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| 13 | UNITED STATES DISTRICT COURT | | | |
| 14 | NORTHERN DISTRICT OF CALIFORNIA | | | |
| 15 | SAN FRANCISCO DIVISION | | | |
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| 17 | TASH HEPTING, et al., | No. C-06-0672-VRW | | |
| 18 | Plaintiffs, | ADMINISTRATIVE MOTION OF DEFENDANT AT&T CORP. TO | | |
| 19 | vs. | CONSIDER WHETHER CASES SHOULD BE RELATED | | |
| 20 | AT&T CORP., et al., | [N.D. Cal. Civ. L.R. 3-12, 7-11] | | |
| 21 | Defendants. | | | |
| 22 | TOM CAMPBELL, et al., | No. C-06-3596-VRW | | |
| 23 | Plaintiffs, | | | |
| 24 | VS. | | | |
| 25 26 | AT&T COMMUNICATIONS OF CALIFORNIA, et al, | | | |
| 27 | Defendants. | | | |
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| 1 | TO A | TO ALL PARTIES AND THEIR COUNSEL OF RECORD: | | |
|----|---|--|--|--|
| 2 | Pursuant to N. D. Cal. Civil Local Rules 3-12 and 7-11, Defendant AT&T CORP. | | | |
| 3 | ("AT&T") hereby files this Administrative Motion to Consider Whether Cases Should Be | | | |
| 4 | Related to consider whether the subsequently filed case of Campbell, et al. v. AT&T | | | |
| 5 | Communications of California, et al., No. C-06-3596-VRW, removed on June 6, 2006 (the | | | |
| 6 | "Campbell case") should be related to this case (the "Hepting case"). | | | |
| 7 | I. | ACTION REQUESTED. | | |
| 8 | | An order pursuant to Civil Local Rule 3-12 relating Campbell to Hepting. | | |
| 9 | II. | REASONS SUPPORTING THE REQUEST. | | |
| 10 | | Civil Local Rule 3-12 provides the applicable standard: "An action is related to | | |
| 11 | another when: (1) The actions concern substantially the same parties, property, transaction | | | |
| 12 | or event; and (2) It appears likely that there will be an unduly burdensome duplication of | | | |
| 13 | labor and expense or conflicting results if the cases are conducted before different Judges." | | | |
| 14 | Both criteria are met here. | | | |
| 15 | Campbell is related to Hepting because they involve substantially the same parties, | | | |
| 16 | transactions and events. See Civ. L.R. 3-12(a)(1). If the cases are conducted before | | | |
| 17 | differ | ent judges, there will likely be a burdensome duplication of labor and expense, as well | | |
| 18 | as the potential for conflicting results. See Civ. L.R. 3-12(a)(2). | | | |
| 19 | А. | Campbell and Hepting involve substantially the same parties and events. | | |
| 20 | 1. | Titles and case numbers. | | |
| 21 | • | TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T | | |
| 22 | | CORP., AT&T INC. and DOES 1-20, inclusive, Defendants, No. C-06-0672-VRW. | | |
| 23 | • | TOM CAMPBELL; GEORGE MAIN; DENNIS P. RIORDAN; MARGARET RUSSELL; ROBERT SCHEER; PETER SUSSMAN; RICHARD BELZER; | | |
| 24 | | MARC COOPER; STEPHEN J. MATHER; SANDRA RICHARDS; CURREN WARF; AMERICAN CIVIL LIBERTIES UNION OF NORTHERN | | |
| 25 | | CALIFORNIA, a nonprofit corporation; ACLU OF SOUTHERN CALIFORNIA, a nonprofit corporation; AMERICAN CIVIL LIBERTIES | | |
| 26 | | UNION OF SAN DIEGO/IMPERIAL COUNTIES, a nonprofit corporation, Plaintiffs, vs. AT&T COMMUNICATIONS OF CALIFORNIA, a corporation; | | |
| 27 | | | | |

- AT&T CORP., a corporation; AT&T, INC., a corporation; and DOES 1 through 20, Defendants, No. C-06-3596-VRW.
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2.

Campbell and *Hepting* involve the same parties.

2 *Plaintiffs:* The named plaintiffs in the *Campbell* case purport to be subscribers of 3 services provided under the AT&T brand. See Campbell Dkt. 1, Ex. A (Complaint) ¶¶ 5-4 16. The named plaintiffs in the *Hepting* case also purport to be subscribers of services 5 provided under the AT&T brand. See Hepting Dkt. 8 (First Amended Complaint) ¶ 13-16. 6 The *Hepting* case is brought on behalf of a purported national class (and a California subclass) of subscribers of AT&T services. Hepting Dkt. 8 at ¶¶ 65, 67. While Campbell is 7 8 not brought as a purported class action, it seeks relief on behalf of all AT&T customers. 9 See Campbell Dkt. 1, Ex. A at 11:14 ("Enjoining AT&T from providing any customer 10 calling records"). 11 Defendants: Both Hepting and Campbell name AT&T Corp. and AT&T Inc. as 12 defendants. While Campbell names one additional defendant (AT&T Communications of 13 California), that entity is an affiliate of AT&T Corp. and a subsidiary of AT&T Inc. 14 In short, these cases involve substantially the same parties. See L.R. 3-12(a)(1). In 15 addition, counsel for plaintiffs in *Campbell* has appeared as an amicus supporting plaintiffs 16 in Hepting. Hepting Dkt. 76-78. 17 3. *Campbell* and *Hepting* involve the same transactions and events. 18 Both cases involve allegations of wrongdoing based on the alleged complicity of 19 defendants in surveillance allegedly conducted by the National Security Agency ("NSA"). 20 See Hepting Dkt. 8 ¶¶ 2-8, Campbell Dkt. 1, Ex. A ¶¶ 1-4. Both cases implicate federal 21 questions including, *inter alia*, federal statutory and common law immunities and the 22 constitutionally based military and state secrets privilege. See Campbell Dkt. 1 (Notice of

23 Removal). Both cases seek a declaratory judgment that defendants have violated plaintiffs'

rights, and an injunction barring defendants from assisting the alleged NSA surveillance

25 program. *See Hepting* Dkt. 8 at 28-29, *Campbell* Dkt. 1, Ex. A at 11.

In short, both cases involve substantially the same alleged transactions and events. *See* L.R. 3-12(a)(2). Both cases also seek substantially the same equitable relief (*Hepting* also seeks damages).

1B.Relating Campbell to Hepting will conserve judicial resources and avoid2inconsistent results; relating Campbell to another case involving different3defendants and a different judge makes no sense.

Chief Judge Walker is already overseeing three actions in the District involving
similar allegations: *Hepting*, *Campbell* and *Roe*, *et al.* v. *AT&T Corp.*, *et al.*, No. C-06-

6 3467-VRW ("*Roe*"). The Court has already determined that *Roe* meets the criteria of Civ.

7 L.R. 3-12(a), having related *Roe* to *Hepting* on June 9, 2006. *See Hepting* Dkt. 189.

8 The Court has presided over *Hepting* since it was filed on January 31, 2006 (see 9 Dkt. 1). *Hepting* has been actively litigated: the parties, *amici* and proposed intervenors 10 have made over 200 filings in the Court's docket. In less than two weeks, the Court will 11 hear the motions to dismiss of defendants AT&T Corp. and AT&T Inc. (Dkts. 79, 86) and 12 of the United States of America (Dkt. 124). Given his extensive familiarity with the facts 13 and complex legal issues presented in *Hepting*, Chief Judge Walker is best situated to 14 preside over *Campbell* as well to avoid the "unduly burdensome duplication of labor and 15 expense" and the prospect of "conflicting results." L.R. 3-12(a)(2).

16 On June 12, 2006, plaintiffs in the *Campbell* case and another case—*DeBonis, et al.*

17 v. Verizon Communications, Inc., No. C-06-3574-EDL, removed on June 5, 2006 (the

18 "DeBonis" case)—filed an Administrative Motion to Consider Whether Campbell should

19 be related to *DeBonis* (*DeBonis* Dkt. 3). *DeBonis* does not name as defendant any AT&T

20 entity; instead, it is brought against Verizon, a competitor of AT&T.

Under the approach of the *Campbell* and *DeBonis* plaintiffs, their cases would
proceed before Magistrate Judge Laporte, while *Hepting* and *Roe* would proceed before
Chief Judge Walker. Splitting the cases against the AT&T defendants between two judges
will neither conserve resources nor prevent inconsistent results. It would make no sense.

In their Administrative Motion, the *Campbell* and *DeBonis* plaintiffs emphasize the fact that they have not pled any federal causes of action. This is irrelevant in the context of

- a motion to relate cases because similar causes of action is not a factor in determining
- 28 whether cases are related. *See* Civil L.R. 3-12(a). The important point is that *Campbell* and

| 1 | Hepting concern substantially the same parties, transactions and events, and relating them | | |
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| 2 | to Hepting (and therefore to Roe) will avoid the waste of resources and prevent inconsistent | | |
| 3 | results. In any event, these cases all implicate questions of federal law, as defendants in | | |
| 4 | Campbell explained in greater detail in their notice of removal. See Campbell Dkt. 1. | | |
| 5 | III. CONCLUSION. | | |
| 6 | For the foregoing reasons, AT&T requests that Campbell be related to Hepting | | |
| 7 | pursuant to Civil L.R. 3-12. | | |
| 8 | Dated: June 13, 2006. | | |
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| 18 | 8 By | /s/ Bruce A. Ericson Bruce A. Ericson | |
| 19 | 9 Att | orneys for Defendants | |
| 20 | Δ Τ | &T CORP. and AT&T INC. | |
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| 1 | DECLARATION PURSUANT TO CIVIL L.R. 7-11(a) | | |
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| 2 | I, BRUCE A. ERICSON, declare: | | |
| 3 | 1. I am a member of the bar of this Court and a member of the law firm of | | |
| 4 | Pillsbury Winthrop Shaw Pittman LLP. I am attorney of record for the named defendants | | |
| 5 | in both <i>Hepting et al. v. AT&T Corp. et al.</i> , No. C-06-0672-VRW and in <i>Campbell et al. v.</i> | | |
| 6 | AT&T Communications of California, et al., No. C-06-3596-VRW ("Campbell"). I make | | |
| 7 | this declaration in support of AT&T's Administrative Motion to Consider Whether Cases | | |
| 8 | Should Be Related ("Administrative Motion"). I have personal knowledge of the facts | | |
| 9 | stated herein and, if called as a witness, I could and would competently testify thereto. | | |
| 10 | 2. As described in the foregoing Administrative Motion, counsel for plaintiffs | | |
| 11 | in the Campbell action recently filed their own administrative motion to have the Campbell | | |
| 12 | action related to DeBonis, et al. v. Verizon Communications, Inc., No. C-06-3574-EDL, and | | |
| 13 | have both cases proceed before Magistrate Judge Laporte. In light of this fact, I do not | | |
| 14 | believe that a stipulation could be reached with plaintiffs in Campbell that would obviate | | |
| 15 | this Administrative Motion. | | |
| 16 | I declare under penalty of perjury that the foregoing is true and correct. | | |
| 17 | Executed this 13 th day of June, 2006, at San Francisco, California. | | |
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| 20 | Bruce A. Ericson | | |
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