

1 ANN BRICK (State Bar No. 65296)  
2 MARK SCHLOSBERG (State Bar No. 209144)  
3 NICOLE A. OZER (State Bar No. 228643)  
4 AMERICAN CIVIL LIBERTIES UNION  
5 FOUNDATION OF NORTHERN CALIFORNIA  
6 39 Drumm Street  
7 San Francisco, California 94111  
8 Telephone: (415) 621-2493  
9 Facsimile: (415) 255-8437  
10 abrick@aclunc.org  
11 mschlosberg@aclunc.org  
12 nozer@aclunc.org

13 Attorneys for Plaintiffs  
14 (additional counsel listed on following page)

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 TASH HEPTING, et al.,  
19 Plaintiffs,  
20 v.  
21 AT&T CORP., et al.  
22 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**

23 TOM CAMPBELL, et al.,  
24 Plaintiffs,  
25 v.  
26 AT&T COMMUNICATIONS OF  
27 CALIFORNIA, et al,  
28 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

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

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

10 LAURENCE F. PULGRAM (State Bar No. 115163)  
11 JENNIFER L. KELLY (State Bar No. 193416)  
12 SAINA SHAMILOV (State Bar No. 215636)  
13 FENWICK & WEST LLP  
14 Embarcadero Center West  
15 275 Battery Street  
16 San Francisco, California 94111  
17 Telephone: (415) 875-2300  
18 Facsimile: (415) 281-1350  
19 lpulgram@fenwick.com

20  
21  
22  
23  
24  
25  
26  
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*.

24  
25  
26  
27 OPPOSITION OF PLAINTIFFS TOM CAMPBELL, ET AL. AND DENNIS RIORDAN, ET AL. TO AT&T CORP.'S  
28 ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED

