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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16
17 TASH HEPTING, et al.,
18 Plaintiffs,
19 vs.
20 AT&T CORP., et al.,
21 Defendants.

No. C-06-0672-VRW

**ADMINISTRATIVE MOTION OF
DEFENDANT AT&T CORP. TO
CONSIDER WHETHER CASES
SHOULD BE RELATED**

[N.D. Cal. Civ. L.R. 3-12, 7-11]

22 TOM CAMPBELL, et al.,
23 Plaintiffs,
24 vs.
25 AT&T COMMUNICATIONS OF
CALIFORNIA, et al,
26 Defendants.
27

No. C-06-3596-VRW

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Pursuant to N. D. Cal. Civil Local Rules 3-12 and 7-11, Defendant **AT&T CORP.**
3 (“AT&T”) hereby files this Administrative Motion to Consider Whether Cases Should Be
4 Related to consider whether the subsequently filed case of *Campbell, et al. v. AT&T*
5 *Communications of California, et al.*, No. C-06-3596-VRW, removed on June 6, 2006 (the
6 “*Campbell case*”) should be related to this case (the “*Hepting case*”).

7 **I. ACTION REQUESTED.**

8 An order pursuant to Civil Local Rule 3-12 relating *Campbell* to *Hepting*.

9 **II. REASONS SUPPORTING THE REQUEST.**

10 Civil Local Rule 3-12 provides the applicable standard: “An action is related to
11 another when: (1) The actions concern substantially the same parties, property, transaction
12 or event; and (2) It appears likely that there will be an unduly burdensome duplication of
13 labor and expense or conflicting results if the cases are conducted before different Judges.”
14 Both criteria are met here.

15 *Campbell* is related to *Hepting* because they involve substantially the same parties,
16 transactions and events. *See* Civ. L.R. 3-12(a)(1). If the cases are conducted before
17 different judges, there will likely be a burdensome duplication of labor and expense, as well
18 as the potential for conflicting results. *See* Civ. L.R. 3-12(a)(2).

19 **A. *Campbell* and *Hepting* involve substantially the same parties and events.**

20 **1. Titles and case numbers.**

- 21 • TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN
22 on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T
CORP., AT&T INC. and DOES 1-20, inclusive, Defendants, No. C-06-0672-VRW.
- 23 • TOM CAMPBELL; GEORGE MAIN; DENNIS P. RIORDAN; MARGARET
24 RUSSELL; ROBERT SCHEER; PETER SUSSMAN; RICHARD BELZER;
25 MARC COOPER; STEPHEN J. MATHER; SANDRA RICHARDS; CURREN
WARF; AMERICAN CIVIL LIBERTIES UNION OF NORTHERN
26 CALIFORNIA, a nonprofit corporation; ACLU OF SOUTHERN
CALIFORNIA, a nonprofit corporation; AMERICAN CIVIL LIBERTIES
27 UNION OF SAN DIEGO/IMPERIAL COUNTIES, a nonprofit corporation,
Plaintiffs, vs. AT&T COMMUNICATIONS OF CALIFORNIA, a corporation;
AT&T CORP., a corporation; AT&T, INC., a corporation; and DOES 1 through
28 20, Defendants, No. C-06-3596-VRW.

1 **2. *Campbell* and *Hepting* involve the same parties.**

2 *Plaintiffs:* The named plaintiffs in the *Campbell* case purport to be subscribers of
3 services provided under the AT&T brand. *See Campbell* Dkt. 1, Ex. A (Complaint) ¶¶ 5-
4 16. The named plaintiffs in the *Hepting* case also purport to be subscribers of services
5 provided under the AT&T brand. *See Hepting* Dkt. 8 (First Amended Complaint) ¶¶ 13-16.
6 The *Hepting* case is brought on behalf of a purported national class (and a California
7 subclass) of subscribers of AT&T services. *Hepting* Dkt. 8 at ¶¶ 65, 67. While *Campbell* is
8 not brought as a purported class action, it seeks relief on behalf of all AT&T customers.
9 *See Campbell* Dkt. 1, Ex. A at 11:14 (“Enjoining AT&T from providing any customer
10 calling records . . .”).

11 *Defendants:* Both *Hepting* and *Campbell* name AT&T Corp. and AT&T Inc. as
12 defendants. While *Campbell* names one additional defendant (AT&T Communications of
13 California), that entity is an affiliate of AT&T Corp. and a subsidiary of AT&T Inc.

14 In short, these cases involve substantially the same parties. *See* L.R. 3-12(a)(1). In
15 addition, counsel for plaintiffs in *Campbell* has appeared as an amicus supporting plaintiffs
16 in *Hepting*. *Hepting* Dkt. 76-78.

17 **3. *Campbell* and *Hepting* involve the same transactions and events.**

18 Both cases involve allegations of wrongdoing based on the alleged complicity of
19 defendants in surveillance allegedly conducted by the National Security Agency (“NSA”).
20 *See Hepting* Dkt. 8 ¶¶ 2-8, *Campbell* Dkt. 1, Ex. A ¶¶ 1-4. Both cases implicate federal
21 questions including, *inter alia*, federal statutory and common law immunities and the
22 constitutionally based military and state secrets privilege. *See Campbell* Dkt. 1 (Notice of
23 Removal). Both cases seek a declaratory judgment that defendants have violated plaintiffs’
24 rights, and an injunction barring defendants from assisting the alleged NSA surveillance
25 program. *See Hepting* Dkt. 8 at 28-29, *Campbell* Dkt. 1, Ex. A at 11.

26 In short, both cases involve substantially the same alleged transactions and events.
27 *See* L.R. 3-12(a)(2). Both cases also seek substantially the same equitable relief (*Hepting*
28 also seeks damages).

1 **B. Relating *Campbell* to *Hepting* will conserve judicial resources and avoid**
2 **inconsistent results; relating *Campbell* to another case involving different**
3 **defendants and a different judge makes no sense.**

4 Chief Judge Walker is already overseeing three actions in the District involving
5 similar allegations: *Hepting*, *Campbell* and *Roe, et al. v. AT&T Corp., et al.*, No. C-06-
6 3467-VRW (“*Roe*”). The Court has already determined that *Roe* meets the criteria of Civ.
7 L.R. 3-12(a), having related *Roe* to *Hepting* on June 9, 2006. *See Hepting* Dkt. 189.

8 The Court has presided over *Hepting* since it was filed on January 31, 2006 (*see*
9 Dkt. 1). *Hepting* has been actively litigated: the parties, *amici* and proposed intervenors
10 have made over 200 filings in the Court’s docket. In less than two weeks, the Court will
11 hear the motions to dismiss of defendants AT&T Corp. and AT&T Inc. (Dkts. 79, 86) and
12 of the United States of America (Dkt. 124). Given his extensive familiarity with the facts
13 and complex legal issues presented in *Hepting*, Chief Judge Walker is best situated to
14 preside over *Campbell* as well to avoid the “unduly burdensome duplication of labor and
15 expense” and the prospect of “conflicting results.” L.R. 3-12(a)(2).

16 On June 12, 2006, plaintiffs in the *Campbell* case and another case—*DeBonis, et al.*
17 *v. Verizon Communications, Inc.*, No. C-06-3574-EDL, removed on June 5, 2006 (the
18 “*DeBonis*” case)—filed an Administrative Motion to Consider Whether *Campbell* should
19 be related to *DeBonis* (*DeBonis* Dkt. 3). *DeBonis* does not name as defendant any AT&T
20 entity; instead, it is brought against Verizon, a competitor of AT&T.

21 Under the approach of the *Campbell* and *DeBonis* plaintiffs, their cases would
22 proceed before Magistrate Judge Laporte, while *Hepting* and *Roe* would proceed before
23 Chief Judge Walker. Splitting the cases against the AT&T defendants between two judges
24 will neither conserve resources nor prevent inconsistent results. It would make no sense.

25 In their Administrative Motion, the *Campbell* and *DeBonis* plaintiffs emphasize the
26 fact that they have not pled any federal causes of action. This is irrelevant in the context of
27 a motion to relate cases because similar causes of action is not a factor in determining
28 whether cases are related. *See* Civil L.R. 3-12(a). The important point is that *Campbell* and

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DECLARATION PURSUANT TO CIVIL L.R. 7-11(a)

I, **BRUCE A. ERICSON**, declare:

1. I am a member of the bar of this Court and a member of the law firm of Pillsbury Winthrop Shaw Pittman LLP. I am attorney of record for the named defendants in both *Hepting et al. v. AT&T Corp. et al.*, No. C-06-0672-VRW and in *Campbell et al. v. AT&T Communications of California, et al.*, No. C-06-3596-VRW (“*Campbell*”). I make this declaration in support of AT&T’s Administrative Motion to Consider Whether Cases Should Be Related (“Administrative Motion”). I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

2. As described in the foregoing Administrative Motion, counsel for plaintiffs in the *Campbell* action recently filed their own administrative motion to have the *Campbell* action related to *DeBonis, et al. v. Verizon Communications, Inc.*, No. C-06-3574-EDL, and have both cases proceed before Magistrate Judge Laporte. In light of this fact, I do not believe that a stipulation could be reached with plaintiffs in *Campbell* that would obviate this Administrative Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of June, 2006, at San Francisco, California.

/s/ Bruce A. Ericson
Bruce A. Ericson