

1 ELECTRONIC FRONTIER FOUNDATION  
 CINDY COHN (145997)  
 2 cindy@eff.org  
 LEE TIEN (148216)  
 3 tien@eff.org  
 KURT OPSAHL (191303)  
 4 kurt@eff.org  
 KEVIN S. BANKSTON (217026)  
 5 bankston@eff.org  
 CORYNNE MCSHERRY (221504)  
 6 corynne@eff.org  
 JAMES S. TYRE (083117)  
 7 jstyre@eff.org  
 454 Shotwell Street  
 8 San Francisco, CA 94110  
 Telephone: 415/436-9333  
 9 415/436-9993 (fax)

10 Attorneys for Plaintiffs

11 [Additional counsel appear on signature page.]

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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

16

TASH HEPTING, GREGORY HICKS, )  
 CAROLYN JEWEL and ERIK KNUTZEN, on )  
 17 Behalf of Themselves and All Others Similarly )  
 Situated,, )  
 18 )  
 Plaintiffs, )

No. C-06-0672-VRW

**CLASS ACTION**

**PLAINTIFFS CASE MANAGEMENT STATEMENT**

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v.

Courtroom: 6, 17th Floor  
 Judge: Hon. Vaughn Walker  
 Date: May 17, 2006

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AT&T CORP., et al.,

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Defendants.

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1 In accordance with the Court’s Order of April 26, setting a Case Management Conference  
2 for May 17 (Dkt. 78), Plaintiffs submit the following Case Management Statement. Plaintiffs  
3 attempted to negotiate a joint statement with defendants, including sending a draft of this statement  
4 to defendants on May 3, 2006 requesting their input, but defendants did not respond. As described  
5 further below, this is likely because defendants have taken the position that their decision to file  
6 motions to dismiss excuses them from participation in the standard case management processes,  
7 including the negotiation of this statement. Nonetheless, plaintiffs below attempt to present  
8 defendants’ positions as defendants have described them during the course of the parties’  
9 discussions.

10 **DESCRIPTION OF THE CASE**

11 1. A brief description of the events underlying the action:

12 This case is a class action brought on behalf of all residential customers and subscribers of  
13 defendants AT&T Corp. and AT&T Inc. (“AT&T”), alleging, among other things, that AT&T is  
14 violating the Fourth Amendment of the United States Constitution and several federal statutes by  
15 conducting, on behalf of the government, warrantless, suspicionless searches and seizures of the  
16 domestic and international communications of millions of Americans, including plaintiffs. The  
17 case also alleges that AT&T has opened its key telecommunications databases to direct access by  
18 the government, disclosing detailed communications records about millions of its customers, again  
19 including plaintiffs.<sup>1</sup>

20 Plaintiffs assert that the massive suspicionless interception and disclosure by defendants of  
21 many millions of domestic as well as foreign communications, and communications records, is far  
22 broader than the one admitted to by the government so far, which is purportedly limited to foreign  
23 communications in which there is a reasonable suspicion that either the sender or the receiver is  
24 connected to Al Qaeda. Plaintiffs also contend that defendants have received no court order or  
25 other judicial authorization for this broader program, and that defendants have received no

26 \_\_\_\_\_  
27 <sup>1</sup> Specifically, plaintiffs allege statutory violations including without limitation: 50 U.S.C. § 1809,  
28 18 U.S.C. §2511, 47 U.S.C. §605 and 18 U.S.C. §2702 on behalf of a nationwide class and allege  
all of those plus a violation of Cal. Bus. & Prof. Code §17200 on behalf of the California sub-class.

1 executive branch authorization that comports with the Foreign Intelligence Surveillance Act, the  
2 Wiretap Act, or any other congressionally-established procedure.

3 2. The principal factual issues which the parties dispute:

4 Defendants have not yet stated which factual issues raised in the Complaint they dispute.

5 3. The principal legal issues which the parties dispute:

6 On March 31, 2006, plaintiffs filed a preliminary injunction motion seeking interim relief  
7 on their claims. (Dkt. 16). The Court has set a schedule for that motion, with a hearing date of June  
8 21, 2006.

9 On April 28, defendants filed two Motions to Dismiss. The AT&T Corp. Motion (Dkt. 86)  
10 seeks to dismiss the case under various theories of immunity and lack of standing raised under  
11 FRCP 12(b)(6). The AT&T Inc. Motion (Dkt. 79) asserts that this Court lacks jurisdiction over  
12 AT&T Inc. Defendants have asked that these motions be specially set for hearing on June 8, 2006,  
13 so that they may be heard prior to Plaintiffs' motion for preliminary injunction. Plaintiffs have  
14 opposed this request, asking that these motions be heard according to the Court's ordinary  
15 scheduling process (Dkt. 106).

16 Also on April 28, the United States government ("DOJ") filed a Statement of Interest  
17 pursuant to 28 U.S.C. § 517, stating its intention to intervene and move to dismiss on May 12 on  
18 the basis of the state secrets privilege. (Dkt. 82). DOJ has asked that their planned motion be heard  
19 "in conjunction with" the parties pending motions and that discovery be stayed until after their  
20 motions are decided.

21 4. The other factual issues [e.g. service of process, personal jurisdiction, subject-matter  
22 jurisdiction or venue] which remain unresolved for the reasons stated below and how the parties  
23 propose to resolve those issues:

24 As noted above, Defendant AT&T, Inc. has brought a motion claiming a lack of personal  
25 jurisdiction. Defendant AT&T Corp. has not.

26 5. The parties which have not been served and the reasons:

27 All currently-named parties have been served.

28 6. The additional parties which the below-specified parties intend to join and the

1 intended time frame for such joinder:

2 The Department of Justice has indicated its intent to intervene in this case, to assert the  
3 military and states secrets privilege and to move to dismiss the case. The Department of Justice has  
4 stated its intent to file those motions by May 12, 2006.

5 7. The following parties consent to assignment of this case to a United States  
6 Magistrate Judge for [court or jury] trial: None.

7 **ALTERNATIVE DISPUTE RESOLUTION**

8 8. The parties have not filed a Stipulation and Proposed Order Selecting an ADR  
9 process.

10 9. The parties do not believe that ADR is appropriate for this case. The ADR Phone  
11 Conference is scheduled for May 11, 2006.

12 **DISCLOSURES**

13 10. Defendants have asserted that they will not be providing any disclosures because  
14 they have moved to dismiss. Plaintiffs assert that the filing of a motion to dismiss does not dispense  
15 with the parties' obligations under Rule 26 and are preparing their initial disclosures.

16 **DISCOVERY**

17 11. Plaintiffs contacted defendants and scheduled a conference under F.R.C.P. 26(f) for  
18 April 25, 2006, in accordance with the court's then-existing schedule setting a CMC on May 16  
19 (Dkt. 7-1). During the conference, however, defendants asserted that their intention to file a motion  
20 to dismiss on April 28 relieved them of any obligation to conduct a Rule 26(f) conference and  
21 further excused them from any of the remaining initial case management requirements, including  
22 negotiation of the joint case management conference statement. Defendants then refused to conduct  
23 the Rule 26(f) conference in any meaningful way and further asserted that since the conference did  
24 not occur, discovery could not commence.

25 Plaintiffs have a pending motion for preliminary injunction, which the Court has scheduled  
26 for hearing on June 21, 2006. In connection with that motion, plaintiffs have served a narrow Rule  
27 30(b)(6) notice of deposition and an associated document request on defendant AT&T Corp. These  
28 discovery requests are tailored to address only issues raised by the preliminary injunction motion.

1 They are also directed to only one of the defendants, AT&T Corp., which has not challenged  
2 jurisdiction.

3 Defendants have refused to comply with the 30(b)(6) notice, but have not filed a motion for  
4 a protective order. The parties met and conferred regarding the deposition notice during the April  
5 25, 2006 conference call.

6 On May 1, plaintiffs filed a letter brief regarding their request for an order compelling  
7 compliance by AT&T with limited discovery on the matters raised by the preliminary injunction  
8 motion. (Dkt. 94). Defendants responded on May 2 (Dkt. 103) requesting that the issue be  
9 discussed at the May 17, 2006 conference set by the Court.

10 **TRIAL SCHEDULE**

11 12. Plaintiffs believe that the case can be brought to trial within 18 months if discovery  
12 commences according to the normal rules of this Court. Defendants believe it is premature to  
13 schedule a trial date.

14  
15 DATED: May 4, 2006

ELECTRONIC FRONTIER FOUNDATION

16  
17 By \_\_\_\_\_

Cindy A. Cohn, Esq. (SBN.145997)  
Lee Tien, Esq. (SBN 148216)  
Kurt Opsahl, Esq. (SBN 191303)  
Kevin S. Bankston, Esq. (SBN 217026)  
Corynne McSherry, Esq. (SBN 221504)  
James S. Tyre, Esq. (SBN 083117)  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333 x108  
Facsimile: (415) 436-9993

18  
19  
20  
21  
22 ATTORNEYS FOR PLAINTIFFS

23  
24 TRABER & VOORHEES  
BERT VOORHEES  
THERESA M. TRABER  
128 North Fair Oaks Avenue, Suite 204  
Pasadena, CA 91103  
Telephone: (626) 585-9611  
Facsimile: (626) 577-7079  
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LAW OFFICE OF RICHARD R. WIEBE  
RICHARD R. WIEBE (121156)  
425 California Street, Suite 2025  
San Francisco, CA 94104  
Telephone: (415) 433-3200  
Facsimile: (415) 433-6382

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
REED R. KATHREIN  
JEFF D. FRIEDMAN  
MARIA V. MORRIS  
SHANA E. SCARLETT  
100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 288-4545  
Facsimile: (415) 288-4534

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
ERIC ALAN ISAACSON  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: (619) 231-1058  
Facsimile: (619) 231-7423

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 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 the United States Postal Service to the following non-CM/ECF participants:

David W. Carpenter  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60600

David L. Lawson  
Sidley Austin Brown & Wood  
1501 K Street, N.W.  
Washington, D.C. 20005

By \_\_\_\_\_  
Cindy A. Cohn, Esq. (SBN.145997)  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333 x108  
Facsimile: (415) 436-9993  
cindy@eff.org