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11 Attorneys for Plaintiffs

12  
 13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 )  
 17 CAROLYN JEWEL, TASH HEPTING, )  
 GREGORY HICKS, ERIK KNUTZEN and )  
 18 JOICE WALTON, on behalf of themselves and )  
 all others similarly situated, )  
 19 Plaintiffs, )  
 20 vs. )  
 21 NATIONAL SECURITY AGENCY, *et al.*, )  
 22 Defendants. )

CASE NO. 08-CV-4373-JSW

**PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL**

**1) PORTIONS OF EXHIBITS TO THE DECLARATION OF MARK KLEIN;**

**2) DECLARATION OF JAMES W. RUSSELL**

**(BOTH ORIGINALLY FILED UNDER SEAL IN THE RELATED CASE OF HEPTING v. AT&T, NO. 06-CV-0676);**

**DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL**

No Hearing Requested  
 Courtroom 11, 19th Floor  
 The Honorable Jeffrey S. White

1 **I. INTRODUCTION**

2 Pursuant to Civil L.R. 7-11, 79-5(c), plaintiffs submit this Administrative Motion  
3 requesting an order: (1) to file under seal portions of the accompanying exhibits (the “Klein  
4 Exhibits”) to the Declaration of Mark Klein (the “Klein Declaration”), and (2) to file under seal the  
5 entire Declaration of James W. Russell (the “Russell Declaration”). Plaintiffs submit the Klein  
6 Exhibits and the Russell Declaration in support of their Motion for Partial Summary Judgment  
7 Rejecting the Government Defendants’ State Secrets Defense.<sup>1</sup>

8 The Administrative Motion should be granted. The Klein Exhibits and the Russell  
9 Declaration remain under seal in the related action of *Hepting v. AT&T*, No. 06-CV-0672 at the  
10 instance of AT&T Corp., one of the parties to that action. In the *Hepting* action, plaintiffs and  
11 AT&T extensively litigated the issue of the information in these documents and, for purposes of  
12 the present motion, there is no need to relitigate those issues.

13 **II. ARGUMENT**

14 **A. The Sealed Portions of the Klein Exhibits**

15 Plaintiffs seek to file under seal those portions the Klein Exhibits filed under seal in the  
16 related *Hepting* action. The Klein Exhibits consist of three AT&T documents. Portions of the  
17 Klein Declaration and the entirety of the Klein Exhibits were originally filed under seal in *Hepting*  
18 (*Hepting* Dkt. #130; #147; #231). The Klein Declaration was unsealed pursuant to stipulation and  
19 court order and filed in the public docket (*Hepting* Dkt. #358 & Ex. 1; #361).

20 A redacted version of the Klein Exhibits was also unsealed pursuant to stipulation and court  
21 order and filed in the public docket (*Hepting* Dkt. #358 & Ex. 2; #361). The following portions of  
22 the Klein Exhibits were unsealed:

- 23 a. Exhibit A, pp. 1, 4.  
24 b. Exhibit B, pp. 6, 20.  
25 c. Exhibit C, pp. 1, 3, 45-46.

26 (*Hepting* Dkt. # 358 & Exs. 1, 2; #361).

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiffs are concurrently publicly filing the Klein Declaration and those portions of the Klein Exhibits that have already been unsealed pursuant to court order in the *Hepting* action.

1 The following portions of the Klein Exhibits remaining under seal by order of this Court in  
2 the *Hepting* action:

- 3 a. Exhibit A, pp. 2-3, 5-43.
- 4 b. Exhibit B, pp. 1-5, 7-19.
- 5 c. Exhibit C, pp. 2, 4-44, 47-58.

6 (*Hepting* Dkt. # 358 & Exs. 1, 2; #361).

7 **B. The Sealed Russell Declaration**

8 Plaintiffs also seek to file under seal the Russell Declaration filed by AT&T in the related  
9 *Hepting* action (*Hepting* Dkt. #220). The Russell Declaration was filed under seal in the *Hepting*  
10 action, and remains under seal in its entirety (*Hepting* Dkt. #130; #220). Russell is an AT&T  
11 employee and his declaration relates to matters within the scope of his employment, including the  
12 Klein Exhibits.

13 **C. There Is No Need To Relitigate The Prior Sealing Orders For Purposes Of The**  
14 **Present Motion**

15 Four of the five present plaintiffs were also the plaintiffs in the *Hepting* action. In that  
16 action, defendant AT&T Corp. sought to seal in their entirety not only the Russell Declaration and  
17 the three AT&T documents that are the Klein Exhibits, but also the Klein Declaration, the  
18 declaration of J. Scott Marcus and the exhibits to the Marcus declaration on the ground that they  
19 allegedly contained AT&T trade secrets (*Hepting* Dkt. #38; #221). The *Hepting* plaintiffs opposed  
20 sealing these documents, and litigated and negotiated the question of sealing extensively over the  
21 course of eighteen months (*Hepting* Dkt. #223).

22 The result of that process was a stipulation between the *Hepting* plaintiffs and AT&T  
23 permitting unsealing of large portions of these documents (*Hepting* Dkt. #358). The Court then  
24 entered an unsealing order based on the stipulation (*Hepting* Dkt. #360). Under the Court's order,  
25 that the Klein Declaration, the Marcus declaration, and the exhibits to the Marcus declaration were  
26 entirely unsealed (*Hepting* Dkt. #358; #360), while the portions of the Klein Exhibits identified  
27 above and the entirety of the Russell Declaration remained sealed. *See* Declaration of Richard R.  
28 Wiebe In Support Of Plaintiffs' Motion to Seal, attached hereto. The government was a party to

1 *Hepting* as an intervenor-defendant, but did not object to the unsealing.

2 For purposes of plaintiffs' present motion, there is no need to relitigate the sealing issue.  
3 Plaintiffs' motion makes only limited use of the sealed portions of the Klein Exhibits and the  
4 Russell Declaration; it does not ask the Court to decide the merits of any of plaintiffs' claims using  
5 the sealed portion of the Klein Exhibits or the Russell Declaration. Under these circumstances,  
6 there is no need at this time to relitigate the question of sealing, and the Court may properly rely on  
7 the sealing determination made by the Court in the related *Hepting* action.

8 **III. CONCLUSION**

9 For the foregoing reasons, plaintiffs respectfully request this Court grant plaintiffs' motion  
10 to file under seal the portions of the Klein Exhibits identified above and the entire Russell  
11 Declaration.

12 DATE: June 29, 2012

Respectfully submitted,

13 s/ Richard R. Wiebe  
14 Richard R. Wiebe

15 CINDY COHN  
16 LEE TIEN  
17 KURT OPSAHL  
18 JAMES S. TYRE  
19 MARK RUMOLD  
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Attorneys for Plaintiffs

**DECLARATION OF RICHARD R. WIEBE IN SUPPORT OF PLAINTIFF'S MOTION TO SEAL**

I, Richard R. Wiebe, do hereby declare:

1. I am a member in good standing of the Bar of the State of California and the bar of this Court. I am counsel to plaintiffs in this action and plaintiffs in the related action of *Hepting, et al. v. AT&T Corp., et al.*, N.D. Cal. No. 06-CV-0672. I have personal knowledge of the facts set forth below, except as may be otherwise noted, and if called as a witness I could and would testify competently to them.

2. In the *Hepting* action, defendant AT&T Corp. sought to seal in their entirety not only the Russell Declaration and the three AT&T documents that are the Klein Exhibits, but also the Klein Declaration, the declaration of J. Scott Marcus and the exhibits to the Marcus declaration (*Hepting* Dkt. #38; #221). The *Hepting* plaintiffs opposed sealing these documents, and litigated and negotiated the question of sealing extensively over the course of eighteen months (*Hepting* Dkt. #223). The result of that process was that the Klein Declaration, the Marcus declaration, and the exhibits to the Marcus declaration were entirely unsealed (*Hepting* Dkt. #358; #360), while portions of the Klein Exhibits and the entirety of the Russell Declaration remained sealed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at San Francisco, CA on June 29, 2012.

*s/ Richard R. Wiebe*

Richard R. Wiebe