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12 UNITED STATES DISTRICT COURT  
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15 TASH HEPTING, GREGORY HICKS,  
 CAROLYN JEWEL and ERIK KNUTZEN, on  
 16 Behalf of Themselves and All Others Similarly  
 Situated,,  
 17

18 Plaintiffs,

19 v.

20 AT&T CORP., et al.,

21 Defendants.

No. C-06-0672-VRW

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION TO EXTEND PAGE  
LIMIT (UNOPPOSED) AND**

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION TO FILE PLAINTIFFS'  
OPPOSITION TO MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT BY THE  
UNITED STATES OF AMERICA AND  
ACCOMPANYING DECLARATION OF  
MICHAEL M. MARKMAN PURSUANT  
TO FED. R. CIV. P. 56(F) UNDER SEAL**

Courtroom: 6, 17th Floor  
Judge: The Hon. Vaughn R. Walker,  
Chief Judge

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1 PLEASE TAKE NOTICE that plaintiffs Tash Hepting, Gregory Hicks, Carolyn Jewel and  
2 Erik Knutzen will and hereby do move the Court:

3 (a) Pursuant to N.D. Cal. Civil Local Rule 7-11 for permission to exceed the page limit set  
4 forth in Civil Local Rules 7-4 for Plaintiffs' Opposition to the Motion to Dismiss Or, in the  
5 Alternative, Motion for Summary Judgment of the United States (the "Opposition"), for a total of  
6 up to 60 pages; and

7 (b) Pursuant to Civil Local Rules 7-11 and 75-9(b), for an order allowing Plaintiffs to file  
8 Plaintiffs' Opposition, and the accompanying Declaration of Michael M. Markman Pursuant to  
9 Fed. R. Civ. P. 56(f), under seal.

10 Plaintiffs seek these administrative orders based on this Notice of Motion and Motion, the  
11 Memorandum of Points and Authorities below, the Declaration of Michael M. Markman filed  
12 herewith, and all associated papers.

### 13 MEMORANDUM OF POINTS AND AUTHORITIES

14 Plaintiffs make two administrative requests on this motion. First, Plaintiffs request leave of  
15 the Court to file a memorandum of points and authorities in Opposition to the Motion to Dismiss  
16 Or, in the Alternative, Motion for Summary Judgment of the United States of 60 pages. Plaintiffs'  
17 request for additional pages is unopposed by the United States. Plaintiffs make this motion in  
18 order to address the multiple and weighty arguments raised by the United States in its Motion to  
19 Dismiss.

20 Plaintiffs further seek leave to file the Opposition, and the accompanying Rule 56(f)  
21 declaration, under seal. Plaintiffs make that request in good faith to protect information that  
22 Defendant AT&T Corporation alleges to be trade secrets and that is discussed in the Opposition.

#### 23 I. ARGUMENT

##### 24 A. Request for Additional Pages

25 Plaintiffs ask the Court for leave to file an Opposition to the government's pending motion  
26 to dismiss of 60 pages. The redacted version of the government's opening brief was 30 pages long;  
27 Plaintiffs have no way of knowing the size of the unredacted brief that the government has  
28 submitted *in camera* and *ex parte*. The government does not oppose Plaintiffs' motion. Markman

1 Decl., ¶ 2.

2 The issues raised by the government’s motion are complex, relating to weighty  
3 constitutional questions and to a complex statutory regime. The government’s motion also  
4 implicates the non-secret facts underlying Plaintiffs’ claims, requiring a discussion of the record  
5 evidence marshaled to date by Plaintiffs to assist the Court.

6 **B. Request to File Under Seal**

7 As discussed in Plaintiffs’ motion to file documents under seal in connection with the  
8 preliminary injunction motion pending in this matter, Defendant AT&T Corp. (“AT&T”) asserts  
9 that evidence developed by Plaintiffs includes AT&T’s confidential trade secrets. While Plaintiffs  
10 contest AT&T’s characterization and reserve all rights to dispute whether particular information  
11 rises to the level of a trade secret, Plaintiffs nevertheless seek to proceed in good faith to address  
12 AT&T’s concerns. Plaintiffs’ Opposition discusses in detail portions of the information that  
13 AT&T asserts constitutes trade secret information in order to rebut the government’s claim that this  
14 case should be dismissed, or summary judgment entered, based on the state secrets privilege.

15 In an abundance of caution, Plaintiffs also submit the accompanying Declaration of  
16 Michael M. Markman Pursuant to Fed. R. Civ. P. 56(f) under seal. The declaration attaches non-  
17 confidential materials relating to Plaintiffs’ Opposition. It also includes a discussion of topics for  
18 further discovery, which may include information that AT&T or the government may contend to be  
19 confidential.

20 Plaintiffs make this request without suggesting that any material in either the Opposition or  
21 the accompanying declaration are trade secrets, state secrets, or otherwise confidential, and without  
22 waiver to Plaintiffs’ right to argue that any of the materials in these documents are non-  
23 confidential. Plaintiffs anticipate that the parties can reach an agreement regarding a protective  
24 order governing documents in this case, and can create a redacted version of the Opposition and  
25 Declaration for the public record.

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1 **II. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request leave of Court to file a 60-page Opposition to  
3 the government's Motion to Dismiss Or, in the Alternative, for Summary Judgment. Plaintiffs also  
4 request leave to file the Opposition and accompanying declaration under seal.

5 DATED: June 8, 2006

Respectfully submitted,

HELLER EHRMAN LLP

7 By /s/Michael M. Markman

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