

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTE ORDER

VAUGHN R WALKER  
United States District Chief Judge

**DATE:** May 17, 2006

**COURTROOM DEPUTY:** Cora Delfin

**Court Reporter:** Connie Kuhl

**CASE NO.** C-06-672 VRW

**TITLE:** Tash Hepting, et al, v AT&T Corporation, et al

**COUNSEL FOR PLAINTIFFS:**

Cindy Cohn, Maria Morris

**COUNSEL FOR DEFENDANTS:**

David Anderson, Bradford Berenson

**COUNSEL FOR UNITED STATES:**

Carl J Nichols

**COUNSEL FOR MEDIA COMPANIES:**

Karl Olson

**PROCEEDINGS:** Hearing on AT&T's motion to compel return of documents and parties' cross-motions regarding sealing of documents

**RESULTS:**

The court denied, without prejudice, AT&T's motion to compel return of the documents attached as Exhibits A-C to the declaration of Mark Klein (Doc #31, Exs A-C). Pending further order of court, plaintiffs, their counsel, retained expert and consultant shall secure the documents and their content and shall not disclose the documents or their content to anyone. Counsel for plaintiffs and AT&T are directed to confer and to submit a joint protective order implementing this directive.

All papers heretofore filed or lodged under seal shall remain under seal pending further order of court. Counsel for plaintiffs and AT&T are directed to confer and to submit by May 25, 2006, jointly agreed-upon redacted versions of the preliminary injunction motion (Doc #30) and the Klein declaration (Doc #31). If the parties fail to agree on this matter, they shall file by that date memoranda that specifically identify the portions, if any, of these documents that each party believes are sealable.

Plaintiffs are instructed to file by close of business on May 22, 2006, a memorandum that addresses: (1) whether this case can be litigated without deciding the state secrets issue, thereby obviating any need for the court to review the government's classified memorandum and declarations and (2) whether the state secrets privilege is implicated by plaintiffs' FRCP 30(b)(6) deposition request for information whether AT&T received any certification from the government. AT&T and the government may each file reply memoranda on these issues by

close of business on May 24, 2006.

The court sets June 23, 2006, at 9:30 AM, for hearing on the following motions: (1) the government's motion to intervene; (2) the government's motion to dismiss based on the state secrets privilege and (3) the AT&T entities' motions to dismiss. The court vacates the June 21, 2006 hearing and the accompanying briefing schedule for plaintiffs' preliminary injunction motion.

The court will entertain motions to intervene only on written application therefor with appropriate notice and service on all parties; if necessary, the court will consider applications to shorten time for any such motions to intervene.