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10 Attorneys for Plaintiffs

11 [Additional counsel appear on signature page.]

12 UNITED STATES DISTRICT COURT  
 13  
 14 NORTHERN DISTRICT OF CALIFORNIA

15 TASH HEPTING, GREGORY HICKS,	)	No. C-06-00672-VRW
CAROLYN JEWEL and ERIK KNUTZEN, on	)	
16 Behalf of Themselves and All Others Similarly	)	<u>CLASS ACTION</u>
Situated,	)	
	)	PLAINTIFFS' REQUEST FOR JUDICIAL
	)	NOTICE
	)	
18 Plaintiffs,	)	
	)	
19 vs.	)	
	)	
20 AT&T CORP., et al.	)	
	)	
	)	
21 Defendants.	)	
	)	

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1 In support of their Motion for a Preliminary Injunction, plaintiffs Tash Hepting, *et al.*  
2 respectfully request, pursuant to Federal Rule of Evidence 201 and the inherent authority of the  
3 Court, that the Court take judicial notice of certain admissions made by the President of the United  
4 States and representatives of the President's Administration about the National Security Agency  
5 ("NSA")'s surveillance program.

6 Federal Rule of Evidence 201 authorizes the Court to take judicial notice of such admissions  
7 because they are "not subject to reasonable dispute in that" they are "capable of accurate and ready  
8 determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.  
9 201(b). Further, the Rule mandates that judicial notice be taken where it is "requested by a party and  
10 supplied with the necessary information." Fed. R. Evid. 201(d).

11 The facts for which plaintiffs request judicial notice can and should be judicially noticed  
12 because they are "not subject to reasonable dispute," as they are statements about the NSA Program  
13 that come directly from the President and his Administration. The facts are easily verifiable, as they  
14 are taken from public statements that the President and members of his administration have made to  
15 Congress and the public, either in writing or orally. The oral statements were documented in  
16 transcripts of proceedings or in media coverage of statements that the President and members of his  
17 Administration have made to the public, which plaintiffs attach to the instant request.

18 Many courts have taken judicial notice of the type of information at issue in the instant  
19 request. *See, e.g., Texas & Pac. Ry. Co. v. Pottorff*, 291 U.S. 245, 254 n.4, 78 L. Ed. 777, 54 S. Ct.  
20 416 (1934), amended on other grounds, 291 U.S. 649, 54 S. Ct. 525 (1934) (taking judicial notice of  
21 official reports put forth by the Comptroller of the Currency); *Heliotrope Gen., Inc. v. Ford Motor*  
22 *Co.*, 189 F.3d 971, 981 (9th Cir. 1999) (taking judicial notice of information contained in news  
23 articles); *Blair v. City of Pomona*, 223 F.3d 1074 (9th Cir. 2000) (taking judicial notice of and  
24 independent commission's report on the code of silence among police officers); *Del Puerto Water*  
25 *Dist. v. United States Bureau of Reclamation*, 271 F. Supp. 2d 1224, 1234 (E.D. Cal. 2003) (taking  
26 judicial notice of public documents, including Senate and House Reports); *Wietschner v. Monterey*  
27 *Pasta Co.*, 294 F. Supp. 2d 1102, 1108 (N.D. Cal. 2003) (taking judicial notice of press releases  
28 issued by the Securities and Exchange Commission); *Clemmons v. Bohannon*, 918 F.2d 858, 865

1 (10th Cir. 1990), vacated on other grounds, on reh’g en banc, 956 F.2d 1523 (10th Cir. 1992) (taking  
2 judicial notice of government reports and Surgeon General’s reports concerning health risk of  
3 environmental tobacco smoke); *Ieradi v. Mylan Labs., Inc.*, 230 F.3d 594, 597-98 (3rd Cir. 2000)  
4 (taking judicial notice of information in a newspaper article); *Feldman v. Allegheny Airlines, Inc.*,  
5 382 F. Supp. 1271 (D. Conn. 1974) , rev’d on other grounds, 524 F.2d 384 (2nd Cir. 1975) (taking  
6 judicial notice of data contained in President’s Economic Report); *B.T. Produce Co., Inc. v. Robert*  
7 *A. Johnson Sales, Inc.*, 354 F. Supp. 2d 284, 285-86 (S.D.N.Y. 2004) (taking judicial notice of U.S.  
8 Department of Agriculture report).

9 The following are the facts that the President and members of his Administration have  
10 admitted to Congress and the public, of which plaintiffs request that the Court take judicial notice:

11 1. In the fall of 2001 the President authorized the NSA to launch a secret electronic  
12 surveillance program (the “Program”).

13 (a) President George W. Bush, Radio Address (Dec. 17, 2005) (Attachment 1) at  
14 1881. (“In the weeks following the terrorist attacks on our nation, I authorized the National Security  
15 Agency, consistent with U.S. law and the Constitution, to intercept the international communications  
16 of people with known links to al Qaeda and related terrorist organizations.”)

17 (b) *Press Briefing by Attorney General Alberto Gonzales and General Michael*  
18 *Hayden, Principal Deputy Director for National Intelligence* (Dec. 19, 2005) (Attachment 2).  
19 (Attorney General Gonzales: “The President has authorized a program to engage in electronic  
20 surveillance . . . .”)

21 2. Under the Program, the NSA intercepts electronic communications.

22 (a) Letter from William E. Moschella, Assistant Attorney General, Office of  
23 Legislative Affairs, Department of Justice, to congressional leaders, December 22, 2005 (Attachment  
24 3) (Assistant Attorney General William E. Moschella: “As described by the President, the NSA  
25 intercepts certain international communications. . . .”)

26 (b) Michael Hayden, Remarks at the National Press Club on NSA Domestic  
27 Surveillance (Jan. 23, 2006) (Attachment 4) (Gen. Michael Hayden, Principal Deputy Director for  
28 National Intelligence, has admitted that the Program covers “international calls”).

1 (c) December 19, 2005 Press Conference of President Bush, at 1889. (Attachment  
2 5) (President Bush has noted that “calls” are intercepted.)

3 3. The President has reauthorized the Program more than thirty times, approximately  
4 every 45 days, based on periodic review and approval of the Program by the Attorney General and  
5 other officials. The President intends to continue reauthorizing the Program indefinitely.

6 (a) December 19, 2005 Press Conference of President Bush (Attachment 5) at  
7 1885. (President Bush: “I’ve reauthorized this program more than 30 times since the September the  
8 11th attacks, and I intend to do so for so long as our nation is – for so long as the nation faces the  
9 continuing threat of an enemy that wants to kill American citizens.”)

10 (b) President George W. Bush, Radio Address (Dec. 17, 2005) (Attachment 1) at  
11 1881. (“The activities I authorized are reviewed approximately every 45 days. . . . The review  
12 includes approval by our nation’s top legal officials, including the Attorney General and the Counsel  
13 to the President. I have reauthorized this program more than 30 times since the September the 11th  
14 attacks, and I intend to do so for as long as our nation faces a continuing threat from al Qaeda and  
15 related groups.”)

16 (c) Letter from William E. Moschella, Assistant Attorney General, Office of  
17 Legislative Affairs, Department of Justice, to Senator Arlen Specter, March 24, 2006 (Attachment 6)  
18 at p. 12 (response to question 29, discussing people involved with the authorization of the Program).

19 4. Under the Program, the NSA conducts “electronic surveillance” as defined by the  
20 Foreign Intelligence Surveillance Act of 1978 (“FISA”), 50 U.S.C. §1801 *et. seq.*

21 (a) *Press Briefing by Attorney General Alberto Gonzales and General Michael*  
22 *Hayden, Principal Deputy Director for National Intelligence, Dec. 19, 2005* (Attachment 2) (Alberto  
23 Gonzales: “[T]he Foreign Intelligence Surveillance Act . . . requires a court order before engaging in  
24 this kind of surveillance . . . unless otherwise authorized by statute or by Congress.”) (emphasis  
25 added).

26 (b) FISA requires a court order before the government may engage in “electronic  
27 surveillance” as defined therein.

28

1           5.       Under the Program, the NSA conducts surveillance that would not satisfy the  
2 standards of the FISA statute.

3                   (a)       *Wartime Executive Power and the NSA’s Surveillance Authority Before the*  
4 *Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006) (Attachment 7), transcript at 151.  
5 (Addressing why FISA applications are not sought for surveillance under the program,  
6 “GONZALES: Well, of course, we can’t begin surveillance just based on a whim by someone, say,  
7 at the FBI. There has to be a reason to believe that all of the standards of the FISA statute can be  
8 satisfied.”)

9                   (b)       Michael Hayden, Remarks at the National Press Club on NSA Domestic  
10 Surveillance (Jan. 23, 2006) (Attachment 4) (“NSA just can’t go up on a number for 72 hours while  
11 it finishes out the paperwork. . . . So my point was that’s not something that NSA, under the FISA  
12 act, can do on its own. . . . The standard the attorney general must have is that he has sufficient  
13 evidence in front of him that he believes he can substantiate that in front of the FISA court.”)

14           6.       Under the Program, the NSA intercepts communications without obtaining a warrant  
15 or any other type of judicial authorization.

16                   (a)       *Press Briefing by Attorney General Alberto Gonzales and General Michael*  
17 *Hayden, Principal Deputy Director for National Intelligence* (Dec. 19, 2005) (Attachment 2)

18                           (i)       Michael Hayden: “The period of time in which we do this is, in most  
19 cases, far less than that which would be gained by getting a court order.”

20                           (ii)       Attorney General Gonzales: “[T]he Supreme Court has long held that  
21 there are exceptions to the warrant requirement in – when special needs outside the law enforcement  
22 arena. And we think that that standard has been met here.”

23                   (b)       *Wartime Executive Power and the NSA’s Surveillance Authority Before the*  
24 *Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006) (Attachment 7), transcript at 14.  
25 (Attorney General Gonzales: “[T]he program is triggered [by] a career professional at the NSA.”).

26                   (c)       Michael Hayden, Remarks at the National Press Club on NSA Domestic  
27 Surveillance (Jan. 23, 2006) (Attachment 4):  
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1 QUESTION: Just to clarify sort of what’s been said, from what I’ve heard you say  
2 today and an earlier press conference, the change from going around the FISA law  
3 was to – one of them was to lower the standard from what they call for, which is  
4 basically probable cause to a reasonable basis; and then to take it away from a federal  
5 court judge, the FISA court judge, and hand it over to a shift supervisor at NSA. Is  
6 that what we’re talking about here – just for clarification?

7 GEN. HAYDEN: *You got most of it right.* The people who make the judgment, and  
8 the one you just referred to, there are only a handful of people at NSA who can make  
9 that decision. They’re all senior executives, they are all counterterrorism and al  
10 Qaeda experts. So I – even though I – you’re actually quoting me back, Jim, saying,  
11 “shift supervisor.” To be more precise in what you just described, the person who  
12 makes that decision, a very small handful, senior executive. So in military terms, a  
13 senior colonel or general officer equivalent; and in professional terms, the people  
14 who know more about this than anyone else.

15 QUESTION: Well, no, that wasn’t the real question. The question I was asking,  
16 though, was since you lowered the standard, doesn’t that decrease the protections of  
17 the U.S. citizens? And number two, if you could give us some idea of the genesis of  
18 this. Did you come up with the idea? Did somebody in the White House come up  
19 with the idea? Where did the idea originate from?

20 Thank you.

21 GEN. HAYDEN: Let me just take the first one, Jim. And I’m not going to talk  
22 about the process by which the president arrived at his decision.

23 *I think you’ve accurately described the criteria under which this operates, and I*  
24 *think I at least tried to accurately describe a changed circumstance, threat to the*  
25 *nation, and why this approach – limited, focused – has been effective” (emphasis*  
26 *added).*

27 7. The Program has been used “in lieu of” the procedures specified under the FISA.

28 (a) *Press Briefing by Attorney General Alberto Gonzales and General Michael*  
29 *Hayden, Principal Deputy Director for National Intelligence, Dec. 19, 2005 (Attachment 2).*

30 Michael Hayden stated:

31 (i) “I can say unequivocally that we have used this program in lieu of [the  
32 FISA process] and this program has been successful.”

33 (ii) “[T]his is a more . . . ‘aggressive’ program than would be traditionally  
34 available under FISA.”

35 (iii) “What you’re asking me is, can we do this program as efficiently using  
36 the one avenue provided to us by the FISA Act, as opposed to the avenue provided to us by  
37 subsequent legislation and the President’s authorization. Our operational judgment, given the threat  
38

1 to the nation that the difference in the operational efficiencies between those two sets of authorities  
2 are such that we can provide greater protection for the nation operating under this authorization.”

3 (b) Michael Hayden, Remarks at the National Press Club on NSA Domestic  
4 Surveillance (Jan. 23, 2006) (Attachment 4) (“If FISA worked just as well, why wouldn’t I use  
5 FISA? To save typing? No. There is an operational impact here, and I have two paths in front of  
6 me, both of them lawful, one FISA, one the presidential – the president’s authorization. And we go  
7 down this path because our operational judgment is it is much more effective. So we do it for that  
8 reason.”)

9 8. The Administration is not using the 72 hour emergency exception to FISA, 50 U.S.C.  
10 §1805(f), to conduct the Program.

11 (a) *Wartime Executive Power and the NSA’s Surveillance Authority Before the*  
12 *Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006) (Attachment 7), transcript at 18.  
13 (Attorney General Gonzales: “In this debate, however, I have been concerned that some who’ve  
14 asked, “Why not FISA?” do not understand how that statute really works. To be sure, FISA allows  
15 the government to begin electronic surveillance without a court order for up to 72 hours in  
16 emergency situations or circumstances [but this] requirement can be cumbersome and  
17 burdensome. . . .”)

18 9. Under the Program, an NSA “shift supervisor” is authorized to approve interceptions  
19 of communications without need for specific approval from the President, the Attorney General or  
20 any judicial authority.

21 (a) Michael Hayden, Remarks at the National Press Club on NSA Domestic  
22 Surveillance (Jan. 23, 2006) (Attachment 4) (“These are communications that we have reason to  
23 believe are al Qaeda communications: a judgment made by American intelligence professionals, not  
24 folks like me or political appointees.”)

25 (b) Michael Hayden, *Press Briefing by Attorney General Alberto Gonzales and*  
26 *General Michael Hayden, Principal Deputy Director for National Intelligence*, Dec. 19, 2005  
27 (Attachment 2) (explaining that the judgment to target a communication “is made by the operational  
28 work force at the National Security Agency using the information available to them at the time, and



1 the standard that they apply – and it’s a two-person standard that must be signed off by a shift  
2 supervisor, and carefully recorded as to what created the operational imperative to cover any target,  
3 but particularly with regard to those inside the United States”)

4 (c) Letter from William E. Moschella, Assistant Attorney General, Office of  
5 Legislative Affairs, Department of Justice, to Senator Arlen Specter, March 24, 2006 (Attachment 6)  
6 at p. 8 (response to question 29, discussing who decides if the Administration’s “reasonable basis”  
7 test is met).

8 (d) *Wartime Executive Power and the NSA’s Surveillance Authority Before the*  
9 *Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006) (Attachment 7) (Attorney General  
10 Gonzales:

11 (i) “[T]he program is triggered [by] a career professional at the NSA.”  
12 Tr. at 14.

13 (ii) “The decision as to which communications will be surveilled are made  
14 by intelligence experts out at NSA.” Tr. at 42.

15 10. The Program “is a more . . . ‘aggressive’ program than would be traditionally  
16 available under FISA,” in part because “[t]he trigger is quicker and a bit softer than it is for a FISA  
17 warrant.”

18 (a) Michael Hayden, *Press Briefing by Attorney General Alberto Gonzales and*  
19 *General Michael Hayden, Principal Deputy Director for National Intelligence*, Dec. 19, 2005  
20 (Attachment 2).

21 (b) Michael Hayden, Remarks at the National Press Club on NSA Domestic  
22 Surveillance (Jan. 23, 2006) (Attachment 4). (“In the instances where this program applies, FISA  
23 does not give us the operational effect that the authorities that the president has given us give us.”)

24 (c) Letter from William E. Moschella, Assistant Attorney General, Office of  
25 Legislative Affairs, Department of Justice, to congressional leaders, December 22, 2005 (Attachment  
26 3) (“[T]he President determined that it was necessary following September 11 to create an early  
27 warning detection system. FISA could not have provided the speed and agility required for the early  
28 warning detection system.”).



1           11. Under the Program, communications are intercepted without probable cause to  
2 believe that the surveillance targets have committed or are about to commit any crime, or are foreign  
3 powers or agents thereof. Instead, the NSA claims to intercept communications when the agency  
4 has, in its own judgment, a “*reasonable basis to conclude* that one party to the communication is a  
5 member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al  
6 Qaeda, or working in support of al Qaeda,” as well as the communications of individuals it deems  
7 suspicious on the basis of its belief that they have some unspecified “link” to al Qaeda or a related  
8 terrorist organization, or “want to kill Americans.” Put another way, when the NSA believes there is  
9 “[i]nherent foreign intelligence value.”

10           (a) Alberto Gonzales, *Press Briefing by Attorney General Alberto Gonzales and*  
11 *General Michael Hayden, Principal Deputy Director for National Intelligence*, Dec. 19, 2005  
12 (Attachment 2) (“[W]e have to have a reasonable basis to conclude that one party to the  
13 communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization  
14 affiliated with al Qaeda, or working in support of al Qaeda.”).

15           (b) Michael Hayden, Remarks at the National Press Club on NSA Domestic  
16 Surveillance (Jan. 23, 2006) (Attachment 4)

17           (i) Hayden explained that the NSA intercepts calls that “we have a  
18 reasonable basis to believe involve al Qaida or one of its affiliates.”

19           (ii) “We are going after very specific communications that our  
20 professional judgment tells us we have reason to believe are those associated with people who want  
21 to kill Americans.”

22           (iii) “Inherent foreign intelligence value is one of the metrics we must use  
23 to ensure that we conform to the Fourth Amendment’s reasonableness standard when it comes to  
24 protecting the privacy of these kinds of people.”

25           (c) *Wartime Executive Power and the NSA’s Surveillance Authority Before the*  
26 *Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006) (Attachment 7), transcript at 123.  
27 (Attorney General Gonzales: “I think it’s probable cause. But it’s not probable cause as to guilt. . . .  
28 Or probable cause as to a crime being committed. It’s probable cause that a party to the

1 communication is a member or agent of al Qaida. The precise language that I'd like to refer to is,  
2 'There are reasonable grounds to believe that a party to communication is a member or agent or al  
3 Qaida or of an affiliated terrorist organization.' It is a probable cause standard, in my judgment.'").

4 (d) President George W. Bush, Radio Address (Dec. 17, 2005) (Attachment 1) at  
5 1881. ("Before we intercept these communications, the government must have information that  
6 establishes a clear link to these terrorist networks.")

7 (e) Dec. 19, 2005 Press Conference of President Bush, (Attachment 5) at 1885.  
8 ("I authorized the interception of international communications of people with known links to al  
9 Qaeda and related terrorist organizations.").

10 12. Information collected under the Program is retained and disseminated, even when  
11 such information is about an American and gives no indication that the individual is involved in  
12 terrorism.

13 (a) *Wartime Executive Power and the NSA's Surveillance Authority Before the*  
14 *Senate Judiciary Committee*, 109th Congress (Feb. 6, 2006) (Attachment 7), transcript at 51-52:

15 SENATOR KOHL: If the administration investigates an American for terrorism  
16 using this program and finds nothing . . . then what is done with the information  
17 collected? Does the administration keep this information on file somewhere? Is it  
18 disposed of? What happens with this information?

19 ALBERTO GONZALES: . . . In terms of what is actually done with that information,  
20 . . . information is collected, information is retained and information is  
21 disseminated. . . ."

22 (b) Michael Hayden, *Press Briefing by Attorney General Alberto Gonzales and*  
23 *General Michael Hayden, Principal Deputy Director for National Intelligence* (Dec. 19, 2005)  
24 (Attachment 2)

25 GENERAL HAYDEN: "If this particular line of logic, this reasoning that took us to  
26 this place proves to be inaccurate, we move off of it right away.

27 Q: Are there cases in which –

28 GENERAL HAYDEN: Yes, of course.

Q: Can you give us some idea of percentage, or how often you get it right and how  
often you get it wrong?

GENERAL HAYDEN: No, . . . I cannot, without getting into the operational details.

1 13. The Administration has not denied that the warrantless surveillance operations may  
2 extend beyond the conduct that the President has already publicly acknowledged.

3 (a) *Wartime Executive Power and the NSA's Surveillance Authority: Hearing*  
4 *Before the Senate Judiciary Committee, 109th Congress (Feb. 6, 2006), (Attachment 7), transcript at*  
5 *117:*

6 SCHUMER: OK. Good. Now, here's the next question I have: Has the  
7 government done this? Has the government searched someone's home, an American  
8 citizen, or office, without a warrant since 9/11, let's say?

9 GONZALES: To my knowledge, that has not happened under the terrorist  
10 surveillance program, and I'm not going to go beyond that.

11 SCHUMER: I don't know what that – what does that mean, under the terrorist  
12 surveillance program? The terrorist surveillance program is about wiretaps. This is  
13 about searching someone's home. It's different. So it wouldn't be done under the  
14 surveillance program. I'm asking you if it has been done, period.

15 GONZALES: But now you're asking me questions about operations or possible  
16 operations, and I'm not going to get into that, Senator.

17 (b) Letter from William E. Moschella, Assistant Attorney General, Office of  
18 Legislative Affairs, Department of Justice, to Senator Arlen Specter, March 24, 2006 (Attachment 6)  
19 at pp. 13-14. (response to questions 34 and 35, refusing to “provide information here concerning any  
20 other intelligence activities beyond the Terrorist Surveillance Program, though our inability to  
21 respond should not be taken to suggest that there are such activities.”).

22 (c) Alberto Gonzales, Letter to Senator Arlen Specter (February 28, 2006)  
23 (Attachment 8) (In reference to his original statement (quoted below) at the February 6, 2006 hearing  
24 that “I've tried to outline for you and the committee what the president has authorized, and that is all  
25 that he has authorized,” Attorney General Gonzales writes: “I did not and could not address . . . any  
26 other classified intelligence activities . . . I was confining my remarks to [the Program] as described  
27 by the President, the legality of which was the subject. . . .”)

28 (i) *Wartime Executive Power and the NSA's Surveillance Authority:*  
*Hearing Before the Senate Judiciary Committee, 109th Congress (Feb. 6, 2006), (Attachment 7),*  
transcript at p. 27:

SPECTER: Well, then, let me ask you this.

1 Under your interpretation of this, can you go in and do mail searches? Can you go  
2 into e-mails? Can you open mail? Can you do black-bag jobs?

3 And under the idea that you don't have much time to go through what you described  
4 as a cumbersome procedure, what most people think is a pretty easy procedure, to get  
5 a FISA warrant, can you go and do that of Americans?

6 GONZALES: Sir, I've tried to outline for you and the committee what the president  
7 has authorized, and that is all that he has authorized.

8 Plaintiffs Tash Hepting, *et al.* further request, pursuant to Federal Rule of Evidence 201 and  
9 the inherent authority of the Court, that the Court take judicial notice of the following public  
10 documents, copies of which are attached hereto, which verify the above-listed facts:

11 1. President Bush, Radio Address (Dec. 17, 2005);

12 2. Alberto Gonzales and Michael Hayden, *Press Briefing by Attorney General Alberto*  
13 *Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence*, Dec.  
14 19, 2005;

15 3. Letter from William E. Moschella, Assistant Attorney General, Office of Legislative  
16 Affairs, Department of Justice, to congressional leaders, December 22, 2005;

17 4. Michael Hayden, Remarks at the National Press Club on NSA Domestic Surveillance  
18 (Jan. 23, 2006);

19 5. President Bush, Press Conference (Dec. 19, 2005); and

20 6. Letter from William E. Moschella, Assistant Attorney General, Office of Legislative  
21 Affairs, Department of Justice, to Senator Arlen Specter, March 24, 2006.

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Attorneys for Plaintiffs

I, Reed R. Kathrein, am the ECF User whose ID and password are being used to file this  
PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE. In compliance with General Order 45, X.B., I  
hereby attest that Cindy Cohn has concurred in this filing.

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via FedEx to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ REED R. KATHREIN  
REED R. KATHREIN

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