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## Privacy Class Action Growth Fuels New California Gold Rush

By Allison Grande

Law360, New York (November 5, 2015, 10:29 PM ET) -- Plaintiffs class action powerhouse Edelson PC is moving West with the opening of an office in San Francisco, and experts predict that firms on both sides of the privacy bar will continue to be lured to the Golden State where tech firms shoulder the brunt of the scrutiny.

After nearly a decade of operating out of a single office in Chicago, **Edelson revealed Tuesday** that it has set up shop in the South of Market neighborhood in San Francisco, an expansion that moves it closer to the Silicon Valley heavyweights such as Facebook Inc. and Google Inc. that are routinely targeted in class actions over their data gathering and security practices.

"The move is significant," Michael Rynowecer, the president and founder of The BTI Consulting Group Inc., told Law360. "Edelson is making a large statement by planting themselves adjacent to the world where many privacy issues are created."

The new digs also position the firm — and others that have both preceded it and are likely to follow in its footsteps — to take advantage of the exploding privacy class action landscape, which features not only individual cases but also sprawling multidistrict litigation over nationwide data breaches and alleged privacy intrusions that attract fierce competition for leadership positions among plaintiffs counsel, experts say.

"It is essential for plaintiff-side firms to have locations in key jurisdictions, and those that don't are at a disadvantage," said Joseph Siprut, the founder and managing partner of plaintiffs firm Siprut PC. "Given the increasing number of large MDLs, cases are sent to one of a handful of forums at a disproportionately high rate. Having offices and lawyers in those locations bolsters that firm's candidacy in a leadership appointment."

California is a particularly popular venue for these disputes, given the large concentration of technology companies that are developing practices that are not explicitly covered by a patchwork of privacy laws that include many outdated statutes, experts say.

"For those firms that have a deep privacy practice, California is especially important, given that many defendants or future defendants in this space are based in California, which will establish jurisdiction and venue there," Siprut said.

With the advantages of being on the ground in California, experts say that more firms on both sides of the bar are likely to follow Edelson.

"Privacy is a huge growth area right now, and law is a follow-the-money profession," said Kent Zimmermann, a consultant with Zeughauser Group LLC. "If you're after the cleanest spring water, you're going to go to Evian in France or Fiji, so like that, firms will go to the source and build a profile there, which is likely to help them grow their business."

Edelson pointed to the convenience of being in the technology industry's backyard in announcing its new office Tuesday. More than half of the firm's cases are pending in the Northern District of California, and San Francisco office managing partner Rafey Balabanian told Law360 that the firm's

plans to ramp up its filings in the district played a big part in the expansion efforts.

"There's a lot happening in this area, so our caseload is only going to increase," Balabanian said.

In recent years, plaintiffs firms' drive to move into the most active litigation jurisdictions has been on the rise.

Siprut — who is involved in a wide range of privacy and consumer protection litigation, including a putative class action over the 2013 data breach at Neiman Marcus that was **recently revived by** the Seventh Circuit — noted that while his firm also has its main office in Chicago, it expanded to San Diego two years ago, has additional locations in Boston and Colorado Springs, and is working on opening a branch in Miami, where many of its cases are pending.

Robins Kaplan LLP, which does work for both plaintiffs and defendants, also recently expanded its California presence by **opening a Silicon Valley office** in April to focus specifically on technology-centric consultation and litigation involving intellectual property, global business process sourcing, cybersecurity and privacy.

"Ultimately, office locations are driven by the need to provide client service," Richard Martinez, the chair of the privacy and cybersecurity litigation practice at Robins Kaplan, said Thursday. "It's certainly true that given the substantial concentration of technology firms in Northern California, many suits involving those companies wind up there."

Defense firms are also increasing their presence in the Golden State as demand grows for services to bat down the influx of privacy and data breach lawsuits that have been popping up in recent years.

"Companies need a lot of help to deal with data breaches that we're seeing in the news all the time, and that generates a lot of work for law firms and other organizations," Zimmermann said. "And some of those firms, such as BakerHostetler and Hunton & Williams, are developing very strong privacy practices and going to the same places because they know where the hot spots are in privacy."

However, not all attorneys see the benefit of being where the action is.

Scott Kamber, the owner of New York-based plaintiffs firm KamberLaw LLC, opened an office location in Northern California several years ago, but has yet to see a sea change result from that action.

"In doing what we do, the location of the office is entirely irrelevant," he said. "Opening an office in a certain geographical location may actually bias a firm to bring cases where the office is located, as opposed to where they can get the best result."

Kamber noted that in recent years, in light of the case law being developed at the federal level — including the dispute **currently pending before** the U.S. Supreme Court over whether consumers can sue companies such as Spokeo Inc. for technical violations of privacy statutes, which Edelson is involved in as counsel for the plaintiff — he's finding himself filing more cases in state court than federal court.

"Spokeo has definitely motivated some defendants and many plaintiffs to take a closer look at certain state court venues," Kamber said.

He added that bringing cases in the Northern District of California may actually put plaintiffs at a disadvantage by allowing companies to fight on their home turf, and pushed back at the popular notion that Silicon Valley is the epicenter of the privacy litigation ecosystem.

"There was a time when tech-related companies were dealing with all the tech-related issues, but now every company has a website and is dealing with these issues," Kamber said. "It doesn't reflect the current state of litigation to dwell on the fact that the Northern District of California is more the center of the privacy universe than anywhere else."

On the defense side, Cooley LLP litigation partner and privacy practice chair Michael Rhodes — who has represented Facebook, Twitter, Google and a host of other tech companies in groundbreaking privacy class actions — said that while he wasn't entirely surprised at Edelson's move to the West Coast given their already sizeable presence in the district court, he didn't expect the expansion to have much impact on the outcome of litigation.

"Better proximity to the courthouse won't improve the merits of their cases," Rhodes said.

In discussing Edelson's expansion to California, Balabanian also expressed hope that the firm's mere presence in the Bay Area would help keep the privacy and data-gathering practices of its neighbors in check by making them think "longer and harder about cases where they are considering overreaching and infringing on consumers' rights and privacy," an outcome that experts weren't totally sold on.

"It sounds good, but I'm not sure if it's totally accurate," Zimmermann said.

In support of his assertion, Balabanian said that after the firm filed **a cutting-edge case** in Illinois state court in April alleging that Facebook's facial software violates state privacy laws, it heard "through the legal grapevine" that another "household name" in the tech industry that had been contemplating whether or not to collect and analyze the type of biometric data at issue in the suit had decided against it.

But while a law firm's location can be influential and may even add a few concerns for any investor performing due diligence on these tech companies, experts say that innovative businesses are unlikely to let the presence of one more plaintiffs firm on their block get in the way of developing the next big technological advancement.

"This will not deter the leading-edge innovators who believe they are not violating privacy rights," Rynowecer said. "The move may make a few companies think twice, but in the end, there will always be a group of aggressive companies and startups who will push the privacy envelope."

--Editing by Katherine Rautenberg and Kelly Duncan.

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