

FILED

UNITED STATES COURT OF APPEALS

APR 04 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CAROLYN JEWEL; TASH HEPTING;
GREGORY HICKS; ERIK KNUTZEN;
JOICE WALTON, on behalf of themselves
and all others similarly situated,

Plaintiffs - Appellants,

v.

NATIONAL SECURITY AGENCY;
KEITH B. ALEXANDER, Director, in his
official and personal capacities;
MICHAEL V. HAYDEN, in his personal
capacity; UNITED STATES OF
AMERICA; GEORGE W. BUSH,
President of the United States, in his
official and personal capacities;
RICHARD B. CHENEY, in his personal
capacity; DAVID S. ADDINGTON, in his
personal capacity; DEPARTMENT OF
JUSTICE; ALBERTO R. GONZALES, in
his personal capacity; JOHN D.
ASHCROFT, in his personal capacity;
JOHN M. MCCONNELL, Director of
National Intelligence, in his official and
personal capacities; JOHN D.
NEGROPONTE, in his personal capacity;
MICHAEL B. MUKASEY, Attorney
General; BARACK HUSSEIN OBAMA;
ERIC H. HOLDER, Jr., Attorney General;
DENNIS C. BLAIR,

Defendants - Appellees.

No. 10-15616

D.C. Nos. 3:08-cv-04373-VRW
M:06-cv-01791-VRW

Northern District of California,
San Francisco

ORDER

VIRGINIA SHUBERT; NOHA ARAFA;
SARAH DRANOFF; HILARY BOTEIN,
individually and on behalf of all others
similarly situated,

Plaintiffs - Appellants,

v.

GEORGE W. BUSH; MICHAEL V.
HAYDEN; KEITH B. ALEXANDER;
ALBERTO R. GONZALES; JOHN
ASHCROFT; UNITED STATES OF
AMERICA,

Defendants - Appellees.

No. 10-15638

D.C. Nos. 3:07-cv-00693-VRW
M:06-cv-01791-VRW

Northern District of California,
San Francisco

Before: PREGERSON, HAWKINS, and McKEOWN, Circuit Judges.

Appellants' and *Shubert* Plaintiffs-Appellants' motion for judicial notice is granted with respect to the following documents:

(1) Exhibit A, Declaration of Mark Klein, dated March 28, 2006 (Dkt. # 230; Hepting v. AT&T Corp., N.D. Cal. Case No. 06-0672 VRW);

(2) Exhibit B, Declaration of J. Scott Marcus, dated March 29, 2006 (Dkt. # 231; Hepting v. AT&T Corp., N.D. Cal. Case No. 06-0672 VRW);

(3) Exhibit C, District Court Hearing transcript, dated June 23, 2006, containing an admission by Assistant Attorney General Peter Keisler that subjects

addressed in the Klein and Marcus declarations (Exs. A & B) are not state secrets (Dkt. # 284; Hepting v. AT&T Corp., N.D. Cal. Case No. 06-0672 VRW);

(4) Exhibit D, Declaration of Attorney General Michael B. Mukasey, dated September 19, 2008 (Dkt. # 469; In Re NSA Telecommunications Records Litigation, N.D. Cal. MDL Case No. 06-1791 VRW, in which Hepting and Shubert are member cases); and

(5) Exhibit E, Declaration of National Security Agency Director Keith Alexander, dated May 25, 2007 (Dkt. # 295; Shubert v. Bush, N.D. Cal. Case No. 07-0693 VRW).