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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

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

18 Plaintiff,

19 v.

20 AT&T CORP., AT&T INC. and DOES 1-
20, inclusive,

21 Defendant.

Case No. C-06-00672-VRW

**NOTICE OF MOTION AND
MOTION OF MARK KLEIN
FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE**

Hearing Date: N/A
Time: N/A
Courtroom: 6 (17th floor)
Judge: Hon. Vaughn Walker

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Mark Klein hereby moves the Court, pursuant to Civil
3 Local Rule 7-11, for leave to appear and file the accompanying proposed Brief of Amicus Curiae.
4 This Motion is based on this Notice of Motion and Motion, Mr. Klein's proposed amicus brief
5 submitted herewith, the proposed order submitted herewith, the pleadings and papers on file
6 herein, and such other argument and evidence as may be presented to the Court.

7 Proposed amicus curiae is Mark Klein. This Court should consider Mr. Klein's
8 submission, in short, "because of [his] involvement in the events leading to this case." *Sonoma*
9 *Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal.
10 2003). Mr. Klein was an employee of defendant AT&T Corp. ("AT&T") for 22 years. In 2003,
11 Mr. Klein began witnessing what he believed to be AT&T's cooperation with the federal
12 government in unlawfully intercepting the communications of countless AT&T customers.
13 During the course of his employment, he came into possession of documents that detailed the
14 nature and mechanism of the surveillance program. As part of his duties as a communications
15 technician, Mr. Klein was required to connect fiber optic circuits carrying AT&T customers'
16 private Internet-based data to a device that diverted that same data to a room controlled by the
17 government.

18 When reports of the government's extensive surveillance program surfaced in December
19 2005, Mr. Klein realized that he was a witness to (and an unwitting participant in) a massive effort
20 that had the effect, if not the purpose, of violating the rights of millions of Americans. Looking
21 only to shed light on AT&T's role in this program, Mr. Klein shared his observations and
22 provided corroborating documents to plaintiffs' counsel and to select news organizations. It is not
23 an overstatement to say that Mr. Klein is a central witness in this case, and that his testimony and
24 documents are the key evidence supporting the plaintiffs' pending motion for a preliminary
25 injunction. Mr. Klein has not sought, and he does not intend to seek, any monetary compensation
26 for the harm caused by AT&T's conduct. Instead, his sole interest in this proceeding is seeing to
27 it that the plaintiffs' grievances are heard by a court of law, and that the unlawful inception of
28 Internet-based communications is halted.

1 In sum, Mr. Klein has “unique information or [a] perspective that can help the court
2 beyond the help that the lawyers for the parties are able to provide.” *Id.* (internal quotation marks
3 and citation omitted). Mr. Klein believes that his submission will aid the Court in adjudicating
4 various issues that have arisen in this case, such as the defendants’ requests to seal certain papers
5 and to compel the return of documents, and the United States’ anticipated assertion of the state
6 secrets privilege. His amicus brief “is at least relevant to the issues raised by the parties [and the
7 government] for the court’s consideration[.]” *In re McKesson HBOC, Inc. ERISA Litigation*, 2005
8 U.S. Dist. LEXIS 7078, at *3 (N.D. Cal. Mar. 31, 2005). Mr. Klein respectfully submits that it
9 would be patently unfair for the Court to rule on these potentially dispositive motions before
10 hearing from him.

11 As is set forth in the accompanying Declaration of James J. Brosnahan, Mr. Klein sought
12 consent to file his papers from counsel for both the plaintiffs and the defendants. Counsel for the
13 plaintiffs stipulated the Mr. Klein’s participation; counsel for the defendants did not. *See Decl. of*
14 *James J. Brosnahan at ¶¶ 2-3.*

15 For the foregoing reasons, Mr. Klein respectfully requests that the Court grant this motion
16 and accept the accompanying Brief of Amicus Curiae.

17 Dated: May 4, 2006

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