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11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN FRANCISCO DIVISION

15 TASH HEPTING, GREGORY HICKS,  
 CAROLYN JEWEL and ERIK KNUTZEN  
 16 on Behalf of Themselves and All Others  
 Similarly Situated,

17 Plaintiff,

18 v.

19 AT&T CORP., AT&T INC. and DOES 1-  
 20 20, inclusive,

21 Defendant.

Case No. C-06-00672-VRW

**NOTICE OF MOTION AND  
 MOTION OF MARK KLEIN  
 FOR LEAVE TO FILE BRIEF  
 AS AMICUS CURIAE**

Hearing Date: N/A  
 Time: N/A  
 Courtroom: 6 (17th floor)  
 Judge: Hon. Vaughn Walker

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Mark Klein hereby moves the Court, pursuant to Civil  
3 Local Rule 7-11, for leave to appear and file the accompanying proposed Brief of Amicus Curiae.  
4 This Motion is based on this Notice of Motion and Motion, Mr. Klein's proposed amicus brief  
5 submitted herewith, the proposed order submitted herewith, the pleadings and papers on file  
6 herein, and such other argument and evidence as may be presented to the Court.

7 Proposed amicus curiae is Mark Klein. This Court should consider Mr. Klein's  
8 submission, in short, "because of [his] involvement in the events leading to this case." *Sonoma*  
9 *Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal.  
10 2003). Mr. Klein was an employee of defendant AT&T Corp. ("AT&T") for 22 years. In 2003,  
11 Mr. Klein began witnessing what he believed to be AT&T's cooperation with the federal  
12 government in unlawfully intercepting the communications of countless AT&T customers.  
13 During the course of his employment, he came into possession of documents that detailed the  
14 nature and mechanism of the surveillance program. As part of his duties as a communications  
15 technician, Mr. Klein was required to connect fiber optic circuits carrying AT&T customers'  
16 private Internet-based data to a device that diverted that same data to a room controlled by the  
17 government.

18 When reports of the government's extensive surveillance program surfaced in December  
19 2005, Mr. Klein realized that he was a witness to (and an unwitting participant in) a massive effort  
20 that had the effect, if not the purpose, of violating the rights of millions of Americans. Looking  
21 only to shed light on AT&T's role in this program, Mr. Klein shared his observations and  
22 provided corroborating documents to plaintiffs' counsel and to select news organizations. It is not  
23 an overstatement to say that Mr. Klein is a central witness in this case, and that his testimony and  
24 documents are the key evidence supporting the plaintiffs' pending motion for a preliminary  
25 injunction. Mr. Klein has not sought, and he does not intend to seek, any monetary compensation  
26 for the harm caused by AT&T's conduct. Instead, his sole interest in this proceeding is seeing to  
27 it that the plaintiffs' grievances are heard by a court of law, and that the unlawful inception of  
28 Internet-based communications is halted.

1 In sum, Mr. Klein has “unique information or [a] perspective that can help the court  
2 beyond the help that the lawyers for the parties are able to provide.” *Id.* (internal quotation marks  
3 and citation omitted). Mr. Klein believes that his submission will aid the Court in adjudicating  
4 various issues that have arisen in this case, such as the defendants’ requests to seal certain papers  
5 and to compel the return of documents, and the United States’ anticipated assertion of the state  
6 secrets privilege. His amicus brief “is at least relevant to the issues raised by the parties [and the  
7 government] for the court’s consideration[.]” *In re McKesson HBOC, Inc. ERISA Litigation*, 2005  
8 U.S. Dist. LEXIS 7078, at \*3 (N.D. Cal. Mar. 31, 2005). Mr. Klein respectfully submits that it  
9 would be patently unfair for the Court to rule on these potentially dispositive motions before  
10 hearing from him.

11 As is set forth in the accompanying Declaration of James J. Brosnahan, Mr. Klein sought  
12 consent to file his papers from counsel for both the plaintiffs and the defendants. Counsel for the  
13 plaintiffs stipulated the Mr. Klein’s participation; counsel for the defendants did not. *See Decl. of*  
14 *James J. Brosnahan at ¶¶ 2-3.*

15 For the foregoing reasons, Mr. Klein respectfully requests that the Court grant this motion  
16 and accept the accompanying Brief of Amicus Curiae.

17 Dated: May 4, 2006

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