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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 CAROLYN JEWEL, TASH HEPTING,
18 GREGORY HICKS, ERIK KNUTZEN and
19 JOICE WALTON, on behalf of themselves
and all other similarly situated,

20 Plaintiffs,

21 v.

22 NATIONAL SECURITY AGENCY, *et al.*,

23 Defendants.
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Case No. C-08-4373-JSW

**PLAINTIFFS REQUEST FOR JUDICIAL
NOTICE IN OPPOSITION TO
GOVERNMENT DEFENDANTS'
MOTION TO DISMISS AND FOR
SUMMARY JUDGMENT**

Date: December 14, 2012
Time: 9:00a.m.
Dept: 11, 19th Floor
Judge: Jeffrey S. White

1 Plaintiffs hereby request that the Court take judicial notice pursuant to Fed. R. Evid. 201
2 of a portion of the Transcript of Proceedings, dated June 23, 2006, in the District Court of the
3 Northern District of California in *Hepting v. AT&T Corp.*, 06-cv-00672-VRW. The transcript
4 contains an admission by then-Assistant Attorney General Peter Keisler that subjects addressed
5 in the Klein Decl. (Dkt #85) and Marcus Decl. (Dkt. #89) are not state secrets. A true and
6 correct copy of the relevant portion of the transcript is attached hereto as Exhibit A.

7 Dated: October 9, 2012

s/ Cindy Cohn

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Exhibit A

Exhibit A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE VAUGHN R. WALKER, JUDGE

TASH HEPTING, et al.,

Plaintiffs,

v. 06 C 0672 VRW

AT&T Corp., et al.,

Defendants.
_____x

San Francisco, CA
June 23, 2006
9:40 a.m.

Pages 1 - 121

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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25 **Official Court Reporter**

CONNIE KUHL, RMR, CRR
Official Reporter - U.S. District Court (415) 431-2020

1 one and two. I don't know if you want that now or reserve
2 that --

3 THE COURT: Why don't we use that in any wrap-up we
4 have, any wrap-up discussion. All right?

5 MR. FRAM: Thank you, your Honor.

6 THE COURT: Thank you, Mr. Fram.

7 Very quickly, Mr. Keisler? It is Keisler?

8 MR. KEISLER: It is, your Honor.

9 First of all, with respect to the suggestion that the
10 plaintiffs already put forward a prima facie case. They note
11 correctly that we haven't said any documents are classified.
12 They say we can't now unring that bell. We don't want to
13 unring that bell. None of the documents they have submitted to
14 accompany these declarations implicate any privileged matters.

15 THE COURT: Including the Klein documents.

16 MR. KEISLER: We have not asserted any privilege over
17 the information that is in the Klein and Marcus declarations.

18 THE COURT: Either in the declaration or its exhibits?

19 MR. KEISLER: We have not asserted a privilege over
20 either of those. Mr. Klein and Marcus never had access to any
21 of the relevant classified information here, and with all
22 respect to them, through no fault or failure of their own, they
23 don't know anything. And that's clear from the face of the
24 declarations. And since Mr. Fram talked about them some, I may
25 respond on that.