their products of infringing claims 1 (independent), 2-4, 7, 9, 16 (independent), 17, 18,
24 and 20-21 of the ’794 patent, claims 1 (independent), 2, 4-5, 12 (independent), 13, and 14 of the
25 ’752 patent, and claims 1 (independent), 2, and 3 of the ’847 patent.

26 **II. STANDARD OF REVIEW**

27 The parties are well-acquainted with the summary judgment standard and guiding
28 principles. The Court mentions some particularly apt here. When faced with summary judgment,

- Index funds seek market-average returns, while active mutual funds try to outperform the market.
- Active mutual funds typically have higher fees than index funds.
- Index fund performance is relatively predictable; active mutual fund performance tends to be less so.

MORE LIKE THIS **Funds**

The biggest difference between index funds and mutual funds is that index funds invest in a specific list of securities (such as stocks of [S&P 500](#)-listed companies only), while active mutual funds invest in a changing list of securities, chosen by an investment manager.

Over a long-enough period, investors might have a better shot at achieving higher returns with an index fund. Exploring these differences in-depth reveals why.

» **Ready to start investing?** [See our picks of best brokerages for fund investors.](#)

Quick glance: Index fund vs. mutual fund

	Index fund	Mutual fund
Investment objective	Match the investment returns of a benchmark stock market index (e.g. the S&P 500).	Beat the investment returns of a related benchmark index.
Invests in	Stocks, bonds and other securities	Stocks, bonds and other securities.
Management style	Passive. Investment mix is automated to match the exact holdings of the benchmark index	Active. Stock pickers (fund managers/analysts) choose fund holdings.
Average management fee (expense ratio)*	0.06%.	0.47%

* Asset-weighted averages from 2021 Investment Company Institute data [\[1\]](#)



ON THIS PAGE



[Standard & Poor's 500 Index](#), which includes the stocks of about 500 of the largest American companies. An index fund merely mimics the assets in the index, making it a kind of passive investment, as opposed to trying to beat the index with active management.

- A **mutual fund** is one way to structure an investment fund, and historically it's been one of the most popular, though [exchange-traded funds \(ETFs\)](#) are growing in popularity very quickly. A mutual fund may include many kinds of assets or investment styles, including being an index fund or an actively managed fund. Literally thousands of mutual funds exist, and some of them are index funds.

Page 1 of 3

As you can see, sometimes an index fund is a mutual fund, and sometimes a mutual fund is an index fund.

To say it another way, investors can buy an index fund that's either an ETF or mutual fund. They can also buy a mutual fund that's a passively managed index fund or an actively managed one.

The pros and cons of an index fund

An index fund can offer a number of pros and cons. Here are some of the most important.

Pros of an index fund

- **Low cost** – Because they're based on an index rather than actively managed, index funds tend to be much cheaper to own. The fund company doesn't pay a pricey research staff to find the best investments but instead mechanically copies the index itself. So index funds usually charge a low [expense ratio](#) to investors.
- **May outperform active managers** – Not all index funds are equal, but one of the best — the S&P 500 Index — outperforms the vast majority of investors in a given year and more over time. Here are some of [the best index funds](#) to consider.
- **Lower taxes** – Index funds that are also mutual funds may create lower tax liabilities for investors because they have less turnover. This is mostly a non-issue for index ETFs.

ON THIS PAGE



Cons of an index fund

- **May track a poor index** – Again, not all index funds are created equal, and an index fund may track a crummy index, meaning that investors get those crummy returns, too.
- **Delivers an average return** – An index fund delivers the weighted average returns of its assets. It must be invested in all the index's stocks, so it's unable to avoid the losers. So while it may have very good years, it can't outperform the best stocks in the index.

The pros and cons of a mutual fund

A mutual fund offers a number of pros and cons. Here are some of the most important.

Pros of a mutual fund

- **Can be low cost** – Index mutual funds may be cheaper to own than a comparable index ETF, though many mutual funds are actively managed and therefore likely to be more expensive.
- **Diversification** – Whether it's focused on a sector or broadly invested, a mutual fund can offer you the benefits of diversification, including lower volatility and reduced risk.
- **May outperform the market** – Actively managed mutual funds may outperform the market – sometimes stunningly so – but [research shows that active investors rarely beat the market's return over time](#). If the mutual fund is an index fund, though, it's going to largely track the index's performance.

Cons of a mutual fund

- **May have sales "loads"** – A sales load is a fancy word for a commission, and the worst funds may charge 2 or even 3 percent of your investment, hitting your returns before you've invested a dime. It's easy to avoid these fees by carefully selecting a fund.

ON THIS PAGE



- **May underperform the market** – Active management, which is more typical in mutual funds, tends to underperform the market average.
- **Capital gains distributions** – At year-end, mutual funds may have to pay out certain capital gains for tax purposes. That means you could be on the hook for taxes, even if you didn't sell a share of your fund. ([That's one advantage ETFs hold over mutual funds.](#))

Should you invest in these funds actively or passively?

Whether it's the pros doing it or individual investors, active management tends to lead to underperformance. Passive investing is an attractive approach for most investors, especially because it requires less time, attention and analysis and still generates higher returns.

If you're investing in an actively managed mutual fund, you want to let the manager do its job. If you're trading in and out of the fund, you're second-guessing professional investors that you've effectively hired to invest your money. That doesn't make a lot of sense, and it can ring up capital gains taxes, if the fund is held in a taxable account, as well as fees for early redemption of your mutual fund.

Actively trading an index fund also doesn't make a lot of sense, either. An index fund is by its nature a passively managed investment, so you're buying the index to get its long-term return. If you trade in and out of the fund, even if it's a low-cost ETF, you may easily lower your returns. Imagine selling in March 2020 as the market crumbled, only to watch it skyrocket over the next year.

Again, passive investing beats active investing most of the time and more so over time.

Bottom line



Vanguard 500 Index Fund

Domestic stock fund | Admiral™ Shares

Fund facts

Risk level Low ← → High					Total net assets	Expense ratio as of 04/29/22	Ticker symbol	Turnover rate	Inception date	Fund number
1	2	3	4	5	\$343,666 MM	0.04%	VFIAX	2.3%	11/13/00	0540

Investment objective

Vanguard 500 Index Fund seeks to track the performance of a benchmark index that measures the investment return of large-capitalization stocks.

Investment strategy

The fund employs a "passive management"—or indexing—investment approach designed to track the performance of the Standard & Poor's 500 Index, a widely recognized benchmark of U.S. stock market performance that is dominated by the stocks of large U.S. companies. The fund attempts to replicate the target index by investing all, or substantially all, of its assets in the stocks that make up the index, holding each stock in approximately the same proportion as its weighting in the index.

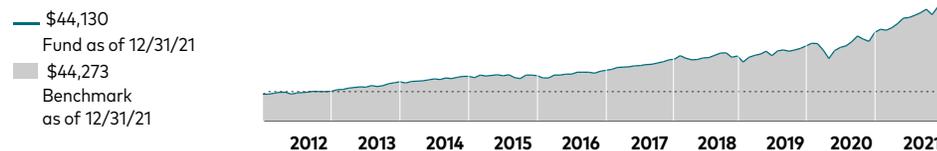
For the most up-to-date fund data, please scan the QR code below.



Benchmark

S&P 500 Index

Growth of a \$10,000 investment: January 31, 2012–December 31, 2021



Annual returns



	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Fund	15.96	32.33	13.64	1.36	11.93	21.79	-4.43	31.46	18.37	28.66
Benchmark	16.00	32.39	13.69	1.38	11.96	21.83	-4.38	31.49	18.40	28.71

Total returns

Periods ended September 30, 2022

	Quarter	Year to date	One year	Three years	Five years	Ten years
Fund	-4.89%	-23.89%	-15.51%	8.12%	9.20%	11.66%
Benchmark	-4.88%	-23.87%	-15.47%	8.16%	9.24%	11.70%

The performance data shown represent past performance, which is not a guarantee of future results. Investment returns and principal value will fluctuate, so investors' shares, when sold, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data cited. For performance data current to the most recent month-end, visit our website at vanguard.com/performance. The performance of an index is not an exact representation of any particular investment, as you cannot invest directly in an index.

Figures for periods of less than one year are cumulative returns. All other figures represent average annual returns. Performance figures include the reinvestment of all dividends and any capital gains distributions. All returns are net of expenses.

Vanguard 500 Index Fund

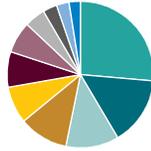
Domestic stock fund | Admiral™ Shares

Ten largest holdings*

1	Apple Inc.	
2	Microsoft Corp.	
3	Alphabet Inc.	
4	Amazon.com Inc.	
5	Tesla Inc.	
6	Berkshire Hathaway Inc.	
7	UnitedHealth Group Inc.	
8	Johnson & Johnson	
9	Exxon Mobil Corp.	
10	Meta Platforms Inc.	
Top 10 as % of total net assets		28.6%

* The holdings listed exclude any temporary cash investments and equity index products.

Sector Diversification



Information Tech	26.4%	Consumer Staples	6.9
Health Care	15.1	Energy	4.6
Consumer Discretionary	11.7	Utilities	3.1
Financials	10.9	Real Estate	2.8
Communication Services	8.1	Materials	2.5
Industrials	7.9	Other	0.0

Sector categories are based on the Global Industry Classification Standard ("GICS"), except for the "Other" category (if applicable), which includes securities that have not been provided a GICS classification as of the effective reporting period.

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Plain talk about risk

An investment in the fund could lose money over short or even long periods. You should expect the fund's share price and total return to fluctuate within a wide range, like the fluctuations of the overall stock market. The fund's performance could be hurt by:

Stock market risk: The chance that stock prices overall will decline. Stock markets tend to move in cycles, with periods of rising stock prices and periods of falling stock prices. The fund's target index may, at times, become focused in stocks of a particular sector, category, or group of companies. Because the fund seeks to track its target index, the fund may underperform the overall stock market.

Investment style risk: The chance that returns from large-capitalization stocks will trail returns from the overall stock market. Large-cap stocks tend to go through cycles of doing better—or worse—than other segments of the stock market or the stock market in general. These periods have, in the past, lasted for as long as several years.

Note on frequent trading restrictions

Frequent trading policies may apply to those funds offered as investment options within your plan. Please log on to [vanguard.com](https://www.vanguard.com) for your employer plans or contact Participant Services at 800-523-1188 for additional information.

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For more information about Vanguard funds or to obtain a prospectus, see below for which situation is right for you.

If you receive your retirement plan statement from Vanguard or log on to Vanguard's website to view your plan, visit [vanguard.com](https://www.vanguard.com) or call 800-523-1188.

If you receive your retirement plan statement from a service provider other than Vanguard or log on to a recordkeeper's website that is not Vanguard to view your plan, please call 855-402-2646.

Visit [vanguard.com](https://www.vanguard.com) to obtain a prospectus or, if available, a summary prospectus. Investment objectives, risks, charges, expenses, and other important information about a fund are contained in the prospectus; read and consider it carefully before investing.

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Investment Products: Not FDIC Insured • No Bank Guarantee • May Lose Value

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Strategies



Management style



What's a management style?

What's a management style?



Active

Index

Management style is the method used to select a fund's investments. Indexing seeks to match, rather than outperform, the return and risk characteristics of an index, by holding all, or a representative sample of, the securities that make up the index. Active management seeks to outperform the average returns of the financial market. Active managers rely on research, market forecasts, and their own judgment and experience in selecting securities to buy and sell.

Asset class



Risk scale



Investment minimum



Share classes



Tax efficiency



Overview

Performance

Price

Detailed view ?



Ticker | Name

Asset class

Risk

Expense ratio

Compare

1. Compass Special Situations Fund, LLC;
2. Compass Global Private Equity Capital Fund;
3. Compass European Private Equity Capital Plan;
4. Special Situations Investment Fund, L.P.; and
5. Special Situations Aggressive Long-Term Portfolio.

However, the funds' managers declined to provide me with sufficient information to enable me to disclose the funds' underlying assets in my financial disclosure report. Therefore, I will divest my financial interests in these funds within 90 days of my confirmation. With regard to each of these funds, until I have divested the fund, I will not participate personally and substantially in any particular matter in which to my knowledge I have a financial interest, if the particular matter has a direct and predictable effect on the financial interests of that fund, or its underlying assets, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

Upon confirmation, I will resign from all of my positions with McKinsey & Company ("McKinsey" or the Firm"), including my positions as a McKinsey Director, as Co-leader of the Firm's global Marketing & Sales Practice, and as Chairperson of the Board of Trustees of the McKinsey Master Retirement Trust. In accordance with McKinsey's standard policies, practice, and timing of delivery, I will receive certain payments and benefits from McKinsey after departing the Firm. These include:

1. A lump-sum payment reflecting the value of my capital account;
2. A lump-sum payment reflecting compensation and pro rata bonus for services performed in 2013 through the date of my withdrawal;
3. A lump-sum termination payment calculated based on age and years of service pursuant to an established McKinsey formula;
4. A *pro rata* share of the firm's profit sharing program for services performed in 2013 through the date of my withdrawal. This payment will be based solely on the firm's earnings through the date of my withdrawal from the firm.
5. A lump-sum payment reflecting the value of my supplemental defined-benefit pension plan;
6. Continued coverage by McKinsey-paid personal lines umbrella insurance policy; and
7. Continued coverage by McKinsey-paid medical, dental, and vision insurance.

I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of McKinsey to make these payments to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). For a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving specific parties in which this firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my positions with the following entities:

1. United Way of the Bay Area (*Board Member*); and
2. Stanford University Graduate School of Business (*Advisory Council Member*).

- App & Dashboard
 - [Fitbit Premium](#)
 - [Fitbit OS](#)
 - [Fitbit Pay](#)
 - [App Tour](#)
 - [Works With Fitbit](#)
 - [Developers](#)
- Health Solutions
 - [Employers](#)
 - [Health Plans](#)
 - [Health Systems](#)
- Help
 - [Product Help](#)
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 - [Wear & Care](#)
 - [How-To Videos](#)

- [Store](#)
- [Log in](#)
- [Setup](#)

[View Categories](#)

- Home
- Activity
- [Fitbit News](#) January 14, 2021
- Nutrition
 - Recipes
 - Healthy Eating Strategies
 - Snacking Tips
 - Smart Shopping
- By James Park
 - Stress
 - Mindfulness
 - Motivation
 - Sleep
 - Sleep Tips
 - Fitbit's Sleep Tools

I'm writing today to let you know that Fitbit is now officially part of Google. It's an incredibly exciting moment for us as a company and for our Fitbit community of users around the globe.

When Eric and I founded Fitbit 13 years ago, we did so with a simple, but bold idea: to make everyone in the world healthier. Since shipping the original Fitbit tracker in 2009 to now having sold more than 120 million devices in over 100 countries, this mission has never wavered. Instead, millions of you joined that mission, and made Fitbit a movement that transformed lives. In some cases, we heard from our users that we even helped save lives. Together, we've taken 275 trillion steps and logged over 15 billion hours of sleep.

1 KING & SPALDING LLP
SHANE BRUN, State Bar No. 179079
2 601 S. California Ave.
Suite 100
3 Palo Alto, CA 94304
Telephone: (415) 318-1245
4 Fax: (415) 318-1200
Email: sbrun@kslaw.com
5

6
7 Attorney for Defendant
FITBIT, INC.
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 CELLSPIN SOFT, INC.,
13 Plaintiff,
14 v.
15 FITBIT, INC.,
16 Defendant.

Case No.: 4:17-cv-05928-YGR

**DEFENDANT FITBIT, INC.’S AMENDED
LOCAL CIVIL RULE 3-15
CERTIFICATION OF INTERESTED
PARTIES AND AMENDED CORPORATE
DISCLOSURE STATEMENT**

17
18 Dept.: Courtroom 1, 4th Floor
19 Judge: Hon. Yvonne Gonzalez Rogers

Pursuant to Federal Rule of Civil Procedure 7.1, Defendant Fitbit, Inc. (“FitBit”) respectfully submits this Amended Corporate Disclosure Statement. Fitbit hereby discloses that it does not have any parent corporation. FitBit further discloses that it is a subsidiary of Google LLC, which is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly traded company holds more than 10% of Alphabet Inc.’s stock.

FitBit also submits this Amended Certification of Interested Parties. Pursuant to Civil L.R. 3-15, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

1. Fitbit, Inc.
2. Google LLC
3. XXVI Holdings Inc., Holding Company of Google LLC
4. Alphabet Inc., Holding Company of XXVI Holdings Inc.

Dated: February 3, 2021

Respectfully submitted,
KING & SPALDING LLP

By: /s/ Shane Brun
Shane Brun

Shane Brun
601 S. California Ave., Suite 100
Palo Alto, CA 94304
Telephone: (415) 318-1245
Fax: (415) 318-1200
Email: sbrun@kslaw.com

Attorney for Defendant
FITBIT, INC.



Matt Rogers · 2nd
Leading in the Energy Transition

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About

I am a global energy and sustainability leader, focusing on the role technologies play in accelerating growth and improving performance in restructuring energy markets. I have spent 35 years serving energy clients around the world: establishing strategic priorities to win in the energy transition, shaping capital investments, defining regulatory and policy approaches, driving operational improvement programs, and building capabilities to accelerate growth.

During my time with McKinsey, I led and grew McKinsey's Electric Power, Oil and Gas, and Sustainability practices. I have served energy clients ranging from a leading energy technology innovators to Fortune 500 oil companies and electric and gas utilities to National Oil Companies and energy marketers globally.

From 2009 to 2010, I left McKinsey to serve as the Senior Advisor to the US Secretary of Energy, leading the Recovery Act Implementation. I had operational responsibility for the Department of Energy's \$35B in Recovery Act appropriations: reviewing more than 30,000 applications and funding more than 5,000 projects to accelerate US energy innovation across markets. In this role, I was a public voice on energy and environmental innovation, testifying before Congress and giving hundreds of press interviews and public speeches. I led the DOE efforts on a series of interagency policy and regulatory issues and held a Department of Defense Q clearance to address national security issues.

I have written and spoken extensively on oil, gas, power, sustainability, and energy transitions to boards, investors, and major global forums. My book with Stefan Heck, Resource Revolution: Capturing the Biggest Business Opportunity in 100 years was published in April 2014, arguing that the combination of information technology with industrial technology is changing the way we produce and use natural resources and restructuring energy, agriculture, transportation markets globally. I have built a strong global network in energy and sustainability based on this combined client service, government service, and public voice contributions.

I graduated magna cum laude from Princeton University and earned an M.B.A. from Yale University's School of Management. I serve on the Board Directors for the United Way of the Bay Area and St Mary's College School of Economics and Business Administration. I teach a course on energy finance at the UC Berkeley, Haas School of Business. I serve as a member of the Council on Foreign Relations and the National Petroleum Council. I am married with three adult children.

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Experience



Operating Partner

Ajax Strategies · Part-time
Apr 2022 - Present · 10 mos
San Francisco Bay Area



McKinsey & Company

12 yrs 4 mos
San Francisco Bay Area

Senior Partner Emeritus

Part-time
Aug 2021 - Present · 1 yr 6 mos

Focused on energy, sustainability and the energy transition

Senior Partner

Full-time
Oct 2010 - Aug 2021 · 10 yrs 11 mos

I serve energy and energy technology companies around the world



Chief Executive Officer

Mission Possible Partnership · Full-time
Jan 2022 - Sep 2022 · 9 mos



Lecturer

University of California, Berkeley, Haas School of Business
Mar 2019 - Apr 2021 · 2 yrs 2 mos
Berkeley, California

Energy and Infrastructure Project Finance for MBA and EMBA



Senior Advisor to the Secretary for Recovery Act Implementation

U.S. Department of Energy
Feb 2009 - Sep 2010 · 1 yr 8 mos
Washington, DC

I led DOE's \$35B Recovery Act program, funding more than 5,000 projects to accelerate US energy innovation.

Show all 9 experiences →

Contact

www.linkedin.com/in/mattcrogers
(LinkedIn)

Top Skills

Business Strategy
Entrepreneurship
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Publications

Resource Revolution: Capturing the Biggest Business Opportunity in a Century

Blue Carbon: The potential of coastal and oceanic climate action

How blockchain can help the utility industry develop clean power

Curbing methane emissions: How five industries can counter a major climate threat

How Technology is Reshaping Supply and Demand for Natural Resources

Matt Rogers

Leading in the Energy Transition
San Francisco Bay Area

Summary

I am a global energy and sustainability leader, focusing on the role technologies play in accelerating growth and improving performance in restructuring energy markets. I have spent 35 years serving energy clients around the world: establishing strategic priorities to win in the energy transition, shaping capital investments, defining regulatory and policy approaches, driving operational improvement programs, and building capabilities to accelerate growth.

During my time with McKinsey, I led and grew McKinsey’s Electric Power, Oil and Gas, and Sustainability practices. I have served energy clients ranging from a leading energy technology innovators to Fortune 500 oil companies and electric and gas utilities to National Oil Companies and energy marketers globally.

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I have written and spoken extensively on oil, gas, power, sustainability, and energy transitions to boards, investors, and major global forums. My book with Stefan Heck, Resource Revolution: Capturing the Biggest Business Opportunity in 100 years was published in April 2014, arguing that the combination of information technology with industrial technology is changing the way we produce and use natural resources and restructuring energy, agriculture, transportation markets globally. I have built a strong



McKinsey partner Liz Ericson and senior partner Peter Dahlstrom.

“McKinsey’s open ecosystem of alliances and acquisitions provides an unparalleled offering, and it is one important ingredient in our ability to partner with our clients for end-to-end impact,” says Peter. “The impact our ecosystem has generated is already compelling—and we are accelerating our journey.”

For example, we worked with AWS to help a global pizza company develop an e-commerce platform and establish a digital team that increased customer conversion by 40 percent, customer satisfaction by 15 percent, and reduced downtime to zero.

We partnered with Google Cloud to help one of our global logistics clients increase their

supply-chain forecasting accuracy by building an advanced analytics platform to better predict order volumes.

By utilizing Microsoft's IoT platform, we helped a wireless equipment manufacturer build a "factory of the future," delivering a use-case strategy, roadmap, and industrial IoT platform in 16 weeks.

And working with SAP, we helped a multinational consumer-packaged goods organization transform their supply chain through tech-enabled autonomous planning. The program reduced inventory by 27 percent, and manual work by 60 percent, by consolidating over 100 data sources into one. It also increased the forecast accuracy by six to ten percent and reaction speed by 400 percent.

Those are just a few cases that illustrate what our collaborations can do. In addition, we work with hundreds of collaborators who bring specific and relevant capabilities across every industry and function where we serve clients. Meanwhile, we're also active in the acquisition space, seeking out strategic, high-caliber organizations that rapidly bolster our internal



Our open ecosystem of alliances and acquisitions

Bringing the best to our clients

To help our clients in a rapidly changing world, we must continuously innovate and extend our capabilities. From cloud and artificial intelligence, to sustainability, change acceleration and more, our open ecosystem allows us to serve as end-to-end impact partners for our clients.

500+

ecosystem members

20+

companies acquired

750+

clients served

OUR COMBINED CAPABILITIES

Technology and applications

We help our clients capture the full value of their technology investments and equip them with tools that revolutionize their ways of working.

Data and analytics

The combined power of extensive sector data and advanced analytics helps our clients generate more, better, and faster insights.

Implementation and change

Our ecosystem allows us to move beyond insight and deliver end-to-end transformations with our clients.

FEATURED ALLIANCES



FEATURED ACQUISITIONS



Appx0919
NETWORK OF CAPABILITIES



< Back to Ecosystem of Alliances and Acquisitions

Technology & Applications

Google Cloud & McKinsey



Our collaboration

We enable digital transformations by combining McKinsey's strategic and functional insights with Google Cloud's scalable, flexible, and secure cloud infrastructure platform and leading artificial intelligence (AI) and machine-learning (ML) capabilities.



Visit [Google Cloud](#)

CLIENT IMPACT

Driving operational efficiencies at a mining company

Unlocked \$150 million in cost savings in four months by aggregating and analyzing operational data from geographically remote sites and developing predictive maintenance tests.

Improving refinery performance at a major oil and gas company

Reduced energy consumption and enabled predictive maintenance through real-time alerts to managers based on digitally integrating more than 300 variables in refinery management.

Helping a global logistics company increase forecasting accuracy

Increased forecasting visibility from one week to 52 weeks with 95 percent accuracy by building an advanced analytics platform to better predict order volumes.

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Technology & Applications

Google Cloud & McKinsey

Our collaboratio n



We enable digital transformations by combining McKinsey's strategic and functional insights with Google Cloud's scalable, flexible, and secure cloud infrastructure platform and leading artificial intelligence (AI) and machine-

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Hal Harvey

PARTNER



Ming Chow

PARTNER



Chris Wong

SENIOR ASSOCIATE



Brad Griffith

OPERATING PARTNER



Audrey Lee

OPERATING PARTNER



Veery Maxwell

OPERATING PARTNER



Brian Mixer

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Sharon Olexy

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Matt Rogers

OPERATING PARTNER



Dorian West

OPERATING PARTNER



Jim Lyons

CHIEF TECHNOLOGIST



Joe Britton

CLIMATE AND ENVIRONMENTAL ADVISOR



Julie Champion

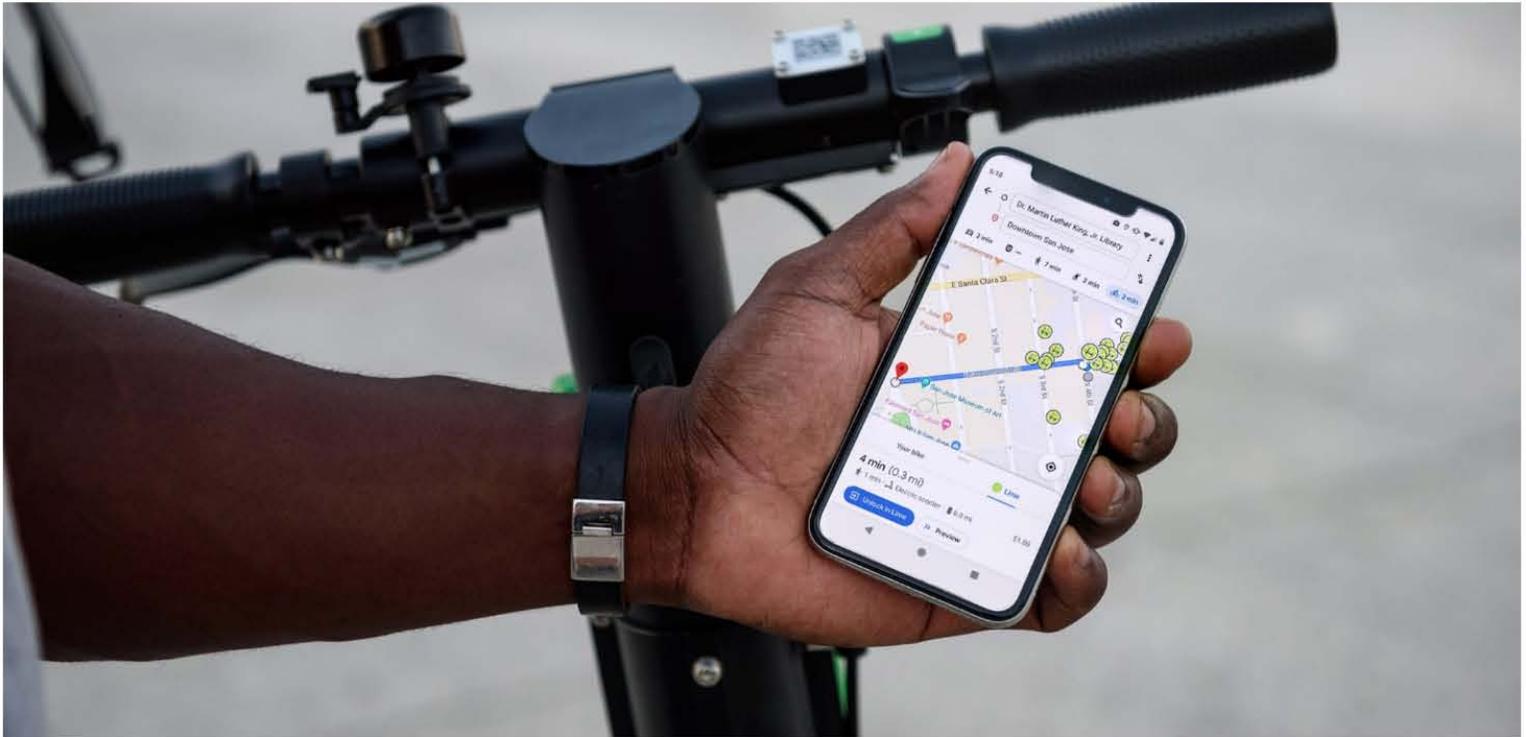
EXECUTIVE ASSISTANT



Lime > Blog > Enhanced Lime, Google Maps Integration Sets Sights On Improving City Commutes

Enhanced Lime, Google Maps Integration Sets Sights On Improving City Commutes

August 13, 2019



Tags

Tech

Lime's integration with Google Maps last December was an industry first, [extending the reach of micromobility](#) to one of the world's most popular GPS mapping services.

Now the two companies are taking their collaborative efforts a significant step further.

In addition to being shown nearby scooters and bikes in the "transit" tab, Google Maps users can now access Limes via both the "walking" and "cycling" tabs as well. The app will display helpful information about each vehicle including distance, price and battery range, as well as the most efficient walking route to get there.

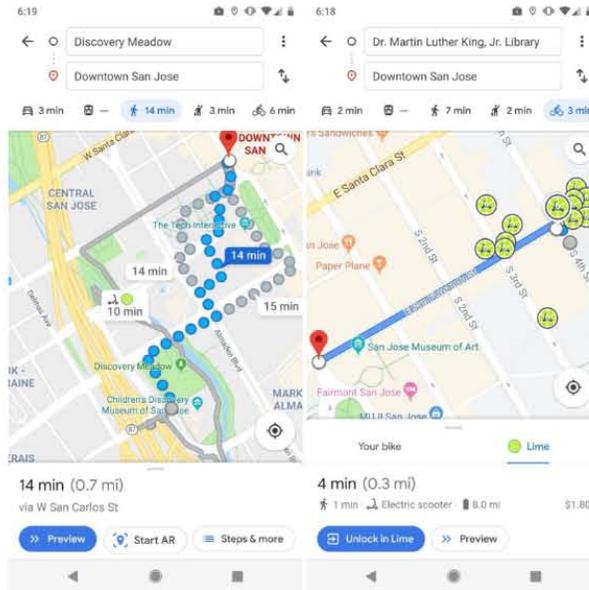
"We're very excited about this enhanced integration," said Leon Kitain, Lime's Director of Product. "When planning a trip, people often look for ways to optimize by combining multiple forms of transportation, from walking and biking to driving and public transit. By expanding our strategic partnership with Google to increase the visibility of Lime scooters and bikes within Google Maps, we're helping to ensure that people have access to the form of transportation that best suits their daily mobility needs."

The expanded integration will roll out to Android users first, with iOS users to follow

HOW IT WORKS

To view Limes from the “cycling” tab in Google Maps, simply enter an origin and a destination then tap the “Lime” sub-tab located on the bottom half of the screen. Available scooters and bikes will automatically be populated in the vicinity of the starting point, with a walking route displayed to the nearest Lime vehicle and a bicycling route displayed for the rest of the trip.

When viewing directions from the “walking” tab, a route using a nearby Lime will be shown as an alternative when it is deemed a good option, along with the estimated travel time.



Clicking the “Unlock in Lime” button will direct users to the Lime app or, if not installed, the iTunes or Google Play stores.

HELPING COMMUTERS

One mobility group that could see the strongest benefits from this upgraded integration is commuters. In cities like Paris, where electric scooters have been shown to **reduce commuting times by more than 10 minutes**, 85% of Lime riders already report combining micromobility with other forms of transportation.

Increasing the visibility of scooters in Google Maps, alongside walking, cycling and transit options, will likely only further encourage more active and sustainable trips. A list of participating cities can be found below:

US Cities

Atlanta, Austin, Baltimore, Bloomington, Boise, Charlotte, Chicago, Cincinnati, Columbus, Corpus Christi, Dallas, Denver, Hoboken, Indianapolis, Little Rock, Los Angeles, Louisville, Lubbock, Miami, Monterey, Mountain View, Oakland, Orlando, Phoenix, Sacramento, San Antonio, San Diego, San Jose, San Marcos, Santa Barbara, Scottsdale, South Bend, Statesboro, Tampa, Washington DC

International Cities

Adelaide, Auckland, Bahia de Banderas, Berlin, Bogota, Brisbane, Brussels, Bucharest, Budapest, Calgary, Cali, Christchurch, Cologne, Copenhagen, Gothenburg, Hamburg, Liege, Linz, London, Lyon, Madrid, Malaga, Malmö, Marseille, Milan, Milton Keynes, Montevideo, Munich, Namur, Oxford, Pamplona, Paris, Poznan, Rio de Janeiro, Rome, Sao Paulo, Stockholm, Sydney, Tel Aviv, Uppsala, Valencia, Vienna, Warsaw, Waterloo, Wellington, Wroclaw, Zaragoza

LEARN MORE

To learn more about Lime’s latest integrations and partnerships, [subscribe to 2nd Street](#), or download the Google Maps and [Lime apps](#) to find the most convenient way around your city today.

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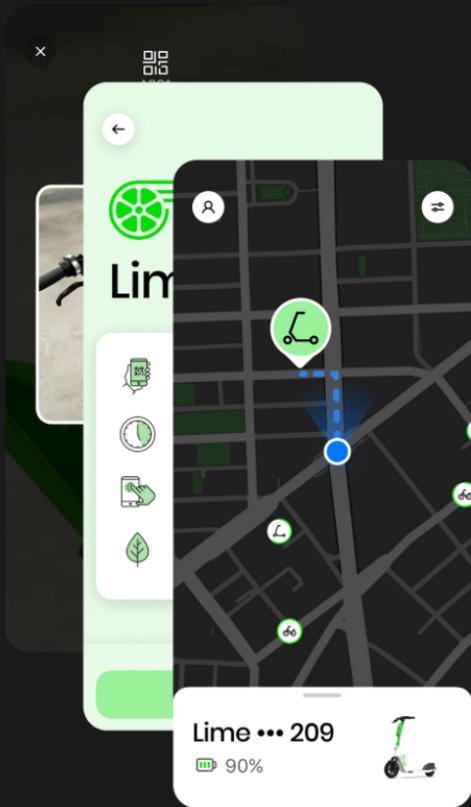
Meet Citra



Lime pilots Google's augmented reality technolog...

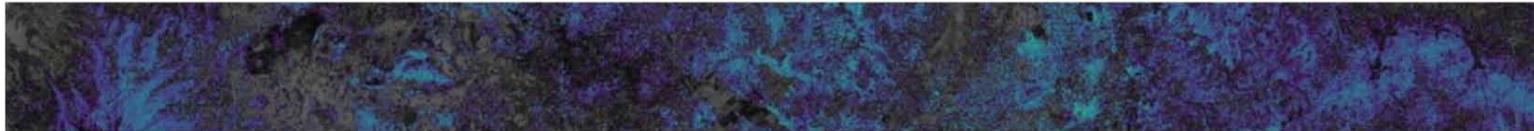


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- Accelerates time to market for research results by more than six months with Google Cloud
- Able to process constantly increasing data volumes while avoiding large capital expenditures
- Improves speed and accuracy of crop yield data

Handling PB-scale datasets in hours versus months

Feeding a growing world population in a changing climate requires highly accurate agricultural forecasting beyond what traditional survey data can provide. [Descartes Labs](#), a research- and analytics-driven company in the Southwestern United States, is helping the world address food security crises and even identify early signs of famine. By using machine learning to analyze years of scientifically calibrated satellite imagery, the company can successfully predict changes in crop health and yield.

Named after the French mathematician René Descartes — who discovered that the position of a point can be determined by coordinates — Descartes Labs provides instant, programmatic access to satellite images of any geographic location. Using environmental change analysis, the company gives customers information about the global food supply through deep learning, remote sensing, and large-scale, high-performance computing. Governments, academic researchers, and food producers can use its forecasts to help ensure crop harvests are sufficient and that critical links in the food chain remain economically healthy.

Labs

Descartes Labs created a cloud-based supercomputing platform to apply machine intelligence to massive datasets. Its mission is to better understand the planet, for good and for profit. Today, Descartes Labs uses satellite imagery and advanced data and analytics processing in Google Cloud to model complex systems on the planet, like forestry and agriculture, to enable organizations to "see" and understand the world in a whole new way.

Industries: Technology, Agriculture, Forestry & Fishing

Location: United States



Descartes Labs' crop health. It offers insights into human populations, natural resources, the growth of cities, the spread of forest fires, and the state of available drinking water across the globe. The company also makes its platform available to organizations that want to gain insights from their own data to optimize pricing and better understand their customers.

About Intel Corporation

Intel Corporation, a Google Cloud Technology Alliance partner, is known for being a market leader and one of the world's best-known chip producers, but Intel does much more. Harnessing the capability of the cloud and the ubiquity of the Internet of Things, Intel is disrupting industries and solving global challenges. Leading on policy, diversity, inclusion, education, and sustainability, Intel creates value for its stockholders, customers, partners, and society.

"We are constantly getting petabytes of new data from hundreds of satellites. With Google Cloud, we don't worry about whether the compute, network, or storage can scale and, instead, can focus on improving models and analyzing larger datasets for better forecasts."

—Tim Kelton, Co-founder and Cloud Architect, Descartes Labs

- BigQuery
- Cloud Bigtable
- Cloud Pub/Sub
- Cloud SQL
- Cloud Storage
- Compute Engine
- Kubernetes Engine
- Container Registry
- Google Earth Engine
- Operations
- Google Workspace
- Gmail
- Calendar
- Docs
- Google Drive
- Google Meet
- Sheets

Building a timely, dynamic atlas of the world with deep historical coverage of the entire planet involves massive datasets – and the amount of data grows all the time. When Descartes Labs learned that [Google Earth Engine](#) hosts all NASA Landsat satellite imagery since 1973 natively on [Cloud Storage](#), the company jumped at the chance to use images – the longest continuous observations of the Earth ever captured – to back-test models over many years. However, it needed a practical way to process more than 1 petabyte of satellite imagery of U.S. corn production data (4 quadrillion pixels) without setting up a large physical infrastructure.

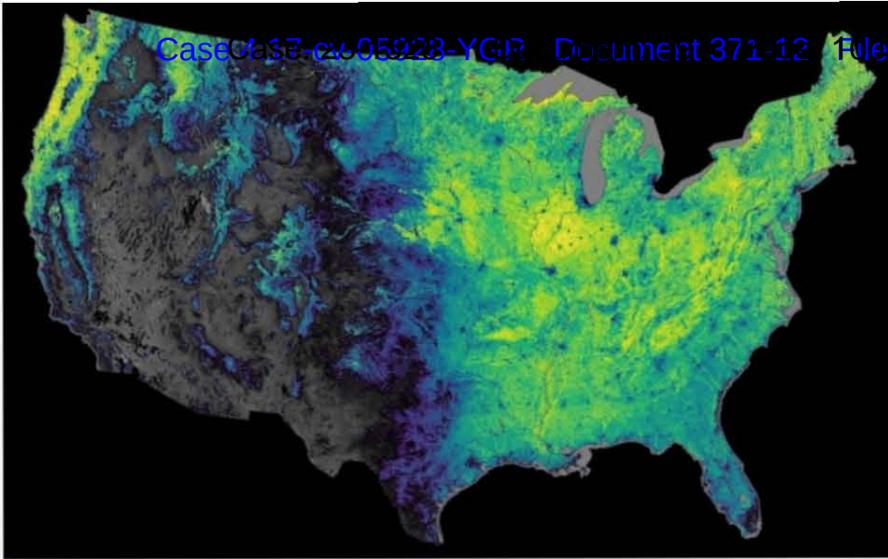
As a startup company in a highly competitive space, Descartes Labs could not afford to wait months to prove its viability in the agricultural research market. By using [Compute Engine](#) and leveraging high-end Intel Xeon Scalable processors for added performance, Descartes Labs is able to scale compute, networking, and storage to process the entire Landsat image archive in just over 15 hours. By enabling historical back-testing, the company indicates it can now predict corn yields faster and more accurately than government organizations. The trading markets believe this to be true and on the first day that Descartes Labs published its forecasting models [the company received major media coverage, and the corn futures market moved by 3 percent.](#)

"Just a few years ago, we would have needed the world's largest supercomputers to do what we can now do with [Google Cloud](#)," says Mark Johnson, CEO, Descartes Labs. "Compared with other cloud solutions, Google Cloud offers unmatched scalability, which is a business requirement as we push toward exascale computing."

"We are constantly getting petabytes of new data from hundreds of satellites," says Tim Kelton, Co-founder and Cloud Architect, Descartes Labs. "With Google Cloud, we don't worry about whether the compute, network, or storage can scale and, instead, can focus on improving models and analyzing larger datasets for better forecasts."

Supercomputing in the cloud with Google Cloud

Descartes Labs now has the ability to scale its proprietary machine learning tools on demand by using Google Cloud to process even the largest datasets, including the European Space Agency's Sentinel satellite constellation. It has developed the first-ever global composite views from some of these satellites, showing different frequency bands to monitor changes in vegetation and the Earth's surface.



Modis NDVI (normalized difference vegetation index) over the 2014 growing season in the United States.

To help keep costs low, it uses preemptible VMs, Compute Engine instances that are extremely affordable because they are short-lived. "Using Intel Xeon Scalable processors helps us achieve even better price/performance in Compute Engine," says Tim. To help keep performance high, Descartes Labs uses tens of thousands of CPUs to ingest the imagery and high-bandwidth links to Cloud Storage, where the compressed imagery is stored. Soon, Descartes Labs expects to have nearly 15 petabytes of processed imagery on Cloud Storage, where it can be analyzed at any time.

"We use Cloud Storage as our large distributed file system because we know it will scale as our datasets grow beyond multiple petabytes," says Tim. "We saw aggregate read bandwidth of 230 gigabytes per second using 512 compute nodes, which is comparable to the best HPC storage systems in existence."

"Google Kubernetes Engine lets us get code into production faster and provide better APIs to our customers," adds Tim. "It's like playing Tetris with our workloads — everything automatically goes in the best slot, and it's constantly checking to make sure services are always available."

"We wouldn't be able to handle the amount of data we're managing daily without Google and Intel. We've already seen file compression rates improve by 38 percent and image extractions speed up by 24 percent."

— Tim Kelton, Co-founder and Cloud Architect, Descartes Labs

For Descartes Labs, the productivity improvements were supported by the company's use of Intel hardware. On Google Cloud, the company's solution is powered by Intel Xeon Scalable processors, which provide best-in-class hardware for many applications. Along with faster performance, the Xeon Scalable series also features Advanced Vector Extensions 512 support, which effectively doubles the amount of data that the processor can process at one time and improves compression speeds.

Building on Google innovation with BigQuery GIS

As satellite images are analyzed, Descartes Labs captures information about each scene as vector data, and uses [Cloud Pub/Sub](#) in conjunction with a microservice hosted on Google Kubernetes Engine to persist that information into [BigQuery](#) for geospatial analysis. By bringing large GIS workloads directly into its data warehouse in BigQuery, Descartes Labs is able to simplify some of its GIS processes and take advantage of the serverless scalability of BigQuery.

"With BigQuery GIS we can provide a highly scalable, no ops API layer to our customers for geospatial analysis of any size," says Kelton. "Plus, its billing and cost structure aligns to one that matches our use patterns."

Descartes Labs also uses BigQuery to analyze logs from its applications and the APIs it provides to customers, gaining valuable insight to improve products. For monitoring and alerting it uses [Stackdriver Monitoring](#), helping engineers resolve issues quickly. To store visual signatures that identify landmarks or structures such as wind turbines, solar farms, golf courses, or airport runways for the company's [GeoVisual Search](#) tool, it uses [Cloud Bigtable](#), which returns search results much faster than a standard relational database.

"A major advantage of Google Cloud is that we get access to the same tools Google uses to power its own services, which helps us improve developer efficiency," says Tim. "Cloud Bigtable is a perfect example. Google has expertise in search, and we can benefit from the same technology."

Just a few years ago, Descartes Labs was a new company needing to maximize productivity on a limited budget. [Google Workspace](#) was the natural choice to help the company grow, and today it supports ten times the number of original employees. Descartes Labs depends on [Gmail](#), [Drive](#), [Sheets](#), [Docs](#), and [Calendar](#) to keep business moving, and regularly uses [Google Meet](#) to meet with customers and connect employees across offices.

"For a company with dreams to change the world, our collaboration with Google is invaluable. The Google Cloud team has been eager to work with us, helping us scale and get maximum benefit from Google Cloud."

—Mark Johnson, CEO, Descartes Labs

"Google Workspace offers excellent security with multi-factor authentication, which is important to us. We started our company using Google Workspace and never looked back," says Tim. "It's an effective and affordable way to communicate and collaborate on the devices our teams rely on."

Scaling for the future of forecasting

As the cost of satellites and satellite launches comes down dramatically, the amount of image data observing the earth is dramatically increasing. With Google Cloud and Intel, Descartes Labs is enabling an understanding of the world at a scale, cost, and level of granularity that would have been impossible just a few years ago. The company expects to have more capacity on Google

As datasets grow, it is exploring new ways to make model training even more efficient, including using [Tensor Processing Units](#) (TPUs) from Google to accelerate machine learning. Current machine learning applications for Descartes include geographic data analysis from satellite imaging and customer-designed models, and the company continues to explore future AI-driven uses on Google Cloud. Intel Xeon Scalable processors have played a vital part in running this machine learning model training, which can often require more than 1,000 iterations in initial calibration.

Descartes Labs collaborates with Google and runs Intel Xeon Scalable processors to learn about the latest innovations that can help maximize the value of its forecasting platform. The results of this collaboration could have enormous and lasting impact, helping people worldwide avoid food shortages and other potentially catastrophic events.

"For a company with dreams to change the world, our collaboration with Google is invaluable," says Mark. "The Google Cloud team has been eager to work with us, helping us scale and get maximum benefit from Google Cloud. We look forward to continue working with Google to push the limits of cloud computing."

Learn More

Reach out to our team to see how Google Cloud can help your business [→](#)

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- Release Notes

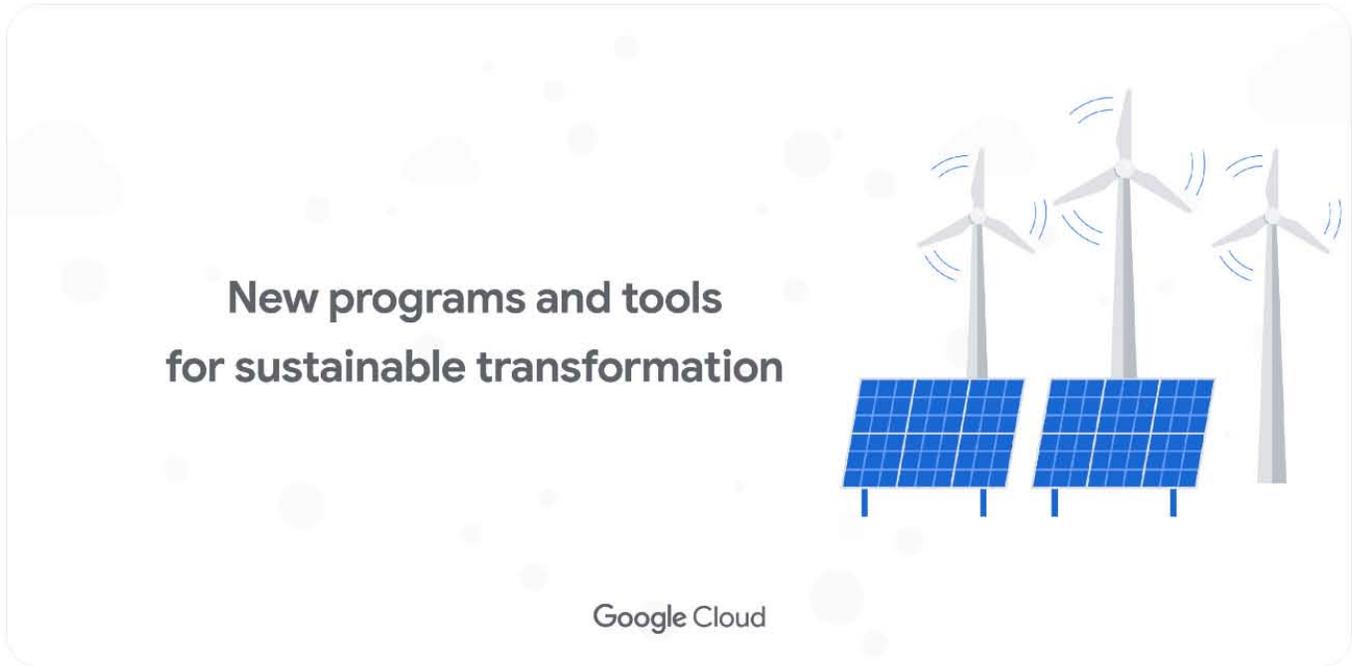
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Sustainability

Google Cloud announces new products, partners and programs to accelerate sustainable transformations

June 28, 2022

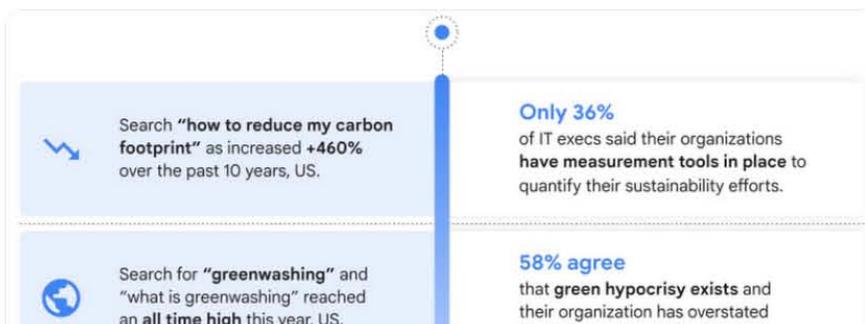


Justin Keeble

Managing Director for Global Sustainability, Google Cloud

At Google, we believe that the path to a sustainable future begins with the small decisions we make every day. But industries, governments and corporations are challenged to make these decisions without the right data or insights to inform them. Even a small choice for an organization — which raw material to choose for a new product, when to proactively water crops ahead of a drought, which green funds to invest in — requires understanding unique and often complex information.

Everyone wants to better understand how to become more sustainable, and take actions that have a meaningful impact. This year in the U.S., “how to reduce my carbon footprint” is being searched more than ever, and searches for “what is greenwashing” have increased five-fold over the past decade. [Businesses](#) and individuals alike are wondering how to turn sustainability ambition into action.



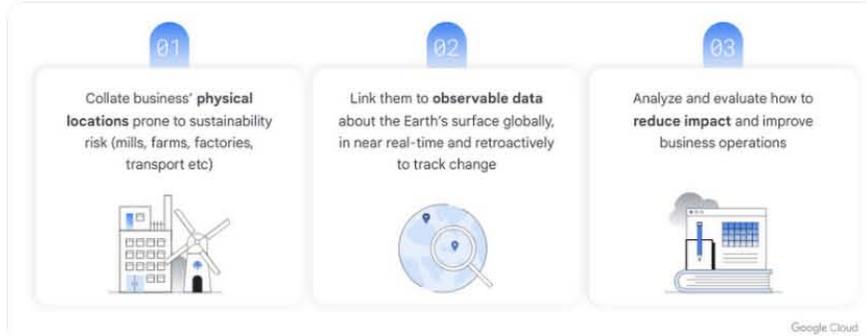


At the [Google Cloud Sustainability Summit](#), we’re excited to expand our sustainability solutions, and launch new datasets, tools and partnership programs that can help make the sustainable choice the easy choice, for everyone.

Providing climate insights for every organization

Last week we [announced two new climate insights offerings](#) for the public sector to help institutions better understand the risks to infrastructure and natural resources due to climate change. These insights can help governments transform the way they manage physical and natural resources, helping them become more climate-resilient. Every industry is also experiencing a new era of sustainability-driven transformation. Like with any transformation, how, why and what you transform needs to be informed by accurate data about your current state, and insights into the potential impact of your decisions. To help deliver these insights to all our customers, we’re excited to share that [Google Earth Engine](#) on Google Cloud is now generally available.

Google Earth Engine, which originally [launched](#) to scientists and NGOs in 2010, is a leading technology for planetary-scale environmental monitoring. Google Earth Engine combines data from hundreds of satellites and other sources with geospatial cloud computing resources to show timely, accurate, high-resolution and decision-relevant insights about the state of the world’s habitats and ecosystems — and how they’re changing over time. With one of the largest publicly available [data catalogs and](#) a global data archive that goes back 50 years and updates every 15 minutes, it’s possible to [detect trends and understand correlations](#) between human activities and environmental impact more precisely than ever before.



With Google BigQuery, Google Maps Platform and Earth Engine, Google provides a powerful combination of geospatial cloud products and solutions to serve customers’ location-aware analysis needs regardless of the scale, complexity or format of the data. This will enable customers like Regrow, a startup in the field of regenerative agriculture, to more easily contribute to our shared challenges around climate change and tackle their unique business challenges involving geospatial data.

“Regrow aims to make regenerative agriculture ubiquitous across the globe with an overall mission to mitigate climate change. That job has been made easier by Google Earth Engine, a platform which has allowed us to scale our technology and increase confidence in our data and reports,” said Juan Delard de Rigoulieres Mantelli, CTO, Regrow

Sharing carbon-free energy insights with customers

When we set out to use [24/7 carbon-free energy](#) across our global operations by 2030, we knew that we would need better tools to track energy consumption and production. After all, you can’t manage what you don’t measure, and existing approaches to clean energy tracking were not designed to track hour-by-hour energy use. For the past 10 years, and together with our partners, we’ve collected insights and knowledge about how to progress our business towards a carbon-free future. We’re

excited to start sharing 24/7 carbon-free energy insights with our Google Cloud customers through a new pilot program.

With access to historical and real-time data, and at regional and hourly granularity, customers will see a clear picture of their electricity emissions profile. The pilot will enable customers to baseline their existing carbon-free energy (CFE) score and their [scope 2 carbon footprint](#), help them forecast and plan for an optimized energy portfolio, and eventually execute on carbon-free energy transactions.

Sharing knowledge like this will be key to helping everyone reach ambitious net-zero targets. For example, companies like Iron Mountain are joining the [Carbon-free Energy Compact](#) to accelerate decarbonization.

“In 2021 we adopted the same 24/7 carbon-free energy goal pioneered by Google, and we recognize that the key to making progress towards this is access to good data and the ability to share that data with solution providers,” said Chris Pennington, Director of Energy and Sustainability at Iron Mountain. “Our early steps towards 24/7 have been enabled by key partners, including Google, who are providing us with the insights we need to evaluate our current performance and identify the next steps on our 24/7 journey. We place a great deal of value in collaboration to achieve better results, faster.”

Expanding the Carbon Sense suite

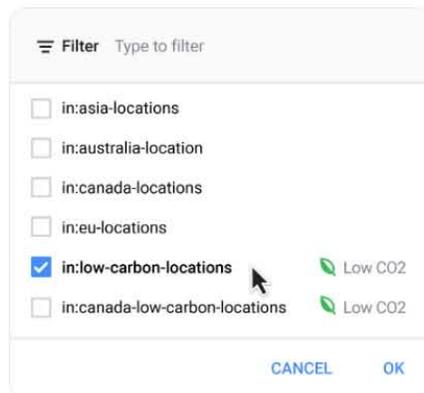
In the latest launch of the [Carbon Sense](#) suite of products we’re adding new data, expanding reporting coverage and making it easier for cloud architects and administrators to prioritize sustainability.

Last year we announced [Carbon Footprint for Google Cloud](#), which helps companies measure, report and reduce the gross carbon emissions of using Google Cloud services. We’re excited that early next year, we’ll launch Carbon Footprint for Google Workspace, providing similar reporting functionality for the emissions associated with products like Gmail, Meet, Docs and others.

For sustainability teams that need to access the data in Carbon Footprint for reporting purposes, we’re also excited to launch a dedicated Identity and Access Management (IAM) role for Carbon Footprint. This will enable non-technical users of Google Cloud to easily access the emissions data and use it for tracking or in disclosures. You don’t need to be a cloud computing expert to view and export carbon emissions data associated with your cloud usage.

Shopify’s sustainability and IT teams are closely aligned on their sustainability goals. “Shopify is on a mission to be the lowest carbon commerce platform for millions of entrepreneurs around the world,” says Stacy Kauk, Head of Sustainability at Shopify. “Tools like Carbon Footprint allow our engineers to understand the carbon impact of our technology decisions, and ensure we continue to architect a fast, resilient and low-carbon commerce solution.”

You also don’t need to be a sustainability expert to make sustainable computing choices. For IT teams, and the administrators and cloud architects within them, we’re introducing low-carbon mode, which enables you to restrict your cloud resources to the low-carbon locations across our infrastructure using new [low-carbon locations value groups](#). One of the most impactful actions you can take to reduce the gross emissions of using Google Cloud is to prioritize the locations with more carbon-free energy powering our infrastructure. Relative to other choices, you may be able to [lower carbon emissions by 5-10x](#).



One company that is putting emissions data in the hands of engineers is Uber. “At Uber we take sustainability seriously across the organization,” said Michael Sudakovich, Sustainable Engineering Lead and Senior Security Engineer at Uber. “From giving riders more sustainable choices to now giving

with Carbon Footprint. Helping everyone make more sustainable choices is a priority for all of our teams as we work to make Uber a zero-emission platform in Canada, Europe, and the US by 2030, and worldwide by 2040.”

Finally, Carbon Footprint is adding both scope 1 and 3 emissions to its reporting data. These are the apportioned amounts of Google’s scope 1 and 3 emissions, associated with a customer’s use of Google Cloud. You can read a detailed explanation of different scopes of emissions [here](#), but for a quick breakdown: Scope 1 emissions are from sources an organization controls directly; Scope 2 are associated with the production of energy used by the organization (those were already in Carbon Footprint); and scope 3 are indirect emissions from up and down the value chain. Users will soon have a comprehensive view of the emissions associated with their Google Cloud usage.

“At SAP, sustainability is core to our culture and operations and we ensure it is infused across the organization. Our SAP Cloud deployment strategy focuses on sustainable data centers to help achieve our commitment to net-zero by 2030. We are leveraging Carbon Footprint to understand, report, and reduce our gross carbon emissions associated with our Google Cloud usage. Google data centers help SAP, and our joint customers, make their entire value chains more sustainable,” said Tom Lee, Head of Multicloud Products and Services, SAP.

Growing our sustainability ecosystem

The ecosystem of [Google Cloud partners](#) focused on sustainability continues to expand at a remarkable pace. The initiative, which brings technology providers together to help global businesses and governments accelerate sustainability programs, has added multiple new partners with innovative solutions. Today, we’re announcing two new programs to make it easier for partners to participate in the initiative, and for organizations to find the tools and expertise to help achieve their sustainability goals

First, Google Cloud Ready - Sustainability is a new validation program for partners with a business-ready solution available on Google Cloud that helps customers achieve sustainability goals. Partners with the GCR-Sustainability designation deliver solutions that reduce carbon emissions, increase the sustainability of value chains, help organizations process ESG data or help them identify climate risks for increased resilience.

Carto, Climate Engine, NGIS, GEOTAB, Planet, Atlas AI, Electricity Map have already achieved their Google Cloud Ready - Sustainability designation. Many of these partners have expertise in next-generation technologies addressing ESG challenges such as [geospatial or climate data](#) and analytics. Providers like [Dun & Bradstreet](#) are excited about this new sustainability validation program.

“As climate-related events increase in magnitude and frequency, it’s imperative that we incorporate climate data into business risk management across company locations and supply chains. Programs like Google Cloud Ready for Sustainability accelerate access to solutions that can drive ESG transformations, such as applying climate-based risk factors alongside traditional financial considerations,” said Rochelle March, Head of ESG Product at Dun & Bradstreet.

Cloud Ready for Sustainability is part of [Google Cloud Partner Advantage](#), designed to maximize our partners’ success across business models, customer requirements, success metrics, and strategic priorities. You can learn more about Google Cloud Ready for Sustainability and complete an application [here](#).

Second, we’re launching the Google Cloud Marketplace Sustainability Hub, providing customers with easy access to validated sustainability solutions. The Marketplace Sustainability Hub will showcase Google Cloud Ready for Sustainability solutions, which can be purchased directly from the site. Look for the Marketplace Sustainability Hub to launch soon.

Don’t miss all the exciting content at the Sustainability Summit

Tomorrow, June 28, we’re bringing technologists, developers, business and sustainability leaders together to learn how the climate leaders of today are building for the future. You can catch all the talks, films, presentations and demos [here](#), so don’t miss out!

Sustainability

Announcing new tools to measure—and reduce—your environmental impact



Now you can evaluate and reduce the carbon footprint of your cloud workloads, and evaluate your environmental impact with Earth Engine.

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III. LEGAL STANDARD

1 Under 28 U.S.C. § 455(a), a judge “shall disqualify [her]self in any proceeding in which
2 [her] impartiality might reasonably be questioned.” In analyzing disqualification motions under
3 § 455(a), the Ninth Circuit “employ[s] an objective test: ‘whether a reasonable person with
4 knowledge of all the facts would conclude that the judge’s impartiality might reasonably be
5 questioned.’” *Clemens v. U.S. Dist. Ct. for Cent. Dist. of California*, 428 F.3d 1175, 1178 (9th
6 Cir. 2005) (quoting *Herrington v. Cnty. of Sonoma*, 834 F.2d 1488, 1502 (9th Cir. 1987)).

7 Under 28 U.S.C. § 455(b)(4), a judge “shall also disqualify [her]self . . . [when she] knows
8 that [s]he, individually or as a fiduciary, or [her] spouse or minor child residing in [her] household,
9 has a financial interest in the subject matter in controversy or in a party to the proceeding, or any
10 other interest that could be substantially affected by the outcome of the proceeding.” As used in
11 this statute, the term “financial interest” means “ownership of a legal or equitable interest, however
12 small, or a relationship as director, adviser, or other active participant in the affairs of a party.” 28
13 U.S.C. § 455(d)(4). However, the statute provides four explicit exceptions to the meaning of
14 “financial interest,” the first of which is: “Ownership in a mutual or common investment fund that
15 holds securities is not a ‘financial interest’ in such securities unless the judge participates in the
16 management of the fund.” 28 U.S.C. § 455(d)(4)(i).

IV. ARGUMENT

17
18 Cellspin’s motion should be denied for a number of independent reasons. First, the motion
19 is untimely under Ninth Circuit law because Cellspin waited to bring it until two years after it
20 ascertained the basis for the motion, and until after Judge Gonzalez Rogers granted summary
21 judgment and entered Judgment in favor of Defendants and against Cellspin in these cases.
22 Second, Cellspin’s argument under 28 U.S.C. § 455 is contingent on showing that Judge Gonzalez
23 Rogers has an appearance of bias in favor of and/or a “financial interest” in “Google” (*i.e.*,
24 Alphabet Inc., Google LLC, and/or GV), but Cellspin’s evidence does not demonstrate either.
25 Third, even if Cellspin could show the appearance of bias or a financial interest under 28 U.S.C.
26 § 455, the circumstances of this case do not support Cellspin’s request under Fed. R. Civ. P. 60 to
27
28

1 vacate the Summary Judgment Order. For these reasons, as explained below, the Court should
2 deny Cellspin’s motion.

3 **A. Cellspin’s Motion Pursuant To 28 U.S.C. § 455 Is Untimely.**

4 The foundational event that forms the basis for Cellspin’s motion was the completion of
5 Google’s acquisition of Fitbit in January 2021. *See* Mot. at 3-4. Fitbit promptly alerted the Court
6 and Cellspin to that event on February 3, 2021. Dkt. No. 165. But Cellspin did not seek Judge
7 Gonzalez Rogers’ recusal at that time. Instead, Cellspin waited two years—during which time
8 (1) the Judge considered and granted Defendants’ dispositive summary judgment motions and
9 entered Judgment in favor of Defendants and (2) Cellspin appealed and filed its opening appeal
10 brief—before finally filing the instant motion for recusal in January 2023. That delay renders
11 Cellspin’s motion untimely and compels denial.

12 “It is well established in [the Ninth Circuit] that a recusal motion must be made in a timely
13 fashion.” *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1295 (9th Cir. 1992) (citing
14 *Molina v. Rison*, 886 F.2d 1124, 1131 (9th Cir. 1989)). “While no per se rule exists regarding the
15 time frame in which recusal motions should be filed after a case is assigned to a particular judge,
16 if the timeliness requirement is to be equitably applied, recusal motions should be filed with
17 reasonable promptness after the ground for such a motion is ascertained.” *Preston v. United States*,
18 923 F.2d 731, 733 (9th Cir. 1991); *see also Skokomish Indian Tribe v. United States*, 410 F.3d 506,
19 519 (9th Cir. 2005) (denying recusal as untimely for seven-month delay).

20 Here, Cellspin did not come close to filing its recusal motion with “reasonable promptness”
21 after ascertaining the facts relevant to its motion. *Preston*, 923 F.2d at 733. On the contrary, long
22 before Cellspin filed its motion for recusal, it had access to 100% of the factual information on
23 which the motion is based. For example, regarding Cellspin’s allegation that Mr. Rogers’ job as a
24 senior partner at McKinsey creates a conflict of interest, Cellspin cites Judge Gonzalez Rogers’
25 Questionnaire for Judicial Nominees, which she completed in 2011. *See* Mot. at 4; Dkt. No. 366,
26 Ex. 1. Similarly, Cellspin’s allegations regarding Judge Gonzalez Rogers’ financial interest in
27 Alphabet Inc. are based on the Judge’s 2020 Financial Disclosure showing the Judge’s stock
28

1 holdings. *See* Mot. at 14-15; Dkt No. 366, Ex. 17. Even with respect to Mr. Rogers’ job as
2 Operations Partner at Ajax, Cellspin concedes that he has been in that position since at least March
3 2022—ten months before Cellspin filed this motion. *See* Mot. at 8; Dkt. No. 371, Ex. 2. Cellspin
4 had access to all the necessary information but did not file its motion promptly.

5 This case presents the quintessential set of circumstances that justify the timeliness
6 requirement. As the Ninth Circuit has “often stated, a party having information that raises a
7 possible ground for disqualification cannot wait until after an unfavorable judgment before
8 bringing the information to the court’s attention.” *United States v. Rogers*, 119 F.3d 1377, 1380
9 (9th Cir. 1997) (denying recusal motion as untimely). “Enforcing the timeliness of a recusal
10 motion is necessary to prevent litigants from using § 455(a) for strategic purposes.” *United States*
11 *v. Mikhel*, 889 F.3d 1003, 1027 (9th Cir. 2018) (finding recusal motion untimely). “[T]he absence
12 of such a requirement would result in increased instances of wasted judicial time and resources
13 and a heightened risk that litigants would use recusal motions for strategic purposes.” *Preston*,
14 923 F.2d at 733 (internal citations omitted); *see also E. & J. Gallo Winery*, 967 F.2d at 1296
15 (affirming denial of motion for disqualification where “the recusal statute is being misused for
16 strategic purposes”).

17 Cellspin’s “strategic purposes” in this case concerning the federal judiciary’s ethical
18 obligations under 28 U.S.C. § 455 are exactly the type of conduct that the Ninth Circuit forbids.
19 Rather than promptly seeking Judge Gonzalez Rogers’ recusal, Cellspin took its chance that the
20 Judge would rule in its favor on Defendants’ summary judgment motions and allow the case to
21 proceed to a trial over which the Judge would preside. It was only after Judge Gonzalez Rogers
22 granted Defendants’ summary judgment motions that Cellspin then asked the Judge to recuse from
23 the case and vacate the Summary Judgment Order. The Ninth Circuit does not allow such
24 gamesmanship. *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, ___ F.4th
25 ___, No. 19-56514, 2022 U.S. App. LEXIS 9488, at *19 (9th Cir. Apr. 8, 2022) (considering
26 whether the untimeliness raises “the appearance of gamesmanship or ‘judge shopping’”) (quoting
27 *In re Anwiler*, 958 F.2d 925, 930 (9th Cir. 1992)).

1 Moreover, by waiting until after it appealed, Cellspin has created an independent appeal
2 issue, which the Federal Circuit will have to review separately from the summary judgment issues
3 currently pending on appeal. That additional delay will likely result in further “wasted judicial
4 time and resources.” *Preston*, 923 F.2d at 733. Cellspin offers no justification or excuse for its
5 delay; indeed, Cellspin’s motion does not address timeliness at all. Accordingly, the Court should
6 deny Cellspin’s recusal motion as untimely.

7 **B. The Evidence Does Not Support Disqualification Under 28 U.S.C. § 455.**

8 Cellspin points to no evidence that would suggest that Judge Gonzalez Rogers is actually
9 biased in this case. Instead, Cellspin levies allegations based on Mr. Rogers’ employment with
10 companies that serve their clients using Google LLC products and services, as well as allegations
11 that the Judge owns the types of investments in which judges invest specifically to avoid ethical
12 problems that could emerge from holding stock in individual companies. Taken at face value,
13 Cellspin’s arguments for disqualification could drastically affect Judge Gonzalez Rogers’ ability
14 to sit as a judge in cases involving large corporations and would have sweeping ramifications for
15 the federal judiciary. As explained below, Cellspin’s arguments are baseless and should be
16 rejected.

17 **1. Mr. Rogers’ Employment At McKinsey Does Not Justify Recusal.**

18 Even assuming that Mr. Rogers “team[s] up” and engages in “collaboration” with “Google”
19 in his role as a partner at McKinsey (Mot. at 5-8), nothing about those facts compels
20 disqualification of Judge Gonzalez Rogers from presiding over cases involving Google, its related
21 entities, or any other tech company. Nor do those facts demonstrate that Google is one of Mr.
22 Rogers’ “primary clients,” such that a case involving an Alphabet entity creates a conflict of
23 interest for the Judge.⁴

24
25
26 ⁴ Cellspin notes that, in Judge Gonzalez Rogers’ Questionnaire for Judicial Nominees, the Judge
27 identified “[m]atters relating to McKinsey and, more broadly, to [the Judge’s] husband’s primary
28 clients” as issues that would be potential conflicts of interest that would “likely require recusal.”
Mot. at 4 (excerpting Dkt. No. 366, Ex. 1). However, Cellspin does not allege, let alone prove,
that any Alphabet entity is a “client” of Mr. Rogers.

1 On issues concerning the business relationships of a judge’s spouse, a number of courts
2 have looked to the Committee on Codes of Conduct’s Advisory Opinion No. 107, which offers
3 guidance on Canon 3C(1) of the Code of Conduct for United States Judges.⁵ See Guide to
4 Judiciary Policy, Vol. 2, Ch. 2, Advisory Opinion No. 107; see also *Smith v. BP Exp. & Prod.*,
5 No. 22-842, 2022 WL 17403568, at *4 (E.D. La. Dec. 2, 2022); *Garrett v. Ohio State Univ.*, No.
6 18-692, 2021 WL 7186381, at *3 (S.D. Ohio Sept. 22, 2021); *Ragozzine v. Youngstown State*
7 *Univ.*, No. 13-750, 2014 WL 1153715, at *2 (N.D. Ohio Mar. 20, 2014). In that Advisory Opinion,
8 the Committee makes clear that “[a]s a general proposition, the fact that the spouse or the spouse’s
9 business has a business relationship with an entity that appears in an unrelated proceeding before
10 the judge usually does not require the judge’s recusal.” Advisory Opinion No. 107 at 205-06. The
11 Advisory Opinion provides examples of the direct business relationships—*e.g.*, the “judge’s
12 spouse is an officer, director, or trustee of a party in the proceeding”—that mandate recusal. *Id.*
13 at 205. However, “[r]ecusal is not mandatory in other situations involving spousal business
14 relationships that are less direct or consequential.” *Id.*

15 In this case, Mr. Rogers is neither employed by an Alphabet entity nor directly affiliated
16 with an Alphabet entity in any other way. And Cellspin does not—and cannot—allege that
17 Alphabet or “Google’s” relationship with McKinsey or with Mr. Rogers is at issue in this case,
18 which involves Cellspin’s allegations that Fitbit infringes Cellspin’s patents. Distilled to their
19 essence, Cellspin’s allegations rely on little more than the mere fact that McKinsey uses Google
20 Cloud. See Mot. at 5 (“For an oil and gas client, McKinsey used Google cloud to improve refinery
21 performance. . . . Here for their oil and gas client, McKinsey used Google Cloud . . .”). But
22 considering Google Cloud is one of the top three providers of cloud services, that fact is hardly
23 surprising.⁶ See Ex. 1.

24 _____
25 ⁵ As noted in the Advisory Opinion, “[a]lthough the Committee is not authorized to render advisory
26 opinions interpreting [28 U.S.C.] §§ 455 and 144, Canon 3C of the Code closely tracks the
27 language of § 455, and the Committee is authorized to provide advice regarding the application of
28 the Code.” Guide to Judiciary Policy, Vol. 2, Ch. 2, Advisory Opinion 107 at 210.

⁶ Cellspin also calls attention to McKinsey’s marketing materials identifying its alliances with
“AWS, Google, [and] Microsoft,” Mot. at 7, which are the top three providers of cloud computing
services globally. See Ex. 1. (Exhibits 1 through 6 are attached to the Declaration of Jamie L.
Kringstein filed herewith.)

1 The facts of this case resemble relevant examples in Advisory Opinion No. 107 of
2 businesses that offer services to a judge’s spouse or the spouse’s business:

3 When a service provider’s transactions with the judge’s spouse or
4 the spouse’s business are in the regular course of business, routine
5 in nature, and are unaccompanied by special circumstances
6 suggesting that the selection of the spouse or the spouse’s business
7 may have been influenced by the judge’s position, recusal is
8 ordinarily not required. The Committee has advised against recusal
9 in various situations where a party, law firm, or attorney appearing
before the judge also provided services to the spouse’s business. For
example, the Committee advised that a judge need not recuse from
proceedings involving banks and other lenders to the spouse’s
business where the relationship with the spouse’s business involved
traditional bank accounts and loans and no special circumstances
were present (such as unusually favorable terms).

10 Advisory Opinion No. 107 at 209. Here, Cellspin’s allegations that Google LLC offers cloud
11 services to McKinsey’s customers in the regular course of business is akin to a bank offering
12 services to a spouse’s business. Cellspin has not alleged any unusual circumstances—*e.g.*, that
13 Google LLC elected to work with McKinsey or Mr. Rogers because of Judge Gonzalez Rogers’
14 position as a judge. Accordingly, like the examples in the Advisory Opinion, McKinsey’s use of
15 Google Cloud services does not warrant recusal.

16 This case presents, at most, indirect and inconsequential spousal business relationships
17 between Alphabet entities and Mr. Rogers through his employment at McKinsey. Cellspin cites
18 no case law to support its argument that such attenuated connections are sufficient to require Judge
19 Gonzalez Rogers’ recusal under 28 U.S.C. § 455.

20 **2. Mr. Rogers’ Employment At Ajax Does Not Justify Recusal**

21 Cellspin’s allegations regarding Mr. Rogers’ employment at Ajax suffer from the same
22 deficiencies as the McKinsey allegations—namely, they rely on attenuated and generic
23 connections to Alphabet Inc. For example, Cellspin alleges that Mr. Rogers works with “three
24 start-up companies funded by Google,” Mot. at 8, but Cellspin fails to explain why, having
25 received investment money from Alphabet or GV, any of the three start-ups—let alone, Mr. Rogers
26 and Ajax—have a financial interest in Fitbit’s success in this litigation over patents. Nor does
27 Cellspin provide any evidence that specifically connects Mr. Rogers’ work with any of the three
28

1 start-up companies to money received from Alphabet entities. Additionally, Cellspin’s exhibits
2 show that a Google entity was one investor, among many others, in those three companies. *See*,
3 *e.g.*, Dkt. No. 371, Ex. 8 (showing that Planet Labs, Inc. also received investments from
4 BlackRock, Koch, and TIME Ventures). And the three companies Cellspin identifies are cherry-
5 picked from hundreds of companies in which GV has invested. *See* Ex. 2.

6 As another example, while Cellspin alleges that Mr. Rogers has handled “strategic
7 partnerships with Google” on behalf of five companies, Mot. at 12, Cellspin makes no effort to
8 demonstrate how, if at all, Mr. Rogers has been personally involved or personally benefits from
9 any of those companies or their relationships with Alphabet entities. Even Cellspin’s framing of
10 these supposed business relationships demonstrates that any financial interest Mr. Rogers has is,
11 at most, indirect. For example, with respect to each company, Cellspin alleges that Mr. Rogers
12 works for Ajax, Ajax has a financial interest in the company, and the company has some form of
13 partnership with Alphabet or GV. *See id.* at 12 (“Ajax Operating Partner Rogers has a financial
14 interest in Lime. And Lime bases about half of its entire business model on Google.”); *see also*
15 *id.* (“Ajax Operating Partner Matt Rogers has a financial interest in Voltus and Voltus has joint
16 product partnership with Google.”). At most, Cellspin suggests that each company integrates its
17 own technology into widely available Google platforms (*e.g.*, Google Maps, Google Nest, Google
18 Cloud, Google Earth Engine) that are not at issue in this litigation. *See id.* at 12-14. Cellspin fails
19 to explain how or why such activities create a “financial interest” in Google, or any reason why
20 the Judge’s impartiality might be questioned with regard to Cellspin’s patent infringement
21 allegations against Fitbit. Thus, for the same reasons discussed above with respect to the
22 McKinsey allegations, Cellspin’s allegations regarding Ajax do not meet the standard for recusal
23 under 28 U.S.C. § 455.

24 **3. Judge Gonzalez Rogers’ Investment In Vanguard Mutual Funds Does**
25 **Not Justify Recusal.**

26 Cellspin’s third basis for recusal is Judge Gonzalez Rogers’ investments in the Vanguard
27 500 Index Fund and Vanguard Total International Stock Index Fund. *See* Mot. at 14-18. Cellspin
28 attempts to draw a distinction between those funds as compared to a “mutual or common

1 investment fund,” which the statute specifically excludes from the definition of a “financial
2 interest.” 28 U.S.C. § 455(d)(4)(i). That distinction is imaginary.

3 Both Vanguard funds are mutual funds and are registered under the Investment Company
4 Act of 1940. Ex. 3 at 22 (“Vanguard 500 Index Fund is registered under the Investment Company
5 Act of 1940 as an open-end investment company, or mutual fund.”); Ex. 4 at 83 (“Vanguard Total
6 International Stock Index Fund is registered under the Investment Company Act of 1940 as an
7 open-end investment company, or mutual fund.”).⁷ Vanguard lists Donald M. Butler and Michelle
8 Louie as the portfolio managers for the Vanguard 500 Index Fund and Michael Perre and Christine
9 D. Franquin as the portfolio managers for the Vanguard Total International Stock Index Fund.
10 Exs. 5-6. Because Judge Gonzalez Rogers does not “participate[] in the management of the fund,”
11 under § 455(d)(4)(i), her ownership in the Vanguard 500 Index Fund and Vanguard Total
12 International Stock Index Fund, which are both “mutual or common investment fund[s],” cannot
13 be a “financial interest” in the securities held by those mutual funds, including Alphabet Inc.,
14 Fitbit’s ultimate parent corporation.

15 Courts addressing this issue have found that index funds, such as the Vanguard funds held
16 by Judge Gonzalez Rogers, are precisely the types of investment that the statute means to exclude
17 from the scope of a “financial interest.” For example, in *David v. GMAC Mortg., LLC*, the plaintiff
18 moved for disqualification under 28 U.S.C. § 455(b) based on the Judge’s investments in “three
19 separate mutual funds,” one of which was the Vanguard 500 Index Fund—*i.e.* the very same fund
20 Cellspin identifies in this case. No. 11-2914, 2011 WL 6078272, at *1 (N.D. Cal. Dec. 6, 2011).
21 In denying the motion, the court in *David* stated that “the funds are sold to the public as mutual
22 funds and are registered with the SEC. As such, they fall within the ambit of Canon 3C(3)(c)(i)
23 [of the Judicial Code of Conduct], and are excluded from the scope of ‘financial interests’ that
24 could create a conflict of interest.” *Id.*; see also *Pi-Net Int’l, Inc. v. Citizens Fin. Grp., Inc.*, No.
25 12-355, 2015 WL 1283196, at *4-5 (D. Del. Mar. 18, 2015) (denying motion for disqualification
26 based on investments that included the mutual fund “Vanguard Total Stock Market Index Fund,”

27 _____
28 ⁷ In fact, Vanguard hosts information regarding both funds at URLs under “mutual-funds” on its
website. See Ex 5; Ex. 6.

1 and noting “if this sort of financial interest were a conflict, I would be recused in many corporate
2 cases, as I dare say that I might have, through mutual fund holdings, an indirect financial interest
3 in almost every large publicly-traded U.S. corporation”).

4 In considering this issue, courts often cite Canon 3C of the Judicial Code of Conduct, which
5 closely tracks the language of 28 U.S.C. § 455(b)(4), and requires a judge to disqualify herself
6 when the judge knows that she “has a financial interest in the subject matter in controversy or in a
7 party to the proceeding.” Code of Conduct for United States Judges, Canon 3C(1)(c). Like the
8 exceptions in 28 U.S.C. § 455(d)(4), the Judicial Code of Conduct notes that “ownership in a
9 mutual or common investment fund that holds securities is not a ‘financial interest’ in such
10 securities unless the judge participates in management of the fund.” Canon 3C(3)(c)(i). The
11 Committee on Codes of Conduct issued Advisory Opinion No. 106 specifically to address issues
12 related to judges’ investments. In framing its analysis, the Committee begins with the overarching
13 principle that “the Code should be interpreted to the extent reasonably possible to enable judges to
14 invest in funds without transgressing the Code or engaging in a conflict of interest.” Advisory
15 Opinion 106 at 201; *see also United States v. Farkas*, 149 F. Supp. 3d 685, 698 (E.D. Va. 2016)
16 (“The legislative purpose of this exception was to enable judges, like many Americans, to invest
17 in securities without facing the threat of recusal in a large number of cases.”), *aff’d* 669 F. App’x
18 122 (4th Cir. 2016); *Cent. Tel. Co. of Va. v. Sprint Commc'ns Co. of Va., Inc.*, 715 F.3d 501, 515–
19 16 (4th Cir. 2013) (noting that “Congress created this exception to enable judges to hold securities
20 without risking recusal across a broad range of cases” and that its application is “mechanical”—
21 without the need to inquire into the likely effect of a decision on the value of the securities held in
22 the fund).

23 Advisory Opinion No. 106 lays out six considerations for “[d]etermining whether a fund
24 is a ‘mutual or common investment fund’”:

25 (1) the number of participants in the fund; (2) the size and diversity
26 of fund investments; (3) the ability of participants to direct their
27 investments; (4) the ease of access to and frequency of information
28 provided about the fund portfolio; (5) the pace of turnover in fund
investments; and (6) any ownership interest investors have in the
individual assets of the fund.

1 Advisory Opinion 106 at 201. Courts have expressly relied on those considerations in determining
2 whether a fund qualifies as a “mutual or common investment fund” for purposes of the statutory
3 exception in 28 U.S.C. § 455(d)(4)(i). *See, e.g., Arunachalam v. Pazuniak*, No. 14-05051, 2015
4 WL 12839126, at *1 (N.D. Cal. Feb. 9, 2015). With respect to the Vanguard funds at issue in
5 Cellspin’s motion, the factors overwhelmingly weigh against Cellspin’s position that the Vanguard
6 funds represent a “financial interest” in Alphabet or Fitbit that warrants recusal in this case.

7 The Vanguard 500 Index Fund “seeks to track the investment performance of the Standard
8 & Poor’s 500 Index, an unmanaged benchmark representing U.S. large-capitalization stocks.”
9 Ex 5. The fund is, by design, extremely large and diversified, with investments in more than 500
10 individual stocks across all sectors of the economy. *Id.* Similarly, the Vanguard Total
11 International Stock Index “tracks stock markets all over the globe,” with investments in nearly
12 8,000 stocks in different regions and markets. Ex. 6. These Vanguard index funds offer no ability
13 for participants to direct their investments in particular assets. *Pi-Net*, 2015 WL 1283196 (noting
14 that the judge had “no input at all on whether and when mutual funds”—including the Vanguard
15 Total Stock Market Index Fund—“buy or sell stocks”). And investors do not obtain any ownership
16 interest (*e.g.*, voting rights as shareholders) in the underlying assets in the fund. *See, e.g., Huebner*
17 *v. Midland Credit Mgmt.*, No. 14-6046, 2015 WL 1966280, at *3 (E.D.N.Y. May 1, 2015) (“[T]he
18 law is quite clear that a judge who owns shares in a mutual fund or ETF [(exchange-traded fund)]
19 does not thereby own the securities held by those mutual funds or ETF”), *aff’d*, 897 F.3d 42 (2d
20 Cir. 2018). Accordingly, under the factors set forth in the Advisory Opinion, both Vanguard index
21 funds qualify as “mutual or common investment funds” within the statutory exception to the
22 definition of “financial interest.” *See* 28 U.S.C. § 455(d)(4)(i).

23 Cellspin attempts to distinguish the Vanguard index funds from a “mutual or common
24 investment fund” on the basis of the particular investment strategy. For example, whereas mutual
25 funds invest in a “changing list of securities chosen by an investment manager,” Cellspin argues
26 that the Vanguard index funds “invest in a specific list of securities” and the investments are not
27 “actively managed.” *See* Mot. at 18-19. But that distinction finds no support in 28 U.S.C. § 455
28

1 or in any precedent.⁸ On the contrary, in view of well-documented facts about the size, diversity,
2 and nature of the Vanguard index funds, Cellspin’s alleged distinction between an “index fund”
3 and a “mutual fund” is entirely illusory. *See, e.g., David*, 2011 WL 6078272, at *1 (finding the
4 Vanguard 500 Index Fund a mutual fund under § 455 and the criteria listed in Advisory Opinion
5 No. 106).

6 Cellspin’s theory appears to be that Judge Gonzalez Rogers knows, for the most part, which
7 stocks will be owned by the index funds at any given time. *See Mot.* at 19 (“Owning Index funds
8 is just another way to HOLD/Own Google and Apple Stocks. It is just by another name.”). But,
9 tellingly, Cellspin cites no legal authority for that argument. The law is clear that owning a fund
10 which holds securities in a company is not equivalent to owning a financial interest in that
11 company. 28 U.S.C. § 455(d)(4)(i). And, as shown above, courts have rejected attempts to
12 distinguish the same or similar Vanguard index funds from the “mutual or common investment
13 funds” in the statutory exception. *See Pi-Net*, 2015 WL 1283196, at *4-5, *Huebner*, 2015 WL
14 1966280, at *2-3; *Bank of Am., N.A. v. Martinson*, No. 10-10, 2013 WL 12234207, at *1 (W.D.
15 Wis. Jan. 3, 2013); *David*, 2011 WL 6078272, at *1. Moreover, Cellspin’s theory (*i.e.*, that an
16 index fund is in essence a proxy for holding each one of the underlying stocks) is logically
17 incoherent because the very purpose of investing in an index fund is to diversify and thus avoid
18 investing in any one of the underlying stocks. Ironically, rather than a financial interest in the
19 underlying stocks, the Vanguard index funds by their nature create something of a financial
20 *dis*interest in each one of the underlying stocks.

21 Cellspin relies heavily on the Federal Circuit’s decision in *Centripetal Networks, Inc. v.*
22 *Cisco Sys., Inc.*, 38 F.4th 1025 (Fed. Cir. 2022). But *Centripetal* has no bearing on the issue in
23 this case. In *Centripetal*, the district judge’s wife owned 100 shares of Cisco stock valued at
24 \$4,687.99. *Id.* at 1028. Because Cisco was a party in the case, and the judge’s wife directly owned

25 ⁸ Cellspin only cites personal finance websites, which themselves confirm that the distinction
26 between “active mutual funds” and “index funds” is one of investment strategy, not statutory
27 category, as “index funds” can be formed as mutual funds. *See Dkt. No. 366, Ex. 29* (comparing
28 the investment strategies of “active mutual funds” to “index funds”); *Dkt. No. 366, Ex. 30* at 4 (“A
mutual fund may include many kinds of assets or investment styles, including being an index fund
or an actively managed fund.”).

1 shares in Cisco stock, there was no question on appeal that the judge had a “financial interest”
2 under 28 U.S.C. § 455(b)(4). *Id.* at 1030-31. This case is completely different because Judge
3 Gonzalez Rogers does not own any Alphabet Inc. stock, and thus there is no “financial interest”
4 under 28 U.S.C. § 455(b)(4).

5 Finally, Cellspin’s argument that Judge Gonzalez Rogers “manages” the Vanguard funds
6 because she “knows what stocks are part of the Index fund,” Mot. at 19-20, is nonsensical. Under
7 the law, a “mutual or common investment fund” is not considered a “financial interest” “unless
8 the judge participates in the management of the fund.” 28 U.S.C. § 455(d)(4)(i). Obviously,
9 Cellspin cannot allege that Judge Gonzalez Rogers participates in the management of the Vanguard
10 funds because those roles are filled by Vanguard fund managers. *See* Exs. 5, 6 (listing portfolio
11 managers for both funds). Instead, Cellspin sets forth a convoluted theory that, due to each
12 Vanguard fund’s “passive management,” nobody is actively managing the Index funds, and “[i]f
13 nobody is managing the fund, then everybody is managing it (including Judge Gonzalez Rogers),
14 because everyone knows what stocks are part of the Index fund” Mot. at 20. Notably, Cellspin
15 offers no support for that bizarre reading of § 455(d)(4)(i), which would equate a judge who has
16 knowledge of “what stocks are part of the Index fund” with one who “participates in the
17 management of the fund.” *Cf.* 28 U.S.C. § 455(d)(4)(i).

18 For the foregoing reasons, Cellspin has failed to demonstrate that Judge Gonzalez Rogers’
19 investments in Vanguard index funds or that Mr. Rogers’ business relationships create either a
20 financial interest under § 455(b) or an appearance of bias under § 455(a). Thus, the Judge’s recusal
21 in this matter is not warranted.

22 **C. Cellspin Is Not Entitled To Relief Under Fed. R. Civ. P. 60.**

23 As demonstrated above, Cellspin’s arguments for disqualification under 28 U.S.C. § 455
24 are untimely and lack merit. However, even to the extent the Court finds that there is any merit to
25 Cellspin’s contentions under 28 U.S.C. § 455, the Court should nevertheless deny Cellspin’s
26 request under Fed. R. Civ. P. 60 to vacate the Summary Judgment Order for two reasons. First,
27 because Cellspin has already appealed from the Summary Judgment Order, this Court lacks
28

1 jurisdiction to take any action with respect to that Summary Judgment Order at this time. And
2 second, any issue with Judge Gonzalez Rogers' ability to preside in this case under § 455 is
3 harmless error and does not meet the "extraordinary circumstances" required for relief from a final
4 judgment under Rule 60(b)(6). *See Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

5 **1. The Court Lacks Jurisdiction To Vacate Its Summary Judgment**
6 **Order Under Fed. R. Civ. P. 60.**

7 Cellspin moves under Fed. R. Civ. P. 60 for the Court to vacate its Summary Judgment
8 Order. Mot. at 1. However, because Cellspin waited until after it filed a notice of appeal with
9 respect to the Summary Judgment Order, this Court lacks jurisdiction to grant that relief at this
10 time.

11 "The filing of a notice of appeal is an event of jurisdictional significance—it confers
12 jurisdiction on the court of appeals and divests the district court of its control over those aspects
13 of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58
14 (1982). This is a "judge-made doctrine designed to avoid the confusion and waste of time that
15 might flow from putting the same issues before two courts at the same time." *Kern Oil & Refining*
16 *Co. v. Tenneco Oil Co.*, 840 F.2d 730, 734 (9th Cir. 1988) (internal quotation marks and citation
17 omitted). To the extent a party seeks relief under Rule 60 during the pendency of the appeal, "the
18 proper procedure is to ask the district court whether it wishes to entertain the motion, or to grant
19 it, and then move the [Court of Appeal], if appropriate, for remand of the case." *United States v.*
20 *Kubon*, No. 18-04788, 2019 WL 2552778, at *1 (N.D. Cal. May 24, 2019) (quoting *Williams v.*
21 *Woodford*, 384 F.3d 567, 586 (9th Cir. 2002)).

22 Here, Cellspin filed its Notice of Appeal, electing to challenge this Court's Summary
23 Judgment Order through the appellate process. Dkt. No. 346. Cellspin's appeal of that issue was
24 pending for months in the Federal Circuit before Cellspin filed the instant motion asking the Court
25 to vacate the Summary Judgment Order pursuant to Rule 60. Cellspin's attempt to collaterally
26 attack an order that is currently under appellate review is improper because the Court lacks
27 jurisdiction to entertain it. *Katzir's Floor & Home Design, Inc. v. M-MLS.COM*, 394 F.3d 1143,
28 1148 (9th Cir. 2004) ("The district court lacked jurisdiction to entertain the Rule 60(b) motion,

1 which was filed after the notice of appeal had been filed, thereby stripping the district court of its
2 jurisdiction.”).

3 **2. Any Issue Under 28 U.S.C. § 455 Is Harmless Error And Does Not**
4 **Justify Relief Under Fed. R. Civ. P. 60(b)(6).**

5 The Ninth Circuit has “cautioned against the use of provisions of Rule 60(b) to circumvent
6 the strong public interest in [the] timeliness and finality of judgments.” *Phelps v. Alameida*, 569
7 F.3d 1120, 1135 (9th Cir. 2009) (quoting *Flores v. Arizona*, 516 F.3d 1140, 1163 (9th Cir. 2008)).
8 Specifically, with respect to Rule 60(b)(6), the Supreme Court “require[s] a movant . . . to show
9 ‘extraordinary circumstances’ justifying the reopening of a final judgment.” *Gonzalez*, 545 U.S.
10 at 524. Here, Cellspin cannot meet that burden because, to the extent any violation of 28 U.S.C.
11 § 455 occurred, it was harmless error with respect to Judge Gonzalez Rogers’ grant of summary
12 judgment.

13 The Supreme Court in *Liljeberg v. Health Servs. Acquisition Corp.*, explained that harmless
14 error analysis applies when a movant seeks relief from judgment under Rule 60(b)(6) due to a
15 violation of 28 U.S.C. § 455:

16 As in other areas of the law, there is surely room for harmless error
17 committed by busy judges who inadvertently overlook a
disqualifying circumstance. There need not be a draconian remedy
for every violation of § 455(a).

18 486 U.S. 847, 862 (1988) ; see also *Heyman v. Nevada ex rel. Bd. of Regents of Nevada Sys. of*
19 *Higher Educ.*, No. 21-16377, 2022 WL 3594080, at *1 (9th Cir. Aug. 23, 2022) (citing *Liljeberg*
20 for the proposition that “harmless error review may apply to violations of 28 U.S.C. § 455); *United*
21 *States v. Van Griffin*, 874 F.2d 634, 637 (9th Cir. 1989) (applying harmless error rule to violation
22 of 28 U.S.C. § 455). In *Liljeberg*, the Court set forth three harmless error factors to consider in
23 determining whether a judgment should be vacated under Rule 60(b)(6) for a violation of 28 U.S.C.
24 § 455: (1) “the risk of injustice to the parties in the particular case;” (2) “the risk that the denial of
25 relief will produce injustice in other cases;” and (3) “the risk of undermining the public’s
26 confidence in the judicial process.” *Liljeberg*, 486 U.S. at 863. Here, all three factors weigh in
27 favor of a harmless error finding, and against vacating this Court’s Summary Judgment Order.

1 Under the first harmless error factor, maintaining the Summary Judgment Order presents
2 no risk whatsoever of injustice to the parties in this case. Numerous circuit courts have recognized
3 that when a district court’s decision is subject to *de novo* review, non-recusal is harmless error.
4 *See Centripetal*, 38 F.4th at 1034 & n.11 (citing cases from the Third Circuit, Fifth Circuit, Seventh
5 Circuit, and Eleventh Circuit for the proposition that the first factor weighs in favor of harmless
6 error “where the ruling involves a pure question of law that is subject to plenary review on
7 appeal”). Here, this Court’s Summary Judgment Order is currently pending before the Federal
8 Circuit, which will review that decision *de novo* consistent with Ninth Circuit law. *See ADASA*
9 *Inc. v. Avery Dennison Corp.*, 55 F.4th 900 (Fed. Cir. 2022).⁹ Accordingly, if this Court regains
10 jurisdiction over the Summary Judgment Order following the conclusion of Cellspin’s appeal to
11 the Federal Circuit, there will be no injustice if this Court declines to retroactively vacate the
12 Summary Judgment Order.

13 The Federal Circuit’s decision in *Centripetal*—which found no harmless error—is
14 distinguishable from the facts of this case. 38 F.4th at 1034-40. For example, with respect to the
15 first harmless error factor, the court in *Centripetal* found a risk of injustice to the parties because
16 the rulings at issue on appeal “resulted from a bench trial in which [the district judge] exercised
17 broad discretion in making findings of fact and credibility determinations.” *Id.* at 1035. The court
18 also emphasized the immediacy with which Cisco moved for disqualification “just nine days” after
19 learning of the judge’s financial interest, as well as the timing of the judge’s opinion which did not
20 issue until after the judge had actual knowledge of his wife’s financial interest in Cisco. *Id.* at
21 1035-36; *see also id.* at 1036-37 (“Moreover, after learning of his wife’s stock ownership, [the
22 judge] continued to sit on post-trial motions that needed to be decided but had not even been
23 briefed by the parties. Cisco’s post-trial motions were rejected in a 49-page opinion and order
24

25 ⁹ In the appeal, Cellspin concedes that one issue—namely, this Court’s finding that Cellspin
26 offered an “improper new theory” in violation of the local patent rules—is subject to review by
27 the Federal Circuit for abuse of discretion. *See Cellspin Soft, Inc. v. Fitbit LLC*, No. 22-2025, Dkt.
28 No. 47 at 40 (Fed. Cir. Jan. 10, 2023). However, the ultimate review of the Summary Judgment
Order is *de novo*. *See Wi-Lan Inc. v. Sharp Elecs. Corp.*, 992 F.3d 1366, 1370 (Fed. Cir. 2021)
(reviewing grant of summary judgment *de novo* but underlying evidentiary rulings for abuse of
discretion).

1 issued . . . while [the judge] knew his wife continued to hold stock in Cisco.”). The facts in this
2 case are substantially different. Here, Judge Gonzalez Rogers decided the case as a matter of law
3 on summary judgment, where she did not weigh facts or make credibility determinations, and her
4 decision is subject to *de novo* review. Additionally, Cellspin waited to bring the motion after it
5 lost the case two years after learning of Google’s acquisition of Fitbit.

6 The second and third factors also weigh in favor of finding harmless error. Under the
7 second factor, Cellspin does not argue that the Court’s Summary Judgment Order risks producing
8 injustice in other cases. *See* Mot. at 25-26 (arguing only the first and third factors). And under
9 the third factor, the risk of undermining the public’s confidence in the judicial process would come
10 from vacating—not from maintaining—the Summary Judgment Order. Again, this case is entirely
11 unlike the Federal Circuit’s decision in *Centripetal*, where the court found that the judge’s decision
12 to preside despite his wife’s direct ownership of stock in one of the litigants was “symptomatic of
13 an increasingly common problem” of “many judges presiding over cases in which they or relevant
14 family members owned stock in a party.” *See Centripetal*, 38 F.4th at 1039. Here, it is undisputed
15 that Judge Gonzalez Rogers does *not* own stock in one of the parties, but rather the Judge is
16 invested in funds that ensure no direct ownership interest in any of the underlying stocks. Granting
17 Cellspin’s motion and finding that such investments are improper could have sweeping
18 consequences for the United States judicial system as a whole. Under Cellspin’s view, any judge
19 who “place[es] money into an Index fund” would have “a direct financial interest” in publicly-
20 traded corporations. Mot. at 1. Such judges would then be unable to preside over cases involving
21 companies such as Alphabet or its subsidiaries because, according to Cellspin, “Google is a major
22 proportion of *any* Index Fund.” Mot. at 3. It is not difficult to see the short-term problems that
23 such a framework would create in terms of finding judges to preside over cases involving publicly-
24 traded corporations, as well as the long-term problems of finding suitable candidates for the federal
25 bench if the pool is limited to only people who are willing to completely refrain from investing in
26 the market and who are not married to any person whose business interacts, directly or indirectly,
27 with any aspect of such corporations.

1 Because any violation of 28 U.S.C. § 455 in this case would be harmless error, Cellspin
2 cannot meet the Supreme Court’s requirement that a movant for relief under Rule 60(b)(6) must
3 “show ‘extraordinary circumstances’ justifying the reopening of a final judgment.” *Gonzalez*, 545
4 U.S. at 535. Accordingly, Cellspin’s motion to vacate the Summary Judgment Order should be
5 denied.

6 **V. CONCLUSION**

7 For the foregoing reasons, the Court should deny Cellspin’s motion for recusal, as well as
8 Cellspin’s request to vacate the Summary Judgment Order.

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ABOUT

TEAM

NEWS

PORTFOLIO

SOCIAL

Consumer
 Enterprise
 Frontier Tech
 Life Sciences

→ [All Companies](#)

As computer scientists, engineers, and former entrepreneurs, we can get in the weeds with startup teams on technical challenges at any scale. And if we can't solve the problem or get the right answer, we leverage our relationships across the Alphabet ecosystem and find someone who can.

We invest in innovative founders across industries and optimize for ideas that demand long-term relationships — ones where we can provide value across multiple stages and milestones.

Spotlight



Stripe



Wonder



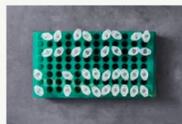
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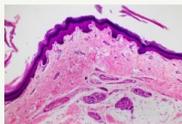
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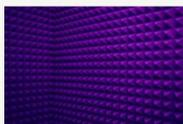


Air Protein



Dapper Labs

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- 2nd Address
- 99 Counties
- A Abacus *
- About.me *
- Acalvio
- Accent Therapeutics
- Adagio Therapeutics *
- Adelphic Mobile *
- Affinia Therapeutics
- Agtonomy
- Ahana
- Air Protein
- Airtime
- Alector
- Aledade
- Alkira
- Altana AI
- AltspaceVR *
- Ambition
- Amino
- AMP Robotics
- Anchor *
- Andela
- AngelList
- Ankyra Therapeutics
- Anomali
- Antiva Biosciences
- Apptentive
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- Aptelligent *
- Arcus Biosciences *
- Arda Therapeutics
- Areteia Therapeutics
- ARMO BioSciences *



Anchor



ROME

- Arrakis
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- Blavity
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- Blue Bottle Coffee *
- Blue Vision Labs *
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- Cambly
- Cambridge Epigenetix
- Cameo
- Carbon
- CareBridge
- Career Karma
- Carmera *
- Carnival Mobile *
- Carrick Therapeutics
- Celsius Therapeutics
- Censys
- Cerevance
- Checkr
- Chronosphere
- CircleUp
- CircuitHub
- Clarifai
- ClassPass
- Clear Labs
- ClearStory Data *
- Clever *
- CliQr Technologies *
- Cloudera *
- Clover Health *
- Clutter
- Cmd *
- Cockroach Labs
- Cohesity
- Collaborate *
- Collective Health
- Comfy *
- Compass Therapeutics
- Confide *
- Contraline
- Cool Planet

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 Dasient *
 DataFox *
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 Emergent
 Emissary
 Encoded Therapeutics
 English Central
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 Ethos
 Evelo Biosciences *
 Evident.io *
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 Fauna
 Firefly
 FitStar *
 Flatiron Health *
 Flexport
 Flock Freight
 FogPharma
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	Genome Medical
	Genomics Medicine Ireland *
	Giphy *
	GitLab *
	GoCardless
	Good Eggs
	Gowalla
	Graft
	Grail
	Granular *
	Gravity Sketch
	Greenwork
	Gritstone Oncology
	Groundswell
	Guide Therapeutics *
	Gusto
	Gyft *
H	HAGS
	Happiest Baby
	Harness
	HeadSpin
	Headway
	HeartThis *
	Helium
	Helix
	HelloSign *
	High Fidelity
	Highfive
	Hipster *
	HomeAway *
	Homebound
	HomeLight
	HOVER
	HubSpot *
	Hustle
	Hyperfine Research
I	IconOVir Bio
	Ideaya Biosciences
	Imagen
	Impossible Foods
	Incorta
	Infinitus
	insitro
	Instawork
	Intercom
	Invetx
	Ionic Security *
	IonQ
	iPierian *
J	Jaunt *
	Jet *
	JoyTunes
	JumpCam

K
Kabam *
Kamcord *
Kensho *
Kindbody
Kindred *
Kitchen United
Kobalt
Kronos Bio *

L
Lacework
Landis
Lapse
Lattice *
LaunchKit *
LawPivot *
Le Tote
LedgerX *
Lemonade *
LendUp
LevelUp
Leyden Labs
LifeMine Therapeutics
Light
Lightmatter
Lime
Locana
Locker Room *
Lola
Loom *
LotusFlare
Lovevery
Luminate *
Luminate Wireless
Luvocracy *
Luxe *

M
mabl
Machinify
Magenta Therapeutics *
Makani *
Managed by Q *
MapD
Matter
Maze Therapeutics
Medallion
Medium
Meltano
Merlin Labs
MessageMe *
Mestag Therapeutics
Metabiota
Mighty AI *
Milk *
Mill
MindMeld *
MindSumo
Mirvie
Mist Systems *
Mitro *
Mode *
Modern Age
Mody

	Modular
	Mohawk *
	Monte Rosa Therapeutics *
	Motive
	mParticle
	Multiverse
N	N3twork
	Namo Media *
	Nanit
	Nava Benefits
	Neo.Tax
	Neo4j
	Nest *
	Neuralink
	Nextbit *
	Nextdoor
	ngmoco *
	Nimble
	NoRedInk
	Nothing
	nPlan
	Nym Health
O	Oasis Health Partners
	Obsidian Security
	Obsidian Therapeutics
	OMass Therapeutics
	Omni Analytics
	OnDeck *
	One Medical *
	oneNav
	Openbay
	Opendoor *
	Optimizely
	Optiwatt
	Oration *
	Orbital Insight
	Oscar *
	Osito
	Outdoor Voices
	Outlier
	Overture
	OWKIN
	Oxford Science Enterprises
P	Packagd *
	PACT Pharma
	Pager
	Pangea
	Panorama Education
	Parsable
	Parse *
	PatientPing *
	Patina
	PayRange
	Pecan AI
	Peerspace
	Pensando *
	Percolata
	Periscope *
	Periscope Data *
	Physna

Pindrop
 Pixie Labs
 Plaid
 PlanGrid *
 Plexxi *
 Pocket *
 Podium
 Polar Signals
 PostHog
 Poynt *
 Premise
 Pretzel Therapeutics
 Prime Medicine
 Product Hunt *
 Puppet Labs *
 Q
 Quartet
 Quetra *
 R
 Rani Therapeutics *
 RAPT Therapeutics
 Rattle
 Reaction Commerce *
 Ready
 Recorded Future *
 Redpanda
 Relay Therapeutics *
 Republic Project *
 Reserve *
 Resilience
 Resistant AI
 Resolution Games
 RetailMeNot *
 Ribon Therapeutics
 RightHand Robotics
 Ripcord
 Rippl Care
 Ripple Foods
 Ripple Labs
 Rise *
 Robinhood *
 Rocana *
 Rockbot
 Rocket Lawyer
 Rocketrip *
 Rodin Therapeutics *
 ROME Therapeutics
 Rooser
 S
 SambaNova Systems
 Sana Biotechnology *
 Sanas
 Sardine
 Savioke
 Scalus
 Scalyr *
 Scan *
 Scandit
 Schematic Labs *
 Schrödinger *
 Science 37 *
 ScoutRFP *

Secret Escapes
 SecurityScorecard
 Segment *
 Seismic Therapeutic
 Sense
 Sensorum Health
 Sesame
 Shape Security *
 SideQuest
 Signos
 Signpost
 Silver Spring Networks *
 SingleStore
 Skycatch
 Skyport Systems *
 Slack *
 Smarterer *
 Smol
 Snorkel AI
 Snowball *
 Snyk
 Sold *
 Sonoma Biotherapeutics
 Soylent
 Space Monkey *
 Spero Therapeutics *
 SpinLaunch
 Spotlight Therapeutics
 Spring *
 Sprinter Health
 Spruce Finance *
 Spruce Health
 SpyBiotech
 SQZ Biotech
 StackBlitz
 Stamped *
 StockX
 Strella Biotechnology
 Stripe
 strongDM
 Studio
 Subtext *
 Superplastic
 SweetLabs
 Swell *
 Swing Education
 Synack
 Synapticure
 Synthesia

T

Tala
 Tamr
 Taysha Gene Therapies *
 Teem *
 Tenaya Therapeutics *
 Tend
 TenSixteen Bio
 tenXer *
 The Climate Corporation *
 The Pill Club

		The Players' Tribune *
		The Wing
		TheSkimm
		ThinkNear *
		ThousandEyes *
		TMRW
		Toast
		Tracelytics *
		Transcriptic
		Transphorm
		TravelJoy
		Treeline Biosciences
		TrueLens
		TScan Therapeutics
		TuneIn
		Turo
		Twyla
	U	Uber *
		UberSense *
		Udacity
		UJET
		Ultromics
		Unbabel
		Universe
		Upbound
		Upstart
		Upthere *
		Urban Engines *
		Urban Machine
		Ursa Computing
		URX *
	V	Vaccitech *
		Vareto
		Veem
		Ventus Therapeutics
		Veo Robotics
		Vera Therapeutics
		Verana Health
		Vercel
		Verve Therapeutics *
		Veza
		Vicinitas Therapeutics
		VIDA *
		VigLink *
		Vir Biotechnology
		Viz.ai
		Voicea *
		Voltage
		Voltron Data
		Vungle *
	W	Walker and Company *
		Waltz Health
		Wander *
		Warp
		Weaveworks
		Wingu *
		Wonder
		Wonder Workshop
		Wonderbly *
	X	Xilis

Y	Yellowbrick Data
	Yesware *
	Yieldify
	Yieldmo
	Yuga Labs
Z	ZappRx *
	Zencoder *
	Zephyr Health *
	Zest
	Zeus Living
	Zipline



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Notes to Financial Statements

Vanguard 500 Index Fund is registered under the Investment Company Act of 1940 as an open-end investment company, or mutual fund. The fund offers four classes of shares: Investor Shares, ETF Shares, Admiral Shares, and Institutional Select Shares. Each of the share classes has different eligibility and minimum purchase requirements, and is designed for different types of investors. ETF Shares are listed for trading on Cboe BZK Exchange, Inc; they can be purchased and sold through a broker.

Market disruptions associated with the COVID-19 pandemic have had a global impact, and uncertainty exists as to the long-term implications. Such disruptions can adversely affect assets of the fund and thus fund performance.

A. The following significant accounting policies conform to generally accepted accounting principles for U.S. investment companies. The fund consistently follows such policies in preparing its financial statements.

1. Security Valuation: Securities are valued as of the close of trading on the New York Stock Exchange (generally 4 p.m., Eastern time) on the valuation date. Equity securities are valued at the latest quoted sales prices or official closing prices taken from the primary market in which each security trades; such securities not traded on the valuation date are valued at the mean of the latest quoted bid and asked prices. Securities for which market quotations are not readily available, or whose values have been materially affected by events occurring before the fund's pricing time but after the close of the securities' primary markets, are valued by methods deemed by the board of trustees to represent fair value. Investments in Vanguard Market Liquidity Fund are valued at that fund's net asset value. Temporary cash investments are valued using the latest bid prices or using valuations based on a matrix system (which considers such factors as security prices, yields, maturities, and ratings), both as furnished by independent pricing services.

2. Futures Contracts: The fund uses index futures contracts to a limited extent, with the objectives of maintaining full exposure to the stock market, maintaining liquidity, and minimizing transaction costs. The fund may purchase futures contracts to immediately invest incoming cash in the market, or sell futures in response to cash outflows, thereby simulating a fully invested position in the underlying index while maintaining a cash balance for liquidity. The primary risks associated with the use of futures contracts are imperfect correlation between changes in market values of stocks held by the fund and the prices of futures contracts, and the possibility of an illiquid market. Counterparty risk involving futures is mitigated because a regulated clearinghouse is the counterparty instead of the clearing broker. To further mitigate counterparty risk, the fund trades futures contracts on an exchange, monitors the financial strength of its clearing brokers and clearinghouse, and has entered into clearing agreements with its clearing brokers. The clearinghouse imposes initial margin requirements to secure the fund's performance and requires daily settlement of variation margin representing changes in the market value of each contract. Any securities pledged as initial margin for open contracts are noted in the Schedule of Investments.

Futures contracts are valued at their quoted daily settlement prices. The notional amounts of the contracts are not recorded in the Statement of Assets and Liabilities. Fluctuations in the value of the contracts are recorded in the Statement of Assets and Liabilities as an asset (liability) and in the Statement of Operations as unrealized appreciation (depreciation) until the contracts are closed, when they are recorded as realized gains (losses) on futures contracts.

Notes to Financial Statements

Vanguard Total International Stock Index Fund is registered under the Investment Company Act of 1940 as an open-end investment company, or mutual fund. The fund offers six classes of shares: Investor Shares, ETF Shares, Admiral Shares, Institutional Shares, Institutional Plus Shares, and Institutional Select Shares. Each of the share classes has different eligibility and minimum purchase requirements, and is designed for different types of investors. ETF Shares are listed for trading on Nasdaq; they can be purchased and sold through a broker.

The fund invests in securities of foreign issuers, which may subject it to investment risks not normally associated with investing in securities of U.S. corporations. Significant market disruptions, such as those caused by pandemics (e.g., COVID-19 pandemic), natural or environmental disasters, war (e.g., Russia's invasion of Ukraine), acts of terrorism, or other events, can adversely affect local and global markets and normal market operations. Any such disruptions could have an adverse impact on the value of the fund's investments and fund performance.

A. The following significant accounting policies conform to generally accepted accounting principles for U.S. investment companies. The fund consistently follows such policies in preparing its financial statements.

1. Security Valuation: Securities are valued as of the close of trading on the New York Stock Exchange (generally 4 p.m., Eastern time) on the valuation date. Equity securities are valued at the latest quoted sales prices or official closing prices taken from the primary market in which each security trades; such securities not traded on the valuation date are valued at the mean of the latest quoted bid and asked prices. Securities for which market quotations are not readily available, or whose values have been affected by events occurring before the fund's pricing time but after the close of the securities' primary markets, are valued by methods deemed by the valuation designee to represent fair value and subject to oversight by the board of trustees. These procedures include obtaining quotations from an independent pricing service, monitoring news to identify significant market- or security-specific events, and evaluating changes in the values of foreign market proxies (for example, ADRs, futures contracts, or exchange-traded funds), between the time the foreign markets close and the fund's pricing time. When fair-value pricing is employed, the prices of securities used by a fund to calculate its net asset value may differ from quoted or published prices for the same securities. Investments in Vanguard Market Liquidity Fund are valued at that fund's net asset value.

2. Foreign Currency: Securities and other assets and liabilities denominated in foreign currencies are translated into U.S. dollars using exchange rates obtained from an independent third party as of the fund's pricing time on the valuation date. Realized gains (losses) and unrealized appreciation (depreciation) on investment securities include the effects of changes in exchange rates since the securities were purchased, combined with the effects of changes in security prices. Fluctuations in the value of other assets and liabilities resulting from changes in exchange rates are recorded as unrealized foreign currency gains (losses) until the assets or liabilities are settled in cash, at which time they are recorded as realized foreign currency gains (losses).

3. Futures Contracts: The fund uses index futures contracts to a limited extent, with the objectives of maintaining full exposure to the stock market, maintaining liquidity, and minimizing transaction costs. The fund may purchase futures contracts to immediately invest incoming cash in the market, or sell futures in response to cash outflows, thereby simulating a fully invested position in the underlying index while maintaining a cash balance for liquidity. The primary risks associated with the use of futures contracts are imperfect correlation between changes in market values of stocks held by the fund and the prices of futures contracts, and the possibility of an illiquid market. Counterparty risk involving futures is mitigated because a regulated clearinghouse is the counterparty instead of the clearing broker. To further mitigate counterparty risk, the fund trades futures contracts on an exchange, monitors the financial strength of its clearing brokers and clearinghouse, and has entered into clearing agreements with its clearing brokers. The clearinghouse imposes initial margin requirements to secure the fund's performance and requires daily settlement of variation margin representing changes in the market value of each contract. Any securities pledged as initial margin for open contracts are noted in the Schedule of Investments.

Futures contracts are valued at their quoted daily settlement prices. The notional amounts of the contracts are not recorded in the Statement of Assets and Liabilities. Fluctuations in the value of the contracts are recorded in the Statement of Assets and Liabilities as an asset (liability) and in the Statement of Operations as unrealized appreciation (depreciation) until the contracts are closed, when they are recorded as realized gains (losses) on futures contracts.

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<https://investor.vanguard.com/investment-products/mutual-funds/profile/vfiac>

Category	Large Blend
Inception date	11/13/2000
Fund Number	0540

Ratings

Risk / reward scale



[Why should I care about risk?](#)

Price

Minimum Investment	NAV Price	NAV change
\$3,000	\$380.28	↑ \$3.93 (1.04%)
\$3,000	\$380.28 <small>as of 02/01/2023</small>	↑ \$3.93 (1.04%) <small>as of 02/01/2023</small>

[Expense Ratio](#)

0.04%
as of 04/29/2022

Performance & fees

Total returns

Summary [Quarterly](#) [Annually](#) [Cumulative](#)

Month-end

as of 01/31/2023

Product summary

As the industry's first index fund for individual investors, the 500 Index Fund is a low-cost way to gain diversified exposure to the U.S. equity market. The fund offers exposure to 500 of the largest U.S. companies, which span many different industries and account for about three-fourths of the U.S. stock market's value. The key risk for the fund is the volatility that comes with its full exposure to the stock market. Because the 500 Index Fund is broadly diversified within the large-capitalization market, it may be considered a core equity holding in a portfolio.

Fund management

Vanguard Equity Index Group



[Search for more historical price information](#)

Portfolio composition

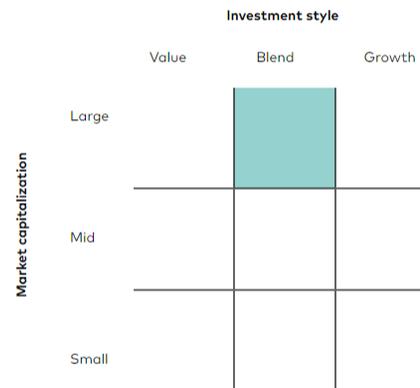
Characteristics

as of 12/31/2022

Fundamental	VFIAX	Benchmark
Number of stocks	506	503
Median market cap	\$150.4 B	\$150.4 B
Earnings growth rate	19.4%	19.4%
Short-term reserves	—	—
P/E ratio	19.1x	19.1x
P/B ratio	3.6x	3.6x
Turnover rate (Fiscal Year-end 12/31/2022)	2.3%	—
Return on equity	23.3%	23.3%
Foreign holdings	0.1%	—
Fund total net assets	\$744.8 B	—
Share class total net assets	\$367.5 B	—

Stylebox

Equity



Risks associated with moderate to aggressive funds

Vanguard funds classified as moderate to aggressive are subject to wide fluctuations in share price. This happens because they hold virtually all of their assets in common stocks.

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 VFIAX-Vanguard 500 Index Fund Admiral Shares | Vanguard
<https://investor.vanguard.com/investment-products/mutual-funds/profile/vfiac>

Realized/Unrealized gains

as of 12/31/2022

Realized gain	% of NAV
-\$6.16	↓ -1.74%
Unrealized gains of NAV	% of NAV
\$106.50	↑ 30.08%
Fiscal year end	Distribution schedule
12/31/2023	Quarterly

A fund's capital gains and losses can reveal the tax implications of holding a particular fund in a taxable account. This is true of both realized and unrealized capital gains and losses.

These tax implications don't apply to investors holding a fund in a tax-deferred account, such as an IRA or employer-sponsored retirement plan.

[Learn about realized and unrealized gains and losses](#)

Dividend income and capital gains

Type	\$/Share	Payable date	Record date	Reinvest date	Reinvest price
Dividend	\$1.676500	12/20/2022	12/16/2022	12/19/2022	\$351.93
Dividend	\$1.471300	09/28/2022	09/26/2022	09/27/2022	\$336.43
Dividend	\$1.432900	06/29/2022	06/27/2022	06/28/2022	\$352.61
Dividend	\$1.372000	03/24/2022	03/22/2022	03/23/2022	\$411.20
Dividend	\$1.535100	12/21/2021	12/17/2021	12/20/2021	\$421.39
Dividend	\$1.307400	09/29/2021	09/27/2021	09/28/2021	\$401.73

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Fund management

Vanguard 500 Index Fund seeks to track the investment performance of the Standard & Poor's 500 Index, an unmanaged benchmark representing U.S. large-capitalization stocks. Using full replication, the portfolio holds all stocks in the same capitalization weighting as the index. The experience and stability of Vanguard's Equity Index Group have permitted continuous refinement of techniques for reducing tracking error. The group uses proprietary software to implement trading decisions that accommodate cash flow and maintain close correlation with index characteristics. Vanguard's refined indexing process, combined with low management fees and efficient trading, has provided tight tracking net of expenses.

Vanguard Equity Index Group ^

Launched in 1975, The Vanguard Group, Malvern, Pennsylvania, is among the world's largest equity and fixed income managers. As chief investment officer, Gregory Davis, CFA, oversees Vanguard's Equity Index, Quantitative Equity, and Fixed Income Groups. Rodney Comegys, Principal and global head of Vanguard's Equity Index Group, is responsible for all equity index funds. The Equity Index Group manages indexed equity portfolios covering U.S. and international markets. It has developed sophisticated portfolio construction methodologies and efficient trading strategies that seek to deliver returns that are highly correlated with target portfolio benchmarks. The group has advised Vanguard 500 Index Fund since 1976.

Donald M. Butler

CFA, Principal, Portfolio manager.

Advised the fund since 2016. Worked in investment management since 1997. B.S.B.A., Shippensburg University.

Michelle Louie

CFA, Portfolio manager.

Advised the fund since 2017. Worked in investment management since 2011. B.S., The American University. M.B.A., Georgia Institute of Technology.

Fund literature

[View prospectus and reports](#)

Select all

Summary Prospectus

Statutory Prospectus

Statement of Additional Information

Annual Report (12/31/2021)

Semiannual Report (06/30/2022)

Performance & fees

- 1 A widely used barometer of U.S. stock market performance; as a market-weighted index of leading companies in leading industries, it is dominated by large-capitalization companies.
- 2 Most recent data available. © 2022 Morningstar, Inc. All rights reserved. The information contained herein: (1) is proprietary to Morningstar and/or its content providers; (2) may not be copied or distributed; (3) does not constitute investment advice offered by Morningstar; and (4) is not warranted to be accurate, complete, or timely. Neither Morningstar nor its content providers are responsible for any damages or losses arising from any use of this information. Past performance is no guarantee of future results.
- 3 R-squared and beta are calculated from trailing 36-month fund returns relative to the associated benchmark.

Portfolio composition

- 4 Sector categories are based on the Global Industry Classification Standard system.

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VTIAX

Vanguard Total International Stock Index Fund Admiral Shares

Also available as an [ETF](#) (starting at the price of one share).

Buy Compare

<p>Management style</p> <p>Index</p>	<p>Asset class</p> <p>International/Global Stock</p>
<p>Category</p> <p>Foreign Large Blend</p>	<p>Risk / reward scale</p> <p>Less 5 More</p>
<p>Expense ratio</p> <p>0.11%</p> <p><small>as of 02/25/2022</small></p>	<p>SEC yield</p> <p>—</p>
<p>Investment minimum</p> <p>\$3,000</p> <p><small>as of 02/01/2023</small></p>	<p>NAV price</p> <p>↑ \$30.50</p> <p><small>as of 02/01/2023</small></p>

VTIAX Vanguard Total International Stock Index Fund Admiral Shares **Buy** Compare

Overview

Key facts

CUSIP	921909818
Management style	Index
Asset class	International/Global Stock
Category	Foreign Large Blend
Inception date	11/29/2010

Performance

YTD returns
9.48%
as of 02/01/2023

Product summary

This fund offers investors a low cost way to gain equity exposure to both developed and emerging international economies. The fund tracks stock

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Fund Number 0569

Ratings

Risk / reward scale



[Why should I care about risk?](#)

Price

Minimum Investment
\$3,000

NAV Price
\$30.50
as of 02/01/2023

NAV change
↑ \$0.29 (0.96%)
as of 02/01/2023

markets all over the globe, with the exception of the United States. Because it invests in non-U.S. stocks, including those in developed and emerging markets, the fund can be more volatile than a domestic fund. Long-term investors who want to add a diversified international equity position to their portfolio might want to consider this fund as an option.

Fund management

Vanguard Equity Index Group

[Expense Ratio](#)

0.11%
as of 02/25/2022

Performance & fees

Total returns

Summary Quarterly Annually Cumulative

Month-end ▼

as of 01/31/2023

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[Fair-value pricing information](#)

[Important fund performance information](#)

Quarterly after-tax returns

Expense ratio

VTIAX	0.11%
Average expense ratio of similar funds ²	0.91%

Historical volatility measures

as of 12/31/2022

Benchmark	R-Squared ³	Beta ³
Spliced Total International Stock Index ¹	0.99	1.02
FTSE Global All Cap ex US Index	0.99	1.02

Fund-specific fees

Purchase fee	None
Redemption fee	None
12b-1 fee	None

[See Vanguard annual account service fees](#)

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The performance data shown represent past performance, which is not a guarantee of future results. Investment returns and principal value will fluctuate so that investors' shares, when sold, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data cited.

Performance data do not reflect the deduction of the \$20 annual account service fee that may be applied to certain accounts. If this fee was included, performance would be lower.

Price

Closing price

Closing price as of 02/01/2023

NAV	NAV change	52-week High	52-week Low	52-week Difference
\$30.50	↑ \$0.29 (0.96%)	\$34.01 <small>as of 02/09/2022</small>	\$24.40 <small>as of 10/14/2022</small>	\$9.61 (39.39%)

[SEC yield](#)

—

Historical prices

1 month 3 months 6 months 1 year 3 years 5 years 10 years

Chart Table

Name	Date	NAV
VTIAX	02/01/2023	● \$30.50



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Jan 3

Jan 9

Jan 15

Jan 21

Jan 27

[Search for more historical price information](#)

Portfolio composition

Characteristics

as of 12/31/2022

Fundamental	VTIAX	Benchmark
Number of stocks	7877	7629
Median market cap	\$29.5 B	\$29.3 B
Earnings growth rate	9.8%	9.8%
Short-term reserves	—	—
P/E ratio	11.2x	11.2x
P/B ratio	1.5x	1.5x
Turnover rate (Fiscal Year-end 10/31/2022)	5.1%	—
Return on equity	12.4%	12.4%
Foreign holdings	99.0%	—
Fund total net assets	\$348.0 B	—
Share class total net assets	\$65.2 B	—

Risks associated with aggressive funds

Vanguard funds classified as aggressive are subject to extremely wide fluctuations in share prices. The unusually high volatility associated with these funds may stem from one or more of the following strategies:

- a concentration of fund holdings in a relatively low number of individual stocks,

Dividend income and capital gains

Type	\$/Share	Payable date	Record date	Reinvest date	Reinvest price
Dividend	\$0.335600	12/19/2022	12/15/2022	12/16/2022	\$27.68
Dividend	\$0.148000	09/19/2022	09/15/2022	09/16/2022	\$26.60
Dividend	\$0.313700	06/21/2022	06/16/2022	06/17/2022	\$27.36
Dividend	\$0.050700	03/21/2022	03/17/2022	03/18/2022	\$32.16
Dividend	\$0.501800	12/20/2021	12/16/2021	12/17/2021	\$33.26
Dividend	\$0.187100	09/20/2021	09/16/2021	09/17/2021	\$34.93

Fund management

Vanguard Total International Stock Index Fund seeks to track the investment performance of the FTSE Global All Cap ex US Index, an index designed to measure equity market performance in developed and emerging markets, excluding the United States. The fund invests substantially all of its assets in the common stocks included in its target index. The fund allocates its assets based on each region's weighting in the index. The experience and stability of Vanguard's Equity Index Group have permitted continuous refinement of techniques for reducing tracking error. The group uses proprietary software to implement trading decisions that accommodate cash flow and maintain close correlation with index characteristics. Vanguard's refined indexing process, combined with low management fees and efficient trading, has provided tight tracking net of expenses.

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Michael Perre
 Principal, Portfolio manager.

Advised the fund since 2008. Worked in investment management since 1990. B.A., Saint Joseph's University. M.B.A., Villanova University.

Christine D. Franquin
 Principal, Portfolio manager.

Advised the fund since 2017. Worked in investment management since 2000. B.A., Universitaire Faculteiten Sint Ignatius, Antwerpen Belgium. J.D., University of Liege Belgium. Master of Science in Finance, Clark University, Massachusetts.

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting Rogers, Yvonne G.	Date of Report 10/28/2020
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div, rent, or int)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)

1. Citibank Checking and Money Market Accounts	A	Interest	M	T					
2. Bank of America Checking	A	Interest	K	T					
3. Trust No. 1									
4. -Vanguard CA IT Tax Exempt	D	Dividend	O	T	Buy (add'l)	04/01/19	N		
5. -Vanguard Total International Stock Index	G	Dividend	P1	T					
6. -Vanguard 500 Index Fund	E	Dividend	P1	T					
7. -Vanguard Extended Market Index	D	Dividend	P1	T	Buy (add'l)	04/01/19	N		
8. -Vanguard Emerging Markets Indez	E	Dividend	P1	T	Buy (add'l)	04/01/19	N		
9. -Vanguard IRA: Inflation Protect Sec Adm	D	Dividend	O	T					
10. -Vanguard: Total Bond Market Index (variable annuity)		None	M	T					
11. -Vanguard 500 Index Fund (retirement)	A	Dividend	J	T					
12. -Vanguard 529-Aggressive Growth Port-Age-Based 24		None	M	T	Buy (add'l)	04/01/19	K		
13. -Vanguard 529-Aggressive Growth Port - Age 21		None	K	T	Sold (part)	01/02/19	K		
14.					Buy (add'l)	04/01/19	K		
15.					Sold (part)	08/08/19	K		
16.					Sold (part)	09/03/19	J		
17. -Vanguard 529 - Moderate Growth- Port Age-Based 18		None	N	T	Buy (add'l)	04/02/19	K		

1 Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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Name of Person Reporting Rogers, Yvonne G.	Date of Report 10/28/2020
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	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div, rent, or int)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	

18. -Wells Fargo Money Market Account	A	Interest	P1	T					
19. -Rental Prop, San Antonio, TX (assessment 12/19: \$128,350)	D	Rent	M	S					
20. McKinsey & Company Special Situations Aggressive Long-Term	G	Dividend	P2	T					
21. McK Spec Sit Retirement (Ind)		None	P1	T	Buy (add'l)	01/31/19	J		
22.					Buy (add'l)	02/28/19	J		
23.					Buy (add'l)	03/31/19	J		
24.					Buy (add'l)	12/31/19	K		
25. McKinsey Partnership Shares	A	Dividend	N	U	Sold (part)	01/01/19	O		
26. McKinsey Partnership Debt	E	Interest	O	T	Sold (part)	01/01/19	P1		
27. McKinsey Cash Balance Plan		None	O	T	Buy (add'l)	01/31/19	M		

1 Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
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3 Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

1 JACK W. LONDEN (CA SBN 85776)
JLonden@mofo.com
2 MORRISON & FOERSTER LLP
425 Market Street
3 San Francisco, California 94105-2482
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 STEPHEN LIU (CA SBN 318533)
SLiu@mofo.com
6 MORRISON & FOERSTER LLP
755 Page Mill Road
7 Palo Alto, California 94304-1018
Telephone: 650.813.5600
8 Facsimile: 650.494.0792

9 YUKA TERAGUCHI (CA SBN 260541)
YTeraguchi@mofo.com
10 MORRISON & FOERSTER LLP
Shin-Marunouchi Building, 29th Floor
11 5-1, Marunouchi 1-Chome
Chiyoda-ku, Tokyo, Japan 100-6529
12 Telephone: 81-3-3214-6522
Facsimile: 81-3-3214-6512

13 Attorneys for Defendants
14 NIKON AMERICAS INC. and NIKON INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18
19 CELLSPIN SOFT, INC.,
20 Plaintiff,
21 v.
22 NIKON AMERICAS INC. AND NIKON
INC.,
23 Defendants.
24
25

Case No. 4:17-CV-05936-YGR

**NIKON AMERICAS INC. AND
NIKON INC.’S OPPOSITION TO
CELLSPIN’S MOTION FOR
RECUSAL**

26
27
28

1 **I. Introduction**

2 Section 455 exists to reinforce the integrity of the judicial system. It does not exist to be
3 weaponized by defeated plaintiffs seeking to resurrect their claims based on allegedly disqualifying
4 facts that they knew of long before moving for recusal—facts which, on their face, do not even
5 establish a financial interest warranting recusal. But that is what Cellspin does here. Desperate for
6 another bite at the apple, Cellspin attempts to twist the Judge’s investment in a diverse index fund,
7 which is excepted from the ambit of Section 455, into a source of bias warranting vacatur. And it
8 does so based on the Judge’s Financial Disclosure Report from October 2021, fifteen months before
9 Cellspin’s present motion. Cellspin’s incorrect, unsupported, and unreasonably late motion should
10 be denied.

11 **II. Cellspin Fails to Identify a Financial Interest Warranting Recusal**

12 Cellspin attempts to manufacture a disqualifying financial interest relating to Nikon in two
13 ways: (1) the inclusion of Nikon Corporation, the parent company of the defendant Nikon entities,
14 in the Vanguard Total International Stock Index Fund (D.I. 366¹ (Motion for Recusal, or “Mot.”)
15 at 17-18); and (2) the alleged use of Google services “for user data” by Nikon Image Services (*id.*
16 at 26). Both arguments are incorrect.

17 **A. Index Funds Are Not Financial Interests Under Section 455(d)(4)(i)**

18 Section 455(d)(4)(i) states that “[o]wnership in a mutual or common investment fund that
19 holds securities is not a ‘financial interest’ in such securities” that would warrant recusal “unless
20 the judge participates in the management of the fund.” The Vanguard Total International Stock
21 Index Fund (the “Vanguard fund”) is a mutual fund within the meaning of this statutory exception.

22 Cellspin’s argument based on the Judge’s investment in the Vanguard fund rests entirely on
23 a false distinction between index funds and mutual funds. Contrary to Cellspin’s claim, index funds
24 are generally classified as mutual funds. The SEC defines “index fund” as “a type of mutual fund
25 or exchange-traded fund that seeks to track the returns of a market index.” (Ex. A².) And even

26

27 ¹ Cellspin filed its motion for recusal in the Fitbit case (4:17-CV-05928), but not in this case, despite
28 requesting relief relating to Nikon. The citations to the docket herein refer to the Fitbit case.

² The exhibits referenced in this brief are attached to the Declaration of Yuka Teraguchi, filed with
this Opposition.

1 Cellspin’s sole evidence of the alleged difference between index funds and mutual funds, a pair of
2 articles published by unofficial commercial sources, acknowledge that index funds can be mutual
3 funds. (*See, e.g.*, D.I. 366-2 (Garteiser Decl.) Ex. 30 at 1 (“The thing is, sometimes index funds
4 are mutual funds and sometimes mutual funds are index funds.”).)

5 More importantly, the Committee on Codes of Conduct Advisory Opinion No. 106 confirm
6 that a standard index fund such as the Vanguard fund is a “mutual or common investment fund”
7 for recusal purposes. (Ex. B at 201.) The Opinion states:

8 Although the Code does not define “mutual or common investment
9 fund,” determining whether a fund qualifies for the safe harbor
10 contemplated under Canon 3C(3)(c)(i) involves several related
11 considerations, including: (1) the number of participants in the fund;
12 (2) the size and diversity of fund investments; (3) the ability of
13 participants to direct their investments; (4) the ease of access to and
frequency of information provided about the fund portfolio; (5) the
pace of turnover in fund investments; and (6) any ownership interest
investors have in the individual assets of the fund.

14 (*Id.*) Each of these factors undercuts Cellspin’s claim that the Vanguard fund is not a mutual fund.
15 First, the Vanguard fund is a freely traded index fund that is open to the general public, and thus
16 has thousands of investors. Second, it is also large and diverse, with 7,877 holdings as of December
17 31, 2022. (Ex. C.) Non-defendant Nikon Corporation is just one of those companies, and nowhere
18 near the top in terms of shares or invested market value. (*See* Ex. D at 42.) Third, participants
19 have no ability to direct their investments; the fund is managed by the Vanguard Equity Index
20 Group, including Portfolio Managers Michael Perre and Christine D. Franquin. (*Id.*) In fact, this
21 directly contradicts Cellspin’s unsupported claim that since “nobody is managing the fund,”
22 “everybody is managing it (including Judge Gonzalez Rogers).” (Mot. at 20.) Fourth, information
23 about the Vanguard fund and its portfolio is readily available, both through Vanguard’s public
24 disclosures (*see, e.g.*, Ex. D (identifying each of the nearly 8,000 stocks in the portfolio)) and
25 through the SEC (*see* Ex. E). Fifth, the turnover rate is relatively low, at 5.1% for the fiscal year
26 ending October 31, 2022. (Ex. C.) And sixth, investors have only indirect interests in individual
27 assets, via shares of the fund itself.

28 The Vanguard fund is not unusual in these regards. As the Advisory Opinion notes, “most

1 mutual funds that are registered with the Securities and Exchange Commission and sold to the
2 public as mutual funds will likely meet the criteria above.” (Ex. B at 201.) The Vanguard fund is
3 registered with the SEC (*see* Ex. E), and its registered profile can be accessed by searching the
4 SEC’s mutual fund database for the name “Vanguard Total International Stock Index Fund.” (Ex.
5 F.). Ignoring all of this, Cellspin offers only its subjective interpretations of the terms “index fund”
6 and “mutual fund,” and does not explain why they are relevant under the statute. (Mot. at 18-20.)

7 It is abundantly clear that the Vanguard fund is a “mutual or common investment fund”
8 within the meaning of Section 455(d)(4)(i), and ownership of the fund does not create a financial
9 interest that could warrant recusal. Accordingly, courts in this District have treated index funds as
10 mutual funds for purposes of Section 455. *See, e.g., David v. GMAC Mortg., LLC*, No. C 11-2914
11 PJH, 2011 WL 6078272, at *1 (N.D. Cal. Dec. 6, 2011) (referring to the Vanguard 500 Index Fund
12 as a “mutual fund” and concluding that, had the defendant been listed, the judge’s investment in
13 the fund would not have constituted a “financial interest”). Therefore, the Judge’s investments in
14 the Vanguard fund cannot be the basis for recusal.

15 **B. The Judge Has No Financial Interest in Google Through Nikon**

16 In a single, unsupported, and unexplained sentence, Cellspin further argues that the Judge
17 should recuse herself and vacate the judgment in favor of Nikon because the accused “Nikon Image
18 Services use Google services for user data,” making Google “a party through Nikon.” (Mot. at 26.)
19 Cellspin appears to be referring to Nikon Image Space, a photo storage service that non-defendant
20 Nikon Corporation offers. But Cellspin never explains what “Google services” it is referring to,
21 how Nikon Image Space uses those unnamed services, or how such use could have any possible
22 bearing on the Judge’s spouse’s alleged financial interests in Google. Thus, Cellspin fails even to
23 articulate a coherent basis for recusal under this “Nikon Image Services” theory, let alone one that
24 warrants recusal and vacatur.

25 **III. Cellspin Motion Is Unreasonably Late**

26 The Financial Disclosure Report on which Cellspin bases its motion is dated October 27,
27 2021. (*See* Garteiser Decl. Ex. 17.) At that time, the parties were in the midst of expert discovery.
28 Then fifteen months passed, during which the parties briefed dispositive motions, the Court decided

1 summary judgment in favor of Nikon, the Court entered judgment, the parties briefed and the Court
2 decided Nikon’s motion for attorneys’ fees, Cellspin noticed its appeal of judgment to the Federal
3 Circuit, and Cellspin filed its opening appellate brief. Only then did Cellspin file this present
4 motion for the extraordinary remedies of recusal and vacatur. Cellspin makes no attempt to explain
5 this delay.

6 Such delay would preclude vacatur, even if there were a violation of Section 455 (there is
7 not). *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 867-68 (1988) (“It is therefore
8 appropriate to vacate the judgment unless it can be said that respondent did not make a timely
9 request for relief.”). In fact, courts have denied Section 455 motions under similar circumstances—
10 a party waiting until after the case was on appeal to move for recusal. *See, e.g., Oglala Sioux Tribe*
11 *of Pine Ridge Indian Rsrv. v. Homestake Min. Co.*, 722 F.2d 1407, 1414 (8th Cir. 1983) (“[A]
12 timeliness requirement is appropriate, especially in this case where the Oglala Sioux were aware of
13 the alleged grounds for disqualification at the time the case was assigned to Judge Bogue, but the
14 suggestion for disqualification was not raised until this appeal.”); *see also In re United Shoe Mach.*
15 *Corp.*, 276 F.2d 77, 79 (1st Cir. 1960) (“One of the reasons for requiring promptness in filing is
16 that a party, knowing of a ground for requesting disqualification, cannot be permitted to wait and
17 decide whether he likes subsequent treatment that he receives.”). The Court should do so here.

18 **IV. Conclusion**

19 For the forgoing reasons, the Court should deny Cellspin’s motion for recusal and request
20 for vacatur.

1 result in a finding of willful infringement making Google’s exposure about \$2 Billion USD
2 for its past infringement through trial.⁴ All this information was laid out when Google
3 submitted Cellspin’s damages expert report (the Fitbit-Blok Report) to the Court on February
4 24, 2022 (Dkt. No. 282-6), as Exhibit 1 to Google’s motion to strike portions of it (Dkt. No.
5 281-2, 289). Thus, the Court had knowledge of \$537 million in potential Google liability
6 being requested by Cellspin when it later ruled on all the Defendants’ Summary Judgment
7 Motions in June 2022. *See* Dkt. No. 331.

8 Google acquiring Fitbit does qualify as a financial interest in a defendant. *See e.g. Key*
9 *Pharms., Inc. v. Mylan Labs., Inc.*, 24 F.Supp.2d 480, 482 n. 2 (W.D.Pa.1998) (noting that,
10 under §455, “the owner of stock in a parent corporation has a direct legal or equitable interest
11 in a controlled subsidiary and the judge should disqualify himself”); *Shell Oil Co.*, 672 F.3d
12 at 1291.

13 In *Shell*, the district court’s wife inherited 97.59 shares of stock in Chevron, the parent
14 company to defendants Texaco and Union Oil. *See Shell Oil Co.*, 672 F.3d at 1286. The
15 Federal Circuit stated unequivocally that: “Because the judge’s wife owns shares in the parent
16 company of Texaco and Union Oil, § 455(b)(4) requires recusal.” *Shell Oil Co.*, 672 F.3d at
17 1291. The guidance that stock in a parent is a financial interest in the wholly owned
18 subsidiary is not new law. *Id.*

19 Additionally, Defendants misconstrue the importance of the analogy Cellspin makes
20 to Ms. Beth F. Cobert, who disclosed owning the same “McKinsey & Company Special
21 Situations Aggressive Long-Term” as a financial interest. Akin to Section 455(c) governing
22 Article III of the Judiciary, ignorance of financial interests is not allowed by appointees to
23 positions within the Executive Branch, either. There, ethics is covered in relevant part by
24 Title 18 U.S.C. Section 208. *See* Dkt. No. 366-36 at 1. Ms. Cobert was not able to obtain the

25 _____
26 eventually reduced its claim against Fitbit to \$536.9 million during expert discovery.”). Fitbit
27 did not redact this \$537 million damages demand for a reasonable royalty from the public,
28 even though the Fitbit-Blok Reports were not filed publicly, but instead were filed under seal.
See e.g. Dkt. No. 283-7 (publicly stating that Exhibit 5 is Filed Under Seal).

⁴ Also, the asserted Cellspin patents do not expire for another 5 (five) years until 2028. This
subjects Google to further foreseeable financial exposure through calendar year 2028.

1 transparency required to disclose her financial interests in McKinsey & Company “Special
2 Situations Aggressive Long-Term Portfolio.” *Id.* at 2. Although she made an inquiry of the
3 manager, she still did not get details to allow her to avoid conflicts of interests with the
4 position she was to be appointed to. *Id.* As such, she made plans to completely divested
5 herself from any financial interest holdings in McKinsey & Company Special Situations
6 Aggressive Long-Term Portfolio. *Id.*

7 In contrast, Judge Gonzalez Rogers has not divested herself from the McKinsey &
8 Company Special Situations Aggressive Long-Term portfolio, despite admitting that matters
9 relating to clients of her husband’s company McKinsey & Company would require recusal.
10 *See* Dkt. No. 366-3 at 35. But she has never made any disclosure of what exactly is the
11 “McKinsey & Company Special Situations Aggressive Long-Term,” that she reaps a 2020
12 dividend of more than \$100,000 from. *See* Exhibit 41 at 5.

13 For context in 2013, Judge Gonzalez Rogers disclosed owning less than \$1,000,000 in
14 the McKinsey & Company Special Situations Aggressive Long-Term. *See* Exhibit 40 at 5.
15 But by the calendar year 2020 financial disclosures, apparently filed with the appropriate
16 government agency on October 27, 2021 (Dkt. No. 366-19) Judge Gonzalez Rogers disclosed
17 having a financial interest that had ballooned to no less than \$5 Million in the same McKinsey
18 & Company Special Situations Aggressive Long-Term. *See* Exhibit 41 at 5.⁵

19 Thus, recusal is required under at least Section 455(a). *See Centripetal Networks, Inc.*
20 *v. Cisco Systems, Inc.*, 38 F.4th 1025, 1039 (Fed. Cir. 2022) (citing 168 Cong. Rec. H4522
21 (daily ed. Apr. 27, 2022) (statement of Rep. Hakeem Jeffries) (“Failure to recuse can cause
22 real harm to parties seeking fair and impartial justice and leave a cloud of doubt over any
23 decision that is made once the conflicts are subsequently uncovered.”)).

24 **IV. New Law On Article III Disclosures and Judge Gonzalez Rogers Public** 25 **Disclosures.**

26 None of the parties can possibly comment on any “financial interests” for Judge

27 ⁵ The Gross Value at the end of the reporting period, which was December 31, 2020, is listed
28 by Judge Gonzalez Rogers to be “P2” that corresponds to a legend that defines “P2” to include
a financial interest between “\$5,000,001 to \$25,000,000.” *See* Exhibit 41 at 5.

- 1
- 2 1. Google has NOT denied that Matt Roger’s company “McKinsey” has
3 partnership and alliance with Google.
- 4 2. Google has NOT denied that as an oil gas & energy senior partner at McKinsey,
5 Matt Roger’s sells Google services to his oil gas and energy clients.
- 6 3. Google has NOT denied that Matt Roger’s portfolio company “Planet” is
7 funded by Google.
- 8 4. Google has NOT denied that Matt Roger’s portfolio company hydropower
9 startup “Natel Energy” is funded by Google.
- 10 5. Google has NOT denied that Matt Roger’s portfolio company start-up “Ripple
11 Food” is funded by Google.
- 12 6. Google has NOT denied that Matt Roger’s portfolio company “Lime” has
13 strategic partnership with Google.
- 14 7. Google has NOT denied that Matt Roger’s portfolio company “Voltus” has
15 partnership with Google.
- 16 8. Google has NOT denied that Matt Roger’s portfolio company “StreetLight
17 Data” has partnership with Google.
- 18 9. Google has NOT denied that Matt Roger’s portfolio company “Descartes
19 Labs” has customer partnership with Google.
- 20 10. Google has NOT denied that Matt Roger’s portfolio company “Regrow” has
21 partnership with Google.

22 Google fails to provide a declaration that it does not have any financial
23 interest/relationship with any of the eight Matt Roger Ajax Strategies companies.

24 Matt Rogers’ Ajax Strategies and Google connections are much more strategic than
25 suggested by Defendant Fossil. Google has funded hundreds of millions of dollars in Ajax
26 companies. And not all the 4,000 Google partners get hundreds of millions of dollars in
27 funding, as Ajax companies did. Google even put Ajax Strategies companies on Google’s
28 own website. *See e.g.* Dkt. No. 366-17 (refiled as Dkt. No. 371-12) Exhibit 15 (Google’s

1 own website shows and touts “Descartes Lab” partnership); Dkt. No. 366-18 (refiled as Dkt.
2 No. 371-13) Exhibit 16 (Excerpt from Google Cloud Website Related to Ajax Startup
3 Regrow). Google does not extend that privilege to all its partners. In any event, whether
4 Google invests in *other companies* is entirely irrelevant to the question of financial
5 relationship and perceived bias in *this* case.

6 Google has invested with others at least \$700 Million USD in Matt Roger’s Ajax. *See*
7 Dkt. No. 366 at 9-11; *see also* <https://www.crunchbase.com/organization/natel-energy>.
8 Regardless of Google’s share of such a massive investment, there is zero question that such
9 is a significant financial interest by Google in Mr. Rogers’ startups.

10 Thus, under Section 455 recusal is appropriate here.

11 **VI. McKinsey and Google Partnership Justify Recusal and Vacatur.**

12 Matt Rogers is a senior partner for oil, gas and energy clients at McKinsey. Cellspin’s
13 allegations is not about the “mere fact that McKinsey uses Google Cloud.” Rather, Cellspin
14 is alleging that senior partner Matt Rogers sells Google services to his oil, gas & energy
15 clients and part of his pay and bonus is dependent on his client’s satisfaction and success
16 through the use Google services. This scenario is not the same as envisioned by Advisory
17 Opinion No. 107 at 209 of businesses that offer services to a judge’s spouse, like a bank
18 provider (Bank of America) or wireless provider (AT&T). Here, direct and consequential
19 spousal business relationships exist between Google and Matt Rogers.

20 Thus, recusal is appropriate under at least Section 455(b)(4).

21 **VII. Millions Invested In Index Funds Justify Recusal and Vacatur For These** 22 **Parties.**

23 Defendants are mistaken that Cellspin is addressing regular Mutual Funds or Pension
24 Funds. And contrary to Google’s assertions, none of the case law and Advisory Opinion cited
25 by Google applies to Index Funds. The Judicial Conference’s Committee on Codes of
26 Conduct have not opined on Index Funds. But the disclosures, like a privilege log, are
27 designed to identify investments to encourage transparency and allow for challenge and full
28 disclosure where appropriate. And as much as Defendants would like to rely on Committee

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18. McKinsey & Company Special Situations Aggressive Long-Term		None	O	T	Buy (add'l)	01/01/13	N		
19.					Buy (add'l)	04/01/13	M		
20.					Buy (add'l)	07/01/13	M		
21. McK Spec Sit Ret		None	P1	T	Buy	01/31/13	K		
22.					Buy (add'l)	02/28/13	J		
23.					Sold (part)	02/28/13	J		
24.					Buy (add'l)	12/31/13	K		
25. McKinsey & Company Supp. Retirement		None	N	T					
26. McKinsey Partnership Shares	C	Dividend	P1	U					
27. Vanguard High Yield Corporate - VWEAX	A	Dividend			Sold	01/03/13	M		

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2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	O = \$500,001 - \$1,000,000 S = Assessment	P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	P2 = \$5,000,001 - \$25,000,000 T = Cash Market	W = Estimated
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	V = Other			

1 Randall T. Garteiser (CA State Bar No. 231821)
 rgarteiser@ghiplaw.com
 2 Christopher A. Honea (CA State Bar No. 232473)
 chonea@ghiplaw.com
 3 M. Scott Fuller (TX State Bar No. 24036607)
 sfuller@ghiplaw.com
 4 GARTEISER HONEA
 5 95 Third Street, 2nd Floor, San Francisco, CA 94103
 119 W Ferguson, Tyler, TX 75702
 6 Telephone: (888) 908-4400
 7
 Attorneys for Plaintiff,
 8 CELLSPIN SOFT INC.

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 10
 11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **OAKLAND DIVISION**

14 CELLSPIN SOFT, INC.,

15 Plaintiff

16 v.

17 FITBIT LLC.,

18 Defendant.
 19
 20

NOTICE OF APPEAL

Case No. 4:17-CV-05928-YGR

Judge: Honorable Yvonne G. Rogers

1 Pursuant to Rules 3 and 4 of Federal Rules of Appellate Procedure and Title 28 U.S.C. §
2 1295(a)(1), notice is given that Plaintiff Cellspin Soft, Inc. (“Cellspin”), appeals to the United States Court
3 of Appeals for the Federal Circuit the following:

4 (1) the order entered on February 15, 2023 (Docket No. 376) for recusal under Section 455 and vacatur of
5 the district court’s Summary Judgment Order (Docket No. 331/332).

6 This is a separate and secondary appeal in this case. The initial appeal pertained to the district
7 court’s Summary Judgment Order, *et al.* filed on July 13, 2022 (Docket No. 346).

8 This Notice of Appeal is related to consolidated case 22-2025 currently pending before the United
9 States Court of Appeals for the Federal Circuit entitled *Cellspin Soft, Inc. v. Fitbit, LLC*.

10 Respectfully submitted,

11
12 Dated: February 17, 2023

13 By: /s/ Randall Garteiser
14 MICHAEL SCOTT FULLER
15 TX State Bar No. 24036607
16 RANDALL T. GARTEISER
17 CA State Bar No. 231821
18 CHRISTOPHER A. HONEA
19 CA State Bar No. 232473

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21
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23
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*Attorneys for Plaintiff,
CELLSPIN SOFT INC.*

ADRMOP, AO279, APPEAL, CLOSED, PROTO, REFDIS, RELATE

U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:17-cv-05928-YGR

Cellspin Soft, Inc. v. Fitbit LLC
Assigned to: Judge Yvonne Gonzalez Rogers
Referred to: Magistrate Judge Kandis A. Westmore
Relate Case Cases:

[4:17-cv-05929-YGR](#)

[4:17-cv-05930-YGR](#)

[4:17-cv-05931-YGR](#)

[4:17-cv-05932-YGR](#)

[4:17-cv-05934-YGR](#)

[4:17-cv-05933-YGR](#)

[4:17-cv-05936-YGR](#)

[4:17-cv-06881-YGR](#)

[4:17-cv-05937-YGR](#)

[4:17-cv-05938-YGR](#)

[4:17-cv-05939-YGR](#)

[4:17-cv-05940-YGR](#)

[4:17-cv-05941-YGR](#)

Case in other court: Federal Circuit, 18-01817
Federal Circuit, 18-02178
Federal Circuit Court of Appeals, 22-02025

Cause: 35:271 Patent Infringement

Plaintiff

Cellspin Soft, Inc.

represented by **Randall Garteiser**
Garteiser Honea PLLC
95 Third Street, 2nd Floor
San Francisco, CA 94103
(415) 568-0553
Fax: (415) 785-3805
Email: rgarteiser@ghiplaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brandon Gregory Moore
Collins Edmonds Schlather PLLC
1616 South Voss Road, Suite 125
Houston, TX 77057
281-501-3425

Email: bmoore@ip-lit.com
TERMINATED: 08/22/2018

Christopher Alan Honea
Garteiser Honea PLLC
119 W. Ferguson Street
Tyler, TX 75702
(415) 785-3762
Fax: (888) 908-4400
Email: chonea@ghiplaw.com
ATTORNEY TO BE NOTICED

John J. Edmonds
Edmonds & Schlather, PLLC
355 South Grand Avenue, Suite 2450
Los Angeles, CA 90071
(213) 973-7846
Fax: (213) 835-6996
Email: jedmonds@ip-lit.com
TERMINATED: 01/13/2020

Michael Scott Fuller
Garteiser Honea PLLC
119 W Ferguson St
Tyler, TX 75702
214-729-6548
Fax: 888-908-4400
Email: sfuller@ghiplaw.com
ATTORNEY TO BE NOTICED

Peter Joseph Corcoran , III
Corcoran IP Law PLLC
4142 McKnight Road
Texarkana, TX 75503
903-701-2481
Fax: 903-560-4979
Email: peter@corcoranip.com
ATTORNEY TO BE NOTICED

Shea Neal Palavan
Palavan & Moore, PLLC
5353 West Alabama Street
Suite 303
Houston, TX 77056
832-800-4133
Fax: 855-725-2826
Email: shea@houstonip.com

TERMINATED: 03/19/2019

V.

Defendant

Fitbit, Inc.

TERMINATED: 10/15/2021

represented by **Alan S. Kellman**

Desmarais LLP

230 Park Avenue

New York, NY 10169

United Sta

2123513400

Fax: 212-351-3404

Email: akellman@desmaraisllp.com

LEAD ATTORNEY

PRO HAC VICE

ATTORNEY TO BE NOTICED

Ameet A. Modi

Desmarais LLP

101 California Street

San Francisco, CA 94111

415-573-1900

Email: amodi@desmaraisllp.com

TERMINATED: 01/06/2023

LEAD ATTORNEY

John M. Desmarais

Desmarais LLP

101 California Street

San Francisco, CA 94111

415-573-1900

Fax: 415-573-1901

Email: jdesmarais@desmaraisllp.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Jonathan Vincent Lewis

Desmarais LLP

230 Park Avenue

New York, NY 10169

United Sta

212-351-3400

Email: jlewis@desmaraisllp.com

LEAD ATTORNEY

PRO HAC VICE

ATTORNEY TO BE NOTICED

Tuhin Ganguly

Desmarais LLP

1701 Pennsylvania Avenue NW

Washington, DC 20006-1865

202-451-4912

Email: tganguly@desmaraisllp.com*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Anjali Moorthy**

Goodwin Procter LLP

Three Embarcadero Center

San Francisco, CA 94111-4017

(415) 733-6000

Fax: (415) 677-9041

Email: AMoorthy@goodwinlaw.com*TERMINATED: 01/16/2019***David Shane Brun**

King & Spalding LLP

601 S. California Ave.

Suite 100

Palo Alto, CA 94304

415-318-1245

Fax: 415-318-1200

Email: sbrun@kslaw.com*ATTORNEY TO BE NOTICED***Indra Neel Chatterjee**

Goodwin Procter LLP

601 Marshall Street

Redwood City, CA 94063

(650) 752-3100

Fax: (650) 853-1038

Email: NChatterjee@goodwinlaw.com*TERMINATED: 01/16/2019***Jamie Lauren Kringstein**

Desmarais LLP

230 Park Avenue

New York, NY 10169

United Sta

212-808-2921

Email: jkringstein@desmaraisllp.com*PRO HAC VICE**ATTORNEY TO BE NOTICED*

Karim Oussayef
Desmarais LLP
230 Park Ave
New York, NY 10169
212-351-3427
Fax: 212-351-3401
Email: koussayef@desmaraisllp.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Rachel Melissa Walsh
Goodwin Procter LLP
Three Embarcadero Center, 28th Floor
San Francisco, CA 94111
(415) 733-6000
Fax: (415) 677-9041
Email: RWalsh@goodwinlaw.com
TERMINATED: 01/16/2019

Defendant
Fitbit LLC

represented by **Alan S. Kellman**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Ameet A. Modi
(See above for address)
TERMINATED: 01/06/2023
LEAD ATTORNEY

John M. Desmarais
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jonathan Vincent Lewis
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Tuhin Ganguly
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Anjali Moorthy
(See above for address)

David Shane Brun
(See above for address)
ATTORNEY TO BE NOTICED

Indra Neel Chatterjee
(See above for address)

Jamie Lauren Kringstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Karim Oussayef
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Rachel Melissa Walsh
(See above for address)

Defendant

Nikon Americas, Inc.

represented by **Yuka Teraguchi**
Morrison & Foerster LLP
Shin-Marunouchi Building, 29th Floor
5-1, Marunouchi 1-Chome
Chiyoda-ku
Tokyo 100-6529
Japan
(81) 3-3214-6522
Fax: (81) 3-3214-6512
Email: YTeraguchi@mofo.com
ATTORNEY TO BE NOTICED

Defendant

Nikon Inc.

represented by **Yuka Teraguchi**
(See above for address)
ATTORNEY TO BE NOTICED

3rd party defendant

Nikon Corporation

represented by **Yuka Teraguchi**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/16/2017	1	COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NOS. 8,738,794, 8,892,752, AND 9,749,847; DEMAND FOR JURY TRIAL; (NO PROCESS); against Fitbit, Inc. (Filing fee \$ 400, receipt number 0971-11801983.). Filed by Cellspin Soft, Inc. (Attachments: # 1 See Docket Number 6 for Correct Attachment Exhibit A - 8,738,794 Patent, # 2 See Docket Number 6 for Correct Attachment Exhibit B - 8,892,752 Patent, # 3 See Docket Number 6 for Correct Attachment Exhibit C - 9,749,847 Patent, # 4 Civil Cover Sheet)(Edmonds, John) (Filed on 10/16/2017) Modified on 10/18/2017 (aaaS, COURT STAFF). Modified on 10/20/2017 (aaaS, COURT STAFF). (Entered: 10/16/2017)
10/17/2017		Electronic filing error. Please complete and docket the court's latest version of the civil cover sheet available on the court's website. Please use the docketing event civil cover sheet. Thank you. Re: 1 Complaint, filed by Cellspin Soft, Inc. (srnS, COURT STAFF) (Filed on 10/17/2017) (Entered: 10/17/2017)
10/17/2017	2	<p>Case assigned to Magistrate Judge Elizabeth D. Laporte.</p> <p>Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening.</p> <p>Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 10/31/2017. (srnS, COURT STAFF) (Filed on 10/17/2017) (Entered: 10/17/2017)</p>
10/17/2017	3	Civil Cover Sheet by Cellspin Soft, Inc. . (Edmonds, John) (Filed on 10/17/2017) (Entered: 10/17/2017)
10/17/2017	4	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 1/9/2018. Initial Case Management Conference set for 1/16/2018 10:00 AM. Signed by Magistrate Judge Elizabeth D. Laporte on 10/17/18. (aaaS, COURT STAFF) (Filed on 10/17/2017) (Entered: 10/18/2017)
10/18/2017	5	REPORT on the filing or determination of an action regarding: PATENT INFRINGEMENT (cc: form mailed to register). (aaaS, COURT STAFF) (Filed on 10/18/2017) (Entered: 10/18/2017)
10/18/2017		Electronic filing error. This filing will not be processed by the clerks office. Please re-file in its entirety. Re: 1 Complaint, filed by Cellspin Soft, Inc. Can not open parts Part 1 Exhibit A and Part 2 Exhibit B (aaaS, COURT STAFF) (Filed on 10/18/2017) (Entered: 10/18/2017)
10/19/2017	6	ERRATA re 1 Complaint, <i>Correct Version of the Exhibits</i> by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit A - 8,738,794 Patent, # 2 Exhibit B - 8,892,752 Patent, # 3

		Exhibit C - 9,749,847 Patent)(Edmonds, John) (Filed on 10/19/2017) (Entered: 10/19/2017)
10/19/2017	7	Certificate of Interested Entities by Cellspin Soft, Inc. (Edmonds, John) (Filed on 10/19/2017) (Entered: 10/19/2017)
10/20/2017	8	Proposed Summons. (Edmonds, John) (Filed on 10/20/2017) (Entered: 10/20/2017)
10/23/2017	9	Summons Issued as to Fitbit, Inc. (aaaS, COURT STAFF) (Filed on 10/23/2017) (Entered: 10/23/2017)
10/30/2017	10	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Cellspin Soft, Inc... (Edmonds, John) (Filed on 10/30/2017) (Entered: 10/30/2017)
10/31/2017	11	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because a party has not consented to the jurisdiction of a Magistrate Judge. You will be informed by separate notice of the district judge to whom this case is reassigned.</p> <p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (shyS, COURT STAFF) (Filed on 10/31/2017) (Entered: 10/31/2017)</p>
10/31/2017	12	ORDER REASSIGNING CASE. Case reassigned to Judge Yvonne Gonzalez Rogers for all further proceedings. Magistrate Judge Elizabeth D. Laporte no longer assigned to the case. This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and http://cand.uscourts.gov/cameras. Signed by Executive Committee on 10/31/17. (Attachments: # 1 Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 10/31/2017) (Entered: 10/31/2017)
11/09/2017	13	CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE. Case Management Statement due by 1/15/2018. Initial Case Management Conference set for MONDAY, 1/22/2018 02:00 PM before Judge Hon. Yvonne Gonzalez Rogers in Courtroom 1, 4th Floor, Oakland. (Attachments: # 1 Standing Order) (fs, COURT STAFF) (Filed on 11/9/2017) (Entered: 11/09/2017)
11/09/2017	14	SUMMONS Returned Executed by Cellspin Soft, Inc.. Fitbit, Inc. served on 10/30/2017, answer due 11/20/2017. (Edmonds, John) (Filed on 11/9/2017) (Entered: 11/09/2017)
11/17/2017	15	STIPULATION to Extend Time for Defendant Fitbit, Inc. to Answer or Otherwise Respond to Complaint filed by Fitbit, Inc., Cellspin Soft Inc. (Brun, David) (Filed on 11/17/2017) Modified on 11/20/2017 (cpS, COURT STAFF). (Entered: 11/17/2017)
11/17/2017	16	Certificate of Interested Entities and Corporate Disclosure Statement by Fitbit, Inc. (Brun, David) (Filed on 11/17/2017) Modified on 11/20/2017 (cpS, COURT STAFF).

		(Entered: 11/17/2017)
12/01/2017	17	MOTION to Relate Case by Cellspin Soft, Inc. (Edmonds, John) (Filed on 12/1/2017) Modified on 12/4/2017 (cpS, COURT STAFF). (Entered: 12/01/2017)
12/05/2017	18	ORDER by Judge Yvonne Gonzalez Rogers granting 17 Motion to Relate Cases and ORDER RELATING CASES 17-cv-5928-YGR; 17-cv-5929-RS; 17-cv-5930-VC; 17-cv-5931-JST; 17-cv-5932-HSG; 17-cv-5933-BLF; 17-cv-5934-EMC; 17-cv-5936-JSW; 17-cv-5937-HSG- 17-cv-5938-MEJ; 17-cv-5939-RS; 17-cv-5940-WHO; 17-CV-5941-EMC and 17-cv-6881-WHO. (fs, COURT STAFF) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	19	CLERK'S NOTICE : The Court requires further information as to the procedural posture of each related case. Accordingly, plaintiffs shall provide a chart which indicates the procedural posture of each case by Monday, December 11, 2017. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	20	NOTICE of Procedural Posture of Related Cases by Cellspin Soft, Inc. pursuant to re 19 Clerk's Notice, (Edmonds, John) (Filed on 12/5/2017) Modified on 12/5/2017 (cpS, COURT STAFF). (Entered: 12/05/2017)
12/12/2017	21	ORDER SETTING CASE MANAGEMENT CONFERENCE. Omnibus Case Management Statement due by 1/22/2018. Initial Case Management Conference set for Monday, 1/29/2018 at specially set time of 01:00 PM before Judge Hon. Yvonne Gonzalez Rogers in Courtroom 1, 4th Floor, Oakland. Signed by Judge Yvonne Gonzalez Rogers on 12/12/17. (fs, COURT STAFF) (Filed on 12/12/2017) (Entered: 12/12/2017)
12/20/2017	22	MOTION to Dismiss filed by Fitbit, Inc.. Motion Hearing set for 1/30/2018 02:00 PM in Courtroom 1, 4th Floor, Oakland before Judge Yvonne Gonzalez Rogers. Responses due by 1/3/2018. Replies due by 1/10/2018. (Attachments: # 1 Proposed Order, # 2 Declaration of S. Brun in Support of Fitbit, Inc.'s Motion to Dismiss Plaintiff Cellspin Soft, Inc.'s Complaint, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C)(Brun, David) (Filed on 12/20/2017) (Entered: 12/20/2017)
12/22/2017	23	ORDER DIRECTING PARTIES TO FILE OMNIBUS BRIEFS. Signed by Judge Yvonne Gonzalez Rogers on 12/22/17. (fs, COURT STAFF) (Filed on 12/22/2017) (Entered: 12/22/2017)
12/22/2017		Set/Reset Deadlines as to Responses due by 1/30/2018. Replies due by 2/13/2018. Motion Hearing set for 3/6/2018 02:00 PM before Judge Yvonne Gonzalez Rogers. (fs, COURT STAFF) (Filed on 12/22/2017) (Entered: 12/22/2017)
01/05/2018	24	NOTICE of Appearance by Indra Neel Chatterjee (Chatterjee, Indra) (Filed on 1/5/2018) (Entered: 01/05/2018)
01/05/2018	25	NOTICE of Appearance by Rachel Melissa Walsh (Walsh, Rachel) (Filed on 1/5/2018) (Entered: 01/05/2018)

01/05/2018	26	NOTICE of Appearance by Anjali Moorthy (Moorthy, Anjali) (Filed on 1/5/2018) (Entered: 01/05/2018)
01/05/2018	27	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Walsh, Rachel) (Filed on 1/5/2018) (Entered: 01/05/2018)
01/08/2018	28	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Edmonds, John) (Filed on 1/8/2018) (Entered: 01/08/2018)
01/08/2018	29	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Edmonds, John) (Filed on 1/8/2018) (Entered: 01/08/2018)
01/09/2018	30	ADR Clerk's Notice Setting ADR Phone Conference on 1/24/2018 at 10:00 AM Pacific Time. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (cmf, COURT STAFF) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/16/2018	31	MOTION to Dismiss filed by Fitbit, Inc.. Motion Hearing set for 3/6/2018 02:00 PM in Courtroom 1, 4th Floor, Oakland before Judge Yvonne Gonzalez Rogers. Responses due by 1/30/2018. Replies due by 2/6/2018. (Attachments: # 1 Declaration of Mulloy in Support of Defendants' Motion to Dismiss, # 2 Exhibit 1 to Mulloy Declaration, # 3 Exhibit 2 to Mulloy Declaration, # 4 Exhibit 3 to Mulloy Declaration, # 5 Exhibit 4 to Mulloy Declaration, # 6 Proposed Order)(Brun, David) (Filed on 1/16/2018) Modified on 1/17/2018 (cpS, COURT STAFF). (Entered: 01/16/2018)
01/22/2018	32	MOTION for leave to appear in Pro Hac Vice of <i>Brandon G. Moore</i> (Filing fee \$ 310, receipt number 0971-12043744.) Filing fee previously paid on 1/22/2018 filed by Cellspin Soft, Inc.. (Moore, Brandon) (Filed on 1/22/2018) (Entered: 01/22/2018)
01/22/2018	33	<p>***FILED IN ERROR. SEE DOCUMENT # 34 ***</p> <p>JOINT CASE MANAGEMENT STATEMENT & <i>PROPOSED ORDER</i> filed by Cellspin Soft, Inc., Fitbit Inc. (Edmonds, John) (Filed on 1/22/2018) Modified on 1/23/2018 (cpS, COURT STAFF). Modified on 1/23/2018 (cpS, COURT STAFF). (Entered: 01/22/2018)</p>
01/22/2018	34	JOINT CASE MANAGEMENT STATEMENT & <i>PROPOSED ORDER</i> filed by Cellspin Soft, Inc., Fitbit Inc. (Edmonds, John) (Filed on 1/22/2018) Modified on 1/23/2018 (cpS, COURT STAFF). (Entered: 01/22/2018)
01/24/2018	35	ORDER by Judge Yvonne Gonzalez Rogers granting 32 Motion for Pro Hac Vice as to Brandon G. Moore. (fs, COURT STAFF) (Filed on 1/24/2018) (Entered: 01/24/2018)
01/24/2018	36	ADR Remark: ADR Phone Conference held on 1/24/2018 by Howard Herman. (af, COURT STAFF) (Filed on 1/24/2018) (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (Entered: 01/24/2018)
01/24/2018	37	JOINT List of Counsel Appearing at the January 29, 2018 Case Management

		Conference pursuant to re 21 Order by Cellspin Soft, Inc., Fitbit Inc (Edmonds, John) (Filed on 1/24/2018) Modified on 1/25/2018 (cpS, COURT STAFF). (Entered: 01/24/2018)
01/29/2018	42	<p>*** THE CORRECT HEARING DATE FOR THE CLAIM CONSTRUCTION HEARING IS FRIDAY, NOVEMBER 9, 2018 AT 9:00AM. SEE CLERKS NOTICE DKT. NO. 45***</p> <p>Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Initial Case Management Conference held on 1/29/2018.Total Time in Court: 13 minutes. Court Reporter: Diane Skillman. (fs, COURT STAFF) (Date Filed: 1/29/2018) (Additional attachment(s) added on 2/2/2018: # 1 Supplement Counsel appearances) (fs, COURT STAFF). (Additional attachment(s) added on 2/2/2018: # 2 Supplement Counsel appearances) (fs, COURT STAFF). Modified on 2/5/2018 (fs, COURT STAFF). (Entered: 02/02/2018)</p>
01/29/2018	43	<p>CLERK'S NOTICE: PLEASE TAKE NOTICE THAT THE LIST OF COUNSEL APPEARANCES AS TO THE CASE MANAGEMENT CONFERENCE HELD JANUARY 29, 2018 HAS BEEN ADDED TO THE MINUTES OF 1/29/18, DKT. NO. 42, AS AN ATTACHMENT DOCUMENT.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 1/29/2018) (Entered: 02/02/2018)</p>
01/29/2018		<p>Set/Reset Hearing re (33 in 4:17-cv-05934-YGR) Case Management Conference - Initial, (36 in 4:17-cv-05939-YGR) Case Management Conference - Initial, (39 in 4:17-cv-05932-YGR) Case Management Conference - Initial, (36 in 4:17-cv-05929-YGR) Case Management Conference - Initial, (38 in 4:17-cv-06881-YGR) Case Management Conference - Initial, (35 in 4:17-cv-05931-YGR) Case Management Conference - Initial, (38 in 4:17-cv-05930-YGR) Case Management Conference - Initial, (38 in 4:17-cv-05938-YGR) Case Management Conference - Initial, (50 in 4:17-cv-05933-YGR) Case Management Conference - Initial, (39 in 4:17-cv-05941-YGR) Case Management Conference - Initial, (42 in 4:17-cv-05928-YGR) Case Management Conference - Initial,</p> <p>Further Case Management Conference set for 7/16/2018 01:00 PM in Oakland, Courtroom 1, 4th Floor. Claims Construction Hearing set for **FRIDAY, 11/9/2018 09:00 AM.** Compliance hearing set for 3/2/2018 09:01 AM before Judge Yvonne Gonzalez Rogers. Filing by 2/23/2018. Tutorial Hearing set for Friday, 10/26/2018 09:00 AM in Oakland, Courtroom 1, 4th Floor. (fs, COURT STAFF) (Filed on 1/29/2018) Modified on 2/5/2018 (fs, COURT STAFF). (Entered: 02/02/2018)</p>
01/30/2018	38	OPPOSITION/RESPONSE (re 31 MOTION to Dismiss <i>Complaints</i>) filed by Cellspin Soft, Inc.. (Edmonds, John) (Filed on 1/30/2018) (Entered: 01/31/2018)
01/31/2018	39	<p>***NOTE: EXHIBITS 2 & 3 RE-FILED AT DKT. # 41 ***</p> <p>ADDITIONAL ATTACHMENTS TO MAIN DOCUMENT re 38</p>

		Opposition/Response to Motion filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order, # 2 Declaration of John J. Edmonds, # 3 Exhibit 2 - '794 patent, # 4 Exhibit 3 - '752 patent, # 5 Exhibit 4 - '847 patent, # 6 Exhibit 5 - '698 patent, # 7 Exhibit 6 - Kennedy application, # 8 Exhibit 7 - '303 app file history, # 9 Exhibit 8 - '214 app file history, # 10 Exhibit 9 - '219 app file history, # 11 Exhibit 10 - '227 app file history, # 12 Exhibit 11 - '913 app file history, # 13 Exhibit 12 - '352 app file history, # 14 Exhibit 13 - '353 app file history, # 15 Exhibit 14 - '401 app file history, # 16 Exhibit 15 - '104 app file history, # 17 Exhibit 16 - Bouet application, # 18 Exhibit 17 - Pryor application)(Related document(s) 38) (Edmonds, John) (Filed on 1/31/2018) Modified on 2/1/2018 (cpS, COURT STAFF). Modified on 2/1/2018 (cpS, COURT STAFF).< Modified on 2/1/2018 (cpS, COURT STAFF). (Entered: 01/31/2018)
01/31/2018	40	TRANSCRIPT ORDER for proceedings held on 1/29/18 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Diane Skillman. (Edmonds, John) (Filed on 1/31/2018) (Entered: 01/31/2018)
01/31/2018	41	NOTICE OF ERRATA re 39 ADDITIONAL ATTACHMENTS TO MAIN DOCUMENT by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit 2 - '794 patent, # 2 Exhibit 3 - '752 patent)(Edmonds, John) (Filed on 1/31/2018) Modified on 2/1/2018 (cpS, COURT STAFF). (Entered: 01/31/2018)
02/02/2018	44	CASE MANAGEMENT AND PRETRIAL ORDER. Signed by Judge Yvonne Gonzalez Rogers on 2/2/2018. (fs, COURT STAFF) (Filed on 2/2/2018) (Entered: 02/02/2018)
02/05/2018	45	CLERK'S NOTICE CORRECTING DATE ON MINUTES OF 1/29/18: THE CORRECT DATE OF THE CLAIM CONSTRUCTION HEARING IS FRIDAY, NOVEMBER 9, 2018 AT 9:00AM. (Not 11/19/18).Claims Construction Hearing set for 11/9/2018 09:00 AM. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 2/5/2018) (Entered: 02/05/2018)
02/09/2018	46	Transcript of Proceedings held on January 29, 2018, before Judge Yvonne Gonzalez Rogers. Court Reporter Diane E. Skillman, telephone number 925-899-2812, Diane_Skillman@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (41 in 4:17-cv-05936-YGR) Transcript Order) Release of Transcript Restriction set for 5/10/2018. (Skillman, Diane) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/13/2018	47	REPLY (re 31 MOTION to Dismiss <i>Complaints</i>) filed by Fitbit, Inc.. (Brun, David) (Filed on 2/13/2018) (Entered: 02/13/2018)
02/16/2018	48	NOTICE of Supplemental Authority by Cellspin Soft, Inc. (Attachments: # 1 Declaration of John J. Edmonds, # 2 Exhibit A - Berkheimer Opinion, # 3 Exhibit B -

		Aatrix Opinion)(Edmonds, John) (Filed on 2/16/2018) Modified on 2/18/2018 (cpS, COURT STAFF). (Entered: 02/16/2018)
02/23/2018	49	STIPULATION WITH PROPOSED ORDER and Statement Regarding Discovery filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit 1 - Email string between counsel)(Edmonds, John) (Filed on 2/23/2018) Modified on 2/25/2018 (cpS, COURT STAFF). (Entered: 02/23/2018)
02/24/2018	50	<p>***FILED IN ERROR***</p> <p>STIPULATION WITH PROPOSED ORDER for Protective Order filed by Cellspin Soft, Inc., Fitbit Inc. (Edmonds, John) (Filed on 2/24/2018) Modified on 2/25/2018 (cpS, COURT STAFF). Modified on 2/25/2018 (cpS, COURT STAFF). Modified on 2/26/2018 (cpS, COURT STAFF). (Entered: 02/24/2018)</p>
02/24/2018	51	<p>***FILED IN ERROR***</p> <p>STIPULATION WITH PROPOSED ORDER for Protective Order filed by Cellspin Soft, Inc., Fitbit Inc.(Edmonds, John) (Filed on 2/24/2018) Modified on 2/25/2018 (cpS, COURT STAFF). Modified on 2/25/2018 (cpS, COURT STAFF). Modified on 2/26/2018 (cpS, COURT STAFF). (Entered: 02/24/2018)</p>
02/24/2018	52	STIPULATION WITH PROPOSED ORDER for Protective Order filed by Cellspin Soft, Inc., Fitbit Inc. (Edmonds, John) (Filed on 2/24/2018) Modified on 2/25/2018 (cpS, COURT STAFF). (Entered: 02/24/2018)
02/27/2018	53	<p>CLERK'S NOTICE VACATING THE FRIDAY, MARCH 2, 2018 AT 9:01AM COMPLIANCE HEARING.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 2/27/2018) (Entered: 02/27/2018)</p>
02/27/2018	54	STIPULATED PROTECTIVE ORDER [*AS MODIFIED BY THE COURT*]. Signed by Judge Yvonne Gonzalez Rogers on 2/27/18. (fs, COURT STAFF) (Filed on 2/27/2018) (Entered: 02/27/2018)
02/27/2018	55	ORDER RE: JOINT STIPULATION AND STATEMENT REGARDING DISCOVERY by Judge Yvonne Gonzalez Rogers; granting (49) Stipulation in case 4:17-cv-05928-YGR; granting (42) Stipulation in case 4:17-cv-05929-YGR; granting (42) Stipulation in case 4:17-cv-05930-YGR; granting (41) Stipulation in case 4:17-cv-05931-YGR; granting (43) Stipulation in case 4:17-cv-05932-YGR; granting (60) Stipulation in case 4:17-cv-05933-YGR; granting (48) Stipulation in case 4:17-cv-05936-YGR; granting (48) Stipulation in case 4:17-cv-05938-YGR; granting (44) Stipulation in case 4:17-cv-05939-YGR; granting (45) Stipulation in case 4:17-cv-05941-YGR; granting (48) Stipulation in case 4:17-cv-06881-YGR. (fs, COURT STAFF) (Filed on 2/27/2018) (Entered: 02/27/2018)

03/01/2018	56	NOTICE of Recent Decision by Fitbit, Inc. re 31 MOTION to Dismiss <i>Complaints</i> (Attachments: # 1 Declaration of Amy Walters in Support of Notice of Recent Decision, # 2 Exhibit A)(Brun, David) (Filed on 3/1/2018) Modified on 3/2/2018 (cpS, COURT STAFF). (Entered: 03/01/2018)
03/02/2018	57	MOTION for leave to appear in Pro Hac Vice <i>Shea N. Palavan</i> (Filing fee \$ 310, receipt number 0971-12155693.) filed by Cellspin Soft, Inc.. (Palavan, Shea) (Filed on 3/2/2018) (Entered: 03/02/2018)
03/02/2018	58	AMENDED COMPLAINT for <i>Patent Infringement</i> against All Defendants. Filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit A - '794 Patent, # 2 Exhibit B - '752 Patent, # 3 Exhibit C - '847 Patent)(Edmonds, John) (Filed on 3/2/2018) (Entered: 03/02/2018)
03/05/2018	59	ORDER RE JOINT STIPULATION AND STATEMENT RE DISCOVERY re case 4:17-cv-5928-YGR. Signed by Judge Yvonne Gonzalez Rogers on 3/5/18. (fs, COURT STAFF) (Filed on 3/5/2018) (Entered: 03/05/2018)
03/05/2018	60	<p>***FILED IN ERROR. RE-FILED AT DKT. # 61***</p> <p>ORDER by Judge Yvonne Gonzalez Rogers granting 57 Motion for Pro Hac Vice as to Shea N. Palavan. (fs, COURT STAFF) (Filed on 3/5/2018) Modified on 3/6/2018 (cpS, COURT STAFF). Modified on 3/6/2018 (cpS, COURT STAFF). (Entered: 03/05/2018)</p>
03/05/2018	61	ORDER GRANTING 57 MOTION for leave to appear in Pro Hac Vice Shea N. Palavan (Filing fee \$ 310, receipt number 0971-12155693.) filed by Cellspin Soft, Inc.. Signed by Judge Yvonne Gonzalez Rogers on 3/5/18. (fs, COURT STAFF) (Filed on 3/5/2018) (Entered: 03/06/2018)
03/06/2018	68	Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Motion Hearing held and submitted on 3/6/2018 re (41 in 4:17-cv-05933-YGR) MOTION to Dismiss <i>Cellspin Soft, Inc.'s Complaints</i> filed by Misfit Inc., Fossil Group, Inc., (34 in 4:17-cv-05941-YGR) MOTION to Dismiss <i>Plaintiff Cellspin Soft, Inc.'s Complaints</i> filed by Panasonic Corporation of North America, (31 in 4:17-cv-05928-YGR) MOTION to Dismiss <i>Complaints</i> filed by Fitbit, Inc., (29 in 4:17-cv-05929-YGR) MOTION to Dismiss <i>Complaints</i> filed by Moov Inc., (28 in 4:17-cv-05931-YGR) MOTION to Dismiss <i>Complaints</i> filed by Nike, Inc., (52 in 4:17-cv-05933-YGR) MOTION to Dismiss <i>Plaintiff Cellspin Soft, Inc.'s Amended Complaint</i> filed by Misfit Inc., Fossil Group, Inc., (34 in 4:17-cv-05937-YGR) MOTION to Dismiss <i>Plaintiff Cellspin Soft, Inc.'s Complaints</i> filed by TomTom, Inc., (33 in 4:17-cv-05932-YGR, 33 in 4:17-cv-05932-YGR) MOTION to Dismiss <i>and/or</i> MOTION to Strike (24) Answer to Complaint (<i>Under Armour's Ninth Affirmative Defense</i>) filed by Cellspin Soft, Inc., (24 in 4:17-cv-06881-YGR) MOTION to Dismiss <i>Plaintiff Cellspin Soft, Inc.'s Complaints</i> filed by JK Imaging Ltd., (27 in 4:17-cv-05934-YGR) MOTION to Dismiss <i>Pursuant to Rule 12(c)</i> filed by Garmin USA, Inc., Garmin International, Inc., (31 in 4:17-cv-05939-YGR)

		MOTION to Dismiss <i>Plaintiff's Complaints</i> filed by GoPro, Inc. Total Time in Court: 1:12 [total time for related cases]. Court Reporter: Diane Skillman. (Attachments: # 1 Supplement: List of Attorney Appearances)(fs, COURT STAFF) (Date Filed: 3/6/2018) (Entered: 03/16/2018)
03/07/2018	62	NOTICE of Lodging of Motion Hearing Demonstrative by Cellspin Soft, Inc. re 31 MOTION to Dismiss <i>Complaints</i> (Attachments: # 1 Exhibit A - Demonstrative Oral Hearing Presentation)(Edmonds, John) (Filed on 3/7/2018) Modified on 3/8/2018 (cpS, COURT STAFF). (Entered: 03/07/2018)
03/12/2018	63	STIPULATION WITH PROPOSED ORDER <i>Regarding Case Schedule Deadlines as to Plaintiff's Infringement Contentions and Fitbit's Answer to Amended Complaint</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order)(Edmonds, John) (Filed on 3/12/2018) Modified on 3/13/2018 (cpS, COURT STAFF). (Entered: 03/12/2018)
03/12/2018	64	Supplemental Brief re 31 MOTION to Dismiss <i>Complaints</i> filed by Fitbit, Inc.. (Related document(s) 31) (Brun, David) (Filed on 3/12/2018) Modified on 3/13/2018 (cpS, COURT STAFF). (Entered: 03/12/2018)
03/13/2018	65	STIPULATION WITH PROPOSED ORDER <i>Continuing Deadlines</i> filed by Cellspin Soft, Inc.. (Edmonds, John) (Filed on 3/13/2018) Modified on 3/14/2018 (cpS, COURT STAFF). (Entered: 03/13/2018)
03/14/2018	66	ORDER GRANTING STIPULATION REGARDING CASE SCHEDULE AND DEADLINES by Judge Yvonne Gonzalez Rogers ;granting (63) Stipulation in case 4:17-cv-05928-YGR; granting (53) Stipulation in case 4:17-cv-05929-YGR; granting (52) Stipulation in case 4:17-cv-05930-YGR; granting (54) Stipulation in case 4:17-cv-05931-YGR; granting (53) Stipulation in case 4:17-cv-05932-YGR; granting (72) Stipulation in case 4:17-cv-05933-YGR; granting (51) Stipulation in case 4:17-cv-05934-YGR; granting (62) Stipulation in case 4:17-cv-05936-YGR; granting (59) Stipulation in case 4:17-cv-05938-YGR; granting (56) Stipulation in case 4:17-cv-05939-YGR; granting (56) Stipulation in case 4:17-cv-05941-YGR; granting (59) Stipulation in case 4:17-cv-06881-YGR. (fs, COURT STAFF) (Filed on 3/14/2018) (Entered: 03/14/2018)
03/15/2018	67	ORDER GRANTING STIPULATION by Judge Yvonne Gonzalez Rogers: granting (65) Stipulation in case 4:17-cv-05928-YGR; granting (55) Stipulation in case 4:17-cv-05929-YGR; granting (53) Stipulation in case 4:17-cv-05930-YGR; granting (55) Stipulation in case 4:17-cv-05931-YGR; granting (55) Stipulation in case 4:17-cv-05932-YGR; granting (73) Stipulation in case 4:17-cv-05933-YGR; granting (53) Stipulation in case 4:17-cv-05934-YGR; granting (61) Stipulation in case 4:17-cv-05938-YGR; granting (58) Stipulation in case 4:17-cv-05939-YGR; granting (58) Stipulation in case 4:17-cv-05941-YGR; granting (61) Stipulation in case 4:17-cv-06881-YGR. (fs, COURT STAFF) (Filed on 3/15/2018) (Entered: 03/15/2018)
03/16/2018	69	Transcript of Proceedings held on March 6, 2018, before Judge Yvonne Gonzalez Rogers. Court Reporter Diane E. Skillman, telephone number 925-899-2812, Diane_Skillman@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public

		terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (61 in 4:17-cv-05936-YGR) Transcript Order) Release of Transcript Restriction set for 6/14/2018. (Skillman, Diane) (Filed on 3/16/2018) (Entered: 03/16/2018)
03/19/2018	70	<p>***FILED IN ERROR. SEE DOCUMENT # 71***</p> <p>TRANSCRIPT ORDER for proceedings held on 3/6/2018 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Diane Skillman. (Edmonds, John) (Filed on 3/19/2018) Modified on 3/19/2018 (cpS, COURT STAFF). (Entered: 03/19/2018)</p>
03/19/2018	71	TRANSCRIPT ORDER for proceedings held on 3/6/2018 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Diane Skillman. (Edmonds, John) (Filed on 3/19/2018) (Entered: 03/19/2018)
03/20/2018	72	NOTICE of Supplemental Authority by Cellspin Soft, Inc. 38 Opposition/Response to Motion (Attachments: # 1 Declaration of John J. Edmonds, # 2 Exhibit A - Vaporstream Opinion)(Edmonds, John) (Filed on 3/20/2018) Modified on 3/21/2018 (cpS, COURT STAFF). (Entered: 03/20/2018)
03/20/2018	73	RESPONSE to re 64 Supplemental Brief by Cellspin Soft, Inc.. (Edmonds, John) (Filed on 3/20/2018) (Entered: 03/20/2018)
03/21/2018		<p>NOTICE TO COUNSEL: Document # 72 filed by Cellspin Soft Inc also listed the related cases 4:17-cv-05930-YGR, 4:17-cv-05932-YGR, 4:17-cv-05936-YGR.</p> <p>Document # 73 filed by Cellspin Soft Inc also listed the related cases 4:17-cv-05930-YGR, and 4:17-cv-05936-YGR</p> <p>If these documents are intended to be applied to the related case, please e-file in the related case also. If the document is <u>not</u> applicable to the related case, DO NOT include that case number on the document (cpS, COURT STAFF) (Filed on 3/21/2018) (Entered: 03/21/2018)</p>
03/22/2018	74	ORDER TO SHOW CAUSE Order to Show Cause Hearing set for Monday, 4/2/2018 03:01 PM. Show Cause Response due by Monday, 3/26/2018. Signed by Judge Yvonne Gonzalez Rogers on 3/22/2018. (fs, COURT STAFF) (Filed on 3/22/2018) (Entered: 03/22/2018)
03/26/2018	75	MOTION for Leave to File <i>Response to Defendants' Supplemental Briefing in Support of Motion to Dismiss Plaintiff Cellspin Soft Inc's Complaints</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order, # 2 Declaration of John J. Edmonds, # 3 Exhibit A - Response to Defendants' Supplemental Briefing)(Edmonds, John) (Filed on 3/26/2018) Modified on 3/27/2018 (cpS, COURT STAFF). Modified on 3/30/2018 (cp, COURT STAFF).

		DISREGARD PROPOSED ORDER. RE-FILED AT DOCUMENT # 77 Modified on 3/30/2018 (cp, COURT STAFF). (Entered: 03/26/2018)
03/26/2018	76	RESPONSE RE: THIS COURTS ORDER RE: RESPONSE TO DEFENDANTS SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF CELLSPIN SOFT, INC.S COMPLAINTS by Cellspin Soft, Inc. . (Edmonds, John) (Filed on 3/26/2018) Modified on 3/27/2018 (cpS, COURT STAFF). (Entered: 03/26/2018)
03/28/2018	77	Proposed Order re 75 MOTION for Leave to File <i>Response to Defendants' Supplemental Briefing in Support of Motion to Dismiss Plaintiff Cellspin Soft Inc's Complaints</i> by Cellspin Soft, Inc.. (Edmonds, John) (Filed on 3/28/2018) (Entered: 03/28/2018)
03/29/2018	78	ORDER VACATING HEARING ON ORDER TO SHOW CAUSE. Signed by Judge Yvonne Gonzalez Rogers on 3/29/18. (fs, COURT STAFF) (Filed on 3/29/2018) (Entered: 03/29/2018)
04/03/2018	79	ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS by Judge Yvonne Gonzalez Rogers; Court GRANTS the Omnibus Defendants' motion to dismiss and GRANTS Garmin's motion for judgment on the pleadings. Defendants shall file a proposed order of judgment approved as to form with five(5) days for each of the captioned matters;granting (75) Motion for Leave to File; granting (31) Motion to Dismiss in case 4:17-cv-05928-YGR; granting (63) Motion for Leave to File; granting (29) Motion to Dismiss in case 4:17-cv-05929-YGR; granting (63) Motion for Leave to File; granting (23) Motion to Dismiss in case 4:17-cv-05931-YGR; granting (41) Motion to Dismiss; granting (81) Motion for Leave to File in case 4:17-cv-05933-YGR; granting (61) Motion for Leave to File; granting (27) Motion to Dismiss in case 4:17-cv-05934-YGR; granting (43) Motion to Dismiss; granting (69) Motion for Leave to File in case 4:17-cv-05938-YGR; granting (66) Motion for Leave to File; granting (31) Motion to Dismiss in case 4:17-cv-05939-YGR; granting (67) Motion for Leave to File; granting (34) Motion to Dismiss in case 4:17-cv-05941-YGR; granting (43) Motion to Dismiss; granting (70) Motion for Leave to File in case 4:17-cv-06881-YGR. (fs, COURT STAFF) (Filed on 4/3/2018) (Entered: 04/03/2018)
04/09/2018	80	Proposed Judgment by Fitbit, Inc.. (Brun, David) (Filed on 4/9/2018) Modified on 4/10/2018 (cpS, COURT STAFF). (Entered: 04/09/2018)
04/10/2018	81	JUDGMENT. Signed by Judge Yvonne Gonzalez Rogers on 4/10/18. (fs, COURT STAFF) (Filed on 4/10/2018) (Entered: 04/10/2018)
04/11/2018	82	NOTICE OF APPEAL to the Federal Circuit as to 81 Judgment, 79 Order on Motion to Dismiss by Cellspin Soft Inc. Filing fee \$505, receipt number 0971-12266013 Appeal Record due by 5/11/2018. (Edmonds, John) (Filed on 4/11/2018) Modified on 4/12/2018 (cpS, COURT STAFF). Modified on 4/13/2018 (cpS, COURT STAFF). Modified on 8/2/2019 (jmlS, COURT STAFF). (Entered: 04/11/2018)

04/12/2018		E-Mail PDF appeal package to USCA for the Federal Circuit. (cpS, COURT STAFF) (Filed on 4/12/2018) (Entered: 04/12/2018)
04/13/2018	83	USCA Case Number 18-1817 Federal Circuit for 82 Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (cjlS, COURT STAFF) (Filed on 4/13/2018) (Entered: 04/13/2018)
04/16/2018	84	REPORT on the determination of an action regarding patent (cc: form mailed to register). (cpS, COURT STAFF) (Filed on 4/16/2018) (Entered: 04/16/2018)
04/24/2018	85	MOTION for Attorney Fees filed by Fitbit, Inc.. Motion Hearing set for 5/29/2018 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 5/8/2018. Replies due by 5/15/2018. (Attachments: # 1 Exhibit A to Motion for Attorneys' Fees, # 2 Declaration of Shane Brun in Support, # 3 Exhibit 1 to Brun Declaration, # 4 Exhibit 2 to Brun Declaration)(Brun, David) (Filed on 4/24/2018) (Entered: 04/24/2018)
04/25/2018	86	*** DISREGARD - FILED IN ERROR (INCORRECT FORM) *** Transcript Designation Form (Edmonds, John) (Filed on 7/31/2018) Modified on 8/1/2018 (rjdS, COURT STAFF). (Entered: 04/25/2018)
04/27/2018	87	ORDER DIRECTING FURTHER SUBMISSION IN SUPPORT OF MOTION FOR ATTORNEY' FEES re 85 MOTION for Attorney Fees filed by Fitbit, Inc. Supplemental documents filed by 5/7/2018. Signed by Judge Yvonne Gonzalez Rogers on 4/27/2018. (fs, COURT STAFF) (Filed on 4/27/2018) (Entered: 04/27/2018)
05/03/2018	88	Supplemental Declaration of Shane Brun in Support of 85 MOTION for Attorney Fees filed by Fitbit, Inc.. (Attachments: # 1 Exhibit 1 to Brun Declaration, # 2 Exhibit 2 to Brun Declaration)(Related document(s) 85) (Brun, David) (Filed on 5/3/2018) Modified on 5/4/2018 (cpS, COURT STAFF). (Entered: 05/03/2018)
05/04/2018	89	STIPULATION WITH PROPOSED ORDER to Extend Time for Plaintiff to Respond to re 85 MOTION for Attorney Fees filed by Cellspin Soft, Inc., Fitbit Inc. (Edmonds, John) (Filed on 5/4/2018) Modified on 5/4/2018 (cpS, COURT STAFF). (Entered: 05/04/2018)
05/04/2018	90	ORDER [*AS MODIFIED BY THE COURT*] by Judge Yvonne Gonzalez Rogers granting (89) Stipulation in case 4:17-cv-05928-YGR; granting (77) Stipulation in case 4:17-cv-05929-YGR; granting (75) Stipulation in case 4:17-cv-05931-YGR; granting (94) Stipulation in case 4:17-cv-05933-YGR; granting (82) Stipulation in case 4:17-cv-05938-YGR; granting (81) Stipulation in case 4:17-cv-05939-YGR. (fs, COURT STAFF) (Filed on 5/4/2018) (Entered: 05/04/2018)
05/04/2018		Set/Reset Deadlines as to (85 in 4:17-cv-05928-YGR) MOTION for Attorney Fees , (73 in 4:17-cv-05929-YGR) MOTION for Attorney Fees , (73 in 4:17-cv-05931-YGR) MOTION for Attorney Fees , (92 in 4:17-cv-05933-YGR) MOTION for Attorney Fees , (79 in 4:17-cv-05938-YGR) MOTION for Attorney Fees , (76 in 4:17-cv-05939-YGR) MOTION for Exceptional Case Finding and Attorneys' Fees. Responses due by 5/15/2018. Replies due by 5/22/2018. Motion Hearing set for 6/12/2018 01:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne

		Gonzalez Rogers. (fs, COURT STAFF) (Filed on 5/4/2018) (Entered: 05/04/2018)
05/15/2018	91	OPPOSITION/RESPONSE (re 85 MOTION for Attorney Fees) filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order, # 2 Declaration of John J. Edmonds, # 3 Exhibit 1 - '766 Patent, # 4 Exhibit 2 - 101 Hearing Transcript, # 5 Exhibit 3 - Michel Interview)(Edmonds, John) (Filed on 5/15/2018) (Entered: 05/15/2018)
05/22/2018	92	REPLY (re 85 MOTION for Attorney Fees) filed by Fitbit, Inc.. (Attachments: # 1 Declaration of Shane Brun, # 2 Exhibit 3)(Brun, David) (Filed on 5/22/2018) (Entered: 05/22/2018)
06/12/2018	93	Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Motion Hearing held on 6/12/2018 re (73 in 4:17-cv-05929-YGR) MOTION for Attorney Fees filed by Moov Inc., (92 in 4:17-cv-05933-YGR) MOTION for Attorney Fees filed by Misfit Inc., Fossil Group, Inc., (79 in 4:17-cv-05938-YGR) MOTION for Attorney Fees filed by Canon U.S.A., Inc., (76 in 4:17-cv-05939-YGR) MOTION for Exceptional Case Finding and Attorneys' Fees filed by GoPro, Inc., (85 in 4:17-cv-05928-YGR) MOTION for Attorney Fees filed by Fitbit, Inc., (73 in 4:17-cv-05931-YGR) MOTION for Attorney Fees filed by Nike, Inc. Total Time in Court: 60 minutes total: 10 minutes per case. Court Reporter: Sarah Goekler. (Attachments: # 1 Exhibit; Attachment with Attorney Appearances)(fs, COURT STAFF) (Date Filed: 6/12/2018) (Entered: 06/13/2018)
07/06/2018	94	ORDER GRANTING IN PART MOTIONS FOR ATTORNEY' FEES by Judge Yvonne Gonzalez Rogers ;granting in part (85) Motion for Attorney Fees in case 4:17-cv-05928-YGR; granting in part (73) Motion for Attorney Fees in case 4:17-cv-05929-YGR; granting in part (73) Motion for Attorney Fees in case 4:17-cv-05931-YGR; granting in part (92) Motion for Attorney Fees in case 4:17-cv-05933-YGR; granting in part (79) Motion for Attorney Fees in case 4:17-cv-05938-YGR; granting in part (76) Motion for Attorney Fees in case 4:17-cv-05939-YGR. (fs, COURT STAFF) (Filed on 7/6/2018) (Entered: 07/06/2018)
07/10/2018	95	TRANSCRIPT ORDER for proceedings held on 6/12/2018 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Sarah Goekler. (Edmonds, John) (Filed on 7/10/2018) (Entered: 07/10/2018)
07/17/2018	96	Transcript of Proceedings held on 06/12/2018, before Judge Gonzalez Rogers. Court Reporter/Transcriber Sarah Goekler, telephone number sgoekler.csr@gmail.com; (530)941-2621. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (95 in 4:17-cv-05928-YGR) Transcript Order) Release of Transcript Restriction set for 10/15/2018. (slg, COURT STAFF) (Filed on 7/17/2018) (Entered: 07/17/2018)
07/17/2018	97	NOTICE OF APPEAL to the Federal Circuit as to 94 Order on Motion for Attorney Fees,,,,,,,,,,,,, by Cellspin Soft, Inc.. Filing fee \$ 505, receipt number 0971-

		12519031. Appeal Record due by 8/16/2018. (Edmonds, John) (Filed on 7/17/2018) (Entered: 07/17/2018)
07/18/2018		Electronically mailed appeal package to the Federal Circuit. (cpS, COURT STAFF) (Filed on 7/18/2018) (Entered: 07/18/2018)
07/23/2018	98	USCA Case Number 18-2178 Federal Circuit for 97 Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (LEAD CASE) (cjlS, COURT STAFF) (Filed on 7/23/2018) (Entered: 07/23/2018)
07/31/2018	99	*** DISREGARD - FILED IN ERROR (INCORRECT FORM) *** Transcript Designation Form (Edmonds, John) (Filed on 7/31/2018) Modified on 8/1/2018 (rjdS, COURT STAFF). (Entered: 07/31/2018)
08/22/2018	100	NOTICE by Cellspin Soft, Inc. of <i>Withdrawal of Counsel, Brandon G. Moore</i> (Edmonds, John) (Filed on 8/22/2018) (Entered: 08/22/2018)
09/25/2018	101	APPLICATION for Writ of Execution by Fitbit, Inc.. (Attachments: # 1 Exhibit A - Proposed Writ of Execution)(Brun, David) (Filed on 9/25/2018) (Entered: 09/25/2018)
09/26/2018	102	WRIT of Execution issued in the amount of \$65,942.15 as to Cellspin Soft Inc. (original mailed to Shane Brun) (cpS, COURT STAFF) (Filed on 9/26/2018) (Entered: 09/26/2018)
10/23/2018	103	Notice of Change of Firm Affiliation by Fitbit, Inc. (Brun, David) (Filed on 10/23/2018) Modified on 10/24/2018 (cjlS, COURT STAFF). (Entered: 10/23/2018)
01/16/2019	104	NOTICE by Fitbit, Inc. of <i>Withdrawal of Counsel Rachel M. Walsh</i> (Walsh, Rachel) (Filed on 1/16/2019) (Entered: 01/16/2019)
01/16/2019	105	NOTICE by Fitbit, Inc. of <i>Withdrawal of Counsel Anjali Moorthy</i> (Moorthy, Anjali) (Filed on 1/16/2019) (Entered: 01/16/2019)
01/16/2019	106	NOTICE by Fitbit, Inc. of <i>Withdrawal of Counsel Neel Chatterjee</i> (Chatterjee, Indra) (Filed on 1/16/2019) (Entered: 01/16/2019)
03/19/2019	107	NOTICE by Cellspin Soft, Inc. of <i>Withdrawal of Counsel Shea N. Palavan</i> (Palavan, Shea) (Filed on 3/19/2019) (Entered: 03/19/2019)
06/25/2019	108	OPINION of United States Court of Appeals for the Federal Circuit VACATED AND REMANDED as to 97 Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (jmlS, COURT STAFF) (Filed on 6/25/2019) Modified on 6/26/2019 (jmlS, COURT STAFF). (Entered: 06/26/2019)
06/26/2019	109	United States Court of Appeals for the Federal Circuit JUDGMENT -VACATED AND REMANDED as to (68 in 4:17-cv-05934-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (74 in 4:17-cv-05941-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (70 in 4:17-cv-05929-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (82 in 4:17-cv-05928-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (73 in 4:17-cv-05939-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (88

		in 4:17-cv-05933-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (77 in 4:17-cv-06881-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (76 in 4:17-cv-05938-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (70 in 4:17-cv-05931-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (jmlS, COURT STAFF) (Filed on 6/26/2019) (Entered: 06/26/2019)
06/26/2019	110	United States Court of Appeals for the Federal Circuit JUDGMENT -VACATED AND REMANDED as to (70 in 4:17-cv-05929-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (82 in 4:17-cv-05928-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (73 in 4:17-cv-05939-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (88 in 4:17-cv-05933-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (76 in 4:17-cv-05938-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (70 in 4:17-cv-05931-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (jmlS, COURT STAFF) (Filed on 6/26/2019) (Entered: 06/26/2019)
08/01/2019	111	MANDATE of USCA as to (93 in 4:17-cv-05938-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (84 in 4:17-cv-05931-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (103 in 4:17-cv-05933-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (89 in 4:17-cv-05939-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (84 in 4:17-cv-05929-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (97 in 4:17-cv-05928-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (cpS, COURT STAFF) (Filed on 8/1/2019) (Entered: 08/01/2019)
08/15/2019	112	MANDATE of USCA as to (68 in 4:17-cv-05934-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (74 in 4:17-cv-05941-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (70 in 4:17-cv-05929-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (82 in 4:17-cv-05928-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (73 in 4:17-cv-05939-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (88 in 4:17-cv-05933-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (76 in 4:17-cv-05938-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc., (70 in 4:17-cv-05931-YGR) Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (jmlS, COURT STAFF) (Filed on 8/15/2019) (Entered: 08/15/2019)
08/19/2019	113	ORDER. Parties who have not answered the first amended complaint are to do so by 8/30/2019. Specially set Case Management Conference shall be held on Wednesday, 10/9/2019 02:00 PM in Oakland, Courtroom 1, 4th Floor. Joint Case Management Statement as explained in this Order to be filed by 9/25/2019. Counsel to file by 10/4/2019 a joint notice which identifies all counsel and the parties they represent that will be appearing at the case management conference on 10/9/2019. Signed by Judge Yvonne Gonzalez Rogers on 8/19/2019. (fs, COURT STAFF) (Filed on 8/19/2019) (Entered: 08/19/2019)
08/30/2019	114	ANSWER to Amended Complaint byFitbit, Inc.. (Brun, David) (Filed on 8/30/2019)

		(Entered: 08/30/2019)
09/20/2019	115	ANSWER TO COUNTERCLAIM by Cellspin Soft, Inc.. (Edmonds, John) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/24/2019	116	STIPULATION WITH PROPOSED ORDER <i>FOR EXTENSION OF TIME TO SUBMIT JOINT CMC STATEMENT</i> filed by Cellspin Soft, Inc., Fitbit, Inc. (Edmonds, John) (Filed on 9/24/2019) Modified on 9/25/2019 (cjlS, COURT STAFF). (Entered: 09/24/2019)
09/26/2019	117	ORDER GRANTING STIPULATION FOR EXTENSION OF DEADLINE FOR JOINT CASE MANAGEMENT STATEMENT by Judge Yvonne Gonzalez Rogers; granting (116) Stipulation in case 4:17-cv-05928-YGR; granting (99) Stipulation in case 4:17-cv-05929-YGR; granting (73) Stipulation in case 4:17-cv-05930-YGR; granting (95) Stipulation in case 4:17-cv-05931-YGR; granting (76) Stipulation in case 4:17-cv-05932-YGR; granting (143) Stipulation in case 4:17-cv-05933-YGR; granting (83) Stipulation; granting (84) Stipulation in case 4:17-cv-05934-YGR; granting (86) Stipulation in case 4:17-cv-05936-YGR; granting (119) Stipulation in case 4:17-cv-05939-YGR; granting (86) Stipulation in case 4:17-cv-05941-YGR; granting (87) Stipulation in case 4:17-cv-06881-YGR. Case Management Statement deadline extended to 9/30/2019. (fs, COURT STAFF) (Filed on 9/26/2019) (Entered: 09/26/2019)
09/27/2019	118	STIPULATION WITH PROPOSED ORDER <i>FOR STAY PENDING U.S. SUPREME COURT REVIEW</i> filed by Cellspin Soft, Inc. and Fitbit, Inc. (Edmonds, John) (Filed on 9/27/2019) Modified on 9/30/2019 (jmlS, COURT STAFF). (Entered: 09/27/2019)
09/27/2019	119	EXHIBIT INCOMPLETE. RE-FILED AT DKT. NO. 120 EXHIBITS re 118 STIPULATION WITH PROPOSED ORDER <i>FOR STAY PENDING U.S. SUPREME COURT REVIEW - EXHIBIT A (CERT PETITION)</i> filed by Cellspin Soft, Inc.. (Related document(s) 118) (Edmonds, John) (Filed on 9/27/2019) Modified on 9/27/2019 (fs, COURT STAFF). (Entered: 09/27/2019)
09/27/2019	120	EXHIBITS re 118 STIPULATION WITH PROPOSED ORDER <i>FOR STAY PENDING U.S. SUPREME COURT REVIEW</i> , 119 Exhibits - <i>CORRECTED EXHIBIT A</i> filed by Cellspin Soft, Inc.. (Related document(s) 118 , 119) (Edmonds, John) (Filed on 9/27/2019) (Entered: 09/27/2019)
09/30/2019	121	ORDER GRANTING STIPULATION FOR STAY PENDING U.S. SUPREME COURT REVIEW by Judge Yvonne Gonzalez Rogers granting (118) Stipulation in case 4:17-cv-05928-YGR; granting (101) Stipulation in case 4:17-cv-05929-YGR; granting (75) Stipulation in case 4:17-cv-05930-YGR; granting (97) Stipulation in case 4:17-cv-05931-YGR; granting (78) Stipulation in case 4:17-cv-05932-YGR; granting (145) Stipulation in case 4:17-cv-05933-YGR; granting (87) Stipulation in case 4:17-cv-05934-YGR; granting (89) Stipulation in case 4:17-cv-05936-YGR; granting (133) Stipulation in case 4:17-cv-05938-YGR; granting (122) Stipulation in case 4:17-cv-05939-YGR; granting (89) Stipulation in case 4:17-cv-05941-YGR; granting (90) Stipulation in case 4:17-cv-06881-YGR. (fs,

		COURT STAFF) (Filed on 9/30/2019) (Entered: 09/30/2019)
09/30/2019	122	CLERK'S NOTICE: In light of the Order Granting Stipulation for Stay of Cases Pending U.S. Supreme Court Review, the Wednesday, October 9, 2019 at 2:00pm Case Management Conference date is VACATED. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 9/30/2019) (Entered: 09/30/2019)
01/10/2020	123	NOTICE of Appearance by Randall Garteiser (Garteiser, Randall) (Filed on 1/10/2020) (Entered: 01/10/2020)
01/10/2020	124	NOTICE of Appearance by Christopher Alan Honea (Honea, Christopher) (Filed on 1/10/2020) (Entered: 01/10/2020)
01/13/2020	125	NOTICE by Cellspin Soft, Inc. of <i>Withdrawal of Counsel John Edmonds</i> (Edmonds, John) (Filed on 1/13/2020) (Entered: 01/13/2020)
01/17/2020	126	NOTICE OF DENIAL OF PETITION FOR CERTIORARI BY THE SUPREME COURT OF THE UNITED STATES by Cellspin Soft, Inc. re 121 Order on Stipulation (Garteiser, Randall) (Filed on 1/17/2020) Modified on 1/21/2020 (cpS, COURT STAFF). (Entered: 01/17/2020)
01/17/2020	127	NOTICE of Appearance by Michael Scott Fuller (Fuller, Michael) (Filed on 1/17/2020) (Entered: 01/17/2020)
04/21/2020	128	NOTICE of Readiness for CMC by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 4/21/2020) Modified on 4/22/2020 (jjs, COURT STAFF). (Entered: 04/21/2020)
04/22/2020	130	CLERK'S NOTICE: In light of the Notice of Readiness for CMC, the Court specially SETs a case management conference for Tuesday, May 26, 2020, at 10:00 a.m. PDT. A case management statement is due Tuesday, May 19, 2020. In light of the uncertainties with the ongoing coronavirus disease (COVID-19) pandemic, the parties are instructed to check the Courts scheduling notes to determine whether the conference will be held in person or by some alternate platform. Further, the Court requests that the parties file one comprehensive statement for all of the Cellspin cases, and include a chart with the proposed dates showing where there is agreement versus disagreement. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 4/22/2020) (Entered: 05/25/2020)
04/22/2020		Set Deadlines/Hearings: Case Management Statement due by 5/19/2020. Further Case Management Conference set for 5/26/2020 10:00 AM. (fs, COURT STAFF) (Filed on 4/22/2020) (Entered: 05/25/2020)
05/19/2020	129	CASE MANAGEMENT STATEMENT filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit 1 - Aatrix Scheduling Order, # 2 Declaration 2 - Lamkin Decl ISO Omnibus Statement, # 3 Exhibit A - Garmin - Petition for Certiorari, # 4 Exhibit B - Email Correspondence)(Garteiser, Randall) (Filed on 5/19/2020) Modified on 5/20/2020 (jjs, COURT STAFF). (Entered: 05/19/2020)

05/25/2020	131	<p>CLERKS NOTICE SETTING ZOOM HEARING.</p> <p>Further Case Management Conference set for 5/26/2020 10:00 AM.</p> <p>The Case Management- Conference hearing set in this case on 5/26/2020 will be held by Zoom Webinar at 10:00 AM.</p> <p>Any person who wishes to appear or to attend/observe the hearing may do so by joining the Zoom webinar by using the links and/or dial-in information below. Parties will be instructed use the raise hand function in order make their appearance at the hearing.</p> <p>For Zoom connection, see: https://apps.cand.uscourts.gov/telhrq/</p> <p>This proceeding will be a Zoom video conferencing webinar.</p> <p>All counsel, members of the public and press please click the link or use the information below to join the webinar:</p> <p>https://us02web.zoom.us/j/94891230736?pwd=eFJURURiQWt5VFgraGRpdWRKc0FyQT09</p> <p>Meeting ID: 948 9123 0736 Password: 535199</p> <p>Dial by your location +1 929 205 6099 US (New York) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) Find your local number: https://zoom.us/u/ac4JkPfcjo</p> <p>For important information and guidance on technical preparation, please see https://www.cand.uscourts.gov/zoom/.</p> <p>Further Case Management Conference set for 5/26/2020 10:00 AM.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 5/25/2020) (Entered: 05/25/2020)</p>
05/26/2020	135	<p>Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Further Case Management Conference held on 5/26/2020. Tutorial set 1/22/2021</p>

		at 9:30 AM. Markman hearing set 1/29/2021 at 9:30 AM.Total Time in Court: 45 minutes [Total for 8 cases]. Court Reporter: Raynee Mercado. (fs, COURT STAFF) (Date Filed: 5/26/2020) (Entered: 06/12/2020)
05/26/2020		Set Deadlines/Hearings: Claims Construction Hearing set for 1/29/2021 09:30 AM. Tutorial Hearing set for 1/22/2021 09:30 AM in Oakland, Courtroom 1, 4th Floor. (fs, COURT STAFF) (Filed on 5/26/2020) (Entered: 06/12/2020)
05/29/2020	132	NOTICE re Proposed Scheduling Order, In Accordance with Court Instructions During CMC by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A - Scheduling Order Version A, # 2 Exhibit B - Scheduling Order Version B)(Garteiser, Randall) (Filed on 5/29/2020) Modified on 6/1/2020 (jjbS, COURT STAFF). (Entered: 05/29/2020)
05/29/2020	133	NOTICE of Supplemental Authority Concerning Proposed Eligibility Contention Requirement by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A - TXED Standing Order)(Garteiser, Randall) (Filed on 5/29/2020) Modified on 6/1/2020 (jjbS, COURT STAFF). Modified on 6/1/2020 (jjbS, COURT STAFF). (Entered: 05/29/2020)
06/01/2020	134	RESPONSE to 133 <i>Notice of Supplemental Authority Concerning Eligibility Contention Requirement</i> by Fitbit, Inc.. (Brun, David) (Filed on 6/1/2020) Modified on 6/2/2020 (jjbS, COURT STAFF). (Entered: 06/01/2020)
06/12/2020	136	SCHEDULING ORDER. Signed by Judge Yvonne Gonzalez Rogers on 6/12/2020. (fs, COURT STAFF) (Filed on 6/12/2020) (Entered: 06/12/2020)
06/22/2020	137	NOTICE of Compliance regarding <i>Infringement Contentions and Eligibility Contentions</i> by Cellspin Soft, Inc. (Fuller, Michael) (Filed on 6/22/2020) Modified on 6/23/2020 (jjbS, COURT STAFF). (Entered: 06/22/2020)
06/24/2020	138	NOTICE OF DISCOVERY by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 6/24/2020) Modified on 6/25/2020 (cjlS, COURT STAFF). (Entered: 06/24/2020)
06/30/2020	139	NOTICE of Change of Address by David Shane Brun , <i>Counsel for Defendant Fitbit, Inc.</i> (Brun, David) (Filed on 6/30/2020) (Entered: 06/30/2020)
07/01/2020	140	NOTICE <i>Of Joinder To Garmin's Motion To Strike Or Compel Amendment Of Cellspin's Inventiveness Contentions and LR 6-3 Motion To Shorten Time</i> by Fitbit, Inc. (Brun, David) (Filed on 7/1/2020) Modified on 7/2/2020 (jjbS, COURT STAFF). (Entered: 07/01/2020)
07/17/2020	141	ORDER DENYING DEFENDANTS' MOTION TO STRIKE OR TO COMPEL AMENDMENT OF CELLSPIN'S INVENTIVENESS CONTENTIONS by Judge Yvonne Gonzalez Rogers in case 4:17-cv-05928-YGR; denying (170) Motion to Compel in case 4:17-cv-05933-YGR; denying (117) Motion to Strike in case 4:17-cv-05934-YGR. (fs, COURT STAFF) (Filed on 7/17/2020) (Entered: 07/17/2020)
07/28/2020	142	MOTION for Extension of Time to Complete Discovery <i>Local Rule 6-3 Unopposed Motion to Change Time</i> filed by Fitbit, Inc.. (Bonilla, Ricardo) (Filed on 7/28/2020) (Entered: 07/28/2020)
07/28/2020	143	ORDER by Judge Yvonne Gonzalez Rogers granting (142) Motion for Extension

		of Time to Complete Discovery in case 4:17-cv-05928-YGR; granting (123) Motion to Continue in case 4:17-cv-05934-YGR. (fs, COURT STAFF) (Filed on 7/28/2020) (Entered: 07/28/2020)
08/10/2020	144	NOTICE of Patent Rule 4-1 disclosure by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 8/10/2020) Modified on 8/11/2020 (jmlS, COURT STAFF). (Entered: 08/10/2020)
08/31/2020	145	NOTICE by Cellspin Soft, Inc. of LPR 4-2 Disclosure (Garteiser, Randall) (Filed on 8/31/2020) (Entered: 08/31/2020)
09/09/2020	146	NOTICE of Disclosure of Expert Reports by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 9/9/2020) Modified on 9/10/2020 (jjbS, COURT STAFF). Modified on 9/10/2020 (jjbS, COURT STAFF). (Entered: 09/09/2020)
09/29/2020	147	CLAIM CONSTRUCTION STATEMENT filed by Cellspin Soft, Inc.. (Attachments: # 1 Patent Rule 4-3 Joint Claim Construction Statement)(Garteiser, Randall) (Filed on 9/29/2020) (Entered: 09/29/2020)
10/06/2020	148	NOTICE of Joinder to Defendants' Notice of Motion and Motion for Summary Judgment Regarding Subject Matter Ineligibility by Fitbit, Inc. (Brun, David) (Filed on 10/6/2020) Modified on 10/7/2020 (jjbS, COURT STAFF). (Entered: 10/06/2020)
10/23/2020	149	MOTION for Extension of Time to File Response/Reply as to 148 Notice (Other), 136 Order filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order)(Fuller, Michael) (Filed on 10/23/2020) (Entered: 10/23/2020)
10/28/2020	150	ORDER GRANTING MOTIONS TO EXTEND DEADLINES by Judge Yvonne Gonzalez Rogers;11/6/2020 Deadline to complete Discovery relating to Claim Construction. 10/30/2020 deadline for Plaintiff's Response Brief to Defendants' Motion for Summary Judgment. 11/13/2020 deadline for Defendants' Omnibus Reply Brief. granting (149) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05928-YGR; granting (131) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05929-YGR; granting (105) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05930-YGR; granting (129) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05931-YGR; granting (111) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05932-YGR; granting (195) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05933-YGR; granting (131) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05934-YGR; granting (128) Motion for Extension of Time to File Response/Reply in case 4:17-cv-05936-YGR. Responses due by 10/30/2020. Replies due by 11/13/2020. Close of Discovery due by 11/6/2020. (fs, COURT STAFF) (Filed on 10/28/2020) (Entered: 10/28/2020)
11/10/2020	151	MOTION to Strike <i>Rebuttal Declaration of Dr. Madisetti</i> filed by Cellspin Soft, Inc.. Responses due by 11/24/2020. Replies due by 12/1/2020. (Attachments: # 1 Proposed Order, # 2 Exhibit 1 - Fuller Declaration, # 3 Exhibit A - Plaintiffs 4-2 Disclosures, # 4 Exhibit B - Defendants 4-2 Disclosures, # 5 Exhibit C - Counsel email, # 6 Exhibit D -

		Counsel email, # 7 Exhibit E - Foley Declaration, # 8 Exhibit F - Defendants RFP Responses)(Garteiser, Randall) (Filed on 11/10/2020) (Entered: 11/10/2020)
11/24/2020	152	NOTICE of Joinder to Defendants' Opposition to Motion to Strike Rebuttal Declaration of Dr. Madisetti by Fitbit, Inc. (Brun, David) (Filed on 11/24/2020) Modified on 11/25/2020 (jjbS, COURT STAFF). (Entered: 11/24/2020)
11/30/2020	153	CLAIM CONSTRUCTION STATEMENT filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall Garteiser, # 2 Exhibit 1 - US Patent No. 8,738,794, # 3 Exhibit 2 - US Patent No. 8,892,752, # 4 Exhibit 3 - US Patent No. 9,749,847, # 5 Exhibit 4 - U.S. Patent application 11-901,802, # 6 Exhibit 5 - Modified Patent Tree for the Patents-in-Suit, # 7 Exhibit 6 - US Patent No. 8,392,591, # 8 Exhibit 7 - Bluetooth Standard 2.1+EDR, # 9 Exhibit 8 - TechCrunch article, # 10 Exhibit 9 - Fitbit Press Release, # 11 Exhibit 10 - Forbes article, # 12 Exhibit 11 - Silicon India cover article, # 13 Exhibit 12 - Foley Declaration, # 14 Exhibit 13 - IEEE paper, # 15 Exhibit 14 - Singh CV, # 16 Exhibit 15 - Cellspin's 3-1 and 3-2 Disclosures)(Garteiser, Randall) (Filed on 11/30/2020) (Entered: 11/30/2020)
12/01/2020	154	REPLY (re 151 MOTION to Strike <i>Rebuttal Declaration of Dr. Madisetti</i>) filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit A - Madisetti Declaration, # 2 Exhibit B - Email String re Extension)(Garteiser, Randall) (Filed on 12/1/2020) (Entered: 12/01/2020)
12/09/2020	155	NOTICE of Joinder to Defendants <i>Garmin International, Inc. and Garmin USA, Inc.'s Motion For Leave to Amend Their Invalidity Contentions</i> by Fitbit, Inc. (Brun, David) (Filed on 12/9/2020) Modified on 12/10/2020 (jjbS, COURT STAFF). (Entered: 12/09/2020)
12/10/2020	156	ORDER REGARDING DEFENDANTS MOTION FOR SUMMARY JUDGMENT. Chart and Statement filed by 12/22/2020. The hearing scheduled for December 15, 2020 regarding defendants motion for summary judgment, plaintiffs motion to strike, and defendant Garmins motion to amend invalidity contentions is VACATED. The Court will reset the hearing date at a later date. Signed by Judge Yvonne Gonzalez Rogers on 12/10/2020. (fs, COURT STAFF) (Filed on 12/10/2020) (Entered: 12/10/2020)
12/22/2020	157	CLERK'S NOTICE RE-SETTING DATES FOR TUTORIAL AND CLAIMS CONSTRUCTION HEARING IN RELATED CASES. Tutorial Hearing set for 1/22/2021 is CONTINUED TO 1/29/2021 09:30 AM via Zoom Webinar Videoconference. Claims Construction Hearing set for 1/29/2021 is CONTINUED to 2/5/2021 09:30 AM via Zoom Webinar Videoconference. <i>(This is a text-only. (This is a text-only entry generated by the court. There is no document associated with this entry.) (fs, COURT STAFF) (Filed on 12/22/2020) (Entered: 12/22/2020)</i>
12/22/2020	158	NOTICE of Joinder To Defendants' Responsive Claim Construction Brief Pursuant To

		<i>Patent L.R. 4-5</i> by Fitbit, Inc. (Brun, David) (Filed on 12/22/2020) Modified on 12/23/2020 (jjbS, COURT STAFF). (Entered: 12/22/2020)
12/22/2020		Set/Reset Hearing dates re 157 Clerk's Notice (fs, COURT STAFF) (Filed on 12/22/2020) (Entered: 12/31/2020)
01/04/2021	159	MOTION for a One-Day Extension to File Claim Construction Reply Brief filed by Cellspin Soft, Inc. (Attachments: # 1 Proposed Order)(Garteiser, Randall) (Filed on 1/4/2021) Modified on 1/5/2021 (jjbS, COURT STAFF). (Entered: 01/04/2021)
01/06/2021	160	CLAIM CONSTRUCTION STATEMENT <i>Reply Claim Construction Brief</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of M Scott Fuller, # 2 Exhibit 16 - Prosecution history of US Patent 8762560, # 3 Exhibit 17 - US Patent No 8762560, # 4 Exhibit 18 - '794 prosecution history excerpts, # 5 Exhibit 19 - '752 prosecution history excerpts, # 6 Exhibit 20 - '847 prosecution history excerpts, # 7 Exhibit 21 - Bluetooth 2.1 Excerpts, # 8 Exhibit 22 - Bluetooth 4.0 Excerpts)(Garteiser, Randall) (Filed on 1/6/2021) (Entered: 01/06/2021)
01/06/2021	161	ORDER by Judge Yvonne Gonzalez Rogers granting (159) Motion for Extension of Time for a One-Day Extension of Time to File Claim Construction Reply Brief in case 4:17-cv-05928-YGR. (fs, COURT STAFF) (Filed on 1/6/2021) (Entered: 01/06/2021)
01/14/2021	162	Amended Joint Claim Construction Statement - Reflects Parties' present positions pursuant to the Court's Standing Order on Patent Cases (Apr. 2019) filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit A - Amended Joint Claim Construction Statement)(Garteiser, Randall) (Filed on 1/14/2021) Modified on 1/15/2021 (jjbS, COURT STAFF). (Entered: 01/14/2021)
01/14/2021	163	ORDER SCHEDULING ORDER REGARDING CLAIM CONSTRUCTION AND MOTION FOR SUMMARY JUDGEMENT re (153 in 4:17-cv-05928-YGR) Claim Construction Statement,, filed by Cellspin Soft, Inc., (151 in 4:17-cv-05928-YGR) MOTION to Strike <i>Rebuttal Declaration of Dr. Madisetti</i> filed by Cellspin Soft, Inc., Set/Reset Deadlines as to (153 in 4:17-cv-05928-YGR) Claim Construction Statement,, (151 in 4:17-cv-05928-YGR) MOTION to Strike <i>Rebuttal Declaration of Dr. Madisetti</i>, (193 in 4:17-cv-05933-YGR) MOTION for Summary Judgment <i>Regarding Subject Matter Ineligibility</i> . Motion for Summary Judgment Hearing set for 2/16/2021 01:00 PM via Zoom Webinar Videoconference before Judge Yvonne Gonzalez Rogers.The technology tutorial and claim construction hearing set for January 29, 2021 and February 5, 2021, are VACATED pending resolution of the summary judgment motion and will be reset if appropriate. Signed by Judge Yvonne Gonzalez Rogers on 1/14/2021. (fs, COURT STAFF) (Filed on 1/14/2021) (Entered: 01/14/2021)
01/15/2021	164	EXHIBITS re 162 Claim Construction Statement, [<i>Patents-in-Suit</i>] filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit Exhibit 1 - US Patent No. 8,738,794 (1 of 3 Patents-in-Suit), # 2 Exhibit Exhibit 2 - US Patent No. 8,892,752 (2 of 3 Patents-in-Suit), # 3 Exhibit Exhibit 3 - US Patent No. 9,749,847 (3 of 3 Patents-in-Suit).)

		(Related document(s) 162) (Garteiser, Randall) (Filed on 1/15/2021) (Entered: 01/15/2021)
02/03/2021	165	Defendant Fitbit, Inc.'s Amended Local Civil Rule 3-15 Certification Of Interested Parties and Amended Corporate Disclosure Statement by Fitbit, Inc. identifying Other Affiliate XXVI Holdings Inc., Holding Company of Google LLC, Other Affiliate Google LLC, Other Affiliate Alphabet Inc., Holding Company of XXVI Holdings Inc. for Fitbit, Inc. (Brun, David) (Filed on 2/3/2021) Modified on 2/4/2021 (cjlS, COURT STAFF). (Entered: 02/03/2021)
02/12/2021	166	CLERK'S NOTICE To Counsel of Record: Parties are reminded that if they intend to use Powerpoint presentations for the hearing on Tuesday, February 16, 2021 they must provide opposing counsel with the same at least 24 hours in advance and send a courtesy copy to the Court at YGRChambers@cand.uscourts.gov. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 2/12/2021) (Entered: 02/12/2021)
02/12/2021	167	CLERKS NOTICE SETTING ZOOM HEARING FOR THE SUMMARY JUDGMENT Motion Hearing set for 2/16/2021 01:00 PM VIA ZOOM WEBINAR Videoconference before Judge Yvonne Gonzalez Rogers. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/ygr Please click the link below to join webinar (public hearings). If you are a case participant, you will join as an attendee, then you will be brought into the proceeding by court staff. https://cand-uscourts.zoomgov.com/j/1618764848?pwd=bW03Y2NvV0YrK2FQSkxoMXRxOWprQT09 Webinar ID: 161 876 4848 Password: 715550 Local telephone dial-in:US: +1 (669) 254-5252 or +1 (646) 828-7666 General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.

		<p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Summary Judgment Motion Hearing set for 2/16/2021 01:00 PM via Zoom Webinar Videoconference before Judge Yvonne Gonzalez Rogers.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 2/12/2021) (Entered: 02/12/2021)</p>
02/15/2021	168	NOTICE of Appearance by John M. Desmarais <i>On Behalf of Fitbit, Inc.</i> (Desmarais, John) (Filed on 2/15/2021) (Entered: 02/15/2021)
02/15/2021	169	NOTICE of Appearance by Ameeet A. Modi <i>On Behalf of Fitbit, Inc.</i> (Modi, Ameeet) (Filed on 2/15/2021) (Entered: 02/15/2021)
02/15/2021	170	MOTION for leave to appear in Pro Hac Vice for Karim Z. Oussayef (Filing fee \$ 317, receipt number 0971-15576076.) filed by Fitbit, Inc.. (Oussayef, Karim) (Filed on 2/15/2021) Modified on 2/16/2021 (bnsS, COURT STAFF). (Entered: 02/15/2021)
02/15/2021	171	MOTION for leave to appear in Pro Hac Vice for Jamie L. Kringstein (Filing fee \$ 317, receipt number 0971-15576083.) filed by Fitbit, Inc.. (Kringstein, Jamie) (Filed on 2/15/2021) Modified on 2/16/2021 (bnsS, COURT STAFF). (Entered: 02/15/2021)
02/16/2021	174	Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Motion for Summary Judgment [Dkt. 193 in case 17-cv-5933} Hearing in related cases held on 2/16/2021. Claims Construction Hearing in related cases is set for Friday 3/5/2021 10:30 AM via Zoom Webinar Videoconference.Total Time in Court: 14 minutes. Court Reporter: Pam Hebel. (fs, COURT STAFF) (Date Filed: 2/16/2021) (Entered: 02/17/2021)
02/17/2021	172	ORDER by Judge Yvonne Gonzalez Rogers granting 170 Motion for Pro Hac Vice as to Karim Oussayef. (fs, COURT STAFF) (Filed on 2/17/2021) (Entered: 02/17/2021)
02/17/2021	173	ORDER by Judge Yvonne Gonzalez Rogers granting 171 Motion for Pro Hac Vice as to Jamie L. Kringstein. (fs, COURT STAFF) (Filed on 2/17/2021) (Entered: 02/17/2021)
02/17/2021	175	ORDER REGARDING DEFENDANTS MOTION FOR SUMMARY JUDGMENT. Plaintiff's Supplemental Response due by 2/24/2021. Signed by Judge Yvonne Gonzalez Rogers on 2/17/2021. (fs, COURT STAFF) (Filed on 2/17/2021) (Entered: 02/17/2021)
02/23/2021	176	<p>CLERK'S NOTICE SETTING TUTORIAL FOR WEDNESDAY, MARCH 3, 2021 AT 11:00 AM. Tutorial Hearing set for 3/3/2021 11:00 AM via Zoom Webinar Videoconference.</p> <p>Zoom link information will be posted on the docket in advance of the hearing. Zoom link information is also on the Judge's page on the court website</p>

		<p>www.cand.uscourts.gov/judges/gonzalez-rogers-yvonne-ygr/</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 2/23/2021) (Entered: 02/23/2021)</p>
02/26/2021	177	<p>Transcript of Proceedings held on 02.16/2021, before Judge Gonzalez Rogers. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamel_a_batalo-hebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (221 in 4:17-cv-05933-YGR) Transcript Order) Redaction Request due 3/19/2021. Redacted Transcript Deadline set for 3/29/2021. Release of Transcript Restriction set for 5/27/2021. (Batalo, Pam) (Filed on 2/26/2021) (Entered: 02/26/2021)</p>
03/01/2021	178	<p>NOTICE OF COMPLIANCE REGARDING LODGING OF § TECHNOLOGY TUTORIAL re 176 Clerk's Notice by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A: Plaintiff's Technology Tutorial)(Garteiser, Randall) (Filed on 3/1/2021) Modified on 3/1/2021 (cjlS, COURT STAFF). (Entered: 03/01/2021)</p>
03/01/2021	179	<p>CLERK'S NOTICE VACATING THE WEDNESDAY, MARCH 3, 2021 AT 11:00AM TUTORIAL IN RELATED CASES.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 3/1/2021) (Entered: 03/01/2021)</p>
03/04/2021	180	<p>CLERKS NOTICE SETTING ZOOM HEARING FOR THE Claims Construction Hearing in related cases set for Friday, 3/5/2021 10:30 AM. This proceeding will be held via a Zoom webinar videoconference.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/ygr</p> <p>Please click the link below to join webinar (public hearings). If you are a case participant, you will join as an attendee, then you will be brought into the proceeding by court staff.</p> <p>https://cand-uscourts.zoomgov.com/j/1618764848?pwd=bW03Y2NvV0YrK2FQSkxoMXRxOWprQT09</p> <p>Webinar ID: 161 876 4848 Password: 715550</p>

		<p>Local telephone dial-in:US: +1 (669) 254-5252 or +1 (646) 828-7666</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Claims Construction Hearing in related cases set for Friday, 3/5/2021 10:30 AM via Zoom Webinar Videoconference. (This is a text-only entry generated by the court. There is no document associated with this entry.) (fs, COURT STAFF) (Filed on 3/4/2021) (Entered: 03/04/2021)</p>
03/05/2021	181	<p>Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Claims Construction / Markman Hearing held in related cases on 3/5/2021. Six page brief due by 3/10/2021. Joint filing as to schedule for these related cases due by 3/12/2021. Compliance deadline set for Friday, 3/19/2021 09:01AM. Time for each individual case in Court: 22 minutes. Court Reporter: Pam Hebel. (fs, COURT STAFF) (Date Filed: 3/5/2021) (Entered: 03/09/2021)</p>
03/10/2021	182	<p>Cellspin Supplemental Claim Construction Brief filed by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A - Annotated Asserted Claims)(Fuller, Michael) (Filed on 3/10/2021) Modified on 3/11/2021 (cjlS, COURT STAFF). (Entered: 03/10/2021)</p>
03/10/2021	183	<p>Transcript of Proceedings held on 03/05/2021, before Judge Gonzalez Rogers. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalohebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (226 in 4:17-cv-05933-YGR) Transcript Order) Redaction Request due 3/31/2021. Redacted Transcript Deadline set for 4/12/2021. Release of Transcript Restriction set for 6/8/2021. (Batalo, Pam) (Filed on 3/10/2021) (Entered: 03/10/2021)</p>
03/12/2021	184	<p>JOINT PROPOSED OMNIBUS SCHEDULING ORDER, Submitted in Accordance with Court Instructions during March 5 Hearing by Cellspin Soft, Inc., Fitbit, Inc. (Attachments: # 1 Joint Proposed Omnibus Scheduling Order)(Garteiser, Randall) (Filed on 3/12/2021) Modified on 3/15/2021 (cjlS, COURT STAFF). (Entered: 03/12/2021)</p>
03/18/2021	185	<p>CLERK'S NOTICE VACATING THE FRIDAY, MARCH 19, 2021 AT 9:01 AM COMPLIANCE DEADLINE.</p>

		(This is a text-only entry generated by the court. There is no document associated with this entry.) (fs, COURT STAFF) (Filed on 3/18/2021) (Entered: 03/18/2021)
04/14/2021	186	CLAIM CONSTRUCTION ORDER. Signed by Judge Yvonne Gonzalez Rogers on 4/14/2021. (fs, COURT STAFF) (Filed on 4/14/2021) (Entered: 04/14/2021)
04/14/2021	187	SUMMARY JUDGMENT ORDER. Signed by Judge Yvonne Gonzalez Rogers on 4/14/2021. (fs, COURT STAFF) (Filed on 4/14/2021) (Entered: 04/14/2021)
05/05/2021	188	STIPULATION TO ENLARGE TIME PURSUANT LOCAL RULE 6-1(a) re 184 Joint Proposed Omnibus Scheduling Order, filed by Cellspin Soft, Inc., Fitbit, Inc. (Garteiser, Randall) (Filed on 5/5/2021) Modified on 5/6/2021 (amd3S, COURT STAFF). Modified on 5/6/2021 (amd3S, COURT STAFF). Modified on 5/6/2021 (amd3S, COURT STAFF). (Entered: 05/05/2021)
05/07/2021	189	STIPULATION AND ORDER ENLARGING TIME from 5/5/2021 to 6/2/2021 for case narrowing order re (153 in 4:17-cv-05936-YGR) Stipulation, filed by Nikon Americas, Inc., Cellspin Soft, Inc., Nikon Inc. Signed by Judge Yvonne Gonzalez Rogers on 5/7/2021. (fs, COURT STAFF) (Filed on 5/7/2021) (Entered: 05/07/2021)
06/04/2021	190	***DISREGARD, FILED IN ERROR*** NOTICE by Cellspin Soft, Inc. of service of 30(b)(1) and 30(b)(6) Notices to Defendant (Garteiser, Randall) (Filed on 6/4/2021) Modified on 6/4/2021 (cjlS, COURT STAFF). (Entered: 06/04/2021)
06/04/2021	191	NOTICE by Cellspin Soft, Inc. of service of 30(b)(1) and 30(b)(6) Notices to Defendant (Garteiser, Randall) (Filed on 6/4/2021) (Entered: 06/04/2021)
06/07/2021	192	NOTICE of Appearance by Peter Joseph Corcoran, III (Corcoran, Peter) (Filed on 6/7/2021) (Entered: 06/07/2021)
06/29/2021	193	MOTION to Amend/Correct <i>Invalidity Contentions</i> filed by Fitbit, Inc.. Motion Hearing set for 8/3/2021 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 7/13/2021. Replies due by 7/20/2021. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, # 20 Proposed Order)(Oussayef, Karim) (Filed on 6/29/2021) (Entered: 06/29/2021)
07/06/2021	194	OPPOSED MOTION TO ENLARGE TIME FOR FACTUAL DISCOVERY, CIVIL L.R. 6-3 filed by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 7/6/2021) Modified on 7/7/2021 (cjlS, COURT STAFF). (Entered: 07/06/2021)
07/07/2021	195	ADDITIONAL DOCUMENTS IN SUPPORT OF MOTION TO ENLARGE TIME re 194 OPPOSED MOTION TO ENLARGE TIME FOR FACTUAL DISCOVERY, CIVIL L.R. 6-3 filed by Cellspin Soft, Inc. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Exhibit A - Comparison of Proposed Scheduling Orders, # 3 Proposed Order to 194 Motion to Enlarge Time)(Related document(s) 194) (Garteiser, Randall) (Filed on 7/7/2021) Modified on 7/7/2021 (cjlS, COURT STAFF). (Entered: 07/07/2021)

		07/07/2021)
07/07/2021	196	NOTICE OF SUBMITTED MATTERS AND NOTICE OF WITHDRAWAL OF PLAINTIFFS SUPPORT FOR PROPOSED SCHEDULING ORDER re 184 Notice (Other), by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 7/7/2021) Modified on 7/7/2021 (cjlS, COURT STAFF). (Entered: 07/07/2021)
07/09/2021	197	ORDER REFERRING CASE to Magistrate Judge for Discovery purposes, AND ORDER REFERRING MOTION: (137 in 4:17-cv-05932-YGR) Joint Discovery Letter Brief filed by Under Armour, Inc., Cellspin Soft, Inc., (157 in 4:17-cv-05931-YGR) MOTION for Leave to File Supplementary P.R. 3-1 Contentions on Nike filed by Cellspin Soft, Inc.; (133 in 4:17-cv-5934-YGR)Motion to amend invalidity contentions. Signed by Judge Yvonne Gonzalez Rogers on 7/9/2021. (fs, COURT STAFF) (Filed on 7/9/2021) (Entered: 07/09/2021)
07/09/2021		CASE REFERRED to Magistrate Judge Kandis A. Westmore for Discovery (ahm, COURT STAFF) (Filed on 7/9/2021) (Entered: 07/12/2021)
07/12/2021	198	OPPOSITION/RESPONSE (re 194 OPPOSED MOTION TO ENLARGE TIME FOR FACTUAL DISCOVERY, CIVIL L.R. 6-3) filed byFitbit, Inc.. (Attachments: # 1 Declaration of Colette R. Mayer w. Exhibits 1-5, # 2 Declaration of Karim Z. Oussayef, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6)(Oussayef, Karim) (Filed on 7/12/2021) (Entered: 07/12/2021)
07/13/2021	199	OPPOSITION/RESPONSE (re 193 MOTION to Amend/Correct <i>Invalidity Contentions</i>) filed byCellspin Soft, Inc.. (Attachments: # 1 Declaration Fuller Declaration, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E) (Garteiser, Randall) (Filed on 7/13/2021) (Entered: 07/13/2021)
07/13/2021	200	MOTION for Protective Order filed by Fitbit, Inc.. Motion Hearing set for 8/17/2021 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 7/27/2021. Replies due by 8/3/2021. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Proposed Order)(Oussayef, Karim) (Filed on 7/13/2021) (Entered: 07/13/2021)
07/19/2021	201	MOTION for leave to appear in Pro Hac Vice <i>for Alan S. Kellman</i> (Filing fee \$ 317.) Filing fee previously paid on 07/19/2021 filed by Fitbit, Inc.. (Kellman, Alan) (Filed on 7/19/2021) (Entered: 07/19/2021)
07/20/2021	202	REPLY (re 194 OPPOSED MOTION TO ENLARGE TIME FOR FACTUAL DISCOVERY, CIVIL L.R. 6-3) filed byCellspin Soft, Inc.. (Garteiser, Randall) (Filed on 7/20/2021) (Entered: 07/20/2021)
07/20/2021	203	CORRECTED REPLY (re 194 OPPOSED MOTION TO ENLARGE TIME FOR FACTUAL DISCOVERY, CIVIL L.R. 6-3) filed by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 7/20/2021) Modified on 7/20/2021 (cjlS, COURT STAFF). (Entered: 07/20/2021)
07/20/2021	204	REPLY (re 193 MOTION to Amend/Correct <i>Invalidity Contentions</i>) filed byFitbit, Inc.. (Attachments: # 1 Declaration of Shane Brun)(Oussayef, Karim) (Filed on

		7/20/2021) (Entered: 07/20/2021)
07/22/2021	205	MOTION to Quash <i>Subpoena of Non-Party Vincent Laviano</i> filed by Cellspin Soft, Inc.. Motion Hearing set for 9/16/2021 01:30 PM before Magistrate Judge Kandis A. Westmore. Responses due by 8/5/2021. Replies due by 8/12/2021. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Declaration of Vincent Laviano, # 3 Exhibit A - Initial Disclosures, # 4 Exhibit B - Subpoena to Marcos Klein, # 5 Exhibit C - Subpoena to Vincent Laviano, # 6 Exhibit D - 4 Production Cover Letters, # 7 Proposed Order)(Garteiser, Randall) (Filed on 7/22/2021) (Entered: 07/22/2021)
07/22/2021	206	MOTION to Quash <i>Subpoena of Non-Party Marcos Klein</i> filed by Cellspin Soft, Inc.. Motion Hearing set for 9/16/2021 01:30 PM before Magistrate Judge Kandis A. Westmore. Responses due by 8/5/2021. Replies due by 8/12/2021. (Attachments: # 1 Declaration of Randall Garteiser, # 2 Declaration of Marcos Klein, # 3 Exhibit A - Initial Disclosures, # 4 Exhibit B - Subpoena to Marcos Klein, # 5 Exhibit C - Subpoena to Vincent Laviano, # 6 Exhibit D - 4 Production Cover Letters, # 7 Proposed Order)(Garteiser, Randall) (Filed on 7/22/2021) (Entered: 07/22/2021)
07/26/2021	207	ORDER re 193 Hearing on Defendants' MOTION to Amend Invalidity Contentions. Signed by Judge Kandis A. Westmore on 7/26/2021. (kawlc2S, COURT STAFF) (Filed on 7/26/2021) (Entered: 07/26/2021)
07/27/2021	208	ORDER REFERRING MOTION to Magistrate Judge Westmore: re 200 MOTION for Protective Order filed by Fitbit, Inc.. Signed by Judge Yvonne Gonzalez Rogers on 7/27/2021. (fs, COURT STAFF) (Filed on 7/27/2021) (Entered: 07/27/2021)
07/27/2021	209	ORDER by Judge Yvonne Gonzalez Rogers granting 201 Motion for Pro Hac Vice as to Alan S. Kellman. (fs, COURT STAFF) (Filed on 7/27/2021) (Entered: 07/27/2021)
07/28/2021	210	UNOPPOSED MOTION FOR A ONE-DAY EXTENSION TO FILE OPPOSITION TO 200 FITBITS MOTION FOR PROTECTIVE ORDER filed by Cellspin Soft, Inc. (Attachments: # 1 Proposed Order)(Garteiser, Randall) (Filed on 7/28/2021) Modified on 7/29/2021 (cjlS, COURT STAFF). (Entered: 07/28/2021)
07/29/2021	211	OPPOSITION/RESPONSE (re 200 MOTION for Protective Order) filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Declaration of Ryan Garlick, # 3 Exhibit A - 54 Current Protective Order, # 4 Exhibit B - July 22, 2021 letter from Mr. Oussayef listing redactions)(Garteiser, Randall) (Filed on 7/29/2021) (Entered: 07/29/2021)
07/29/2021	212	MOTION for leave to appear in Pro Hac Vice for Jonathan V. Lewis (Filing fee \$317, receipt number 0971-16228995) filed by Fitbit, Inc. (Lewis, Jonathan) (Filed on 7/29/2021) Modified on 7/29/2021 (cjlS, COURT STAFF). (Entered: 07/29/2021)
07/29/2021	213	[PROPOSED] ORDER DENYING 200 MOTION FOR PROTECTIVE ORDER by Cellspin Soft, Inc. (Garteiser, Randall) (Filed on 7/29/2021) Modified on 7/29/2021 (cjlS, COURT STAFF). (Entered: 07/29/2021)
07/30/2021	214	ORDER TERMINATING 200 MOTION FOR A PROTECTIVE ORDER;

		DENYING 210 MOTION FOR EXTENSION OF TIME. Signed by Magistrate Judge Kandis A. Westmore on 7/30/2021. (ig, COURT STAFF) (Filed on 7/30/2021) (Entered: 07/30/2021)
08/05/2021	215	Notice of Withdrawal of Motion to <i>Quash Subpoena of Non-party Marcos Klein</i> 206 (Garteiser, Randall) (Filed on 8/5/2021) (Entered: 08/05/2021)
08/05/2021	216	Administrative Motion to File Under Seal <i>Certain Documents Associated with Defendants Opposition to Non-Party Vincent Lavianos Motion to Quash</i> filed by Fitbit, Inc.. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Proposed Order, # 3 Redacted Version of Exhibit 2, # 4 Unredacted Version of Exhibit 2, # 5 Redacted Version of Exhibit 3, # 6 Unredacted Version of Exhibit 3)(Oussayef, Karim) (Filed on 8/5/2021) (Entered: 08/05/2021)
08/05/2021	217	OPPOSITION/RESPONSE (re 205 MOTION to Quash <i>Subpoena of Non-Party Vincent Laviano</i>) filed by Fitbit, Inc.. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1, # 3 Exhibit 2 (REDACTED), # 4 Exhibit 3 (REDACTED), # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15)(Oussayef, Karim) (Filed on 8/5/2021) (Entered: 08/05/2021)
08/05/2021	218	CERTIFICATE OF SERVICE by Fitbit, Inc. re 216 Administrative Motion to File Under Seal <i>Certain Documents Associated with Defendants Opposition to Non-Party Vincent Lavianos Motion to Quash</i> (Oussayef, Karim) (Filed on 8/5/2021) (Entered: 08/05/2021)
08/10/2021	219	ORDER by Judge Kandis A. Westmore Granting 193 DEFENDANTS' MOTION TO AMEND INVALIDITY CONTENTIONS. (amgS, COURT STAFF) (Filed on 8/10/2021) (Entered: 08/10/2021)
08/12/2021	220	***PDF error, document to be filed.*** NOTICE of Service of Joint Discovery Letter Brief to Fitbit Re search by Fitbit of emails mentioning "Cellspin" in them as it relates to willful infringement prior to the lawsuit by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A - Cellspin's Letter Served on Fitbit relating to Fitbit's refusal to provide emails that mention Cellspin in the email prior to the filing the lawsuit)(Garteiser, Randall) (Filed on 8/12/2021) Modified on 8/13/2021 (cjlS, COURT STAFF). Modified on 8/13/2021 (cjlS, COURT STAFF). (Entered: 08/12/2021)
08/12/2021	221	Joint Discovery Letter Brief <i>re Cellspin's Production of Documents</i> filed by Fitbit, Inc. Cellspin Soft, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Oussayef, Karim) (Filed on 8/12/2021) Modified on 8/13/2021 (cjlS, COURT STAFF). (Entered: 08/12/2021)
08/12/2021	222	NOTICE of Appearance by Tuhin Ganguly <i>On Behalf of Fitbit, Inc.</i> (Ganguly, Tuhin) (Filed on 8/12/2021) (Entered: 08/12/2021)
08/12/2021	223	Administrative Motion to File Under Seal <i>Exhibit 1 to the Joint Discovery Dispute Letter re Deposition of Mr. Gurvinder Singh</i> filed by Fitbit, Inc.. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Proposed Order, # 3 Redacted Version of Exhibit 1, # 4 Unredacted Version of Exhibit 1)(Oussayef, Karim) (Filed on

		8/12/2021) (Entered: 08/12/2021)
08/12/2021	224	Joint Discovery Letter Brief <i>re Deposition of Mr. Gurvinder Singh</i> filed by Fitbit, Inc., Cellspin Soft, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Oussayef, Karim) (Filed on 8/12/2021) Modified on 8/13/2021 (cjlS, COURT STAFF). (Entered: 08/12/2021)
08/12/2021	225	CERTIFICATE OF SERVICE by Fitbit, Inc. re 223 Administrative Motion to File Under Seal <i>Exhibit 1 to the Joint Discovery Dispute Letter re Deposition of Mr. Gurvinder Singh</i> (Oussayef, Karim) (Filed on 8/12/2021) (Entered: 08/12/2021)
08/13/2021	226	Joint Discovery Letter Brief Related to Common Interrogatory No.10 (Fitbit's Total Revenue due to infringement plead under Section 217, subsection (f) in Exhibit 2 (Infringement contentions - not challenged) filed by Cellspin Soft, Inc., Fitbit, Inc. (Attachments: # 1 Exhibit 1 - Cellspin's Second Set of Common Interrogatories (No.10) (Excerpts), # 2 Exhibit 2 - Cellspin's P.R. 3-1 disclosures to Fitbit (Excerpts), # 3 Exhibit 3 - Transcript of Fitbit's Senior Engineer relating to Fitbit App - Accused Instrumentality (Excerpts))(Garteiser, Randall) (Filed on 8/13/2021) Modified on 8/16/2021 (cjlS, COURT STAFF). (Entered: 08/13/2021)
08/14/2021	227	NOTICE of its Service on Fitbit of its Portion of Joint Discovery Letter Brief RE: Emails not produced by Fitbit relating to Cellspin that Fitbit refuses to produce in the period of time prior to filing of lawsuit (notwithstanding Fitbit receiving 2 letters from Cellspin on June 11, 2017 and August 31, 2017 by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A - Portion served on Fitbit by Cellspin on Joint Discovery Letter Brief RE Fitbit emails with Cellspin mentioned in them, # 2 Exhibit B - June 11, 2017 Letter Cellspin served on Fitbit About its patent portfolio, # 3 Exhibit C - August 31, 2017 Letter Served on Fitbit by Cellspin about Fitbit's about Cellspin's patent portfolio) (Garteiser, Randall) (Filed on 8/14/2021) Modified on 8/16/2021 (cjlS, COURT STAFF). (Entered: 08/14/2021)
08/14/2021	228	NOTICE of its Service on Fitbit of Cellspin's portion of a THIRD joint discovery letter pursuant to Mag. Judge Westmore's standing order RE: Fitbit's promise to produce Fitbit download numbers for iOS and Android for just one app - the Fitbit App - but failure to even do that without involving the Court as Fitbit attempts to avoid its promise to produce on its unilateral belief that Factual Discovery has ended and Cellspin did not move fast enough. Fitbit has this position even though it never moved for the Court to entry an Scheduling Order and it Opposed Cellspin's pending motion for entry of a Scheduling Order that takes into account Fitbit's discovery delays in production by Cellspin Soft, Inc. (Attachments: # 1 Exhibit A - Cellspin's Portion of Joint Discovery Letter Brief Served on Fitbit on August 13, 2021 RE: Fitbit's failure to provide App downloads numbers for just one App - the Fitbit App., # 2 Exhibit B - Discovery Request in Dispute, # 3 Exhibit C - Emails between counsel where Fitbit indicates it will produce download figures for Fitbit App, # 4 Exhibit D - screenshot of Google Play for Fitbit App with more than 50 million downloads indicated.)(Garteiser, Randall) (Filed on 8/14/2021) Modified on 8/16/2021 (cjlS, COURT STAFF). (Entered: 08/14/2021)
08/16/2021	229	ADMINISTRATIVE MOTION to Request Case Management Conference filed by Fitbit, Inc.. Responses due by 8/20/2021. (Attachments: # 1 Declaration of Karim Z.

		Oussayef, # 2 Exhibit A, # 3 Proposed Order)(Oussayef, Karim) (Filed on 8/16/2021) (Entered: 08/16/2021)
08/17/2021	230	ORDER TO SHOW CAUSE Show Cause Response due by 8/24/2021. Signed by Judge Kandis A. Westmore on 8/17/2021. (wft, COURT STAFF) (Filed on 8/17/2021) (Entered: 08/17/2021)
08/17/2021	231	FITBIT, INC.'S RESPONSE TO CELLSPIN'S NOTICE OF SERVICE OF JOINT DISCOVERY LETTER BRIEF (D.I. 227) by Fitbit, Inc. (Oussayef, Karim) (Filed on 8/17/2021) Modified on 8/18/2021 (cjlS, COURT STAFF). (Entered: 08/17/2021)
08/17/2021	232	Second Discovery Letter Brief Re: Fitbit's Response to Cellspin's First Set of Common Requests for Production, under Rule 36, No.1 filed by Cellspin Soft, Inc. (Attachments: # 1 Exhibit 1 - Excerpts from Cellspin's First Set of Common Requests for Production, Rule 36 (No.10), # 2 Exhibit 2 - June 11, 2021 Cellspin Ltr sent to Fitbit, # 3 Exhibit 3 - August 31, 2021 Cellspin Ltr sent to Fitbit)(Garteiser, Randall) (Filed on 8/17/2021) Modified on 8/19/2021 (cjlS, COURT STAFF). (Entered: 08/18/2021)
08/19/2021	233	STIPULATION re Service of Expert Reports filed by Fitbit, Inc., Cellspin Soft, Inc. (Oussayef, Karim) (Filed on 8/19/2021) Modified on 8/20/2021 (cjlS, COURT STAFF). (Entered: 08/19/2021)
08/20/2021	234	ORDER by Judge Kandis A. Westmore terminating 226 232 Discovery Letters. (kawlc2S, COURT STAFF) (Filed on 8/20/2021) (Entered: 08/20/2021)
08/25/2021	235	RESPONSE TO 230 ORDER TO SHOW CAUSE by Cellspin Soft, Inc. (Attachments: # 1 Declaration of Garteiser In Support of Response, # 2 Ex A Fitbit's Joint Letter Brief email exchanged, # 3 Ex B Cellspin's Joint Letter Brief email exchanged)(Garteiser, Randall) (Filed on 8/25/2021) Modified on 8/26/2021 (cjlS, COURT STAFF). (Entered: 08/25/2021)
08/30/2021	236	ORDER by Judge Yvonne Gonzalez Rogers granting 212 Motion for Pro Hac Vice as to Jonathan V. Lewis. (fs, COURT STAFF) (Filed on 8/30/2021) (Entered: 08/30/2021)
08/31/2021	237	REPLY (re 205 MOTION to Quash <i>Subpoena of Non-Party Vincent Laviano</i>) filed by Cellspin Soft, Inc.. (Garteiser, Randall) (Filed on 8/31/2021) (Entered: 08/31/2021)
09/07/2021	238	ORDER by Judge Kandis A. Westmore DENYING 216 & 223 ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL. (amgS, COURT STAFF) (Filed on 9/7/2021) (Entered: 09/07/2021)
09/13/2021	239	ORDER RE DISCOVERY DISPUTES as to 205 , 221 and 224 : Court DENIES Mr. Laviano's motion to quash. See Order for all particulars. Motions terminated: 205 Motion to Quash; 221 Joint Discovery Letter Brief; and 224 Joint Discovery Letter Brief. Signed by Magistrate Judge Kandis A. Westmore on 9/13/2021. (ig, COURT STAFF) (Filed on 9/13/2021) (Entered: 09/13/2021)
09/13/2021	240	NOTICE of Mootness Regarding Pending Motion to Continue Fact Discovery (Dkt. 194) and Plaintiff's Service of Opening Expert Reports by Cellspin Soft, Inc. re 194

		Opposed Motion To Enlarge Time For Factual Discovery, Civil L.R. 6-3 (Garteiser, Randall) (Filed on 9/13/2021) Modified on 9/14/2021 (jlgS, COURT STAFF). (Entered: 09/13/2021)
09/17/2021	241	JOINT STIPULATION <i>Regarding Expert Discovery</i> filed by Fitbit, Inc. (Oussayef, Karim) (Filed on 9/17/2021) Modified on 9/17/2021 (jlgS, COURT STAFF). (Entered: 09/17/2021)
09/18/2021	242	Transcript of Proceedings held on May 26, 2020, before Judge Yvonne Gonzalez Rogers. Court Reporter Raynee H. Mercado, CSR, telephone number 510-565-7228, cacsr8258@gmail.com. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (242 in 4:17-cv-05933-YGR) Transcript Order) Release of Transcript Restriction set for 11/24/2021. (rhm) (Filed on 9/18/2021) (Entered: 09/18/2021)
09/21/2021	243	EXHIBITS re 217 Opposition/Response to Motion,, (<i>Unredacted Versions of Exhibit 2 & 3 in Compliance with the Court's Order (DI 238)</i>) filed by Fitbit, Inc.. (Related document(s) 217) (Oussayef, Karim) (Filed on 9/21/2021) (Entered: 09/21/2021)
09/21/2021	244	EXHIBITS re 224 <i>Joint Discovery Brief (Unredacted Version of Exhibit 1 in Compliance with the Court's Order (DI 238)</i>) filed by Fitbit, Inc.. (Oussayef, Karim) (Filed on 9/21/2021) (Entered: 09/21/2021)
09/21/2021	245	ORDER SETTING COMPLIANCE DEADLINE re (229 in 4:17-cv-05928-YGR) ADMINISTRATIVE MOTION to Request Case Management Conference filed by Fitbit, Inc. Joint Status update or one-page joint Statement due by 10/8/2021. Compliance Deadline is set for 10/15/2021 09:01 AM.. Signed by Judge Yvonne Gonzalez Rogers on 9/21/2021. (fs, COURT STAFF) (Filed on 9/21/2021) (Entered: 09/21/2021)
10/05/2021	246	ADMINISTRATIVE MOTION to Reflect Name Change from Fitbit, Inc. to Fitbit LLC filed by Fitbit, Inc.. Responses due by 10/12/2021. (Attachments: # 1 Declaration of Eric Speckhard, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Proposed Order) (Oussayef, Karim) (Filed on 10/5/2021) (Entered: 10/05/2021)
10/05/2021	247	STIPULATION <i>re Expert Discovery</i> filed by Fitbit, Inc.. (Oussayef, Karim) (Filed on 10/5/2021) (Entered: 10/05/2021)
10/05/2021	248	STIPULATION WITH PROPOSED ORDER <i>re: Discovery of Electronically Stored Information (ESI)</i> filed by Fitbit, Inc.. (Oussayef, Karim) (Filed on 10/5/2021) (Entered: 10/05/2021)
10/07/2021	249	ORDER by Judge Yvonne Gonzalez Rogers RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION (ESI) FOR PATENT LITIGATION. (amgS, COURT STAFF) (Filed on 10/7/2021) (Entered: 10/07/2021)
10/08/2021	250	JOINT STATUS UPDATE <i>re Compliance Deadline</i> by Fitbit, Inc. (Oussayef, Karim)

		(Filed on 10/8/2021) Modified on 10/10/2021 (jlgS, COURT STAFF). (Entered: 10/08/2021)
10/13/2021	251	<p>CLERK'S NOTICE VACATING THE FRIDAY, OCTOBER 15, 2021 AT 9:01AM COMPLIANCE DEADLINE AND SETTING A FURTHER CASE MANAGEMENT CONFERENCE. The 10/15/21 Compliance Deadline is VACATED.</p> <p>Case Management Statement due by 10/25/2021. Further Case Management Conference set for Monday, 11/1/2021 at specially set time of 10:00 AM via Zoom Webinar Videoconference Only.</p> <p>Zoom link information will be posted on the docket in advance of the hearing. Zoom link information is also on the Judge's page on the court website www.cand.uscourts.gov/judges/gonzalez-rogers-yvonne-ygr/</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 10/13/2021) (Entered: 10/13/2021)</p>
10/14/2021	252	ORDER by Judge Yvonne Gonzalez Rogers granting 246 Administrative Motion to Reflect Name Change from Fitbit, Inc. to Fitbit LLC. (cwlc4, COURT STAFF) (Filed on 10/14/2021) (Entered: 10/14/2021)
10/20/2021	253	ADMINISTRATIVE MOTION for Relief Under Local Rule 7-11 re Disputed Deadline for Summary Judgment Motion Pre-Filing Letter Briefs filed by Fitbit LLC. Responses due by 10/25/2021. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Proposed Order)(Oussayef, Karim) (Filed on 10/20/2021) (Entered: 10/20/2021)
10/25/2021	254	Joint Discovery Letter Brief <i>re Cellspin's Production of Documents in Response to Court Order</i> filed by Fitbit LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Oussayef, Karim) (Filed on 10/25/2021) (Entered: 10/25/2021)
10/25/2021	255	OPPOSITION/RESPONSE (re 253 ADMINISTRATIVE MOTION for Relief Under Local Rule 7-11 re Disputed Deadline for Summary Judgment Motion Pre-Filing Letter Briefs) filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Exhibit A - emails from August 2021, # 3 Exhibit B - emails from September 2021)(Garteiser, Randall) (Filed on 10/25/2021) (Entered: 10/26/2021)
10/26/2021	256	JOINT CASE MANAGEMENT STATEMENT filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit A - Proposed Omnibus Scheduling Order, # 2 Exhibit B - Proposed Omnibus Scheduling Order)(Garteiser, Randall) (Filed on 10/26/2021) (Entered: 10/26/2021)
10/27/2021	257	Order Granting 253 Administrative Motion to address the scheduling of summary judgment motion practice at the case management conference, which tentatively shall follow the protocol to which the parties previously agreed. Entered by Judge Yvonne Gonzalez Rogers. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (Entered: 10/27/2021)
10/31/2021	258	CLERKS NOTICE SETTING ZOOM HEARING FOR THE Further Case Management Conference in related cases set for Monday, 11/1/2021 10:00 AM via

		<p>Zoom Webinar Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/ygr</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Further Case Management Conference set for Monday, 11/1/2021 10:00 AM via Zoom Webinar Videoconference Only.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 10/31/2021) (Entered: 10/31/2021)</p>
11/01/2021	259	<p>Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Further Case Management Conference held via Zoom Webinar Videoconference on 11/1/2021. Close of Expert Discovery due by 11/23/2021. Pre-filing Conference re Summary Judgment is set for 12/16/2021 09:00 AM via zoom Webinar Videoconference before Judge Yvonne Gonzalez Rogers.Total Time in Court: 5 minutes. Court Reporter: Pam Hebel. (fs, COURT STAFF) (Date Filed: 11/1/2021) (Entered: 11/05/2021)</p>
11/05/2021	260	<p>SCHEDULING PRETRIAL ORDER. Signed by Judge Yvonne Gonzalez Rogers on 11/5/2021. (fs, COURT STAFF) (Filed on 11/5/2021) (Entered: 11/05/2021)</p>
11/05/2021		<p>Set Deadlines/Hearings:, Set/Reset Deadlines as to Dispositive Motion due by 12/23/2021. Responses due by 1/20/2022. Replies due by 2/3/2022. Status Report due by 4/8/2022. Jury Selection set for 5/23/2022 08:30 AM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Jury Trial set for 5/23/2022 08:30 AM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Daubert/Dispositive Motion Hearing set for 2/25/2022 02:00 PM via Zoom Webinar Videoconference before Judge Yvonne Gonzalez Rogers. Pretrial Conference set for 5/6/2022 09:00 AM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Compliance Deadline set for 4/15/2022 09:01 AM. (fs, COURT STAFF) (Filed on 11/5/2021) (Entered: 11/05/2021)</p>
11/12/2021	261	<p>Administrative Motion to File Under Seal filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order, # 2 Redacted Version of Declaration, # 3 Unredacted Version of Declaration, # 4 Redacted Version of Exhibit 1, # 5 Unredacted Version of Exhibit 1) (Fuller, Michael) (Filed on 11/12/2021) (Entered: 11/12/2021)</p>

11/12/2021	262	MOTION to Stay re 261 Administrative Motion to File Under Seal filed by Cellspin Soft, Inc.. Responses due by 11/26/2021. Replies due by 12/3/2021. (Attachments: # 1 Proposed Order, # 2 Redacted Version of Declaration, # 3 Redacted Version of Ex 1) (Fuller, Michael) (Filed on 11/12/2021) (Entered: 11/12/2021)
11/15/2021	263	<p>CLERKS NOTICE SETTING ZOOM HEARING FOR THE Status Conference set for Thursday, 11/18/2021 11:00 AM VIA ZOOM WEBINAR Videoconference before Judge Yvonne Gonzalez Rogers.</p> <p>This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/ygr</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Status Conference set for Thursday, 11/18/2021 11:00 AM VIA ZOOM WEBINAR Videoconference Only before Judge Yvonne Gonzalez Rogers.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 11/15/2021) (Entered: 11/15/2021)</p>
11/18/2021	264	Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Status Conference held via Zoom Webinar on 11/18/2021. Further Case Management Conference set for 12/16/2021 09:00 AM via Zoom Webinar Videoconference Only.Total Time in Court: 30 minutes. Court Reporter: not reported/not recorded. (fs, COURT STAFF) (Date Filed: 11/18/2021) (Entered: 11/19/2021)
11/18/2021	265	SCHEDULING ORDER. Signed by Judge Yvonne Gonzalez Rogers on 11/18/21. (fs, COURT STAFF) (Filed on 11/18/2021) (Entered: 11/19/2021)
12/08/2021	266	ORDER RE DISCOVERY LETTER NO 3 by Magistrate Judge Kandis A. Westmore denying 254 Discovery Letter Brief. (wft, COURT STAFF) (Filed on 12/8/2021) (Entered: 12/08/2021)
12/14/2021	267	JOINT CASE MANAGEMENT STATEMENT filed by Cellspin Soft, Inc.. (Garteiser, Randall) (Filed on 12/14/2021) (Entered: 12/14/2021)
12/15/2021	268	CLERKS NOTICE SETTING ZOOM HEARING for the Status Conference in related cases set for Thursday, 12/16/2021 09:00 AM via Zoom Webinar Videoconference Only before Judge Yvonne Gonzalez Rogers.

		<p>This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/ygr</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Status Conference in related cases set for Thursday, 12/16/2021 09:00 AM via Zoom Webinar Vid eoconference Only before Judge Yvonne Gonzalez Rogers.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (fs, COURT STAFF) (Filed on 12/15/2021) (Entered: 12/15/2021)</p>
12/16/2021	269	<p>Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Further Case Management Conference held on 12/16/2021. Close of Expert Discovery due by 1/14/2022.Total Time in Court: 7 minutes. Court Reporter: Pam Hebel. (fs, COURT STAFF) (Date Filed: 12/16/2021) (Entered: 12/16/2021)</p>
12/22/2021	270	<p>ORDER REGARDING EXPERT SUBSTITUTION. Signed by Judge Yvonne Gonzalez Rogers on 12/22/2021. (amg, COURT STAFF) (Filed on 12/22/2021) (Entered: 12/22/2021)</p>
01/10/2022	271	<p>Letter Brief <i>Requesting Leave to File Motion for Summary Judgment</i> filed by Fitbit LLC. (Oussayef, Karim) (Filed on 1/10/2022) (Entered: 01/10/2022)</p>
01/13/2022	272	<p>CLERK'S NOTICE SETTING PRE-FILING HEARING. Notice is hereby given that a pre-filing hearing on leave to file Motions for Summary Judgment is set for 1/19/2022 at 9:00 a.m. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>, This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/ygr</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent to the CRD at ygrcrd@cand.uscourts.gov no later than January 17, 2022 at 5:00 PST.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p>

		<p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Motion Hearing set for 1/19/2022 09:00 AM in Oakland, - Videoconference Only before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 1/13/2022) (Entered: 01/13/2022)</p>
01/17/2022	273	Letter Brief re 271 Letter Brief <i>RESPONSIVE LETTER BRIEF</i> filed by Cellspin Soft, Inc.. (Related document(s) 271) (Fuller, Michael) (Filed on 1/17/2022) (Entered: 01/17/2022)
01/19/2022	274	Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Pre-Filing on Leave to File Motions for Summary Judgment Hearing held on 1/19/2022. Dispositive Motion due by 1/27/2022. Responses due by 2/24/2022. Replies due by 3/10/2022. Total Time in Court: 32 minutes. Court Reporter: Raynee Mercado. (amg, COURT STAFF) (Date Filed: 1/19/2022) (Entered: 01/19/2022)
01/20/2022	275	STIPULATION <i>to Set a Daubert Briefing Schedule</i> filed by Fitbit LLC. (Oussayef, Karim) (Filed on 1/20/2022) (Entered: 01/20/2022)
01/27/2022	276	Administrative Motion to File Under Seal <i>Portions of Exhibits in Support of Fitbit's Motion for Summary Judgment</i> filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Exhibit 4, # 3 Exhibit 4-1, # 4 Exhibit 4-2, # 5 Exhibit 4-3, # 6 Exhibit 4-4, # 7 Exhibit 4-5, # 8 Exhibit 4-6, # 9 Exhibit 6, # 10 Exhibit 8, # 11 Exhibit 9)(Oussayef, Karim) (Filed on 1/27/2022) (Entered: 01/27/2022)
01/27/2022	277	MOTION for Summary Judgment of <i>Non-Infringement of All Asserted Claims</i> filed by Fitbit LLC. Motion Hearing set for 4/5/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 2/24/2022. Replies due by 3/10/2022. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit A, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4 Redacted, # 7 Exhibit 4-1 Redacted, # 8 Exhibit 4-2 Redacted, # 9 Exhibit 4-3 Redacted, # 10 Exhibit 4-4 Redacted, # 11 Exhibit 4-5 Redacted, # 12 Exhibit 4-6 Redacted, # 13 Exhibit 5, # 14 Exhibit 5-1, # 15 Exhibit 5-2, # 16 Exhibit 5-3, # 17 Exhibit 5-4, # 18 Exhibit 5-5, # 19 Exhibit 5-6, # 20 Exhibit 6 Redacted, # 21 Exhibit 7, # 22 Exhibit 8 Redacted, # 23 Proposed Order)(Oussayef, Karim) (Filed on 1/27/2022) (Entered: 01/27/2022)
01/27/2022	278	Declaration of Dr. Harry Bims in Support of 277 MOTION for Summary Judgment of <i>Non-Infringement of All Asserted Claims</i> filed by Fitbit LLC. (Attachments: # 1 Exhibit 9 Redacted)(Related document(s) 277) (Oussayef, Karim) (Filed on 1/27/2022) (Entered: 01/27/2022)
01/27/2022	279	CERTIFICATE OF SERVICE by Fitbit LLC re 276 Administrative Motion to File Under Seal <i>Portions of Exhibits in Support of Fitbit's Motion for Summary Judgment</i> (Oussayef, Karim) (Filed on 1/27/2022) (Entered: 01/27/2022)
02/14/2022	280	STIPULATION <i>to Modify and Extend Time</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration)(Fuller, Michael) (Filed on 2/14/2022) (Entered: 02/14/2022)

02/23/2022	<p>281 Administrative Motion to File Under Seal <i>Portions of Defendants Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok</i> filed by Fitbit LLC. (Attachments: # 1 UNREDACTED Version of Memorandum in Support of Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok, # 2 REDACTED Version of Memorandum in Support of Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok, # 3 Exhibit 5 (Unredacted), # 4 Exhibit 5 (Redacted), # 5 Exhibit 6 (Unredacted), # 6 Exhibit 6 (Redacted), # 7 Exhibit 7 (Unredacted), # 8 Exhibit 7 (Redacted), # 9 Exhibit 8 (Unredacted), # 10 Exhibit 8 (Redacted), # 11 Exhibit 9 (Unredacted), # 12 Exhibit 9 (Redacted), # 13 Exhibit 10 (Unredacted), # 14 Exhibit 10 (Redacted), # 15 Exhibit 11 (Unredacted), # 16 Exhibit 11 (Redacted), # 17 Exhibit 12 (Unredacted), # 18 Exhibit 12 (Redacted), # 19 Exhibit 13 (Unredacted), # 20 Exhibit 13 (Redacted), # 21 Exhibit 14 (Unredacted), # 22 Exhibit 14 (Redacted), # 23 Exhibit 15 (Unredacted), # 24 Exhibit 15 (Redacted), # 25 Exhibit 16 (Unredacted), # 26 Exhibit 16 (Redacted), # 27 Exhibit 17 (Unredacted), # 28 Exhibit 17 (Redacted), # 29 Exhibit 18 (Unredacted), # 30 Exhibit 18 (Redacted), # 31 Exhibit 19 (Unredacted), # 32 Exhibit 19 (Redacted), # 33 Exhibit 20 (Unredacted), # 34 Exhibit 20 (Redacted), # 35 Exhibit 23 (Unredacted), # 36 Proposed Order)(Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)</p>
02/23/2022	<p>282 Administrative Motion to File Under Seal /<i>Administrative Motion To Consider Whether Another Partys Materials Should Be Sealed</i> filed by Fitbit LLC. (Attachments: # 1 UNREDACTED Version of Memorandum in Support of Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok, # 2 REDACTED Version of Memorandum in Support of Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok, # 3 Exhibit 5 (Unredacted), # 4 Exhibit 5 (Redacted), # 5 Exhibit 6 (Unredacted), # 6 Exhibit 6 (Redacted), # 7 Exhibit 7 (Unredacted), # 8 Exhibit 7 (Redacted), # 9 Exhibit 8 (Unredacted), # 10 Exhibit 8 (Redacted), # 11 Exhibit 9 (Unredacted), # 12 Exhibit 9 (Redacted), # 13 Exhibit 10 (Unredacted), # 14 Exhibit 10 (Redacted), # 15 Exhibit 11 (Unredacted), # 16 Exhibit 11 (Redacted), # 17 Exhibit 12 (Unredacted), # 18 Exhibit 12 (Redacted), # 19 Exhibit 13 (Unredacted), # 20 Exhibit 13 (Redacted), # 21 Exhibit 14 (Unredacted), # 22 Exhibit 14 (Redacted), # 23 Exhibit 15 (Unredacted), # 24 Exhibit 15 (Redacted), # 25 Exhibit 16 (Unredacted), # 26 Exhibit 16 (Redacted), # 27 Exhibit 17 (Unredacted), # 28 Exhibit 17 (Redacted), # 29 Exhibit 18 (Unredacted), # 30 Exhibit 18 (Redacted), # 31 Exhibit 19 (Unredacted), # 32 Exhibit 19 (Redacted), # 33 Exhibit 20 (Unredacted), # 34 Exhibit 20 (Redacted), # 35 Exhibit 22 (Unredacted), # 36 Exhibit 23 (Unredacted), # 37 Exhibit 24 (Unredacted), # 38 Exhibit 28 (Unredacted), # 39 Exhibit 29 (Unredacted), # 40 Exhibit 30 (Unredacted), # 41 Exhibit 31 (Unredacted), # 42 Exhibit 32 (Unredacted), # 43 Exhibit 33 (Unredacted), # 44 Exhibit 34 (Unredacted), # 45 Exhibit 35 (Unredacted), # 46 Proposed Order) (Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)</p>
02/23/2022	<p>283 MOTION to Strike /<i>Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok</i> filed by Fitbit LLC. Motion Hearing set for 4/13/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 3/23/2022. Replies due by 4/6/2022. (Attachments: # 1 Memorandum in Support of Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok (Filed Under Seal), # 2 Declaration of Jamie Kringstein, # 3 Exhibit 1,</p>

		# 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5 (Filed Under Seal), # 8 Exhibit 6 (Filed Under Seal), # 9 Exhibit 7 (Filed Under Seal), # 10 Exhibit 8 (Filed Under Seal), # 11 Exhibit 9 (Filed Under Seal), # 12 Exhibit 10 (Filed Under Seal), # 13 Exhibit 11 (Filed Under Seal), # 14 Exhibit 12 (Filed Under Seal), # 15 Exhibit 13 (Filed Under Seal), # 16 Exhibit 14 (Filed Under Seal), # 17 Exhibit 15 (Filed Under Seal), # 18 Exhibit 16 (Filed Under Seal), # 19 Exhibit 17 (Filed Under Seal), # 20 Exhibit 18 (Filed Under Seal), # 21 Exhibit 19 (Filed Under Seal), # 22 Exhibit 20 (Filed Under Seal), # 23 Exhibit 21, # 24 Exhibit 22 (Filed Under Seal), # 25 Exhibit 23 (Redacted), # 26 Exhibit 24 (Filed Under Seal), # 27 Exhibit 25, # 28 Exhibit 26, # 29 Exhibit 27, # 30 Exhibit 28 (Filed Under Seal), # 31 Exhibit 29 (Filed Under Seal), # 32 Exhibit 30 (Filed Under Seal), # 33 Exhibit 31 (Filed Under Seal), # 34 Exhibit 32 (Filed Under Seal), # 35 Exhibit 33 (Filed Under Seal), # 36 Exhibit 34 (Filed Under Seal), # 37 Exhibit 35 (Filed Under Seal), # 38 Exhibit 36, # 39 Exhibit 37, # 40 Exhibit 38, # 41 Exhibit 39, # 42 Exhibit 40, # 43 Exhibit 41, # 44 Exhibit 42, # 45 Exhibit 43, # 46 Exhibit 44, # 47 Exhibit 45, # 48 Exhibit 46, # 49 Exhibit 47, # 50 Exhibit 48, # 51 Exhibit 49, # 52 Exhibit 50, # 53 Proposed Order)(Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)
02/23/2022	284	CERTIFICATE OF SERVICE by Fitbit LLC re 281 Administrative Motion to File Under Seal <i>Portions of Defendants Motion to Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok</i> (Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)
02/23/2022	285	CERTIFICATE OF SERVICE by Fitbit LLC re 282 Administrative Motion to File Under Seal <i>Administrative Motion To Consider Whether Another Partys Materials Should Be Sealed</i> (Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)
02/23/2022	286	Administrative Motion to File Under Seal <i>Portions of Fitbits Motion to Exclude Certain Opinions and Testimony of Justin R. Blok and Certain Exhibits</i> filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Unredacted Version of Notice of Motion and Motion to Exclude Certain Opinions and Testimony of Justin R. Blok, # 3 Exhibit 1 (Unredacted))(Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)
02/23/2022	287	Erroneous Entry--Please Ignore--See corrected entry below MOTION to Strike <i>Exclude Certain Opinions and Testimony of Justin R. Blok</i> filed by Fitbit LLC. Motion Hearing set for 4/13/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 3/23/2022. Replies due by 4/6/2022. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1 (Redacted), # 3 Exhibit 2, # 4 Proposed Order)(Oussayef, Karim) (Filed on 2/23/2022) Modified on 2/24/2022 (msr, COURT STAFF). (Entered: 02/23/2022)
02/23/2022	288	CERTIFICATE OF SERVICE by Fitbit LLC re 286 Administrative Motion to File Under Seal <i>Portions of Fitbits Motion to Exclude Certain Opinions and Testimony of Justin R. Blok and Certain Exhibits</i> (Oussayef, Karim) (Filed on 2/23/2022) (Entered: 02/23/2022)
02/24/2022	289	MOTION to Strike <i>Exclude Certain Opinions and Testimony of Justin R. Blok (CORRECTION OF DOCKET NO. 287)</i> filed by Fitbit LLC. Motion Hearing set for 4/13/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne

		Gonzalez Rogers. Responses due by 3/23/2022. Replies due by 4/6/2022. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1 (Redacted), # 3 Exhibit 2, # 4 Proposed Order)(Oussayef, Karim) (Filed on 2/24/2022) (Entered: 02/24/2022)
02/24/2022	290	MOTION to Remove Incorrectly Filed Documents filed by Fitbit LLC. Responses due by 3/10/2022. Replies due by 3/17/2022. (Attachments: # 1 Proposed Order) (Oussayef, Karim) (Filed on 2/24/2022) (Entered: 02/24/2022)
02/24/2022	291	CLERK'S NOTICE TO RE-NOTICE MOTIONS TO STRIKE. Counsel must re-notice not re-file the Motions to Strike previously noticed for 4/13/2022. Judge Gonzalez Rogers holds Civil Law and Motion calendar on Tuesdays at 2:00 p.m. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (amg, COURT STAFF) (Filed on 2/24/2022) (Entered: 02/24/2022)
02/24/2022	292	Renotice motion hearing re 283 MOTION to Strike / <i>Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok</i> filed byFitbit LLC. (Related document(s) 283) (Oussayef, Karim) (Filed on 2/24/2022) (Entered: 02/24/2022)
02/24/2022	293	Renotice motion hearing re 289 MOTION to Strike / <i>Exclude Certain Opinions and Testimony of Justin R. Blok (CORRECTION OF DOCKET NO. 287)</i> filed byFitbit LLC. (Related document(s) 289) (Oussayef, Karim) (Filed on 2/24/2022) (Entered: 02/24/2022)
02/25/2022		Set Hearing as to 283 MOTION to Strike / <i>Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok</i> , 289 MOTION to Strike / <i>Exclude Certain Opinions and Testimony of Justin R. Blok (CORRECTION OF DOCKET NO. 287)</i> . Motion Hearing set for 4/12/2022 02:00 PM in Oakland, - Videoconference Only before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 2/25/2022) (Entered: 02/25/2022)
02/28/2022	294	Declaration of Yuka Teraguchi in Support of 282 Administrative Motion to File Under Seal / <i>Administrative Motion To Consider Whether Another Partys Materials Should Be Sealed</i> filed byNikon Corporation. (Related document(s) 282) (Teraguchi, Yuka) (Filed on 2/28/2022) (Entered: 02/28/2022)
03/02/2022	295	CLERK'S NOTICE CONTINUING HEARING. Notice is hereby given that the hearing on the Motion to Strike previously set for 4/12/2022 at 2:00 p.m. is continued to 4/13/2022 at 1:00 p.m. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) Motion Hearing set for 4/13/2022 01:00 PM in Oakland, - Videoconference Only before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 3/2/2022) (Entered: 03/02/2022)
03/02/2022	296	CLERK'S NOTICE CONTINUING HEARING. Notice is hereby given that the hearing on the Motions for Summary Judgment previously set for 4/5/2022 at 2:00 p.m. is continued to 4/13/2022 at 1:00 p.m. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) Motion Hearing set for 4/13/2022 01:00 PM in Oakland, - Videoconference Only before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 3/2/2022) (Entered: 03/02/2022)

03/07/2022	297	OPPOSITION/RESPONSE (re 277 MOTION for Summary Judgment of <i>Non-Infringement of All Asserted Claims</i>) filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of M. Scott Fuller, # 2 Proposed Order, # 3 Exhibit 6, # 4 Exhibit 10, # 5 Exhibit 11, # 6 Exhibit 27, # 7 Exhibit 37, # 8 Exhibit 38, # 9 Exhibit 39, # 10 Exhibit 40, # 11 Exhibit 41, # 12 Exhibit 42, # 13 Exhibit 43, # 14 Exhibit 44, # 15 Exhibit 45, # 16 Exhibit 46, # 17 Exhibit 47, # 18 Exhibit 48, # 19 Exhibit 49, # 20 Exhibit 52, # 21 Exhibit 53, # 22 Exhibit 54, # 23 Exhibit 55, # 24 Exhibit 60)(Fuller, Michael) (Filed on 3/7/2022) (Entered: 03/07/2022)
03/07/2022	298	Administrative Motion to File Under Seal <i>Exhibits to 297 Opposition to Motion for Summary Judgment</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Proposed Order, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 12, # 12 Exhibit 13, # 13 Exhibit 14, # 14 Exhibit 15, # 15 Exhibit 16, # 16 Exhibit 17, # 17 Exhibit 18, # 18 Exhibit 19, # 19 Exhibit 20, # 20 Exhibit 21, # 21 Exhibit 22, # 22 Exhibit 23, # 23 Exhibit 24, # 24 Exhibit 25, # 25 Exhibit 26, # 26 Exhibit 28, # 27 Exhibit 29, # 28 Exhibit 30, # 29 Exhibit 31, # 30 Exhibit 32, # 31 Exhibit 33, # 32 Exhibit 34, # 33 Exhibit 35, # 34 Exhibit 36, # 35 Exhibit 50, # 36 Exhibit 51, # 37 Exhibit 56, # 38 Exhibit 57, # 39 Exhibit 58, # 40 Exhibit 59)(Fuller, Michael) (Filed on 3/7/2022) (Entered: 03/07/2022)
03/07/2022	299	***filed in error*** Administrative Motion to File Under Seal filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall Garteiser, # 2 Proposed Order, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6, # 9 Exhibit 7, # 10 Exhibit 8, # 11 Exhibit 9, # 12 Exhibit 10, # 13 Exhibit 11, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14, # 17 Exhibit 15, # 18 Exhibit 16, # 19 Exhibit 17, # 20 Exhibit 18, # 21 Exhibit 19, # 22 Exhibit 20, # 23 Exhibit 21, # 24 Exhibit 22, # 25 Exhibit 24, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 29, # 29 Exhibit 30, # 30 Exhibit 31, # 31 Exhibit 40, # 32 Exhibit 41, # 33 Exhibit 42, # 34 Exhibit 43, # 35 Exhibit 44, # 36 Exhibit 45, # 37 Exhibit 46)(Garteiser, Randall) (Filed on 3/7/2022) Modified on 3/9/2022 (hdj, COURT STAFF). (Entered: 03/07/2022)
03/11/2022	300	CLERK'S NOTICE SETTING HEARING. Notice is hereby given that a hearing on the pending Motions for Summary Judgment and Daubert Motions is set for 4/22/2022 at 2:00 p.m. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (amg, COURT STAFF) (Filed on 3/11/2022) (Entered: 03/11/2022)
03/14/2022	301	EXHIBITS re 298 Administrative Motion to File Under Seal <i>Exhibits to 297 Opposition to Motion for Summary Judgment</i> filed by Fitbit LLC. (Attachments: # 1 Exhibit 3 (Proposed Redactions), # 2 Exhibit 4 (Proposed Redactions))(Related document(s) 298) (Oussayef, Karim) (Filed on 3/14/2022) (Entered: 03/14/2022)
03/14/2022	302	Declaration of Jamie L. Kringstein in Support of 298 Administrative Motion to File Under Seal <i>Exhibits to 297 Opposition to Motion for Summary Judgment</i> filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Exhibit 3 (REDACTED), # 3 Exhibit 4 (REDACTED))(Related document(s) 298) (Oussayef, Karim) (Filed on 3/14/2022) (Entered: 03/14/2022)

03/21/2022	303	REPLY (re 277 MOTION for Summary Judgment of <i>Non-Infringement of All Asserted Claims</i>) filed by Fitbit LLC. (Attachments: # 1 Declaration of Jamie L. Kringstein, # 2 Exhibit C, # 3 Exhibit 10, # 4 Exhibit 11, # 5 Exhibit 12, # 6 Exhibit 13)(Oussayef, Karim) (Filed on 3/21/2022) (Entered: 03/21/2022)
03/21/2022	304	EXHIBITS re 282 Administrative Motion to File Under Seal / <i>Administrative Motion To Consider Whether Another Partys Materials Should Be Sealed</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Supplement 283-1 Unreacted filed under deal Memo ISO Motion with highlights of additional redactions, # 2 Supplement 283-1 Redacted Memo ISO Motion with redactions (proposed public version), # 3 Exhibit 282-3 Ex 05 highlights 2021-09-03 Expert Report of Justin R Blok, with Exhibits - Cellspin v Fitbit, # 4 Exhibit 282-3 Redacted Ex 05 2021-09-03 Expert Report of Justin R Blok, with Exhibits - Cellspin v Fitbit, # 5 Exhibit 282-5 Ex 06 highlighted Expert Report of Justin R Blok, with Exhibits - Cellspin v Nike, # 6 Exhibit 282-5 Redacted Ex 06 Expert Report of Justin R Blok, with Exhibits - Cellspin v Nike, # 7 Exhibit 282-7 Ex 07 highlighted Expert Report of Justin R Blok with Exhibits - Cellspin v Under Armour, # 8 Exhibit 282-7 Redacted Ex 07 highlighted Expert Report of Justin R Blok with Exhibits - Cellspin v Under Armour, # 9 Exhibit 282-9 Ex 08 Highlighted 21-09-03 Expert Report of Justin R Blok and Exhibits - Cellspin v Fossil Group, # 10 Exhibit 282-9 Redacted Ex 08 21-09-03 Expert Report of Justin R Blok and Exhibits - Cellspin v Fossil Group, # 11 Exhibit 282-11 Ex 09 Highlighted Expert Report of Justin R Blok with Exhibits - Cellspin v Garmin, # 12 Exhibit 282-11 Redacted Ex 09 Expert Report of Justin R Blok with Exhibits - Cellspin v Garmin, # 13 Exhibit 282-13 Ex 10 highlighted Blok Nikon Report, # 14 Exhibit 282-13 Redacted Ex 10 Blok Nikon Report, # 15 Exhibit 282-15 Ex 11 highlighted 2021_12_01 Supplemental Expert Report of Justin R Blok with Exhibits - Cellspin v Nike, # 16 Exhibit 282-15 Redacted Ex 11 2021_12_01 Supplemental Expert Report of Justin R Blok with Exhibits - Cellspin v Nike, # 17 Exhibit 282-17 Ex 12 highlighted 2021_12_01 Supp Expert Report of Justin R Blok with Exhibits - Cellspin v Under Armour, # 18 Exhibit 282-17 Redacted Ex 12 2021_12_01 Supp Expert Report of Justin R Blok with Exhibits - Cellspin v Under Armour, # 19 Exhibit 282-19 Ex 13 highlights 2021_12_01 Supplemental Expert Report of Justin R Blok with Exhibits - Cellspin v Fitbit, # 20 Exhibit 282-19 Redacted Ex 13 2021_12_01 Supplemental Expert Report of Justin R Blok with Exhibits - Cellspin v Fitbit, # 21 Exhibit 282-21 Ex 14 highlighted 2021-12-01 - HC-AEO 1st Suppl Expert Report of J Blok + Exhibits, # 22 Exhibit 282-21 Redacted Ex 14 2021-12-01 - HC-AEO 1st Suppl Expert Report of J Blok + Exhibits, # 23 Exhibit 282-23 Ex 15 highlighted 2021-12-30 HC-AEO - 2nd Suppl Expert Report of Justin R Blok, # 24 Exhibit 282-23 Redacted Ex 15 2021-12-30 HC-AEO - 2nd Suppl Expert Report of Justin R Blok, # 25 Exhibit 282-27 Ex 17 highlighted 2021_11_22 Supplemental Expert Report of Justin R Blok - Cellspin v Garmin, # 26 Exhibit 282-27 Redacted Ex 17 2021_11_22 Supplemental Expert Report of Justin R Blok - Cellspin v Garmin, # 27 Exhibit 282-31 Ex 19 highlighted Blok 1st Supplemental Nikon Report, # 28 Exhibit 282-31 Redacted Ex 19 Blok 1st Supplemental Nikon Report, # 29 Exhibit 282-37 Ex 24 Highlighted Nike Blok Tr Excerpts 01-12-2022_Blok, # 30 Exhibit 282-37 Redacted Ex 24 Nike Blok Tr Excerpts 01-12-2022_Blok, # 31 Exhibit 282-44 Ex 34 highlighted- FitSub0940.pdf, # 32 Exhibit 282-44 Redacted Ex 34 - FitSub0940.pdf, # 33 Proposed Order Granting

		motion to file under seal)(Related document(s) 282) (Garteiser, Randall) (Filed on 3/21/2022) (Entered: 03/21/2022)
03/21/2022	305	Administrative Motion to File Under Seal <i>Related to Fitbit's related motion to file under seal filed as Docket No. 282 and Docket No. 304</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration With Exhibits (highlighted and redacted version of documents filed under seal filed concurrently at Docket No. 304 in connection with a related supporting statement to file under seal), # 2 Proposed Order)(Garteiser, Randall) (Filed on 3/21/2022) (Entered: 03/21/2022)
03/22/2022	306	MOTION to Continue <i>by 1-week opposition and reply deadlines for Daubert moving papers</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration, # 2 Proposed Order Regarding MOTION TO CONTINUE DEADLINES TO RESPOND TO DAUBERT MOTIONS TO STRIKE)(Garteiser, Randall) (Filed on 3/22/2022) (Entered: 03/22/2022)
03/24/2022	307	Order denying 306 Motion to Continue. Plaintiff filed a motion with respect to numerous Daubert motions after 5:00 p.m. on March 22, 2022 requesting a week extension of filings due on March 23, 2022 without providing a particularized rationale for the request as to each motion. The Court views the filing as a delaying tactic. Oppositions shall be filed by noon on March 25, 2022. Replies will be due no later than April 8, 2022 at noon. Entered by Judge Yvonne Gonzalez Rogers. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 03/24/2022)
03/25/2022	308	Administrative Motion to File Under Seal filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Proposed Order GRANTING Motion to File Under Seal, # 3 PLAINTIFFS RESPONSE TO 283 DEFENDANTS MOTION TO EXCLUDE THE EXPERT OPINIONS OF DR. RAMAMIRTHAM SUKUMAR AND MR. JUSTIN BLOK, # 4 Exhibit 1 - 2021_09_03 Sukumar Wearables Ex 2-3, # 5 Exhibit 2 - 2021_09_03 Vijh Infringement Report - Fitbit, # 6 Exhibit 3 - 2021_09_03 Vijh Infringement Report - Nikon, # 7 Exhibit 4 - 2021_09_03 Sukumar Camera Ex 2-3, # 8 Exhibit A - Sukumar Nov 17 Depo Excerpts, # 9 Exhibit B - Sukumar Nov 18 Depo Excerpts, # 10 Declaration of Scott Fuller, # 11 Declaration of Justin R. Blok, # 12 Exhibit 1 - 2021_12_27 Fitbit Blok Transcript, # 13 Exhibit 2 - 2021_01_12 Nike Blok Transcript, # 14 Exhibit 3 - 2021_11_23 Garmin Blok Transcript, # 15 Exhibit 4 - 2021_10_29 Irvine Rebuttal Report)(Garteiser, Randall) (Filed on 3/25/2022) (Entered: 03/25/2022)
03/25/2022	309	Administrative Motion to File Under Seal filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Proposed Order GRANTING Motion to File Under Seal, # 3 PLAINTIFFS RESPONSE TO 289 DEFENDANT FITBIT LLCS MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF JUSTIN R. BLOK, # 4 Declaration of Justin R. Blok, # 5 Exhibit 1 - 2021_12_27 Fitbit Blok Transcript, # 6 Declaration of Scott Fuller, # 7 Exhibit A - Sukumar Nov 17 Depo Excerpts, # 8 Exhibit B - Sukumar Nov 18 Depo Excerpts)(Garteiser, Randall) (Filed on 3/25/2022) (Entered: 03/25/2022)
03/25/2022	310	EXHIBITS re 308 Administrative Motion to File Under Seal <i>REDACTED version of</i>

		<i>[308-3] PLAINTIFFS RESPONSE TO 283 DEFENDANTS MOTION TO EXCLUDE THE EXPERT OPINIONS OF DR. RAMAMIRTHAM SUKUMAR AND MR. JUSTIN BLOK</i> filed by Cellspin Soft, Inc.. (Related document(s) 308) (Garteiser, Randall) (Filed on 3/25/2022) (Entered: 03/25/2022)
03/25/2022	311	EXHIBITS re 309 Administrative Motion to File Under Seal <i>REDACTED</i> version of <i>[309-3] PLAINTIFFS RESPONSE TO 289 DEFENDANT FITBIT LLC'S MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF JUSTIN R. BLOK</i> filed by Cellspin Soft, Inc.. (Related document(s) 309) (Garteiser, Randall) (Filed on 3/25/2022) (Entered: 03/25/2022)
04/01/2022	312	EXHIBITS re 308 Administrative Motion to File Under Seal filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Exhibit 2 (Proposed Redactions))(Related document(s) 308) (Oussayef, Karim) (Filed on 4/1/2022) (Entered: 04/01/2022)
04/01/2022	313	Declaration of Jamie L. Kringstein in Support of 308 Administrative Motion to File Under Seal filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Exhibit 2 (Redacted))(Related document(s) 308) (Oussayef, Karim) (Filed on 4/1/2022) (Entered: 04/01/2022)
04/01/2022	314	EXHIBITS re 309 Administrative Motion to File Under Seal filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Plaintiff's Brief (Proposed Redactions), # 3 Declaration of Blok (Proposed Redactions), # 4 Exhibit 1 (Proposed Redactions)) (Related document(s) 309) (Oussayef, Karim) (Filed on 4/1/2022) (Entered: 04/01/2022)
04/01/2022	315	Declaration of Jamie L. Kringstein in Support of 309 Administrative Motion to File Under Seal filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Plaintiff's Opposition Brief (Redacted), # 3 Declaration of Blok (Redacted), # 4 Exhibit 1 (Redacted))(Related document(s) 309) (Oussayef, Karim) (Filed on 4/1/2022) (Entered: 04/01/2022)
04/01/2022	316	EXHIBITS re 308 Administrative Motion to File Under Seal -- <i>Declaration of Yuka Teraguchi in Support of Cellpsin's Administrative Motion to Consider Whether Another Party's Material Should be Sealed</i> filed by Nikon Corporation. (Attachments: # 1 Exhibit A - revised unredacted version of 308-6, # 2 Proposed Order)(Related document(s) 308) (Teraguchi, Yuka) (Filed on 4/1/2022) (Entered: 04/01/2022)
04/07/2022	317	CLERK'S NOTICE CONTINUING COMPLIANCE DEADLINE. Notice is hereby given that the compliance deadline previously set for 4/15/2022 is continued to 5/20/2022. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> Compliance Deadline set for 5/20/2022 09:01 AM in Oakland, Chambers before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 4/7/2022) (Entered: 04/07/2022)
04/07/2022	318	CLERK'S NOTICE CHANGING HEARING TIME. Notice is hereby given that the hearing previously scheduled for 5/6/2022 at 9:00 a.m. will now be heard at 2:00 p.m. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> Hearing set for 5/6/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 4/7/2022)

		(Entered: 04/07/2022)
04/08/2022	319	Administrative Motion to File Under Seal <i>Defendants' Administrative Motion to Consider Whether Another Party's Material Should be Sealed</i> filed by Fitbit LLC. (Attachments: # 1 Proposed Order, # 2 Defendants Reply Brief (FILED UNDER SEAL), # 3 Exhibit 54 (FILED UNDER SEAL))(Oussayef, Karim) (Filed on 4/8/2022) (Entered: 04/08/2022)
04/08/2022	320	REPLY (re 283 MOTION to Strike / <i>Exclude the Expert Opinions of Dr. Ramamirtham Sukumar and Mr. Justin Blok</i>) filed by Fitbit LLC. (Attachments: # 1 Declaration of Jamie L. Kringstein, # 2 Exhibit 51, # 3 Exhibit 52, # 4 Exhibit 53, # 5 Exhibit 54) (Oussayef, Karim) (Filed on 4/8/2022) (Entered: 04/08/2022)
04/08/2022	321	CERTIFICATE OF SERVICE by Fitbit LLC re 319 Administrative Motion to File Under Seal <i>Defendants' Administrative Motion to Consider Whether Another Party's Material Should be Sealed</i> (Oussayef, Karim) (Filed on 4/8/2022) (Entered: 04/08/2022)
04/08/2022	322	REPLY (re 289 MOTION to Strike / <i>Exclude Certain Opinions and Testimony of Justin R. Blok (CORRECTION OF DOCKET NO. 287)</i>) filed by Fitbit LLC. (Oussayef, Karim) (Filed on 4/8/2022) (Entered: 04/08/2022)
04/11/2022	323	AMENDED SCHEDULING ORDER. Signed by Judge Yvonne Gonzalez Rogers on 4/11/2022. (amg, COURT STAFF) (Filed on 4/11/2022) (Entered: 04/11/2022)
04/11/2022		5/6/2022 Status Conference Vacated. See Docket No. 323 . (amg, COURT STAFF) (Filed on 4/11/2022) (Entered: 04/11/2022)
04/22/2022	324	Minute Entry for proceedings held before Judge Yvonne Gonzalez Rogers: Motions Hearing held on 4/22/2022. Total Time in Court: 4:54. Court Reporter: Pamela Hebel. (amg, COURT STAFF) (Date Filed: 4/22/2022) (Entered: 04/22/2022)
04/25/2022	325	TRANSCRIPT ORDER for proceedings held on 4/22/2022 before Judge Yvonne Gonzalez Rogers by Fitbit LLC, for Court Reporter Pam Batalo. (Oussayef, Karim) (Filed on 4/25/2022) (Entered: 04/25/2022)
04/25/2022	326	TRANSCRIPT ORDER for proceedings held on 4/22/2022 before Judge Yvonne Gonzalez Rogers by Fitbit LLC, Fitbit, Inc., for Court Reporter Pam Batalo. (Parker, Victoria) (Filed on 4/25/2022) (Entered: 04/25/2022)
04/26/2022	327	TRANSCRIPT ORDER for proceedings held on 4/22/2022 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Pam Batalo. (Garteiser, Randall) (Filed on 4/26/2022) (Entered: 04/26/2022)
04/26/2022	328	Transcript of Proceedings held on 04/22/2022, before Judge Gonzalez Rogers. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalohebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice

		of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (325 in 4:17-cv-05928-YGR) Transcript Order) Redaction Request due 5/17/2022. Redacted Transcript Deadline set for 5/27/2022. Release of Transcript Restriction set for 7/25/2022. (Batalo, Pam) (Filed on 4/26/2022) (Entered: 04/26/2022)
05/03/2022	329	NOTICE by Cellspin Soft, Inc. <i>of Conflicts with Respect to Potential Trial Dates</i> (Fuller, Michael) (Filed on 5/3/2022) (Entered: 05/03/2022)
05/19/2022	330	CLERK'S NOTICE VACATING COMPLIANCE DEADLINE. Notice is hereby given that the compliance deadline previously set for 5/20/2022 is vacated. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (amg, COURT STAFF) (Filed on 5/19/2022) (Entered: 05/19/2022)
06/07/2022	331	UNDER SEAL SUMMARY JUDGMENT ORDERS. Signed by Judge Yvonne Gonzalez Rogers on 6/7/2022. (amg, COURT STAFF) (Filed on 6/7/2022) (amg, COURT STAFF). (Entered: 06/07/2022)
06/15/2022	332	SUMMARY JUDGMENT ORDERS. *REDACTED VERSION*. Signed by Judge Yvonne Gonzalez Rogers on 6/7/2022. (amg, COURT STAFF) (Filed on 6/15/2022) (Entered: 06/15/2022)
06/15/2022	333	JUDGMENT. Signed by Judge Yvonne Gonzalez Rogers on 6/15/2022. (amg, COURT STAFF) (Filed on 6/15/2022) (Entered: 06/15/2022)
06/17/2022	334	TRANSCRIPT ORDER for proceedings held on 12/16/2021 before Judge Yvonne Gonzalez Rogers by Fitbit LLC, for Court Reporter Pam Batalo-Hebel. (Oussayef, Karim) (Filed on 6/17/2022) (Entered: 06/17/2022)
06/23/2022	335	Transcript of Proceedings held on 12/16/2021, before Judge Gonzalez Rogers. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalohebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (334 in 4:17-cv-05928-YGR) Transcript Order) Redaction Request due 7/14/2022. Redacted Transcript Deadline set for 7/25/2022. Release of Transcript Restriction set for 9/21/2022. (Batalo, Pam) (Filed on 6/23/2022) (Entered: 06/23/2022)
06/23/2022	336	TRANSCRIPT ORDER for proceedings held on 1/18/2022 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Raynee Mercado. (Garteiser, Randall) (Filed on 6/23/2022) (Entered: 06/23/2022)
06/27/2022	337	TRANSCRIPT ORDER for proceedings held on 12/16/2021 before Judge Yvonne Gonzalez Rogers by Cellspin Soft, Inc., for Court Reporter Pam Batalo-Hebel. (Garteiser, Randall) (Filed on 6/27/2022) (Entered: 06/27/2022)
06/27/2022	338	TRANSCRIPT ORDER for proceedings held on 1/18/2022 before Judge Yvonne Gonzalez Rogers by Fitbit LLC, for Court Reporter Raynee Mercado. (Oussayef,

		Karim) (Filed on 6/27/2022) (Entered: 06/27/2022)
06/29/2022	339	MOTION for Attorney Fees filed by Fitbit LLC. Motion Hearing set for 8/9/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 7/13/2022. Replies due by 7/20/2022. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Proposed Order)(Oussayef, Karim) (Filed on 6/29/2022) (Entered: 06/29/2022)
06/29/2022	340	BILL OF COSTS by Fitbit LLC. Objections due by 7/13/2022. (Attachments: # 1 Declaration of Karim Z. Oussayef, # 2 Exhibit 1, # 3 Exhibit 2)(Oussayef, Karim) (Filed on 6/29/2022) (Entered: 06/29/2022)
07/04/2022	341	Transcript of Proceedings held on January 19, 2022, before Judge Yvonne Gonzalez Rogers. Court Reporter Raynee H. Mercado, CSR, telephone number 510-565-7228, cacsr8258@gmail.com. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (338 in 4:17-cv-05928-YGR) Transcript Order) Release of Transcript Restriction set for 9/30/2022. (Mercado, Raynee) (Filed on 7/4/2022) (Entered: 07/04/2022)
07/06/2022	342	***error***MOTION for Extension of Time to File Response/Reply as to 339 MOTION for Attorney Fees <i>Stipulation to Extend Plaintiff's Response and Defendants' Reply Deadlines Regarding Defendants' Motions for Attorneys Fees and Joinder</i> filed by Cellspin Soft, Inc.. (Garteiser, Randall) (Filed on 7/6/2022) Modified on 7/7/2022 (hdj, COURT STAFF). (Entered: 07/06/2022)
07/06/2022	343	STIPULATION WITH PROPOSED ORDER re 339 MOTION for Attorney Fees <i>Stipulation to Extend Plaintiff's Response and Defendants' Reply Deadlines Regarding Defendants' Motions for Attorneys Fees and Joinder</i> filed by Cellspin Soft, Inc.. (Garteiser, Randall) (Filed on 7/6/2022) (Entered: 07/06/2022)
07/07/2022	344	ORDER GRANTING STIPULATION TO EXTEND PLAINTIFF'S RESPONSE AND DEFENDANTS' REPLY DEADLINES REGARDING DEFENDANTS' MOTIONS FOR ATTORNEY FEES AND JOINDER. Responses due by 8/15/2022. Replies due by 9/7/2022. Motion Hearing set for 9/27/2022 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Signed by Judge Yvonne Gonzalez Rogers on 7/7/2022. (amg, COURT STAFF) (Filed on 7/7/2022) (Entered: 07/07/2022)
07/13/2022	345	OBJECTIONS to re 340 Bill of Costs by Cellspin Soft, Inc.. (Attachments: # 1 Declaration PJC Decl, # 2 Exhibit EX 1)(Corcoran, Peter) (Filed on 7/13/2022) (Entered: 07/13/2022)
07/13/2022	346	NOTICE OF APPEAL to the Federal Circuit by Cellspin Soft, Inc. Appeal of 186 , 331 Order, 332 Order, 333 Judgment. Filing fee \$ 505, receipt number ACANDC-17348945. Appeal Record due by 8/12/2022. (Garteiser, Randall) (Filed on 7/13/2022)

		Modified on 7/14/2022 (mcl, COURT STAFF). (Entered: 07/13/2022)
07/14/2022		Electronic filing error . Document not properly linked. [err102]Corrected by Clerk's Office. No further action is necessary. Re: 346 Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc. (mcl, COURT STAFF) (Filed on 7/14/2022) (Entered: 07/14/2022)
07/14/2022		Appeal packet emailed to U.S. Court of Appeals for the Federal Circuit. (mcl, COURT STAFF) (Filed on 7/14/2022) (Entered: 07/14/2022)
07/15/2022	347	Federal Circuit Court of Appeals Case Number 2022-2025 for 346 Notice of Appeal to the Federal Circuit, filed by Cellspin Soft, Inc.. (msr, COURT STAFF) (Filed on 7/15/2022) (Entered: 07/15/2022)
07/15/2022	348	ADMINISTRATIVE MOTION Stay post judgment pending appeal re 347 USCA Case Number filed by Cellspin Soft, Inc.. Responses due by 7/19/2022. (Attachments: # 1 Proposed Order, # 2 Declaration)(Garteiser, Randall) (Filed on 7/15/2022) . Modified on 7/18/2022 (msr, COURT STAFF). (Entered: 07/15/2022)
07/19/2022	349	STIPULATION WITH PROPOSED ORDER re 348 ADMINISTRATIVE MOTION Stay post trial proceedings pending appeal re 347 USCA Case Number filed by Fitbit LLC. (Kringstein, Jamie) (Filed on 7/19/2022) (Entered: 07/19/2022)
07/19/2022	350	ORDER by Judge Yvonne Gonzalez Rogers Granting (349) in case 4:17-cv-05928-YGR; granting (234) in case 4:17-cv-05931-YGR; (203) Stipulation in case 4:17-cv-05932-YGR; (235) in case 4:17-cv-05934-YGR; (246) Stipulation in case 4:17-cv-05936-YGR STIPULATION TO EXTEND DEFENDANTS' RESPONSE DEADLINE REGARDING PLAINTIFF'S ADMINISTRATIVE MOTION TO STAY PENDING APPEAL. (amg, COURT STAFF) (Filed on 7/19/2022) (Entered: 07/19/2022)
07/19/2022		Reset Deadline as to (348 in 4:17-cv-05928-YGR) ADMINISTRATIVE MOTION Stay post trial proceedings pending appeal re (347) USCA Case Number , (233 in 4:17-cv-05931-YGR) ADMINISTRATIVE MOTION, (201 in 4:17-cv-05932-YGR) Motion to Stay pending resolution on appeal, (331 in 4:17-cv-05933-YGR) ADMINISTRATIVE MOTION Stay post judgment proceedings re (313) Judgment, Terminated Case, (329) Notice of Appeal to the Federal Circuit, , (243 in 4:17-cv-05936-YGR) ADMINISTRATIVE MOTION Stay proceedings pending appeal to re (242) Notice of Appeal to the Federal Circuit, . Response due by 7/22/2022. (amg, COURT STAFF) (Filed on 7/19/2022) (Entered: 07/19/2022)
07/21/2022	351	Costs Taxed in amount of \$18,891.44 against Cellspin Soft, Inc. as to 340 Bill of Costs. (kc, COURT STAFF) (Filed on 7/21/2022) (Entered: 07/21/2022)
07/21/2022	352	Costs Taxed in amount of \$18,891.44 against Cellspin Soft, Inc. as to 340 Bill of Costs. ***Amended to add Disallowance Reason***. (kc, COURT STAFF) (Filed on 7/21/2022) (Entered: 07/21/2022)
07/22/2022	353	OPPOSITION/RESPONSE (re 348 ADMINISTRATIVE MOTION Stay post trial proceedings pending appeal re 347 USCA Case Number) filed byFitbit LLC. (Ganguly, Tuhin) (Filed on 7/22/2022) (Entered: 07/22/2022)

07/25/2022	354	REPLY (re 348 ADMINISTRATIVE MOTION Stay post trial proceedings pending appeal re 347 USCA Case Number) filed by Cellspin Soft, Inc.. (Garteiser, Randall) (Filed on 7/25/2022) (Entered: 07/25/2022)
08/15/2022	355	OPPOSITION/RESPONSE (re 339 MOTION for Attorney Fees) filed by Cellspin Soft, Inc.. (Attachments: # 1 Declaration PJC Decl, # 2 Exhibit EX 1 - 2022.03.21 1 Week Extension for Cellspin Daubert Responses, # 3 Exhibit EX 2 - 2020.10.29 3-19-cv-3710 (PDS-IBM) (NDCA) 69)(Corcoran, Peter) (Filed on 8/15/2022) (Entered: 08/15/2022)
08/17/2022	356	ORDER by Judge Yvonne Gonzalez Rogers Denying (348) in case 4:17-cv-05928-YGR; (233) in case 4:17-cv-05931-YGR; (201) in case 4:17-cv-05932-YGR; (331) in case 4:17-cv-05933-YGR; (230) in case 4:17-cv-05934-YGR; (243) in case 4:17-cv-05936-YGR ADMINISTRATIVE MOTION TO STAY. (amg, COURT STAFF) (Filed on 8/17/2022) (Entered: 08/17/2022)
09/01/2022	357	ORDER REGARDING SEALING MOTIONS. Signed by Judge Yvonne Gonzalez Rogers on 9/1/2022. (amg, COURT STAFF) (Filed on 9/1/2022) (Entered: 09/01/2022)
09/07/2022	358	REPLY (re 339 MOTION for Attorney Fees) filed by Fitbit LLC. (Kringstein, Jamie) (Filed on 9/7/2022) (Entered: 09/07/2022)
09/12/2022	359	CLERK'S NOTICE VACATING HEARING. Notice is hereby given that the hearing previously set for 9/27/2022 is vacated. The Court will reset if necessary. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (amg, COURT STAFF) (Filed on 9/12/2022) (Entered: 09/12/2022)
10/06/2022	360	ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES; ORDER DENYING MOTION TO REVIEW CLERK'S ORDER TAXING COSTS; ORDER DENYING AS MOOT MOTION FOR JOINDER. Signed by Judge Yvonne Gonzalez Rogers on 10/6/2022. (amg, COURT STAFF) (Filed on 10/6/2022) (Entered: 10/06/2022)
12/22/2022	361	MOTION to Enforce Execution of Bills of Costs filed by Fitbit LLC. Motion Hearing set for 1/31/2023 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. Responses due by 1/5/2023. Replies due by 1/12/2023. (Attachments: # 1 Declaration of Jamie L. Kringstein, # 2 Exhibit 1, # 3 Proposed Order)(Kringstein, Jamie) (Filed on 12/22/2022) (Entered: 12/22/2022)
01/05/2023	362	STIPULATION WITH PROPOSED ORDER re 361 MOTION to Enforce Execution of Bills of Costs <i>STIPULATION TO CONTINUE DEADLINE TO RESPOND TO DEFENDANTS MOTION TO ENFORCE EXECUTION OF BILLS OF COSTS</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Proposed Order)(Garteiser, Randall) (Filed on 1/5/2023) (Entered: 01/05/2023)
01/06/2023	363	NOTICE by Fitbit LLC of <i>Withdrawal of Counsel, Ameet A. Modi</i> (Kringstein, Jamie) (Filed on 1/6/2023) (Entered: 01/06/2023)
01/08/2023	364	Order Granting in part and Denying in part 362 Stipulation re briefing deadlines.

		Plaintiff shall file any opposition by January 19, 2023. Any reply shall be filed by January 26, 2023. Pursuant to the District's rules, the hearing is continued until February 14, 2023. However, until briefing is complete, it is not known whether argument will be necessary. Entered by Judge Yvonne Gonzalez Rogers. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 01/08/2023)
01/09/2023		Reset Deadlines/Hearing as to 361 MOTION to Enforce Execution of Bills of Costs . Response due by 1/19/2023. Reply due by 1/26/2023. Motion Hearing set for 2/14/2023 02:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Yvonne Gonzalez Rogers. (amg, COURT STAFF) (Filed on 1/9/2023) (Entered: 01/09/2023)
01/19/2023	365	OPPOSITION/RESPONSE (re 361 MOTION to Enforce Execution of Bills of Costs) filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit A - Order)(Garteiser, Randall) (Filed on 1/19/2023) (Entered: 01/20/2023)
01/20/2023	366	MOTION for Recusal filed by Cellspin Soft, Inc.. Responses due by 2/3/2023. Replies due by 2/10/2023. (Attachments: # 1 Proposed Order, # 2 Declaration of Randall Garteiser, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6, # 9 Exhibit 7, # 10 Exhibit 8, # 11 Exhibit 9, # 12 Exhibit 10, # 13 Exhibit 11, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14, # 17 Exhibit 15, # 18 Exhibit 16, # 19 Exhibit 17, # 20 Exhibit 18, # 21 Exhibit 19, # 22 Exhibit 20, # 23 Exhibit 21, # 24 Exhibit 22, # 25 Exhibit 23, # 26 Exhibit 24, # 27 Exhibit 25, # 28 Exhibit 26, # 29 Exhibit 27, # 30 Exhibit 28, # 31 Exhibit 29, # 32 Exhibit 30, # 33 Exhibit 31, # 34 Exhibit 32, # 35 Exhibit 33, # 36 Exhibit 34, # 37 Exhibit 35, # 38 Exhibit 36, # 39 Exhibit 37)(Garteiser, Randall) (Filed on 1/20/2023) (Entered: 01/20/2023)
01/20/2023	367	ORDER REFERRING (366 in 4:17-cv-05928-YGR) MOTION FOR JUDICIAL RECUSAL. Signed by Judge Yvonne Gonzalez Rogers on 1/20/2023. (amg, COURT STAFF) (Filed on 1/20/2023) (Entered: 01/20/2023)
01/23/2023	368	ORDER WITHDRAWING REFERENCE. Signed by Judge Yvonne Gonzalez Rogers on 1/23/2023. (amg, COURT STAFF) (Filed on 1/23/2023) (Entered: 01/23/2023)
01/24/2023	369	STIPULATION to Enlarge Time for Defendants to Respond to Cellspin's Motion for Recusal filed by Fitbit LLC. (Kringstein, Jamie) (Filed on 1/24/2023) (Entered: 01/24/2023)
01/26/2023	370	REPLY (re 361 MOTION to Enforce Execution of Bills of Costs) filed by Fitbit LLC. (Kringstein, Jamie) (Filed on 1/26/2023) (Entered: 01/26/2023)
01/26/2023	371	EXHIBITS re 366 MOTION for Recusal <i>DECLARATION OF RANDALL GARTEISER CORRECTING EXHIBIT QUALITY FOR THE CONVENIENCE OF THE COURT</i> filed by Cellspin Soft, Inc.. (Attachments: # 1 Exhibit 2, replacing [366-4], # 2 Exhibit 3, replacing [366-5], # 3 Exhibit 4, replacing [366-6], # 4 Exhibit 5, replacing [366-7], # 5 Exhibit 6, replacing [366-8], # 6 Exhibit 7, replacing [366-9], # 7 Exhibit 8, replacing [366-10], # 8 Exhibit 9, replacing [366-11], # 9 Exhibit 10, replacing [366-12], # 10 Exhibit 12, replacing [366-14], # 11 Exhibit 14, replacing [366-16], # 12 Exhibit 15, replacing [366-17], # 13 Exhibit 16, replacing [366-18], #

		14 Exhibit 18, replacing [366-20], # 15 Exhibit 36, replacing [366-38])(Related document(s) 366) (Garteiser, Randall) (Filed on 1/26/2023) (Entered: 01/26/2023)
01/27/2023	372	CLERK'S NOTICE VACATING HEARING. Notice is hereby given that the hearing on the 361 MOTION to Enforce Execution of Bills of Costs previously set for 2/14/2023 is vacated. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (amg, COURT STAFF) (Filed on 1/27/2023) (Entered: 01/27/2023)
02/03/2023	373	OPPOSITION/RESPONSE (re 366 MOTION for Recusal) filed byFitbit LLC. (Attachments: # 1 Declaration of Jamie L. Kringstein, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6)(Kringstein, Jamie) (Filed on 2/3/2023) (Entered: 02/03/2023)
02/03/2023	374	OPPOSITION/RESPONSE (re 366 MOTION for Recusal) filed byNikon Americas, Inc., Nikon Inc.. (Attachments: # 1 Declaration of Yuka Teraguchi, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F)(Teraguchi, Yuka) (Filed on 2/3/2023) (Entered: 02/03/2023)
02/10/2023	375	REPLY (re 366 MOTION for Recusal) filed byCellspin Soft, Inc.. (Attachments: # 1 Declaration of Randall T. Garteiser, # 2 Exhibit 38, # 3 Exhibit 39, # 4 Exhibit 40, # 5 Exhibit 41)(Garteiser, Randall) (Filed on 2/10/2023) (Entered: 02/10/2023)
02/15/2023	376	Order by Judge Yvonne Gonzalez Rogers Denying (366) MOTION FOR RECUSAL PURSUANT TO SECTION 455 in case 4:17-cv-05928-YGR.Associated Cases: 4:17-cv-05928-YGR, 4:17-cv-05931-YGR, 4:17-cv-05932-YGR, 4:17-cv-05933-YGR, 4:17-cv-05934-YGR, 4:17-cv-05936-YGR(amg, COURT STAFF) (Filed on 2/15/2023) (Entered: 02/15/2023)

PACER Service Center			
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02/17/2023 14:05:27			
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United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CELLSPIN SOFT, INC.,

Plaintiff,

vs.

FITBIT, INC.,

NIKE, INC.,

UNDER ARMOUR, INC.,

FOSSIL GROUP, ET AL.,

GARMIN INTERNATIONAL, INC.,

NIKON AMERICAS, INC., ET AL.,

Defendants.

**ORDER DENYING MOTION FOR RECUSAL
PURSUANT TO SECTION 455**

Case No. 4:17-CV-05928-YGR

Case No. 4:17-CV-05931-YGR

Case No. 4:17-CV-05932-YGR

Case No. 4:17-CV-05933-YGR

Case No. 4:17-CV-05934-YGR

Case No. 4:17-CV-05936-YGR

Pending before the Court is a futile attempt to evade the Federal Circuit’s review of this Court’s June 7, 2022, 83-page comprehensive order granting defendants’ motions for summary judgment. (Dkt. No. 331.)¹ Plaintiff’s chosen vehicle is a motion for recusal of the undersigned under 28 U.S.C. §§ 455(a)-(d). (Dkt. No. 366.)

¹ These defendants include Fitbit, Inc. (“Fitbit”), Nike, Inc. (“Nike”), Under Armour, Inc. (“Under Armour”), Fossil Group (“Fossil”), Garmin International, Inc. (“Garmin”), and Nikon Americas, Inc. (“Nikon”). Plaintiff’s caption also extends its motion to defendant Moov, Inc. (“Moov”). Judgment was not entered as to Moov.

All docket references are to Case No. 4:17-cv-5928-YGR unless otherwise indicated.

United States District Court
Northern District of California

1 In short, plaintiff’s attack on the integrity of the judiciary, through the undersigned,² not
2 only demonstrates a measure of desperation, but is divorced from the law and the facts. Reduced
3 to its essence, and extended to its illogical conclusion, the motion would seek to have federal
4 judges recuse after the appeal of their objective findings, based upon nothing but speculation and
5 attenuation. The argument is extreme and meritless.

6 Notably, plaintiff’s motion is also plagued by myriad procedural deficiencies. While the
7 Court is under no obligation to address the meritless assertions in detail, it does so at exacting
8 length to increase transparency³ and reassure the public that members of the judiciary take
9 seriously their obligation to be impartial and objective. Unfortunately, the judiciary cannot predict
10 when lawyers and parties will grasp to bypass the normal avenues of appellate review hoping for
11 the proverbial second bite at the apple.

12 Simply put, the undersigned has no material financial stake in the outcome of this case and
13 there is no other reason why her impartiality might reasonably be questioned to justify recusal.
14 Evidence does not exist to support a contrary result. Nor do bald attorney arguments divorced
15 from law and fact compel a different finding. For the following reasons, the motion for recusal is
16 **DENIED.**⁴

17 _____
18 ² Through convoluted allegations, the plaintiff also seeks to attack the business affiliations
19 of the undersigned’s husband. The undersigned’s husband is only affiliated with this case by way
20 of the undersigned’s role as an officer of the court. While his name has been extensively
21 highlighted in the record, the Court finds no reason to inject it further into this dispute.

22 ³ Plaintiff baldly suggests that the Court has been derelict by failing to submit its 2021 and
23 2022 financial disclosures. This attack on the Court’s integrity is inconsistent with fact. The 2022
24 deadline has not passed. As to the 2021 fiscal year, the Court did timely submit a disclosure. Its
25 public release has been temporarily stayed because the Administrative Office of the U.S. Courts,
26 not the undersigned, found that the undersigned and her husband actually **over-disclosed**, further
27 demonstrating the Court’s commitment to transparency. That disclosure will ultimately be
28 released and will not change the outcome of this motion.

⁴ Fitbit, Nike, Under Armour, Fossil, and Nikon all filed briefs opposing the motion in
their respective cases or the docket concerning Fitbit. Garmin filed an unopposed request for
leave to file its opposition, which is granted. All oppositions are considered.

Since plaintiff failed to notice the motion for hearing consistent with Civil Local Rule 7-2,
Fitbit noticed the motion for hearing on February 28, 2023. Pursuant to Federal Rule of Civil
Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that the motion is appropriate for
decision without oral argument. Therefore, the hearing noticed for February 28, 2023 is

United States District Court
Northern District of California

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I. BACKGROUND

The Court assumes the parties’ familiarity with the factual underpinnings of this lawsuit, which are largely irrelevant to the pending motion.

This lawsuit was commenced in 2017 when plaintiff filed over a dozen complaints alleging infringement of one or more patents. In December 2017, the undersigned related fourteen cases. (Dkt. No. 18.) Subsequently, on April 10, 2018, the Court dismissed plaintiff’s claims finding that the asserted patents at issue were directed to unpatentable subject matter pursuant to 35 U.S.C. § 101. (Dkt. No. 79, 81.) That order was appealed and subsequently reversed by the Federal Circuit. (Dkt. No. 108.) Following remand, the cases proceeded through claim construction and discovery.

Relevant to the pending motion, on February 3, 2021, Fitbit submitted an Amended Corporate Disclosure Statement and Amended Certification of Interested Parties disclosing that “it is a subsidiary of Google LLC, which is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company.” (Dkt. No. 165.) According to plaintiff’s pending motion, Google’s⁵ introduction into these proceedings via Fitbit gave rise to publicly known circumstances which plaintiff now claims, over – months later, required the undersigned to recuse herself from these patent cases. Plaintiff did not move for disqualification and proceedings continued.

In January 2022, the defendants moved for summary judgment of noninfringement. A joint hearing on the motions was held on April 22, 2022, where the nuances of the various motions were addressed extensively. After taking the motions for summary judgment under submission, the Court issued a comprehensive omnibus order on June 7, 2022. (Dkt. No. 331.) That order addressed the particularities of each motion brought by the defendants. Where the order addressed all pending claims, judgment was entered in favor of the defendants on June 15, 2022.

VACATED.

⁵ Plaintiff broadly uses “Google” to refer to myriad projects, investments, entities, partnerships, and services. Through this shotgun tactic, plaintiff has substantially failed to articulate the legal foundation throughout the vast majority of its filings.

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1 Approximately one month later, plaintiff filed its notice of appeal on July 13, 2022. (Dkt.
2 No. 346.) Taking judicial notice of the appellate record, the appeal was docketed on July 15,
3 2022, and plaintiff filed an opening brief on December 16, 2022.

4 Nearly seven months after entry of judgment and after substantial progress on appeal,
5 plaintiff has now moved to recuse the undersigned pursuant to 28 U.S.C. §§ 455(a)-(d) and
6 requests that the Court vacate the entry of summary judgment in favor of the defendants due to the
7 alleged violations of section 455. In short, the motion asserts that the Court has an appearance of
8 bias in favor Google or financial interests in Google. Plaintiff bases these allegations on at least
9 three reasons: (1) the undersigned’s husband’s employment with McKinsey & Company, Inc.
10 (“McKinsey”); (2) the undersigned’s husband’s employment with Ajax Strategies Venture Capital
11 as an Operating Partner (“Ajax”) where he purportedly handles over eight companies funded
12 and/or in partnership with Google; and (3) the undersigned’s purported investments in Google and
13 the defendants through the Vanguard 500 Index Fund, Vanguard Total International Stock Index
14 Fund, and the McKinsey Special Situations Aggressive Long-Term fund (“Special Situations
15 Fund”). While plaintiff’s motion attaches over 1500 pages of exhibits, the Court notes that
16 plaintiff does not cite to the documents with any degree of particularity. As addressed below, the
17 accusations are frivolous and devoid of any evidentiary merit. While unnecessary, this order
18 provides detail to support transparency and any appellate review.

19 **II. LEGAL STANDARDS**

20 The standard for recusal is not in serious dispute. The Court’s duty to recuse here is
21 governed by 28 U.S.C. § 455.

22 First, a judge “shall disqualify [her]self in any proceeding in which [her] impartiality might
23 reasonably be questioned.” 28 U.S.C. § 455(a). In analyzing the Court’s impartiality, the Ninth
24 Circuit “employ[s] an objective test: ‘whether a reasonable person with knowledge of all the facts
25 would conclude that the judge’s impartiality might reasonably be questioned.’” *Clemens v. U.S.*
26 *Dist. Ct.*, 428 F.3d 1175, 1178 (9th Cir. 2005) (quoting *Herrington v. County of Sonoma*, 834 F.2d
27 1488, 1502 (9th Cir. 1988)). It is well-known that “the ‘reasonable person’ is not someone who is
28 ‘hypersensitive or unduly suspicious,’ but rather is a ‘well-informed, thoughtful observer.’ The

1 standard must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is
 2 mandated upon the merest unsubstantiated suggestion of personal bias or prejudice.” *United*
 3 *States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008) (internal citations omitted).

4 Second, a judge “shall also disqualify [her]self . . . [when she] knows that [s]he,
 5 individually or as a fiduciary, or [her] spouse . . . has a financial interest in the subject matter in
 6 controversy or in a party to the proceeding, or any other interest that could be substantially
 7 affected by the outcome of the proceeding.” 28 U.S.C. § 455(b)(4). A “financial interest” is
 8 statutorily defined as “ownership of a legal or equitable interest, however small, or a relationship
 9 as director, adviser, or other active participant in the affairs of a party.” 28 U.S.C. § 455(d)(4).
 10 However, “[o]wnership in a mutual or common investment fund that holds securities is not a
 11 ‘financial interest’ in such securities unless the judge participates in the management of the fund.”
 12 28 U.S.C. § 455(d)(4)(i).

13 Notably, “[j]udges are presumed to be impartial and, accordingly, parties seeking recusal
 14 bear the substantial burden of proving otherwise.” *Stebbins v. Polano*, No. 21-cv-04184-JSW,
 15 2021 WL 8532245, at *1 (N.D. Cal. Oct. 22, 2021) (internal quotations and citations omitted); *see*
 16 *also Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992) (“A party introducing a
 17 motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party
 18 seeking disqualification bears the substantial burden of proving otherwise.”).

19 **III. DISCUSSION**

20 **A. Jurisdiction**

21 Before diving into the merits of the pending motion, the Court addresses jurisdictional
 22 matters. It is well-established that “[t]he filing of a notice of appeal is an event of jurisdictional
 23 significance—it confers jurisdiction on the court of appeals and divests the district court of its
 24 control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer*
 25 *Disc. Co.*, 459 U.S. 56, 58 (1982). As acknowledged by the Ninth Circuit, this is a “judge-made
 26 doctrine designed to avoid the confusion and waste of time that might flow from putting the same
 27 issues before two courts at the same time.” *Kern Oil & Refining Co. v. Tenneco Oil Co.*, 840 F.2d
 28 730, 734 (9th Cir. 1988) (internal quotation marks and citation omitted). Since judgment has been

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1 entered and plaintiff has filed an appeal, this Court has been divested of jurisdiction over the
2 summary judgment order. Jurisdiction continues to exist over post-judgment proceedings
3 ancillary to issues raised on appeal.

4 To the extent plaintiff is seeking to disqualify the undersigned from post-judgment
5 proceedings such as cost motions that have not been decided, that request is properly before the
6 Court. However, plaintiff asks for much more. Plaintiff “moves to vacate entry of the joint
7 Summary Judgment Order in favor of all Defendants and all subsequent orders thereto.” (Dkt. No.
8 366 at 1.) Procedurally, the request to vacate the summary judgment order is defective for at least
9 two reasons.

10 First, the summary judgment order is before the Federal Circuit. The Court has no
11 authority to vacate the order because the appeal divested it of jurisdiction. Plaintiff should have
12 filed a motion for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1. That rule
13 would permit this Court to defer consideration of the motion, deny it, or state that it would grant it.
14 Notably, the rule and relevant standard is nowhere within plaintiff’s motion. Even though plaintiff
15 is not pro se and is proceeding through counsel, the Court generously construes a request for an
16 indicative ruling into plaintiff’s filing to promote judicial economy for the Court and parties.

17 Second, requests to vacate are made pursuant to Federal Rule of Civil Procedure 60.
18 Under Rule 60, a district court “may relieve a party or its legal representative from a final
19 judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or
20 excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have
21 been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously
22 called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the
23 judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an
24 earlier judgment that has been reversed or vacated; or applying it prospectively is no longer
25 equitable; or (6) any other reason that justifies relief.” Plaintiff’s vague gestures to Rule 60 in its
26 motion fails to identify the precise basis upon which it relies to vacate the summary judgment.
27 Once more, the Court generously construes counsel’s motion as a request to vacate the judgment
28 “as void” in light of the conflicts asserted.

1 For the reasons addressed below, the motion fails. No conflict or extraordinary
 2 circumstances exist to void the judgment. The Court would also deny the motion if jurisdiction
 3 existed over the summary judgment order.

4 **B. The Motion is Untimely**

5 Another threshold issue, separate and apart from the jurisdictional issues identified, the
 6 Court considers whether plaintiff’s motion pursuant to section 455 is timely. *United States v.*
 7 *Rogers*, 119 F.3d 1377, 1380 (9th Cir. 1997). The Court has little difficulty determining that it is
 8 not. This on its own is a sufficient basis to deny plaintiff’s motion.

9 Section 455 does not have a statutory deadline. Nevertheless, as the Ninth Circuit has
 10 instructed, “[a]bsent a timeliness requirement, parties would be encouraged to withhold recusal
 11 motions, pending a resolution of their dispute on the merits, and then if necessary invoke section
 12 455 in order to get a second bite at the apple.” *Rogers*, 119 F.3d at 1380. Such an open-ended
 13 approach without any measure of deterrence “would result in increased instances of wasted
 14 judicial time and resources and a heightened risk that litigants would use recusal motions for
 15 strategic purposes.” *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991). Notably,
 16 “[w]here unexplained delay in filing a recusal motion suggests that the recusal statute is being
 17 misused for strategic purposes, the motion will be denied as untimely.” *United States v. Mikhel*,
 18 889 F.3d 1003, 1027 (9th Cir. 2018). Further, “[w]hile no per se rule exists regarding the time
 19 frame in which recusal motions should be filed after a case is assigned to a particular judge, if the
 20 timeliness requirement is to be equitably applied, recusal motions should be filed with reasonable
 21 promptness after the ground for such a motion is ascertained.” *Preston*, 923 F.2d at 733. Courts
 22 have also long recognized that waiting to raise the issue until after an unfavorable order was on
 23 appeal is sufficient grounds to deny a motion. *See, e.g., Oglala Sioux Tribe of Pine Ridge Indian*
 24 *Rsrv. v. Homestake Min. Co.*, 722 F.2d 1407, 1414 (8th Cir. 1983) (“[A] timeliness requirement is
 25 appropriate, especially in this case where the Oglala Sioux were aware of the alleged grounds for
 26 disqualification at the time the case was assigned to Judge Bogue, but the suggestion for
 27 disqualification was not raised until this appeal.”); *In re United Shoe Mach. Corp.*, 276 F.2d 77,
 28 79 (1st Cir. 1960) (“One of the reasons for requiring promptness in filing is that a party, knowing

1 of a ground for requesting disqualification, cannot be permitted to wait and decide whether he
2 likes subsequent treatment that he receives.”).

3 Plaintiff’s motion is not reasonably prompt as demonstrated by plaintiff’s own filings.
4 According to plaintiff’s motion, Fitbit disclosed its affiliation with Google on February 3, 2021
5 after a well-known merger, by filing its amended certification on the docket. Plaintiff is charged
6 with knowledge of this document as a user of ECF. Notably, plaintiff’s allegations concerning the
7 Court’s financial interests and affiliations with Google are based on the undersigned’s 2020
8 Financial Disclosure. That disclosure was available through the balance of 2021 and 2022. While
9 plaintiff highlights the 2020 Financial Disclosure, the investments at issue in the motion have been
10 publicly known since the 2012 Financial Disclosure and have not changed. Remarkably, plaintiff
11 also extensively relies upon this Court’s Questionnaire for Judicial Nominees to criticize
12 affiliations with McKinsey. That questionnaire was submitted and has been publicly available
13 since 2011. Both sources of public information predate Fitbit’s disclosure. While an affiliation
14 with Ajax developed after that disclosure was filed, plaintiff’s own motion and evidence
15 demonstrate that the undersigned’s husband was in the position nine months prior to the motion
16 being brought and that at a minimum plaintiff knew of the position in November (roughly one
17 month prior to substantially commencing appeal). As set forth below, this is immaterial since
18 there are no financial interests or affiliations related to these proceedings.

19 Despite these public disclosures, plaintiff sat on the motion and strategically litigated this
20 case through summary judgment. This is a dispositive fact the reply brief ignores in its entirety.⁶
21 After appealing that ruling, filing an opening brief on appeal, and triggering the defendants’
22 obligation to respond to the appeal, plaintiff then filed the present motion before the Court. There
23 is little doubt that filing the motion nearly seven months after judgment was entered and after an
24 appeal has been substantially commenced is gamesmanship. Indeed, plaintiff’s blanket request to
25 vacate the judgment as to *all defendants*, not just Fitbit, illuminates plaintiff’s true intention of

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27 ⁶ Plaintiff raises a futile argument that it did not know the Federal Circuit was going to
28 decide *Centripetal Networks* until 2022. The inference plaintiff seeks to make is that the decision
substantially altered the legal landscape. As explained *infra*, that decision has no bearing on this
motion.

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1 securing an unwarranted second bite at the apple.

2 The procedural deficiencies of the motion are replete. First, it was only filed in the action
3 concerning Fitbit even though separate judgments were issued as to each defendant in each
4 underlying action and relief was sought against all. Second, the motion also fails to include a
5 notice of motion as required by Civil Local Rule 7-2(b).⁷ This requirement exists to alert non-
6 movants of their rights and obligations with respect to the movant’s assertions. Failing to comply
7 is significant. Consideration of the defendants’ oppositions highlight the concern.

8 Third, proper motion practice requires identification of supporting evidence, not present
9 here. Throughout these proceedings, plaintiff has cited extensively to voluminous documents
10 without explanation and proper pincites. The Court noted as much in the summary judgment
11 order: “Cellspin’s citations to swaths of documents without explanation does not create a genuine
12 dispute of material fact.” (Dkt. No. 331 at 2:12-13.) Despite the admonishment, plaintiff’s
13 counsel has once again submitted approximately 1500 pages in connection with the motion.
14 Plaintiff makes broad string cite references to its exhibits without any pincites. This sends the
15 Court and defendants on a fishing expedition to identify the relevance of a document that is not
16 always apparent. As noted below, some of the documents cited do not exist, others are illegible
17 copies,⁸ and many more do not stand for the proposition asserted even under a liberal construction.
18 Finally, plaintiff has not submitted any declaration to justify its lack of diligence, and instead,
19 once again relies upon misplaced attorney argument divorced from fact and law.

20 For these reasons, the motion is untimely and can be denied.

21 **C. Purported Bases for Recusal**

22 Substantial justification exists to deny the motion on procedural grounds and the Court

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24 ⁷ Under controlling rules, motions in this District must contain a notice that includes the
25 date and time of a hearing, as well as “a concise statement of what relief or Court action the
26 movant seeks.” Civ. L.R. 7-2(b)(1)-(3).

27 ⁸ Plaintiff appreciated that substantial portions of its initial filing were illegible and filed a
28 correction without withdrawing the original set of exhibits. (Dkt. No. 371.) Rather than create a
legible filing in the first instance, plaintiff’s correction required the Court to evaluate two sets of
exhibits to verify the information being provided and discern why they were being corrected.

1 does not need to reach the accusations raised. Nonetheless, to promote transparency and maintain
 2 the Court’s credibility in light of plaintiff’s sweeping assertions, the Court addresses the plaintiff’s
 3 accusations and evidentiary submission at great lengths. In short, the accusations have no merit.
 4 The order addresses affiliations with McKinsey and Ajax that are unrelated to these proceedings,
 5 as well as the Court’s independent financial investments.

6 *1. Affiliations with McKinsey*

7 The Court begins by addressing whether the undersigned’s prior familial affiliations with
 8 McKinsey have created financial interests in this case or create a reasonable appearance of
 9 impartiality to justify recusal in this case. They do not.

10 Plaintiff writes that the undersigned’s husband consults in the oil, gas, and energy sectors
 11 as a Senior Partner at McKinsey, where he has authored over 20 articles related to the oil and gas
 12 industries. From there, plaintiff asserts that McKinsey has a strategic partnership with Google and
 13 has teamed up with Google to assist clients in the oil, gas, and energy sectors as demonstrated by
 14 various McKinsey blog postings. Highlighting one such partnership, which is not directly tied to
 15 the undersigned’s husband (even on information and belief), plaintiff alleges that McKinsey
 16 assisted an energy sector client in avoiding more forest fires and associated power outages in
 17 California after the wake of the Dixon Fire in 2021.⁹ According to the plaintiff “being a senior
 18 partner at McKinsey & Company . . . doing substantial business with Google looks inappropriate
 19 for Google to appear before [the undersigned]. Google and [the undersigned’s] husband’s firm
 20 provide for profit joint solutions to their clients, which creates the objective appearance that [the
 21 undersigned] would be biased in favor of Google.” (Dkt. No. 366 at 8.) For the first time in reply,
 22 plaintiff asserts that the undersigned’s husband sells Google services and that “his pay and bonus
 23 is dependent on his client’s satisfaction and success through the use of Google services.” (Dkt.
 24 No. 375 at 12.) Plaintiff’s evolving theory for recusal is nothing but unsubstantiated speculation
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26
 27 ⁹ The Court notes that the motion references Exhibit 5a to support this factual assertion.
 28 This appears to be missing from the record. Ultimately, this is immaterial because plaintiff has
 not demonstrated that the undersigned’s husband had any involvement with this project, nor is the
 Court aware of any of the work alleged.

1 divorced from any evidence.

2 First, the Court clarifies that the undersigned’s husband has not been a Senior Partner at
3 McKinsey since July 31, 2021. This is eleven months prior to the summary judgment order being
4 issued in this case. Plaintiff’s selective quote of the undersigned’s nomination disclosures to
5 justify recusal does not persuade. The May 2011 disclosure provided in full: “[m]y husband is a
6 senior partner at McKinsey. Matters relating to McKinsey and, more broadly, *to my husband’s*
7 *primary clients* would also likely require recusal.” (Emphasis supplied.) This disclosure differs
8 significantly from plaintiff’s reconstruction in its motion which claims that the undersigned
9 “disclosed that if a ‘primary’ client of her husband’s consulting firm, McKinsey, became a party
10 before her, she would have to recuse herself.” (Dkt. No. 366 at 4.) In short, McKinsey has never
11 been a party to these proceedings. Despite the substantial commentary available online that the
12 plaintiff leverages in its motion, the plaintiff did not, *and cannot*, point to a single instance tying
13 the undersigned’s husband to a Google project or partnership, including without limitation any
14 related to Fitbit or a party in these proceedings. None exists. Nor has plaintiff proffered any
15 admissible evidence that Google was a client, let alone a primary client or partner, of the
16 undersigned’s husband and that he profited from such a relationship. No such evidence exists.
17 Nor does any evidence exist that the parties to this infringement action were clients of my husband
18 in any capacity that would support recusal.¹⁰

19 In short, plaintiff carries a heavy burden to justify disqualification. It has failed to
20 demonstrate that the undersigned or her husband have a material financial stake in the outcome of
21 this case due to McKinsey’s affiliations with Google and there is no other reason why the
22 undersigned’s impartiality might reasonably be questioned.¹¹ The motion is denied on this basis.

23 _____
24 ¹⁰ As a matter of practice, the Court consistently recuses on all matters that have
25 concerned my husband’s clients and this case would be no exception were there any basis to do so.

26 ¹¹ The motion sets forth essentially no foundation for alleged partnerships or projects
27 concerning the undersigned’s husband. At most, it appears that Google was one of several cloud-
28 based service providers for McKinsey, providing services as part of the regular course of business.
Consistent with Advisory Opinion 107, when a “service provider’s transactions with the judge’s
spouse or the spouse’s business are in the regular course of business, routine in nature, and are

2. *Affiliations with Ajax*

Next, plaintiff alleges that the undersigned’s husband has obtained financial benefits from Google since at least March of 2022 through his role as Operations Partner at Ajax. The motion as presented raises two categories of affiliations to suggest that recusal is proper. First, the motion alleges that the undersigned’s husband has overseen the operations of three start-up companies funded by Google since at least March of 2022. This specifically includes: (1) Planet Labs, Inc. (“Planet Labs”); (2) Natel Energy (“Natel”); and (3) Ripple Foods. Second, the motion alleges that the undersigned’s husband has handled several strategic partnerships with Google in his role as Operations Partner. These partnerships include (1) Lime; (2) Voltus; (3) Streetlight Data; (4) Descartes Lab; and (5) Regrow. Again, this argument is frivolous, lacks any merit, and makes substantial misrepresentations of the record provided.

To begin, it is true that the undersigned’s husband has been an Operations Partner at Ajax since April 2022. However, plaintiff seeks to create an inference that the undersigned’s husband has equity in Ajax based solely on the title “Operations Partner.” Plaintiff is wrong. The undersigned’s husband is a contractor for Ajax with no equity in any Ajax portfolio.

In his role as an Operations Partner, he represents Ajax’s interests by serving on the board of Natel and as a board advisor to another company not implicated in the motion.¹² These are his only engagements. Despite plaintiff’s bald accusations, the undersigned’s husband has no interest or relationship with Lime, Voltus, Streetlight Data, Descartes Lab, Regrow, and Ripple Foods. Planet Labs, which is identified in the motion, is one of approximately sixty customers of Natel’s software business. He has no equity interest in Planet Labs, at most his affiliation is attenuated.¹³

unaccompanied by special circumstances suggesting that the selection of the spouse or spouse’s business may have been influenced by the judge’s position, recusal is ordinarily not required.” This applies with equal force here. Adopting plaintiff’s contrary theory would mean the undersigned is required to recuse anytime a business integrates something as simple as a Google search into its internal platforms. No authority supports such a grasping theory.

¹² In furtherance of transparency, the company is Ojjo. The undersigned knows of no affiliations with Google, Ojjo, and other parties in this case that would justify recusal.

¹³ While the foregoing is sufficient to dispense of the motion with respect to all Ajax

1 Other evidentiary submissions are similarly deficient. One, to create the appearance of a
 2 non-existent personal interest to Ripple Foods, plaintiff relies upon a July 14, 2016, article from
 3 AgFunder Network Partners to note that Ripple Foods raised \$30 million from Google and other
 4 investors. Per plaintiff’s own evidence, this alleged conduct pre-dates the undersigned’s
 5 husband’s tenure by approximately six years. No evidence supports any personal affiliation
 6 because none exists. Two, with respect to Streetlight Data, the sole exhibit relied upon is from
 7 April 7, 2020, which would predate any personal affiliation with Ajax by two years. No evidence
 8 supports any personal affiliation because none exists. Three, with respect to Lime’s nexus to
 9 Ajax, plaintiff relies upon a blog post from Lime that apparently touts the benefits it obtains from
 10 Google. No evidence supports any personal affiliation because none exists. Four, as to Descartes
 11 Lab, Regrow, and Voltus, no evidence supports any personal affiliation because none exists.

12 Once more, plaintiff carries a heavy burden to justify disqualification. Relying on nothing
 13 but speculation, it has failed to demonstrate that the undersigned or her husband have a material
 14 financial stake in the outcome of this case due to Ajax’s affiliations and there is no other reason
 15 why the undersigned’s impartiality might reasonably be questioned. The motion is denied on this
 16 basis.

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 20 _____
 21 affiliations, the Court makes note of additional attenuated arguments for recusal that fail to
 22 persuade. First, plaintiff speculates that Natel’s foundation was improper and bears on this
 23 litigation. This is false. Natel was funded in 2009 by a grant from the U.S. Department of Energy
 24 (“DOE”), which overlaps with the undersigned’s husband’s tenure as senior advisor to the U.S.
 25 Secretary of Energy. The undersigned’s husband had no personal involvement with awarding a
 26 grant to Natel. However, the DOE’s funding of Natel from a decade prior is so attenuated, recusal
 27 is not warranted, and the nexus to these proceedings is speculative at best. Attenuated speculation
 28 is insufficient to support recusal.

29 Second, plaintiff relies on a “Power Technology” article to suggest that Natel was funded
 30 by Google in November 2019. Not only was the article dated over two years before any
 31 connection to Ajax, plaintiff misrepresents the substance of the article. As noted, plaintiff
 32 represents that Google funded Natel as shown by the article. However, the article only indicates
 33 that Google funded eleven start-ups. Unrelated to this funding, the article then proceeds
 34 generically to describe five companies that received funding during the COVID-19 pandemic,
 35 including Natel. According to the article, Natel secured funding from two venture funds. It does
 36 not establish that Google invested in Natel. The undersigned and her husband have no knowledge
 37 of any investment by Google into Natel.

1 3. *Financial Investments*

2 Lastly, plaintiff criticizes the Court for three investments that the undersigned has
3 disclosed since her nomination to the bench in 2011. These include a Vanguard 500 Index Fund, a
4 Vanguard Total International Stock Index Fund, and the Special Situations Fund. Each is
5 addressed in turn.

6 a. *Vanguard Funds*

7 Given the substantial overlap concerning the Vanguard 500 Index Fund and Vanguard
8 Total International Stock Index Fund, the Court addresses both together. According to the
9 plaintiff, Google is a Top 10 holding in the Vanguard Index Fund and public sources confirm that
10 it includes significant shares of Nike, Under Armour, Garmin, and Fossil. As to the Vanguard
11 Total International Stock Index, plaintiff alleges that it is publicly known that Samsung and Nikon
12 are significant holdings, and this is significant since Under Armour’s accused devices are made by
13 Samsung. With respect to each fund, plaintiff argues that the undersigned somehow actively
14 manages the investments. Ultimately, this argument is divorced from law and fact, and does not
15 justify recusal.¹⁴

16 As set forth above, judges must disqualify themselves from a case where it is known that
17 the judge or his or her spouse has “a financial interest in the subject matter in controversy or in a
18 party to the proceeding[.]” 28 U.S.C. § 455(b)(4). However, the same statutory scheme expressly
19 provides that “[o]wnership in a mutual or common investment fund that holds securities is not a
20 ‘financial interest’ in such securities unless the judge participates in the management of the fund.”
21 28 U.S.C. § 455(d)(4)(i). Similarly, Canon 3C(1)(c) of the Judicial Code of Conduct applicable to
22 judges requires disqualification when the judge knowingly “has a financial interest in the subject
23 matter in controversy or in a party to the proceeding,” or when the judge has “any other interest
24 that could be affected substantially by the outcome of the proceeding.” Again, pursuant to Canon

25 _____
26 ¹⁴ Plaintiff argues in reply that the defendants should have affirmatively denied the
27 undersigned’s financial relationships to aid public perception. Again, the attorney argument,
28 which is devoid of any citation to legal authority, is inconsistent with law placing a heavy burden
on plaintiff as the party seeking recusal. Despite having no obligation to respond, defendants went
to great lengths to debunk plaintiff’s new conspiracy to evade appeal. The truth prevalent in those
oppositions is one the plaintiff ignores in lodging new criticism at the defendants.

1 3C(3)(c)(i), “ownership in a mutual or common investment fund that holds securities is not a
2 ‘financial interest’ in such securities unless the judge participates in the management of the fund.”
3 What qualifies as a “mutual or common investment fund” is not defined. While not binding, the
4 Committee on Codes of Conduct Advisory Opinion No. 106 is instructive.¹⁵ That opinion lists six
5 factors for consideration: “(1) the number of participants in the fund; (2) the size and diversity of
6 fund investments; (3) the ability of participants to direct their investments; (4) the ease of access to
7 and frequency of information provided about the fund portfolio; (5) the pace of turnover in fund
8 investments; and (6) any ownership interest investors have in the individual assets of the fund.”
9 Moreover, “most mutual funds that are registered with the Securities and Exchange Commission
10 and sold to the public as mutual funds will likely meet the criteria above.” (*Id.*)

11 Based upon undisputed facts,¹⁶ the Vanguard investments at issue are prototypical
12 examples falling into the safe harbors for mutual or common investment funds. Both are
13 registered with the SEC and are sold as mutual funds. Each has separate portfolio managers. Both
14 funds are also diversified and extremely large. For instance, the Vanguard 500 Index Fund
15 investments in over 500 stocks across different sectors of the economy. The reach of the
16 Vanguard Total International Stock Index Fund is global, with almost 8,000 stocks across myriad
17 markets and sectors. Investors in both funds do not obtain any ownership interests in the funds’
18 underlying assets, including by directly holding the stocks. Furthermore, despite plaintiff’s bald
19 and self-serving suggestion, the undersigned does not manage, direct, or control the funds’
20 investments. Both funds clearly fall within the safe harbor exemption.

21 Plaintiff has not proffered any legal authority to support its illusory assertion that the
22 investments at issue here are somehow not exempt, especially considering that the undersigned
23 has no control over the management of the large and extremely diversified portfolios. Instead,
24 plaintiff places substantial reliance on the Federal Circuit’s recent decision in *Centripetal*

25 _____
26 ¹⁵ See Guide to Judiciary Policy, Vol. 2, Pt. B, Sec. 106,
https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02_0.pdf.

27 ¹⁶ To the extent the parties’ papers ask for the Court to take judicial notice of public
28 information concerning the funds at issue, those requests are granted. The documents are given
their appropriate weight.

1 *Networks, Inc. v. Cisco Systems, Inc.*, 38 F.4th 1025 (2022), which is far removed from the
 2 circumstances here. In *Centripetal Networks*, a spouse of the judge *directly* held stock in one of
 3 the parties to the case and the judge continued to preside over the case once it became known that
 4 the spouse had a *direct* interest. *Id.* at 1028-30. Disclosing that interest and placing the stocks in a
 5 blind trust *after the fact* did not spare the judge from recusal. *Id.* The Federal Circuit had no issue
 6 finding that the direct stock ownership was a financial interest that required disqualification or
 7 divestment, and that the district court ran afoul of its statutory obligations by continuing to hold
 8 that known interest during the proceedings. Here, there is no “financial interest” within the
 9 meaning of section 255 because the investments are exempt funds precluding the undersigned
 10 from directly holding stocks of any party to these proceedings.¹⁷ Notably, plaintiff’s papers ignore
 11 that courts have been in accord in reaching the same finding with respect to Vanguard funds.¹⁸
 12 There is no reason to reach a contrary result now.

13 Echoing prior findings, the undersigned has no material financial stake in the outcome of

14
 15 _____
 16 ¹⁷ Plaintiff argues that the Court must hold stocks in its investments because the Court
 17 recused itself without explanation in *Geographic Location Innovations, LLC v. Health Mart*
 18 *Systems, Inc.*, No. 21-cv-05155-YGR, Dkt. No. 21 (N.D. Cal. 2021). According to the plaintiff,
 the Court must have recused because a defendant disclosed that it was owned by McKesson
 Corporation and McKesson is listed in the funds. The prior recusal did not concern any financial
 interest.

19 ¹⁸ See, e.g., *David v. GMAC Mortg., LLC*, No. C11-2914 PJH, 2011 WL 6078272, at *1
 20 (N.D. Cal. Dec. 6, 2011) (concerning Vanguard 500 Index Fund); *Arunachalam v. Pazuniak*, No.
 21 14-cv-05051-JST, Dkt. Nos. 57 at 6 and 57-2 (N.D. Cal. Jan. 08, 2015) (identifying Vanguard
 22 investments in motion papers); *Arunachalam v. Pazuniak*, No. 14-cv-05051-JST, 2015 WL
 23 12839126, at *1-2 (N.D. Cal. Feb. 9, 2015) (finding funds within safe harbor); *Pi-Net Int’l, Inc. v.*
 24 *Citizens Fin. Grp., Inc.*, No. 12-cv-355-RGA, 2015 WL 1283196, at *4 (D. Del. Mar. 18, 2015)
 (concerning Vanguard Institutional Index); *Bank of Am., N.A. v. Martinson*, No. 10-cv-10-WMC,
 2013 WL 12234207, at *1 (W.D. Wis. Jan. 3, 2013) (concerning Vanguard Institutional Index);
 25 *Huebner v. Midland Credit Mgmt.*, No. 14-6046, 2015 WL 1966280, at *3 (E.D.N.Y. May 1,
 26 2015) (concerning Vanguard Group, Inc. portfolios).

27 In order to create an impression that judicial ethics have been substantially over-hauled to
 28 cast doubt on this line of authority, plaintiff relies upon the passage of the Courthouse Ethics and
 Transparency Act, Pub. L. No. 117-125, 136 Stat. 1205 (2022), which generally modified the
 accessibility and timeliness of financial disclosures and potential conflicts of interest. The
 backdrop to this law was the failure of certain judges to disclose direct stock holdings in cases
 where they presided. However, the law did not change section 455. The undersigned holds no
 such interests that would have required further disclosure in these proceedings and has timely filed
 financial disclosures consistent with the undersigned’s obligations.

1 this case because of the Vanguard investments and there is no other reason why her impartiality
2 might reasonably be questioned. The motion for recusal is denied on this basis.

3 *b. Special Situations Fund*

4 Finally, plaintiff notes that the undersigned's 2020 Financial Disclosure identifies the
5 Special Situations Fund as an investment. In short, plaintiff asserts that the Special Situations
6 Fund is opaque and that "[a] huge portion of this opaque investment could be in Big Tech stocks
7 like the defendants in this case." (Dkt. No. 366 at 23.) Because of this investment, plaintiff
8 argues that the Court should be recused from this case and all other "Big Tech" cases. Again, this
9 argument fails.

10 To begin, the Court sets aside the obvious point that plaintiff does not have standing to
11 challenge the undersigned's ability to preside over other cases. While plaintiff has no actual
12 evidence and proffers only speculation, the Court notes for transparency purposes that the Special
13 Situations Fund is managed by the McKinsey Investment Office ("MIO") and functions in essence
14 like a mutual fund where the undersigned has no knowledge or control of the investments being
15 made. The only choice is deciding how much to invest.

16 Pursuant to MIO's public website, it is "a subsidiary of McKinsey & Company and a
17 registered investment adviser regulated by the Securities and Exchange Commission in the US,"
18 and it "invest[s] the retirement assets for the global McKinsey pension plans."¹⁹ Of note, "MIO's
19 investment operations are intentionally separated from McKinsey's consulting operations. *MIO*
20 *does not trade individual stocks or bonds of any public or private company anywhere in the world,*
21 *except in the specific case of credit-default swaps for counterparty hedging. Our macro trading*
22 *strategies involve trading in major asset classes such as sovereign debt, commodities, foreign*
23 *exchange, equity indices, and credit indices." (Emphasis supplied.) Thus, investors such as the*
24 *undersigned do not directly own stocks, however, like the Vanguard funds discussed above,*
25 *individual unknown funds within the Special Situations Fund may separately hold securities.*
26 *Investors do not directly hold public stocks, do not have knowledge of the particular assets that the*

27
28 ¹⁹ See <https://miopartners.com/>.

United States District Court
Northern District of California

1 fund invests in, are denied access to that information when requested, and have no influence on the
2 assets that are pursued. The undersigned and her husband have no control over the fund, have no
3 reason to question the public representations made by MIO on its website, and have no knowledge
4 of any underlying assets directly being held in our names. Thus, plaintiff’s suggestion that the
5 fund lacks any public transparency and is comprised of the defendants’ stock is misplaced.²⁰ The
6 examples outlined in Advisory Opinion No. 106 further demonstrate that investments into a
7 mutual fund such as this is appropriate where there is no information available to investors about
8 the assets and there is no direct control in the investments.

9 Again, the undersigned has no material financial stake in the outcome of this case because
10 of the Special Situations Fund and there is no other reason why her impartiality might reasonably
11 be questioned. The motion for recusal is denied on this basis.

12 **IV. CONCLUSION**

13 As is demonstrated by this Order, the pending motion lacks any substantive basis tethered
14 to law or fact to support recusal or vacatur. Thus, one can only surmise that plaintiff and its
15 lawyers brought the motion for tactical advantage. The Court will not reward such conduct. The
16 motion is denied.

17 This Order terminates Docket Number 366.

18
19 **IT IS SO ORDERED.**

20
21 Dated: February 15, 2023


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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26 _____
27 ²⁰ Plaintiff suggests that holding this investment is improper because a nominee agreed to
28 divest her interest in the fund in connection with her confirmation to the Office of Management
and Budget (“OMB”). The relevance for plaintiff’s theory is attenuated. OMB personnel are not
governed by section 455 or the Judicial Code of Conduct, a point plaintiff concedes in reply. In
fact, the evidence relied upon confirms that the nominee was not provided with information
concerning assets when requested.

1 John J. Edmonds (State Bar No. 274200)

2 jedmonds@ip-lit.com

3 **COLLINS EDMONDS**

4 Collins Edmonds Schlather & Tower, PLLC

5 355 South Grand Avenue, Suite 2450

6 Los Angeles, California 90071

7 Telephone: (213) 973-7846

8 Facsimile: (213) 835-6996

9 Attorneys for Plaintiff,
10 CELLSPIN SOFT INC.

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 CELLSPIN SOFT, INC.,

14 Plaintiff,

15 v.

16 FITBIT, INC.,

17 Defendant.

Case No. 3:17-cv-05928

**COMPLAINT FOR INFRINGEMENT
OF U.S. PATENT NOS. 8,738,794,
8,892,752, AND 9,749,847**

DEMAND FOR JURY TRIAL

Complaint Filed: October 16, 2017

18 **NATURE OF THE ACTION**

19 1. This is a patent infringement action to stop Defendant’s infringement of United States
20 Patent Nos. 8,738,794 entitled “Automatic Multimedia Upload for Publishing Data and
21 Multimedia Content” (the “794 patent”), 8,892,752 entitled “Automatic Multimedia Upload
22 for Publishing Data and Multimedia Content” (the “752 patent”), and 9,749,847 entitled
23 “Automatic Multimedia Upload for Publishing Data and Multimedia Content” (the “847
24 patent”) (collectively, the “Patents-in-Suit”).

25 **THE PARTIES**

26 2. Plaintiff, Cellspin Soft, Inc. (“Cellspin”), is a California corporation with an office and
27 place business at 1410 Mercy Street, Mountain View, California 94041.

28 3. Upon information and belief, Defendant, FitBit, Inc. (“FitBit”), is a corporation
organized under the laws of Delaware, with its principal place of business located at 405
Howard Street, San Francisco, California 94015. Upon information and belief, FitBit, Inc. can
be served with process through its registered agent The Corporation Trust Company at

1 Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

2 **JURISDICTION AND VENUE**

3 4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq.,
4 including 35 U.S.C. §§ 271, 281, 283, and 284. This Court has subject matter jurisdiction over
5 this case for patent infringement, including pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6 5. Plaintiff is the assignee of the Patents-in-Suit with all right, title and interest to bring the
7 claims herein comprising those for past and present infringement, including to recover
8 damages therefor.

9 6. The Court has personal jurisdiction over FitBit, including because FitBit has minimum
10 contacts within the State of California; FitBit has purposefully availed itself of the privileges
11 of conducting business in the State of California; FitBit regularly conducts business within the
12 State of California; and Plaintiff's cause of action arises directly from FitBit's business
13 contacts and other activities in the State of California, including at least by virtue of FitBit's
14 infringing methods and products, which are at least practiced, made, used, offered for sale, and
15 sold in the State of California. FitBit is subject to this Court's specific and general personal
16 jurisdiction, pursuant to due process and the California Long Arm Statute, due at least to its
17 continuous and systematic business contacts in California, including related to operations
18 conducted from its San Francisco, California headquarters and the infringements alleged
19 herein. Further, on information and belief, FitBit is subject to the Court's specific jurisdiction,
20 including because FitBit has committed patent infringement in the State of California,
21 including as detailed herein. In addition, FitBit induces infringement of the patents-in-suit by
22 customers and/or infringing users located in California. Further, on information and belief,
23 FitBit regularly conducts and/or solicits business, engages in other persistent courses of
24 conduct, and/or derives substantial revenue from goods and services provided to persons
25 and/or entities in California.

26 7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), including
27 because FitBit has at least one regular and established place of business in this District and in
28 California, including its San Francisco California headquarters, and at least some of its

1 infringement of the patent-in-suit occurs in this District and in California.

2 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,738,794**

3 8. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

4 9. United States Patent No. 8,738,794 Patent was duly and legally issued by the USPTO
5 on May 27, 2014 after full and fair examination. *See* Exhibit A.

6 10. Claims of the ‘794 Patent comprise, in general, methods comprising acquiring new data
7 in a data capture device after establishing a paired connection with a mobile device;
8 determining the existence of new data by the capture device; transferring the new data from
9 the capture device to the mobile device automatically over the paired connection; applying a
10 user identifier uniquely identifying a particular user to the new data; transferring the new data
11 along with the user identifier to a web service; and making available, at the web service, the
12 new data received from the mobile device over the internet, wherein the new data corresponds
13 to the user identifier.

14 11. FitBit has infringed, and is now infringing, the ‘794 patent, including at least claims 1,
15 2, 3, 4, 7, and 9, in this judicial district, the State of California, and elsewhere, in violation of
16 35 U.S.C. § 271 through actions comprising the practicing, without authority from Plaintiff,
17 methods for acquiring and transferring data from FitBit Bluetooth enabled data capture devices
18 to FitBit web services via Bluetooth enabled mobile devices. On information and belief, FitBit
19 practices the claimed methods via its fitness tracking devices, including smart watches,
20 wearables, fitness bands, and other data capture devices, designed to monitor a user’s
21 biological and/or fitness information and metrics, *e.g.*, heart rate and physical activity such as
22 walking and/or running, as specified herein, comprising Bluetooth functionality, with such
23 products comprising the FitBit Charge 2, FitBit Surge, FitBit One, FitBit Charge HR, FitBit
24 Blaze, FitBit Flex 2, FitBit Charge, FitBit Flex, FitBit Zip, FitBit Alta, FitBit Ultra, FitBit Alta
25 HR, FitBit Aria, FitBit Aria 2, and FitBit Ionic, including when used in conjunction with FitBit
26 mobile applications (including iOS and Android versions thereof) comprising FitBit Mobile,
27 including when used in conjunction with web services comprising www.fitbit.com.

28 12. Without limitation, the accused methods comprising FitBit devices and software which

1 practice said methods support Bluetooth protocols, including Bluetooth 4.0, which enables
2 connection between such devices and other Bluetooth-enabled mobile devices, such as a cell
3 phone, tablet, laptop, or other mobile device, and which permits the user to acquire and transfer
4 data from FitBit devices to the FitBit web services via a Bluetooth enabled mobile device. The
5 accused FitBit methods comprise acquiring and determining the existence of new tracking
6 data, such as heart rate, steps, etc., in the FitBit device after establishing a paired connection
7 with the mobile device, and transferring the new data from the FitBit device to the mobile
8 device automatically over the paired connection. The accused FitBit methods further comprise
9 FitBit applications receiving the new data from the FitBit device and transferring the new data,
10 along with the account information identifying the user, and tied to the new data, to the FitBit
11 web service, such that the FitBit web service receives, and makes available, the new data
12 received over the Internet. Upon information and belief, at least through FitBit's hardware,
13 software, and efforts to test, demonstrate, and otherwise use FitBit devices, FitBit has practiced
14 the accused FitBit methods via at least the use of FitBit devices, comprising at least the
15 foregoing steps.

16 13. Additionally, or in the alternative, FitBit has infringed, and now infringing, the '794
17 Patent in this judicial district, the State of California, and elsewhere, jointly with end users
18 and/or customers (collectively, "users"), wherein all of the foregoing steps are performed by
19 FitBit and/or users. Without limitation, FitBit provides software modules for FitBit Bluetooth
20 enabled capture devices and FitBit applications comprising software modules, and FitBit
21 further receives new data at its web services and makes said new data available via its web
22 services. Further, without limitation, user mobile devices perform at least the remaining steps
23 in the claimed methods under the direction or control of FitBit, including FitBit software and
24 hardware, including because user mobile devices perform said steps in order to receive the
25 benefits of FitBit's web services and/or application, and/or because FitBit conditions use of its
26 web services and/or applications upon performance of the remaining method steps.

27 14. FitBit has had notice of its infringement of the '794 patent pursuant to notifications from
28 Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017.

1 15. To the extent FitBit continues, and has continued, its infringing activities noted above
2 in an infringing manner post-notice of the '794 patent, such infringement is necessarily willful
3 and deliberate. Plaintiff believes and contends that FitBit's continuance of its clear and
4 inexcusable infringement of the '794 patent post notice is willful, wanton, malicious, bad-
5 faith, deliberate, and/or consciously wrongful.

6 16. Including on account of the foregoing, Plaintiff contends such activities by FitBit
7 qualify this as an egregious case of misconduct beyond typical infringement, entitling Plaintiff
8 to enhanced damages. Including based on the foregoing, Plaintiff hereby respectfully requests
9 an award of enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

10 17. Each of FitBit's aforesaid activities have been without authority and/or license from
11 Plaintiff.

12 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,892,752**

13 18. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

14 19. U.S. Patent No. 8,892,752 was duly and legally issued by the USPTO on November 18,
15 2014 after full and fair examination. *See* Exhibit B.

16 20. Claims of the '752 Patent comprise, generally, methods comprising establishing a
17 secure paired Bluetooth connection between a Bluetooth enabled data capture device and a
18 Bluetooth enabled mobile device using an encryption key; acquiring new data in the capture
19 device; receiving a message from the mobile device over the paired connection to enable event
20 notification corresponding to new data on the capture device; determining existence of the new
21 data for transfer; sending an event notification to the mobile device, corresponding to existence
22 of the new data, over the paired connection, wherein the mobile device is configured to listen
23 for the event notification; and transferring the encrypted data from the data capture device to
24 the mobile device, over the paired connection, wherein the mobile device sends the obtained
25 new data with an attached user identifier, a hypertext transfer protocol method, and a
26 destination web address to a remote internet server.

27 21. FitBit has infringed, and is now infringing, the '752 patent, including at least claims 1,
28 2, 4, 5, 12, 13, and 14, in this judicial district, the State of California, and elsewhere, in

1 violation of 35 U.S.C. § 271 through actions comprising the practicing, without authority from
2 Plaintiff, methods for transferring data from FitBit Bluetooth enabled data capture device to
3 remote FitBit internet servers via Bluetooth enabled mobile devices. On information and
4 belief, FitBit practices, and/or induces others to practice, the claimed methods via its fitness
5 tracking devices, including smart watches, wearables, fitness bands, and other data capture
6 devices, designed to monitor a user's biological and/or fitness information and metrics, *e.g.*,
7 heart rate and physical activity such as walking and/or running, as specified herein, comprising
8 Bluetooth functionality, with such products comprising the FitBit Charge 2, FitBit Surge,
9 FitBit One, FitBit Charge HR, FitBit Blaze, FitBit Flex 2, FitBit Charge, FitBit Flex, FitBit
10 Zip, FitBit Alta, FitBit Ultra, FitBit Alta HR, FitBit Aria, FitBit Aria 2, and FitBit Ionic,
11 including when used in conjunction with FitBit mobile applications (including iOS and
12 Android versions thereof) comprising FitBit Mobile, including when used in conjunction with
13 FitBit's web servers comprising www.fitbit.com.

14 22. Without limitation, the accused methods comprising FitBit devices and software which
15 practice said methods support Bluetooth protocols, including Bluetooth 4.0, which enables
16 connection between these devices and other Bluetooth-enabled devices, such as a cell phone,
17 laptop, tablet, or other mobile device, which permits the user to establish a secure connection
18 between FitBit devices and a mobile device and acquire and transfer data from the FitBit
19 devices to the FitBit web services via the mobile device. The accused FitBit methods comprise
20 establishing a secure paired Bluetooth connection between the FitBit device and the mobile
21 device using a Bluetooth encryption key. Once paired, new data is acquired on the FitBit
22 device, the FitBit device receives a message from the mobile device over the paired connection
23 to enable event notifications which correspond to new data on the FitBit device, the FitBit
24 device determines the existence of the new data for transfer, and the FitBit device sends an
25 event notification to the mobile device over the paired connection, corresponding to existence
26 of new data for transfer, wherein the mobile device is configured to listen for the event
27 notification. The encrypted data is transferred from the FitBit device to the mobile device over
28 the paired connection, wherein the mobile device sends the obtained new data along with the

1 account information, a hypertext transfer protocol operation, and a destination web address to
2 the FitBit web server. Upon information and belief, at least through FitBit's hardware,
3 software, and efforts to test, demonstrate, and otherwise use FitBit devices, FitBit has practiced
4 the accused FitBit methods via at least the use of FitBit devices, comprising at least the
5 foregoing steps.

6 23. FitBit has had notice of its infringement of the '752 patent pursuant to notifications from
7 Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017.

8 24. Additionally, or in the alternative, FitBit has induced, and continues to induce,
9 infringement of the '752 Patent in this judicial district, the State of California, and elsewhere,
10 by actively inducing direct infringement of the '752 Patent, including by knowingly and
11 actively aiding or abetting infringement by users, by and through at least instructing and
12 encouraging the use of the FitBit products and software noted above. Such aiding and abetting
13 comprises providing devices, software, web servers, and/or instructions regarding the use
14 and/or operation of the FitBit devices, applications, and web servers in an infringing manner.
15 Further, the direct infringement of users that occurs in connection with FitBit's applications
16 and/or web services occurs under the direction or control of FitBit, including FitBit software
17 and hardware, including because user devices perform said steps in order to receive the
18 benefits of FitBit's web services and/or mobile application, and/or because FitBit conditions
19 use of its web services and/or mobile applications upon performance of the remaining method
20 steps. Such induced infringement has occurred since FitBit became aware of the '752 Patent,
21 at a minimum, as noted above, and the knowledge and awareness that such actions by users
22 comprise infringement of the '752.

23 25. To the extent FitBit continues, and has continued, its infringing activities noted above
24 in an infringing manner post-notice of the '752 patent, such infringement is necessarily willful
25 and deliberate. Plaintiff believes and contends that FitBit's continuance of its clear and
26 inexcusable infringement of the '752 patent post notice is willful, wanton, malicious, bad-
27 faith, deliberate, and/or consciously wrongful.

28 26. Including on account of the foregoing, Plaintiff contends such activities by FitBit

1 qualify this as an egregious case of misconduct beyond typical infringement, entitling Plaintiff
2 to enhanced damages. Including based on the foregoing, Plaintiff hereby respectfully requests
3 an award of enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

4 27. Each of FitBit's aforesaid activities have been without authority and/or license from
5 Plaintiff.

6 **COUNT III – INFRINGEMENT OF U.S. PATENT NO. 9,749,847**

7 28. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

8 29. U.S. Patent No. 9,749,847 was duly and legally issued by the USPTO on August 29,
9 2017 after full and fair examination. *See* Exhibit C.

10 30. Claims of the '847 Patent comprise, generally, systems comprising a capture device
11 comprising: a communication device configured to establish a secure paired connection with
12 a cellular phone, a processor configured to acquire new-data using a data capture circuitry after
13 the paired connection is established, wherein said processor is configured to store the acquired
14 new-data in a coupled memory device and send an event notification along with the acquired
15 new-data to the cellular phone over the paired connection; and a mobile application comprising
16 a graphical user interface in the cellular phone configured to listen for and receive the event
17 notification, receive the acquired new-data over the established paired connection, store the
18 new-data in a memory device of the cellular phone before transfer to a website, and use HTTP
19 to transfer the new-data, along with user information, to the website over a cellular data
20 network.

21 31. FitBit has infringed, and is now infringing, the '847 patent, including at least claims 1,
22 2, and 3, in this judicial district, the State of California, and elsewhere, in violation of 35 U.S.C.
23 § 271 through actions comprising the making, using, offering for sale, and/or selling, without
24 authority from Plaintiff, systems for transferring data from FitBit Bluetooth enabled data
25 capture devices to FitBit websites via Bluetooth enabled cellular phones. On information and
26 belief, FitBit makes, uses, offers for sale, and/or sells, and/or induces others to use, the claimed
27 systems, including fitness tracking devices, including smart watches, wearables, fitness bands,
28 and other data capture devices, designed to monitor a user's biological and/or fitness

1 information and metrics, *e.g.*, heart rate and physical activity such as walking and/or running,
2 as specified herein, comprising Bluetooth functionality, with such products comprising the
3 FitBit Charge 2, FitBit Surge, FitBit One, FitBit Charge HR, FitBit Blaze, FitBit Flex 2, FitBit
4 Charge, FitBit Flex, FitBit Zip, FitBit Alta, FitBit Ultra, FitBit Alta HR, FitBit Aria, FitBit
5 Aria 2, and FitBit Ionic, including when used in conjunction with FitBit mobile applications
6 (including iOS and Android versions thereof) comprising FitBit Mobile.

7 32. Without limitation, the accused FitBit devices support Bluetooth protocols, including
8 Bluetooth 4.0, which enables connection between such devices and other Bluetooth-enabled
9 devices, such as a cellular phone, which permits the user to establish a secure connection
10 between the FitBit devices and a cellular phone and acquire and transfer data from the FitBit
11 devices to the FitBit web services via the cellular phone. These FitBit devices comprise capture
12 devices, comprising a communication device within the FitBit devices configured to establish
13 a secure paired connection with a cellular phone, a processor configured to acquire new-data
14 on the FitBit devices, *e.g.*, heart rate or step tracking data, using data capture circuitry within
15 the FitBit devices after the paired connection is established. The processor within the FitBit
16 devices is coupled to a memory device within said devices, wherein said processor is
17 configured to store the acquired new-data in the memory device and send an event notification,
18 along with the acquired new-data, to the authenticated and paired cellular phone over the
19 established paired connection. The FitBit application comprises a graphical user interface for
20 operation on the cellular phone, and the FitBit application is configured to listen for and receive
21 the event notification from the FitBit devices, receive the acquired new-data over the
22 established paired connection from the FitBit devices, store the new-data in a memory device
23 of the cellular phone before transfer to the FitBit websites, and use HTTP to transfer the new-
24 data, along with the account information, to the FitBit websites over a cellular data network
25 servicing the cellular phone. In addition, and in the alternative, to FitBit's making, offering for
26 sale, and/or selling of the FitBit devices and applications, upon information and belief, at least
27 through FitBit's hardware, software, and efforts to test, demonstrate, and otherwise use FitBit
28 devices, FitBit has used the claimed systems via at least the use of the FitBit devices as noted

1 above.

2 33. FitBit has had notice of its infringement of the '847 patent pursuant to notification from
3 Plaintiff comprising a letter mailed on August 31, 2017.

4 34. Additionally, or in the alternative, FitBit has induced, and continues to induce,
5 infringement of the '847 Patent in this judicial district, the State of California, and elsewhere,
6 by intentionally inducing direct infringement of the '847 Patent, including by knowingly and
7 actively aiding or abetting infringement by users, by and through at least instructing and
8 encouraging the use of the FitBit products and software noted above. Such aiding and abetting
9 comprises providing devices, hardware, software, websites, and/or instructions, including
10 providing the accused FitBit devices and applications to users who, in turn, use the claimed
11 systems, including as noted above. Further, the direct infringement by users of the claimed
12 systems provides the user with a direct benefit from the use of FitBit devices and applications.
13 Such induced infringement has occurred since FitBit became aware of the '847 Patent, at a
14 minimum, as noted above, and the knowledge and awareness that such actions and use by users
15 comprise infringement of the '847.

16 35. To the extent FitBit continues, and has continued, its infringing activities noted above
17 in an infringing manner post-notice of the '847 patent, such infringement is necessarily willful
18 and deliberate. Plaintiff believes and contends that FitBit's continuance of its clear and
19 inexcusable infringement of the '847 patent post notice is willful, wanton, malicious, bad-
20 faith, deliberate, and/or consciously wrongful.

21 36. Including on account of the foregoing, Plaintiff contends such activities by FitBit
22 qualify this as an egregious case of misconduct beyond typical infringement, entitling Plaintiff
23 to enhanced damages. Including based on the foregoing, Plaintiff hereby respectfully requests
24 an award of enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

25 37. Each of FitBit's aforesaid activities have been without authority and/or license from
26 Plaintiff.

27 DAMAGES

28 38. By way of its infringing activities, FitBit has caused, and continues to cause, Plaintiff

1 to suffer damages, and Plaintiff is entitled to recover from FitBit the damages sustained by
2 Plaintiff as a result of FitBit’s wrongful acts in an amount subject to proof at trial, which, by
3 law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this
4 Court under 35 U.S.C. § 284.

5 39. FitBit’s infringement of Plaintiff’s rights under the Patents-in-Suit will continue to
6 damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law,
7 unless enjoined by this Court.

8 40. Plaintiff also requests that the Court make a finding that this is an exceptional case
9 entitling Plaintiff to recover their attorneys’ fees and costs pursuant to 35 U.S.C. § 285.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby respectfully requests that this Court enter judgment in favor of Plaintiff and against FitBit, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been directly and/or indirectly infringed by FitBit;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for FitBit’s past infringement, together with pre-judgment and post-judgment interest, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A grant of preliminary and permanent injunction pursuant to 35 U.S.C. § 283, enjoining FitBit and all persons, including its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation therewith, from making, using, offering to sell, or selling in the United States or importing into the United States any methods, systems, or computer readable media that directly or indirectly infringe any claim of the Patents-in-Suit, or any methods, systems, or computer readable media that are colorably different;
- D. That this Court declare that FitBit’s infringement has been, and continues to be, willful, including that FitBit acted to infringe the Patents-in-Suit despite an objectively high likelihood that its actions constituted infringement of a valid patent and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;
- E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys’ fees and costs in accordance with 35 U.S.C. § 285; and
- F. A judgment and order requiring FitBit to pay Plaintiff their damages, costs, expenses, fees, and prejudgment and post-judgment interest for FitBit’s infringement of the Patents-in-Suit as provided under 35 U.S.C. §§ 284 and/or 285; and
- G. Any and all further relief for which Plaintiff may show itself justly entitled that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby respectfully requests a trial by jury of any issues so triable by right.

Dated: October 16, 2017

**COLLINS EDMONDS
SCHLATHER & TOWER, PLLC**

By: /s/ John J. Edmonds

JOHN J. EDMONDS
State Bar No. 274200

*Attorneys for Plaintiff,
CELLSPIN SOFT INC.*

Of counsel:

Stephen F. Schlather (*pro hac vice* to be filed)

sschlather@ip-lit.com

Brandon G. Moore (*pro hac vice* to be filed)

bmoore@ip-lit.com

**COLLINS, EDMONDS
SCHLATHER & TOWER, PLLC**
1616 South Voss Road, Suite 125
Houston, Texas 77057
Telephone: (713) 364-5291
Facsimile: (832) 415-2535

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CELLSPIN SOFT, INC.,
Plaintiff,
v.
FITBIT, INC.,
Defendant.

Case No. [17-cv-05928-EDL](#)

ORDER REASSIGNING CASE

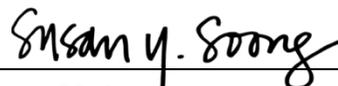
GOOD CAUSE APPEARING THEREFORE,

IT IS ORDERED that this case is reassigned to the Honorable Yvonne Gonzalez Rogers in the Oakland division for all further proceedings. Counsel are instructed that all future filings shall bear the initials YGR immediately after the case number.

All hearing and trial dates presently scheduled are vacated. However, existing briefing schedules for motions remain unchanged. Motions must be renoticed for hearing before the judge to whom the case has been reassigned, but the renoticing of the hearing does not affect the prior briefing schedule. Other deadlines such as those for ADR compliance and discovery cutoff also remain unchanged.

Dated: October 31, 2017

FOR THE EXECUTIVE COMMITTEE



Susan Y. Soong
Clerk, United States District Court

A true and correct copy of this order has been served by mail upon any pro se parties.

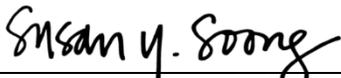
United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ELIGIBILITY FOR VIDEO RECORDING

This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See [General Order 65](#) and cand.uscourts.gov/cameras. The parties' consent is required before any proceedings in this case may be recorded. If a party, the presiding judge, or a member of the media requests that a proceeding be recorded, consent of the parties will be presumed unless a party submits an Objection to Request for Video Recording form as directed by the Cameras in the Courtroom Procedures.

Parties objecting to video recording are asked, for research purposes, to communicate to the Court the reasons for declining to participate. If you decline to participate, you should candidly convey the reasons for your decision. Whether you agree to participate or decline to participate will have no effect on your case whatsoever.



Susan Y. Soong, Clerk of Court

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RELATED CASE ORDER

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed. As the judge assigned to case

17-cv-05928-YGR

Cellspin Soft, Inc. v. Fitbit, Inc.

I find that the more recently filed case(s) that I have initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

Case	Title	Related	Not Related
17-cv-05929-RS	Cellspin Soft, Inc. v. Moov Inc.	YGR	
17-cv-05930-VC	Cellspin Soft, Inc. v. Adidas America, Inc.	YGR	
17-cv-05931-JST	Cellspin Soft, Inc. v. Nike, Inc.	YGR	
17-cv-05932-HSG	Cellspin Soft, Inc. v. Under Armour, Inc.	YGR	
17-cv-05933-BLF	Cellspin Soft, Inc. v. Fossil Group, Inc.	YGR	
17-cv-05934-EMC	Cellspin Soft, Inc. v. Garmin International, Inc.	YGR	
17-cv-05936-JSW	Cellspin Soft, Inc. v. Nikon Americas, Inc.	YGR	
17-cv-05937-HSG	Cellspin Soft, Inc. v. TomTom, Inc.	YGR	
17-cv-05938-MEJ	Cellspin Soft, Inc. v. Canon U.S.A., Inc.	YGR	
17-cv-05939-RS	Cellspin Soft, Inc. v. GoPro, Inc.	YGR	
17-cv-05940-WHO	Cellspin Soft, Inc. v. Eastman Kodak Company	YGR	
17-cv-05941-EMC	Cellspin Soft, Inc. v. Panasonic Corporation of North America		
17-cv-06881-WHO	Cellspin Soft, Inc. v. JK Imaging Ltd.	YGR	

ORDER

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re-noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated: December 5, 2017


Yvonne Gonzalez Rogers
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CELLSPIN SOFT, INC.,
Plaintiff,
v.
FITBIT LLC,
Defendant.

Case No. 17-cv-05928-YGR

JUDGMENT

Having granted defendant’s motion for summary judgment, the Court hereby orders, adjudges, and decrees that judgment be entered in favor of defendant.

The Clerk of Court shall enter judgment and close the matter.

IT IS SO ORDERED.

Dated: June 15, 2022


YVONNE GONZALEZ ROGERS
United States District Judge

United States District Court
Northern District of California

1 Randall T. Garteiser (CA State Bar No. 231821)
 rgarteiser@ghiplaw.com
 2 Christopher A. Honea (CA State Bar No. 232473)
 chonea@ghiplaw.com
 3 M. Scott Fuller (TX State Bar No. 24036607)
 sfuller@ghiplaw.com
 4 GARTEISER HONEA
 5 95 Third Street, 2nd Floor, San Francisco, CA 94103
 119 W Ferguson, Tyler, TX 75702
 6 Telephone/Facsimile: (888) 908-4400
 7
 8 Attorneys for Plaintiff,
 CELLSPIN SOFT INC.

9
 10
 11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **OAKLAND DIVISION**

14 CELLSPIN SOFT, INC.,

15 Plaintiff

16 v.

17 FITBIT LLC.,

18 Defendant.
 19
 20

NOTICE OF APPEAL

Case No. 4:17-CV-05928-YGR

Judge: Honorable Yvonne G. Rogers

1 Plaintiff, Cellspin Soft, Inc. (“Cellspin”), hereby appeals to the United States Court of Appeals for
2 the Federal Circuit from the following:

- 3 (1) the district court’s April 14, 2021, Order styled “Claim Construction Order,” including Dkt. No. 186;
- 4 (2) the district court’s June 7, 2022, Order styled “Summary Judgment Orders,” including filed Under Seal
5 version at Dkt. No. 331 and Dkt. No. 332 (Unredacted Version);
- 6 (3) the district court’s June 15, 2022, Order styled “Judgment,” including at Dkt. No. 333;
- 7 and
- 8 (4) any and all other opinions, orders, findings, conclusions or rulings, including prior to, concurrent with,
9 or after said Judgment in the above-named case that were adverse to Cellspin.

10
11

12 Respectfully submitted,

13
14 Dated: July 13, 2022

15 By: /s/ Randall Garteiser
 16 MICHAEL SCOTT FULLER
 TX State Bar No. 24036607
 17 RANDALL T. GARTEISER
 State Bar No. 231821
 18 CHRISTOPHER A. HONEA
 State Bar No. 232473
 19 PETER J. CORCORAN III
 State Bar No. 224181

20
 21 *Attorneys for Plaintiff,*
 22 *CELLSPIN SOFT INC.*

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