

CASE NO.: 06-17132, 06-17137

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL, AND ERIK KNUTZEN, ON  
BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS-APPELLEES,

v.

AT&T CORP.,

DEFENDANT-APPELLANT, AND

THE UNITED STATES,

INTERVENOR AND APPELLANT.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
THE HONORABLE VAUGHN R. WALKER, CHIEF DISTRICT JUDGE  
CIVIL No. C-06-0672-VRW

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**MOTION OF PLAINTIFFS-APPELLEES TO FILE  
AN ENLARGED BRIEF**

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Pursuant to Ninth Circuit Rules 28-4 and 32-2 and for the reasons stated in the accompanying Declaration of Michael M. Markman, Plaintiffs-Appellees hereby move the Court for permission to exceed the page limitations set forth in Fed. R. App. P. 32(a)(7).

Plaintiffs-Appellees ask the Court for leave to file a single brief of 19,796 words, counted according to Fed. R. App. P. 32(a)(7)(B)(iii), in response to the multiple briefs filed by the Government and AT&T Corp. (“AT&T”). Pursuant to Circuit Rule 32-2, a copy of the proposed brief is submitted herewith.

Plaintiffs-Appellees request additional space in order to adequately address the legal arguments presented by both Intervenor the United States and AT&T. This Court consolidated the two appeals. Intervenor and AT&T divided up the key issues on appeal between them for briefing. Intervenor addressed the state secrets privilege while AT&T addressed standing. *See* Brief of Appellant AT&T Corp. at 3 (“The brief of the United States provides a full explanation of the district court’s errors in applying the state secrets privilege and the *Totten* doctrine. This brief explains why the state secrets doctrine precludes the parties from fully and fairly litigating standing.”).

Together, Intervenor and AT&T have filed public opening briefs totaling 106 pages with approximately 27,700 words (excluding appendices). For its part, Intervenor has also made available—but not served—a further confidential brief.

Plaintiffs have no way of knowing the true size of Intervenor’s confidential submission, as all Intervenor has certified is that “[t]he public and classified versions of this brief contain no more than 14,000 words.” Intervenor and AT&T were joined by four *amicus curae*, whose briefs included 98 additional pages.

Plaintiffs address the arguments of Intervenor and AT&T in a single answering brief of 19,796 words (90 pages). The issues raised by this case are complex, relating to weighty constitutional questions and to a complex statutory regime. Plaintiffs have briefed those issues in less space than that taken by the combined briefs filed by Intervenor and AT&T. Plaintiffs also submit that additional pages are warranted given Intervenor’s decision to ask the Court to consider an unserved confidential submission of indeterminate length.

For these reasons, as well as those stated in the accompanying Declaration of Michael M. Markman, Plaintiffs-Appellees request leave of the Court to file a 90 page Response.

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DATED: April 23, 2007

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By 

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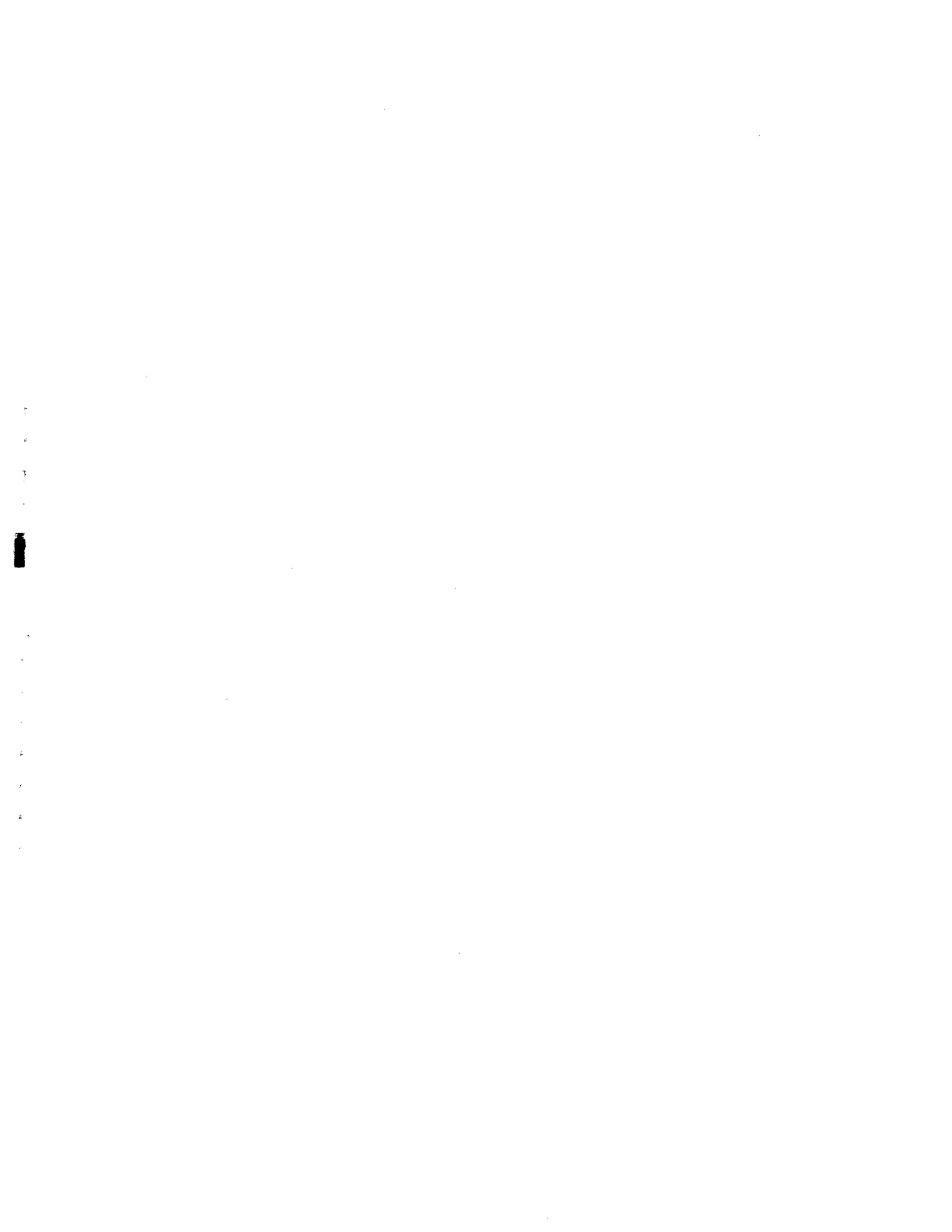
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**CERTIFICATE OF COMPLIANCE**

I certify that this brief uses a proportional typeface and 14-point font, and contains 19,796 words, counted according to Fed. R. App. P. 32(a)(7)(B)(iii).

Plaintiffs have filed herewith a motion to file an enlarged brief pursuant to Ninth Circuit Rule 32-2.

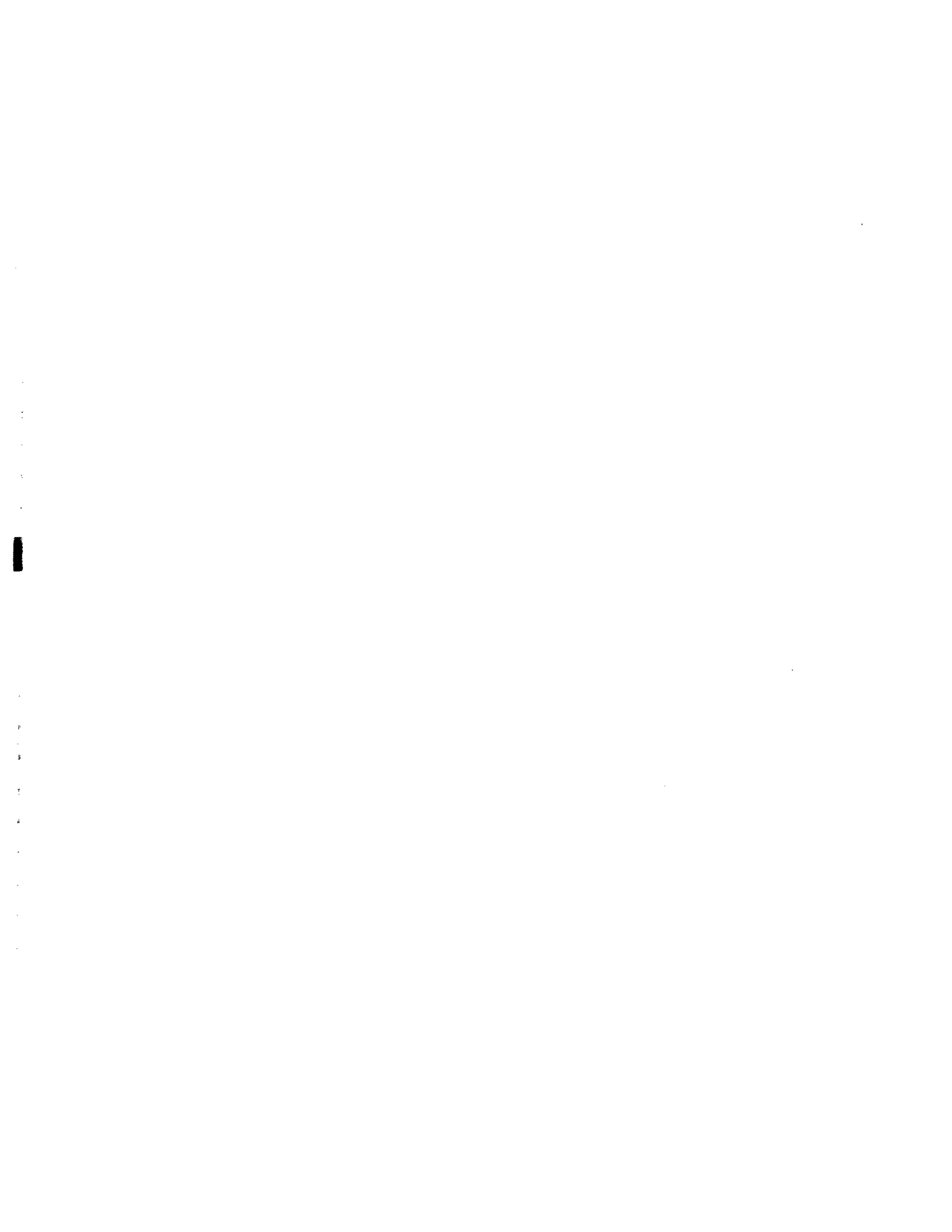
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## CERTIFICATE OF SERVICE

I, Victor M. Gonzales, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 333 Bush Street, San Francisco, California 94104-2878.

On April 23, 2007, I served the following document(s):

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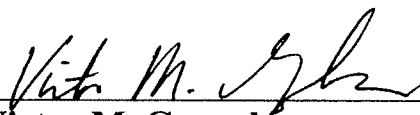
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that this declaration is executed on April 23, 2007, at San Francisco, California; and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
\_\_\_\_\_  
Victor M. Gonzales

