

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ANN BRICK (State Bar No. 65296)  
MARK SCHLOSBERG (State Bar No. 209144)  
NICOLE A. OZER (State Bar No. 228643)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA  
39 Drumm Street  
San Francisco, California 94111  
Telephone: (415) 621-2493  
Facsimile: (415) 255-8437  
abrick@aclunc.org  
mschlosberg@aclunc.org  
nozer@aclunc.org

Attorneys for Plaintiffs  
(additional counsel listed on following page)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TASH HEPTING, et al.,  
Plaintiffs,  
v.  
AT&T CORP., et al.  
Defendants.

Case No. C-06-0672-VRW

**OPPOSITION OF PLAINTIFFS TOM  
CAMPBELL, ET AL. AND DENNIS P.  
RIORDAN, ET AL. TO AT&T CORP.'S  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES SHOULD  
BE RELATED**

TOM CAMPBELL, et al.,  
Plaintiffs,  
v.  
AT&T COMMUNICATIONS OF  
CALIFORNIA, et al,  
Defendants.

Case No. 06-3596 VRW

OPPOSITION OF PLAINTIFFS TOM CAMPBELL, ET AL. AND DENNIS RIORDAN, ET AL. TO AT&T CORP.'S  
ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED

Case No. C-06-0672-VRW

1 PETER ELIASBERG (State Bar No. 189110)  
2 CLARE PASTORE (State Bar No. 135933)  
3 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
4 1616 Beverly Boulevard  
5 Los Angeles, California 90026  
6 Telephone: (213) 977-9500  
7 Facsimile: (213) 250-3919  
8 peliasberg@aclu-sc.org  
9 cpastore@aclu-sc.org

10 DAVID BLAIR-LOY (State Bar No. 229235)  
11 ACLU FOUNDATION OF SAN DIEGO/IMPERIAL COUNTIES  
12 P.O. Box 87131  
13 San Diego, California 92138  
14 Telephone: (619) 232-2121  
15 Facsimile: (619) 232-0036  
16 dblairloy@aclusandiego.org

17 LAURENCE F. PULGRAM (State Bar No. 115163)  
18 JENNIFER L. KELLY (State Bar No. 193416)  
19 SAINA SHAMILOV (State Bar No. 215636)  
20 FENWICK & WEST LLP  
21 Embarcadero Center West  
22 275 Battery Street  
23 San Francisco, California 94111  
24 Telephone: (415) 875-2300  
25 Facsimile: (415) 281-1350  
26 lpulgram@fenwick.com

27  
28  
OPPOSITION OF PLAINTIFFS TOM CAMPBELL, ET AL. AND DENNIS RIORDAN, ET AL. TO AT&T CORP.'S  
ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED

1 Plaintiffs Tom Campbell, *et al.* and Dennis Riordan, *et al.*, submit this memorandum in  
2 opposition to the motion of AT&T Corp. suggesting that *Campbell, et al. v. AT&T Communications of*  
3 *California, et al.*, case no. C-06-3596 VRW (“*Campbell*”) should be related to *Hepting, et al. v. AT&T*  
4 *Corp., et al.*, case no. C-06-00672 VRW (“*Hepting*”). As discussed in plaintiffs’ own related case  
5 motion concerning *Campbell* and *Riordan et al. v. Verizon Communications, Inc.*, case no. C-06-3574  
6 JSW (“*Riordan*”),<sup>1</sup> while *Campbell* and *Riordan* have much in common that justifies their being treated  
7 as related, they have little in common with *Hepting*.

9 Even the defendants in *Riordan* and *Campbell* concede that these two companion cases should be  
10 heard by the same judge. *See, e.g.*, Opposition of AT&T Defendants to the *Riordan-Campbell* related  
11 case motion at 2 (“Nonetheless, the *Campbell* and *Riordan* cases are related to *Hepting* because they  
12 involve substantially the same parties and events.”); Defendant Verizon’s Response to the *Riordan-*  
13 *Campbell* related case motion at 2, (“Defendant Verizon Communications Inc. . . . agrees that  
14 coordinated treatment of these cases would be appropriate but believes that if *Riordan* and *Campbell* are  
15 ‘related’ under Local Rule 3-12, two other cases . . . *Hepting* . . . and *Roe, et al. v. AT&T Corp., et al.*,  
16 No. C-06-03467—are also related.”). Plaintiffs differ with defendants AT&T and Verizon, however,  
17 about whether *Riordan* and *Campbell* should be related to *Hepting* and *Roe*. In fact the two sets of cases  
18 are very different and little will be gained in terms of judicial economy in having all four cases before  
19 the same judge.  
20  
21

22 First, and foremost, the legal questions the Court will be called upon to resolve in the two sets of  
23 cases are quite different. *Hepting* and *Roe* are both nationwide class action suits for damages, in  
24

---

25 <sup>1</sup> AT&T’s Motion mistakenly refers to *Riordan* as “*Debonis*,” but it is intending to refer to the same  
26 action, C-06-3574 JSW. *Riordan* has been reassigned to Judge White after a declination to proceed  
before a United States Magistrate Judge as it was initially assigned.

1 addition to seeking equitable relief. *Riordan* and *Campbell* are not class action lawsuits, so none of the  
2 class issues that must be resolved in *Hepting* and *Roe* will be at issue in *Riordan* and *Campbell*. Nor  
3 will any of the damages issues be relevant in *Riordan* and *Campbell* because plaintiffs in *Riordan* and  
4 *Campbell* seek only equitable relief.

5  
6 More importantly, the gravamen of the *Hepting* and *Roe* complaints is the claim that defendants  
7 have violated federal law. In *Hepting*, six of the seven claims for relief are based on federal law. The  
8 sole state law claim asserted in *Hepting* is a claim under California Business & Professions Code section  
9 17200 *et seq.* That is the sole state law claim in *Roe*, as well. *Riordan* and *Campbell*, on the other hand,  
10 assert no federal claims, nor do they assert a section 17200 claim. Rather, the two claims for relief in  
11 *Riordan* and *Campbell* are based on (i) the privacy provision of Article I, section 1 of the California  
12 Constitution and (ii) Public Utilities Code section 2891, which prohibits telephone companies from  
13 providing customer calling records to third parties unless it has the customer's consent or unless it is  
14 required to provide the records pursuant to legal process.

15  
16 Because *Riordan* and *Campbell* are quintessentially state law cases, the first substantive issue the  
17 district court must confront is its lack of subject matter jurisdiction over these two cases. Nothing that  
18 has gone before in *Hepting* will result in any judicial economies in resolving that issue. Moreover,  
19 resolution of that threshold issue will most likely result in a remand of the cases to state court, thus  
20 ending the need for further involvement by any judge of this court. Thus the most expeditious and  
21 efficient way to manage *Riordan* and *Campbell* is to have them heard by the judge assigned to *Riordan*,  
22 the lower numbered of the two cases, and to keep them free of the complications and entanglements of  
23 *Hepting* and *Roe*.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 16, 2006

Respectfully submitted,

By: s/Ann Brick  
Ann Brick  
Counsel for Plaintiffs

Ann Brick  
Mark Schlosberg  
Nicole Ozer  
American Civil Liberties Union Foundation  
of Northern California

Peter Eliasberg  
Clare Pastore  
American Civil Liberties Union Foundation  
of Southern California

David Blair-Loy  
American Civil Liberties Union Foundation  
of San Diego/Imperial Counties

Laurence Pulgram  
Jennifer L. Kelly  
Saina Shamilov  
Fenwick & West LLP

OPPOSITION OF PLAINTIFFS TOM CAMPBELL, ET AL. AND DENNIS RIORDAN, ET AL. TO AT&T CORP.'S  
ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED