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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. )  
 22 )  
 \_\_\_\_\_ )

No. C-06-0672-VRW  
**CLASS ACTION**  
**PLAINTIFFS' NOTICE OF MOTION  
 AND MOTION TO FILE  
 SUPPLEMENTARY MATERIAL**  
 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, pursuant to Civil Local Rule 7-11, for an order  
3 allowing Plaintiffs to bring to the Court's attention relevant, supplementary material published  
4 after the June 23, 2006 hearing in this matter.

5 Plaintiffs seek this administrative order based on this Notice of Motion and Motion, the  
6 Memorandum of Points and Authorities below, and the Supplementary Material submitted  
7 herewith.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Plaintiffs seek to submit an internet article published after the June 23, 2006 hearing, titled  
10 "Lawmakers: NSA Database Incomplete," for the Court's consideration. Susan Page et al.,  
11 *Lawmakers: NSA Database Incomplete*, USA Today, June 30, 2006,  
12 [http://www.usatoday.com/news/washington/2006-06-30-nsa\\_x.htm](http://www.usatoday.com/news/washington/2006-06-30-nsa_x.htm). This article contains  
13 important information relating to the Government's motion to dismiss, argued at the June 23  
14 hearing, and would have been cited by the Plaintiffs had it been available before the hearing date.

15 **I. ARGUMENT**

16 At the June 23, 2006 hearing, the government argued, in support of its motion to dismiss on  
17 the basis of the state secrets privilege, that Plaintiffs' claims of warrantless, illegal wiretapping had  
18 no support outside of hearsay and other inadmissible or untrustworthy evidence. The government  
19 argued:

20 The President has confirmed that the government seeks to intercept  
21 communications with one end abroad where one party is associated with al  
22 Qaeda. With respect to all of the other allegations in plaintiffs' complaint, there is  
23 a raft of speculation out there, much of it contradictory, much of it seemingly  
24 confused, all of it sourced either to anonymous, unnamed people who claim to be  
25 insiders or named people who say that they're outside experts and acknowledge  
26 that they're speculating based upon their expertise.  
27 That combination of anonymous assertions and speculations certainly gives rises  
28 to suspicions and may lead lots of people to assume various things. It doesn't  
establish reliable facts.

Mot. to Dismiss Hr'g Tr. 47: 7-19, June 23, 2006.

Plaintiffs respectfully submit that the article submitted herewith rebuts these assertions by

1 the government, and provides additional support for certain facts plead upon information and belief  
2 in the First Amended Complaint. Specifically, the article establishes that “[n]ineteen lawmakers  
3 who had been briefed on the program verified that the NSA has built a database that includes  
4 records of Americans’ domestic phone calls.” *Lawmakers: NSA Database Incomplete*, USA  
5 Today, June 30, 2006, [http://www.usatoday.com/news/washington/2006-06-30-nsa\\_x.htm](http://www.usatoday.com/news/washington/2006-06-30-nsa_x.htm). The  
6 article also states that “[f]ive members of the intelligence committees said they were told by senior  
7 intelligence officials that AT&T participated in the NSA domestic calls program.” *Id.*

8 Good cause exists to allow Plaintiffs to supplement the record with this information  
9 because it did not exist prior to the hearing, and it is not cumulative of the information before the  
10 Court. The article relies on members of Congress who have been briefed on the activities of the  
11 NSA and AT&T. Plaintiffs therefore seek to add this article to the record for the Court’s  
12 consideration in connection with the government’s motion to dismiss.

13 **II. CONCLUSION**

14 For the foregoing reasons, Plaintiffs request leave to file the referenced internet article with  
15 the Court for its consideration.

16  
17 DATED: July 6, 2006

Respectfully submitted,

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