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22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
24 SAN FRANCISCO DIVISION

25 In re:

26 NATIONAL SECURITY AGENCY TELE-
27 COMMUNICATIONS RECORDS LITIGATION

MDL Dkt. No. 06-1791-VRW

**REPLY IN SUPPORT OF UNOPPOSED
MOTION OF DEFENDANTS AT&T
COMMUNICATIONS OF SOUTHWEST,
INC., ET AL., TO DISMISS PLAINTIFF'S
APPLICATION TO COMPEL**

[Fed. R. Civ. P. 12(b)(6)]

Date: May 7, 2009
Time: 10:30 a.m.
Courtroom: 6, 17th Floor
Judge: Hon. Vaughn R. Walker

28 This Document Relates To:

*Clayton v. AT&T Communications of the
Southwest, Inc., et al., No. 07-1187*

1 On April 2, 2009, defendants AT&T Communications of the Southwest, Inc., SBC
2 Long Distance, L.L.C., SBC Advanced Solutions, Inc., TCG St. Louis Holdings, Inc. dba
3 TCG St. Louis and Southwestern Bell Telephone L.P., and TCG Kansas City, Inc. (collec-
4 tively, the "AT&T defendants") filed a motion to dismiss Plaintiff's First Amended Appli-
5 cation to Compel Production of Documents and to Compel Witnesses to Appear and An-
6 swer Questions Upon Oral Examination (Dkt. 1-6, "Application") for failure to state a
7 claim upon which relief can be granted. See Dkts. 594, 595. The motion set oral argument
8 for May 7, 2009. *Id.* Under the local rules, plaintiff Clayton had until April 16, 2009 to file
9 an opposition or statement of non-opposition. Civ. L.R. 7-3(a), (b). Plaintiff did neither.
10 Plaintiff did file two sur-replies (Dkts. 601-602) addressing the United States' related mo-
11 tion for summary judgment (Dkt. 536), but neither sur-reply addresses the arguments made
12 by the AT&T Defendants in their motion. Therefore, Plaintiff has filed no opposition to
13 which the AT&T Defendants can reply.

14 For the reasons set out in the AT&T Defendants' motion, Dkts. 594, 595, this
15 Court should dismiss Plaintiff's Application.

16 Dated: April 23, 2009

Respectfully submitted,

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23
24 By /s/ Marc H. Axelbaum
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DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from the other signatory listed above.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on April 23, 2009, at San Francisco, California.

 /s/ Marc H. Axelbaum
Marc H. Axelbaum