

CASE NO.: 06-17132, 06-17137

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

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.

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

**MOTION OF PLAINTIFFS-APPELLEES TO FILE
BRIEF AND OTHER DOCUMENTS UNDER SEAL**

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Pursuant to Ninth Circuit Rule 27-13 and for the reasons stated below, Plaintiffs-Appellees hereby seek leave to file their Answering Brief, and the Declarations of Mark Klein, J. Scott Marcus, James W. Russell, and Michael M. Markman in the Supplemental Excerpts of Record, under seal.

Defendant-Appellant AT&T Corp. informed the District Court that it considers the information contained in the Klein, Marcus, and Russell declarations to be confidential and proprietary trade secret information. Plaintiffs-Appellees disagreed. On May 17, 2006, the District Court entered an Order directing that the declarations (and attached exhibits), as well as all papers filed or lodged under seal, be filed under seal and remain under seal pending further order of the court. A copy of the Order is attached hereto.

In an effort to comply with the District Court's Order in good faith, Plaintiffs respectfully request that the Klein, Marcus, Russell, and Markman declarations and the Answering Brief (which discusses the declarations), be sealed. Nothing in this motion should be construed as acquiescence by Plaintiffs in AT&T's arguments that the three declarations, or any part of the Answering Brief, constitute proprietary, confidential, or trade secret information.

As was done in the District Court, Plaintiffs will confer with AT&T in order to attempt to reach agreement on the subsequent filing of a redacted version of the Answering Brief with the Court. If Plaintiffs are unable to reach agreement with

AT&T, Plaintiffs will subsequently seek to unseal the Answering Brief in its entirety or alternatively to file a redacted copy of the Answering Brief.

DATED: April 23, 2007

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By



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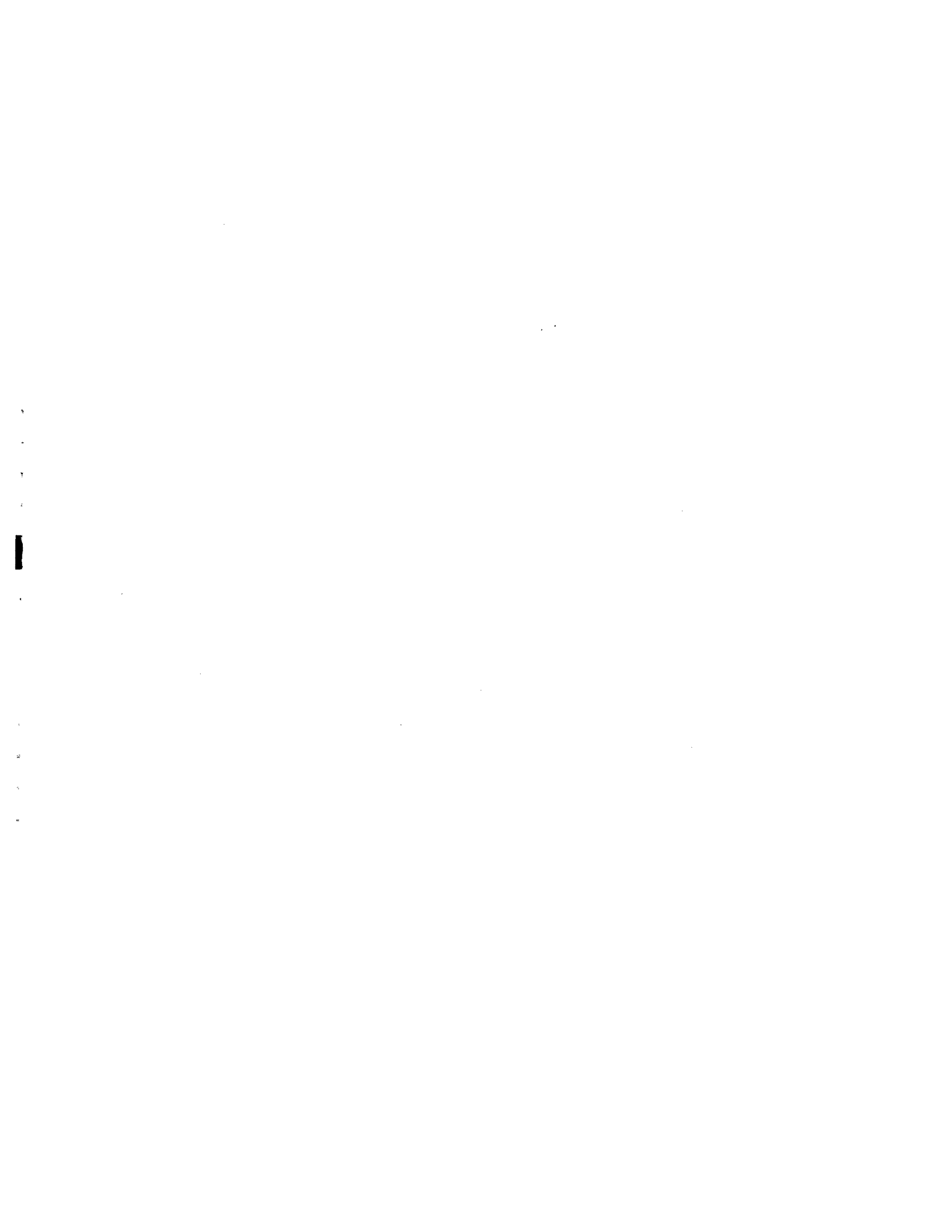
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTE ORDER

VAUGHN R WALKER
United States District Chief Judge

DATE: May 17, 2006

COURTROOM DEPUTY: Cora Delfin

Court Reporter: Connie Kuhl

CASE NO. C-06-672 VRW

TITLE: Tash Hepting, et al, v AT&T Corporation, et al

COUNSEL FOR PLAINTIFFS:

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COUNSEL FOR DEFENDANTS:

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COUNSEL FOR UNITED STATES:

Carl J Nichols

COUNSEL FOR MEDIA COMPANIES:

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PROCEEDINGS: Hearing on AT&T's motion to compel return of documents and parties' cross-motions regarding sealing of documents

RESULTS:

The court denied, without prejudice, AT&T's motion to compel return of the documents attached as Exhibits A-C to the declaration of Mark Klein (Doc #31, Exs A-C). Pending further order of court, plaintiffs, their counsel, retained expert and consultant shall secure the documents and their content and shall not disclose the documents or their content to anyone. Counsel for plaintiffs and AT&T are directed to confer and to submit a joint protective order implementing this directive.

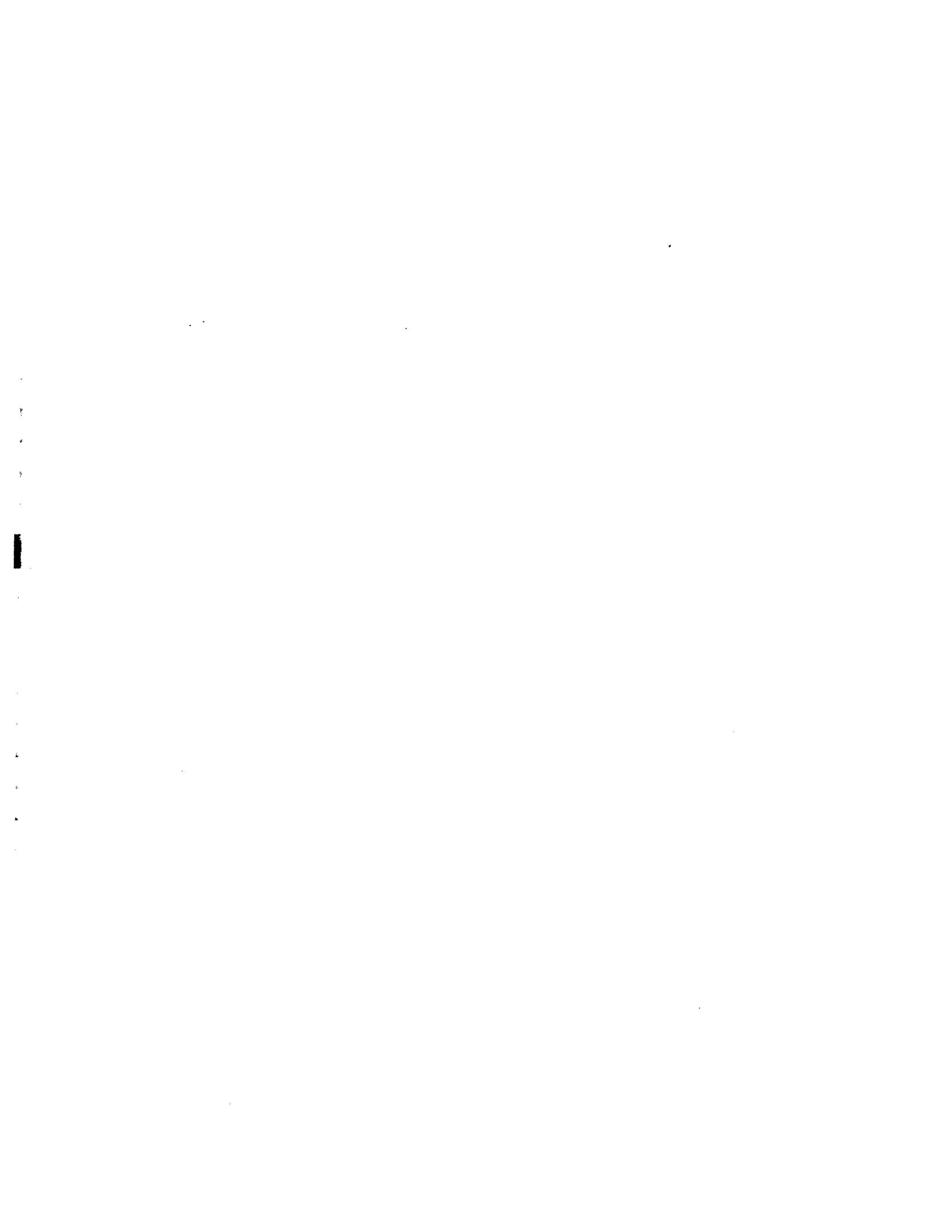
All papers heretofore filed or lodged under seal shall remain under seal pending further order of court. Counsel for plaintiffs and AT&T are directed to confer and to submit by May 25, 2006, jointly agreed-upon redacted versions of the preliminary injunction motion (Doc #30) and the Klein declaration (Doc #31). If the parties fail to agree on this matter, they shall file by that date memoranda that specifically identify the portions, if any, of these documents that each party believes are sealable.

Plaintiffs are instructed to file by close of business on May 22, 2006, a memorandum that addresses: (1) whether this case can be litigated without deciding the state secrets issue, thereby obviating any need for the court to review the government's classified memorandum and declarations and (2) whether the state secrets privilege is implicated by plaintiffs' FRCP 30(b)(6) deposition request for information whether AT&T received any certification from the government. AT&T and the government may each file reply memoranda on these issues by

close of business on May 24, 2006.

The court sets June 23, 2006, at 9:30 AM, for hearing on the following motions: (1) the government's motion to intervene; (2) the government's motion to dismiss based on the state secrets privilege and (3) the AT&T entities' motions to dismiss. The court vacates the June 21, 2006 hearing and the accompanying briefing schedule for plaintiffs' preliminary injunction motion.

The court will entertain motions to intervene only on written application therefor with appropriate notice and service on all parties; if necessary, the court will consider applications to shorten time for any such motions to intervene.



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):

MOTION OF PLAINTIFFS-APPELLEES TO FILE BRIEF AND OTHER DOCUMENTS UNDER SEAL

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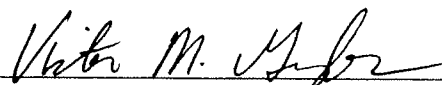
BY EXPRESS MAIL: I am readily familiar with the business' practice for collection and processing correspondence for mailing with the United States Postal Service via Express Mail. I know that the correspondence was deposited with the United States Postal Service via Express Mail on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

BY FACSIMILE TRANSMISSION: I transmitted such documents by facsimile as indicated above.

BY PERSONAL SERVICE: I caused the document(s) to be delivered by hand as indicated above.

BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered on the following business day by FEDERAL EXPRESS service as indicated above.

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

