13-2784-cv

In the United States Court of Appeals for the Second Circuit

CHEVRON CORPORATION,

Plaintiff-Appellee,

-v.-

NON-PARTY JOHN DOE SIMEONTEGEL@HOTMAIL.COM, NON-PARTY JOHN DOE MEY_1802@HOTMAIL.COM, NON-PARTY JOHN DOE PIRANCHA@HOTMAIL.COM, NON-PARTY JOHN DOE DURUTI@HOTMAIL.COM,

Movants-Appellants,

-v.-

STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, DONZIGER & ASSOCIATES, PLLC, JAVIER PIAGUAJE, HUGO GERARDO, CAMACHO NARANJO,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

OPPOSITION OF PLAINTIFF-APPELLEE CHEVRON CORPORATION TO EMERGENCY MOTION FOR STAY

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PRELIMINARY STATEMENT

This appeal arises from orders upholding a subpoena that appellee Chevron Corporation issued to Microsoft Corporation in September 2012. In contrast to the rhetoric of the appellants' motion to stay, there is nothing unprecedented or novel about the subpoena, and the district court denied the appellants' motion to quash the subpoena based on well-settled precedent, reaching the same result as courts in California that evaluated virtually identical subpoenas and allowed the production of the majority of the information sought. *See Chevron Corp. v. Donziger*, 12-MC-80237 (CRB), Dkt. 70 (N.D. Cal. Aug. 22, 2013). This motion to stay is a last-minute attempt to frustrate the district court's conclusion that the information at issue should be produced before judgment is rendered.

The subpoena at issue requests basic identifying and login information for several email accounts, and was specifically tailored to seek only information that courts routinely allow to be produced in litigation. Producing such information will cause no cognizable harm: the subpoena does not request the contents of email communications, does not imperil First Amendment activity, does not affect anonymity, and does not impede any right of association. To the contrary, the subpoena is tailored to help Chevron prove its fraud claims in a lawsuit that is underway against the appellants' allies and employers, who used the email accounts at issue as part of a scheme to defraud Chevron of billions of dollars

through a lawsuit in Ecuador. The owners of 26 of the 30 accounts listed in the subpoena, in fact, did not even file any objections or join in the motion to quash. As a result, the district court correctly and repeatedly upheld the subpoena, emphasizing that the appellants—who characterize themselves as "John Doe" movants even though their identities are clear to all concerned—did not make a sufficient evidentiary proffer to prevent enforcement of the subpoena in their own right, much less on behalf of account owners who did not object and are not before this Court.

A review of the criteria required to justify a stay shows that the Does cannot establish *any* of the prerequisites to relief.

First, the Does have not made the "strong showing" of success needed for a stay because the overwhelming weight of legal authority allows the production of the information sought here, as multiple courts have recognized. In brief, the Does have not—to this day—made any attempt to detail (much less document with competent evidence) their standing to object to 29 of the 30 accounts at issue, even though the district court gave them multiple opportunities to do so. The district court reached the same conclusion that the Ninth Circuit reached in a related case: the facts here do not call for the abrogation of traditional standing principles. The Does, moreover, cannot meet their standing burden by relying on sweeping generalities about anonymous speech because, as the district court recognized, the

Does are *not anonymous*—and have in many cases broadly *publicized* their identities.

Second, the Does do not cite *any* competent evidence establishing that they face a concrete risk of harm if the information sought is disclosed to Chevron. This failing is plain in light of the many chances that the district court afforded the Does to make their case. And yet they have still marshaled nothing but unsubstantiated, conclusory assertions that the subpoena would somehow chill their expressive rights or associational freedoms.

Third, the Does have no response to the district court's conclusion just this week that "[i]t remains important that the [subpoenaed] documents be produced promptly so that an appropriate application to expand the record, should either side think that advisable, may be made before the case is decided." Dkt. 69 at 2. "Further delay," the district court emphasized, "is extremely undesirable." *Id.* As the district court recognized, Chevron would be harmed by a stay because of its imminent need to use the subpoenaed information before judgment is rendered.

This Court should deny the Does' motion.

BACKGROUND

1. This matter arises from a $19 billion judgment that a group of U.S.-based lawyers manufactured against Chevron in Ecuador. Courts throughout the United States have concluded that those lawyers' efforts to obtain that judgment

have been rife with fraud.[1] One of the keys to uncovering evidence of that fraud has been Chevron's use of lawful process to seek evidence from third parties. *See*, *e.g.*, *In re Chevron Corp.*, Docket Entry 77 at 3-4, No. 1:10-mc-00021-JCH-LFG (D.N.M. Sept. 2, 2010). Based on the information obtained from such efforts, Chevron brought suit in 2011 under the Racketeer Influenced and Corrupt Organizations Act and New York state law (the "RICO action"), contending that those plaintiffs' lawyers conspired to defraud Chevron of billions of dollars. *See Chevron Corp. v. Donziger*, No. 11 Civ. 0691 LAK (S.D.N.Y.).

The subpoena that the Does have sought to quash here—which was served on Microsoft Corporation on September 19, 2012—is part of Chevron's discovery effort in the RICO action. Specifically, the subpoena seeks information about account owners, as well as Internet Protocol ("IP") logs and IP address information. *See* Dkt. 39-2. Discovery of such information is critical because the Ecuadorian plaintiffs and their agents used email accounts to share documents to further their fraudulent scheme. The subpoena will provide information relevant to

[1] *See*, *e.g.*, *Chevron Corp. v. Camp*, Nos. 1:10mc 27, 1:10mc 28, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010) ("[W]hat has blatantly occurred in this matter would in fact be considered fraud by any court."); *In re Chevron Corp.*, No. 11-24599-CV, 2012 WL 3636925, at *2 (S.D. Fla. June 12, 2012) ("[M]ounds of evidence . . . suggest[ ] that the judgment [obtained in Ecuador was] . . . ghostwritten [and includes] verbatim passages that were taken from various pieces of the [plaintiffs'] lawyers' internal, unfiled, work product.").

claims in the RICO action, because each of the individual email account owners who bring this motion was intimately involved with the fraud alleged. *See*, *e.g.*, Dkt. 35 at 5.

Though Microsoft did not object to Chevron's subpoena, three non-party "John Does" moved to quash the subpoena in October 2012. Dkt. 2. The Does contended that the subpoena is overbroad and that it infringes the right to anonymity and freedom of association. Dkt. 2-1 at 7-20. The motion was assigned to Judge Lewis A. Kaplan, the presiding judge in the RICO action, sitting by designation in the Northern District of New York. Dkt. 27.

The Does claimed to own only 3 of the 30 email accounts listed in the subpoena: simeontegel@hotmail.com, mey_1802@hotmail.com, and lupitadeheredia@hotmail.com. Dkt. 2-1 at 3; Dkt. 2-2 at 1. The owner of the last of those accounts dropped from the lawsuit upon realizing that that email address was not included in the subpoena. Dkt. 42-1 at 1. Two other account owners—the owners of duruti@hotmail.com and pirancha@hotmail.com—attempted to join the motion to quash as "John Does" only on reply. *See* Dkt. 42-1 at 1; Dkt. 44 at 2 n.5.

In moving to quash—and in moving this Court for emergency relief—the Does failed to address two significant issues of fact:

First, the Does have not accurately represented their involvement in the Ecuador litigation. The Does portray themselves as well-meaning individuals

involved in a mere "campaign of expressive activity." Emergency Motion ("Mot.") at 15. The record does not support that self-serving characterization. To the contrary, the Does were intimately involved in the alleged fraud. The Does managed strategies that furthered that fraud, helped the plaintiffs' attorneys in the Ecuador litigation tout a fraudulent "independent" expert report in the Ecuadorian court, and worked closely with—and at the direction of—the lead RICO action defendant in furthering the fraud. Chevron submitted to the district court significant evidence substantiating the Does' involvement in the Ecuador litigation. *See*, *e.g.*, Dkt. 35 at 4-6. The Does cite none of that evidence in their motion.

The lead Doe movant is a prime example. Simeontegel@hotmail.com is apparently an email account of Simeon Tegel, who was from 2005 to 2008 the Communications Director of Amazon Watch, an entity funded and directed by the lead RICO action defendant to facilitate his fraudulent scheme. *See* Dkt. 50 at 7. Tegel publicized and distributed a fraudulent expert report and helped the lead RICO action defendant further his fraud by writing false letters to news entities. *See*, *e.g.*, Dkt. 39-3, 39-4. These and other activities were part of a campaign to legitimize a fraudulent judgment against Chevron. *See*, *e.g.*, Dkt. 39-5.

Second, despite their claims to anonymity, the Does are not anonymous. The vast majority of the Does' email addresses contain either their actual names or initials, and many of the Does repeatedly publicized their association with the

Ecuadorian plaintiffs. Indeed, many of the Does list their email addresses on publicly accessible websites and have otherwise publicized their association with the Ecuadorian plaintiffs. *See*, *e.g.*, Dkt. 35 at 14 (summarizing ways in which the Does have publicized their email addresses and citing supporting exhibits). For example, a Google search for "Simeon Tegel" easily finds Tegel's promotional website, which includes a "Contact" page featuring his email address. *See* http://www.simeontegel.com/contact.php (last visited Dec. 13, 2013); Dkt. 39-12.

2. The district court denied the Does' motion to quash the subpoena. *See* Dkt. 50. *First*, the court held that the Does had not established standing to move to quash the subpoena on First Amendment grounds. *Id.* at 9-10. Relying on Supreme Court and other federal appellate court precedent, the court explained that constitutional protections extend only to U.S. citizens or to non-citizens with sufficient connections to the United States. *Id.* Here, however, the Does "submitted no evidence that they are U.S. citizens or otherwise have a strong connection to this country," *id.* at 7, and therefore failed to establish their entitlement to First Amendment protections, *id.* at 10. *Second*, the court held that, even if the Does possessed standing, they would not be able to assert standing on behalf of the many non-objecting account holders listed in the subpoena, because there is "neither evidence nor reason to believe that the" absent, non-objecting account owners "would face any practical difficulties in protecting their own

interests if they were so minded." *Id.* at 10-11. *Finally*, the court rejected the Does' argument that the subpoena is overbroad, explaining that the subpoena requests information "only from the period of the alleged fraud." *Id.* at 12 n.39.

3. The Does moved for reconsideration, contending that the district court erred in "assuming" that none of them were United States citizens or residents and for "assuming" that the Does lacked standing to assert the interests of absent third parties. Dkt. 53 at 1. The Does submitted one declaration in which the owner of simeontegel@hotmail.com declared that he is a United States citizen. Dkt. 53-1.

The district court substantially denied the motion for reconsideration. *See* Dkt. 57. The court clarified that it had not assumed that the Does were non-citizens, but rather concluded that they had not met their burden of establishing their standing to assert First Amendment claims. *Id.* at 1-2. The court also explained that its ruling as to standing to assert interests of absent, non-objecting third parties would have been the same even if the Does were citizens, because the Does had not established the prerequisites for third-party standing. *Id.* at 2.

Considering the declaration regarding simeontegel@hotmail.com, the district court ruled that the declarant had not established a right to anonymous speech. Dkt. 57 at 3. It then determined that the right to private association did not apply either, reasoning that disclosure of the IP addresses associated with simeontegel@hotmail would not chill his associational activities because Chevron

already knew of those activities. *Id.* The court ruled in the alternative that the right of association did not apply because "the First Amendment does not shield fraud." *Id.* The court, however, narrowed the subpoena as to simeontegel@hotmail.com for 2005 through 2008, after determining that Chevron had alleged that he was involved in the fraud only during that period. *Id.*

4. The Does moved the district court to stay its orders pending appeal. On December 9, 2013, the district court denied the Does' motion. It reaffirmed its conclusions that "[t]here is no substantial reason to suppose that the three John Does who moved to quash before this Court had or have standing to assert any claimed rights or interests of anyone other than themselves." Dkt. 70 at 1. The court rejected the Does' contrary arguments regarding third-party standing as "frivolous." *Id.* at 2. The court also rejected as "frivolous" the Does' continued insistence that the district court had imposed a new burden on the Does to plead their citizenship. *See id.* The court explained that it had followed Supreme Court precedent holding that "'any person invoking the power of a federal court must demonstrate standing to do so.'" *Id.* (quoting *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013)). On December 11, the Does filed the pending emergency motion to stay the district court's order.

5. Counsel for the Does brought a virtually identical challenge in the Northern District of California, seeking to quash similar subpoenas that Chevron

served on Google Inc. and Yahoo! Inc. *See Chevron Corp. v. Donziger*, Dkt. 70, 12-MC-80237 (CRB) (N.D. Cal. Aug. 22, 2013). The district court there substantially denied the motion to quash, concluding: (1) that the account holders had no First Amendment interest at stake; (2) that they had no privacy interest in the requested information; and (3) that the information sought is relevant to Chevron's claims. *Id.* at 11-21. The "Does" in that case sought an emergency stay as well. The Ninth Circuit substantially denied that request, and thus Google and Yahoo! have produced the subpoenaed information regarding many accounts listed in those subpoenas. *See Chevron Corp. v. Donziger*, No. 13-16920, Dkt. 10 (Oct. 25, 2013); *see* PX 2560, 2561, *Chevron Corp. v. Donziger*, No. 11 Civ. 0691 LAK (S.D.N.Y.) (exhibits in RICO action of those productions). In denying the request, the Ninth Circuit emphasized that the Does' challenge to the subpoenas did not warrant "a lessening" of limitations on standing. No. 13-16920, Dkt. 10 at 3.

ARGUMENT

The district court was correct to uphold the subpoena. The Does cannot meet the burden of establishing their entitlement to a stay based on the governing four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other

parties . . . ; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (internal quotation marks omitted); *see id.* at 433-34 (stating burden).

I. The Movants Have Not Made A Strong Showing Of Success On The Merits.

The district court correctly upheld Chevron's subpoena. To begin, the Does failed to establish their standing to object to the subpoena. Although the subpoena requested information about 30 email accounts, 26 of the account holders did not object to the subpoena at all. Of the four account holders who did object, none established standing to represent the interests of the absent, non-objecting account owners. And only ***one*** of the Does submitted ***any*** evidence regarding his own standing. The district court modified the subpoena in response to that showing. *See* Dkt. 57. But because the Does failed to carry their burden of establishing standing, the district court correctly concluded that it lacked authority to order relief for any other account holder.

The subpoena would have also withstood any challenge on the merits. The subpoena makes reasonable requests for relevant information to support substantial legal claims. Courts routinely uphold subpoenas seeking such information from Internet service providers like Microsoft. *See, e.g.*, *London v. Does 1-4*, 279 F. App'x 513, 514-15 (9th Cir. 2008); *John Wiley & Sons, Inc. v. Does 1-35*, 12 Civ. 2968 (RWS), 2012 U.S. Dist. LEXIS 182741 (S.D.N.Y. Dec. 28, 2012). And the subpoena accords with First Amendment standards: The First Amendment right of

anonymity does not apply here because the Does are not anonymous—they have publicized their identities in connection with these email addresses—and because the First Amendment does not shield fraud like that aided by the Does. As the district court emphasized, "[t]he suggestion that there is some right to anonymous speech at issue in this circumstanc[e] is risible." Dkt. 69 at 1. Nor does the First Amendment right of association apply here. The Does failed to identify any harm that would result from re-disclosure of identities that they already disclosed.

The Does attack the district court's conclusions on several grounds. *See* Mot. 8-16. None of their arguments has merit, and thus the Does have failed to show a likelihood of success on appeal.

First, the Does contend that the information that Chevron seeks is not relevant to its claims. Mot. 9. The Does do not and cannot cite any authority for that view. The subpoenaed information is relevant to Chevron's RICO claims because it is reasonably calculated to help: (1) show whether certain account holders had access to the Ecuadorian plaintiffs' attorneys internal documents and data (several of the accounts were used as virtual drop sites to allow the RICO defendants to exchange information without generating email); (2) prove that substantial portions of the RICO predicate acts took place in the United States; (3) provide information about the structure and management of the RICO enterprise; and (4) substantiate the identities of the accountholders in a form usable at trial.

See, *e.g.*, Dkt. 35 at 10-11. And Judge Kaplan—who is presiding over the RICO action and is uniquely well positioned to determine whether the subpoena seeks relevant information—has rejected the Does' relevance argument. In denying the Does' motion for reconsideration, for example, Judge Kaplan emphasized that the information sought relating to the account simeontegel@hotmail.com was "quite relevant to Chevron's RICO claims." Dkt. 57 at 3. And he reemphasized this week that the subpoenaed information is needed "promptly." Dkt. 69 at 2.

Second, the Does contend that the district court erred in holding that the movants were required to prove their citizenship to assert First Amendment rights. *See* Mot. 9-10. Judge Kaplan correctly deemed this argument "frivolous" because he "held no such thing." Dkt. 70 at 2. Rather, the district court held that the Does had to meet their well-established burden of establishing that they had Article III standing. Dkt. 57 at 2; *see Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). While the Does insist that "[t]here is at least a serious question whether the non-movants [sic] have" the connections to the United States necessary to establish standing, Mot. 10, they submitted *no evidence* of standing for 29 of the 30 account holders. Although the district court repeatedly "called" the "issue" of the Does' standing burden "to the Does' attention," Dkt. 69 at 1, the Does refused to submit any evidence of standing except for one account holder. Their failure to satisfy their burden should not be rewarded with emergency relief.

Third, the Does contend that the district court erred in concluding "that the facts here do not implicate the First Amendment." Mot. 10. But that is not what the district court held. The district court held that the only Doe who established standing to object to the subpoena had not established a right to anonymous speech. Dkt. 57 at 3. As the district court noted this week, "[i]t is essentially obvious that Chevron already knows" who the Does are, and the "[t]he suggestion that there is some right to anonymous speech at issue in this circumstanc[e] is risible." Dkt. 69 at 1. To the extent the Does established any entitlement to have the district court consider a First Amendment claim, the district court considered and properly rejected the Does' arguments.

Fourth, the Does contend that the subpoena implicates their right of association. Mot. 11-13. This argument fails, however, because the Does cannot make "a *prima facie* showing that disclosure would infringe" their associational rights. *N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1355 (2d Cir. 1989). As explained, the Does' identities have been disclosed, and the Does freely associated themselves and their identities with the Ecuadorian plaintiffs for long spans of time during which the Ecuadorian plaintiffs' attorneys were perpetrating massive fraud. Dkt. 35 at 14. Nothing about *re*-disclosure of the Does' identities could harm their associational freedom.

Citing the Supreme Court's decision in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), the Does contend that "First Amendment rights will be denied only to those who *themselves* ha[ve] 'a specific intent to further an unlawful aim.'" Mot. 12 (quoting 458 U.S. at 925; emphasis in original). But *Claiborne Hardware* applied that specific-intent rule as a prerequisite to *imposing civil liability*: "For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims." 458 U.S. at 920 (footnote omitted). Chevron has not sought to impose civil liability on the Does; it has asked only that Microsoft disclose information relating to fraudulent activity in which the Does were involved. *Claiborne Hardware* does not undercut that request.

Fifth, the Does contend that the district court erred because it did not require Chevron to present facts necessary to limit the subpoena. Mot. 13-14. But Chevron merely had to show that the subpoenaed information is relevant to its claims. *Schoolcraft v. City of N.Y.*, 10 Civ. 6005 RWS, 2012 WL 2161596, at *2 (S.D.N.Y. June 14, 2012), *recon. denied*, 2012 WL 2958176 (S.D.N.Y. July 20, 2012) ("The party issuing the subpoena must demonstrate that the information sought is relevant and material to the allegations and claims at issue in the proceedings." (citations and internal quotation marks omitted)). The court correctly held that the subpoena seeks relevant information. Dkt. 57 at 3. The

Does then had the burden of showing that the subpoena is unreasonable. *Libaire v. Kaplan*, 760 F. Supp. 2d 288, 291 (E.D.N.Y. 2011). The Does made no effort to do so, and their failure to satisfy their obligation cannot be grounds for a stay. Nor did the Does explain how Chevron could have limited their subpoena to "relevant logins," Mot. 13, as relevance can be determined only from reviewing all data that the subpoena would yield.

Sixth, the Does contend that the district court erred in concluding that the Does lack standing to challenge Chevron's subpoena on behalf of absent, non-objecting account owners. Mot. 14-16. Again, the Does cite no authority demonstrating that they should have been afforded such standing. Although the Does complain of the "burden of discovery," the Does are not the ones being asked to produce responsive information, so they face no burden of compliance at all. The lead case the Does cite on this argument, moreover, rejected a claim of third-party standing, and recognized the basic principle that a party seeking relief "bears the burden of establishing standing." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010); *see id.* at 792-93. The Does failed to satisfy their burden, despite many chances. *See*, *e.g.*, Dkts. 2, 42, 43, 46. They have again failed to do so, and should not be saved with a stay. *See*, *e.g.*, *In re N. Plaza, LLC*, 395 B.R. 113, 126 (S.D. Cal. 2008) (rejecting stay where, as here, multiple courts had rejected movant's arguments).

II. The Movants Will Face No Cognizable Harm Without A Stay.

The Does' pleas of irreparable harm (*see* Mot. 6-7) are also empty. Indeed, the general rule is that interlocutory review of discovery decisions is not allowed, and numerous courts have held that a desire to avoid discovery does not show irreparable harm or prejudice.[2]

The Does insist that compliance with the subpoena will cause them to lose their "privacy" and violate their constitutional rights. Mot. 7. But compliance will not cause any cognizable harm. As explained above, the Does already disclosed their identities to the public and willingly disclosed all of the other requested information to Microsoft. If disclosure could have harmed the Does, it would have already done so (and such harm would be self-inflicted). The mere re-disclosure occasioned by compliance with the subpoena will not cause harm.[3]

The cases invoked by the Does (*see* Mot. 7) do not support them. In *Center*

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[2] *See*, *e.g.*, *In re Perry H. Koplik & Sons, Inc.*, 02-B-40648 REG, 2007 WL 781905, at *2 (Bankr. S.D.N.Y. Mar. 13, 2007) ("There is no irreparable injury in . . . complying with the requirements of discovery."); *In re Gushlak*, 11-MC-218 NGG JO, 2012 WL 2564466, at *7 (E.D.N.Y. Jan. 30, 2012), *report and recommendation adopted*, 2012 WL 1514824 (E.D.N.Y. Apr. 30, 2012); *Grant v. Capital Mgmt. Servs., L.P.*, 10CV2471 WQH (BGS), 2011 WL 3653770, at *2 (S.D. Cal. Aug. 19, 2011).

[3] There is no basis to the Does' claim that the information sought will "revea[l]" their "professional, political, religious, and intimate associations." Mot. 7. As the Does acknowledge, IP address information typically will show only the regional office of the Internet service provider that allowed the user to access the Internet. *See* Appellants' Opening Brief, ECF No. 34-1 at 9 (Oct. 31, 2013).

for International Environmental Law v. Office of the United States Trade Representative, 240 F. Supp. 2d 21 (D.D.C. 2003), the court ordered a conditional stay pending appeal but directed the appellants to seek to expedite their appeal in order to prevent harming the parties requesting information. *Id.* at 23-24. The circumstances here are materially different, because a stay could not be imposed without harming Chevron, which needs "the [subpoenaed] documents [to] be produced promptly so that an appropriate application to expand the record, [if] advisable, may be made before the [RICO action] is decided." Dkt. 69 at 2. And the statement in *United States v. Phillip Morris, Inc.* that the Does quote—that "disclosure of privileged documents to an adverse party" can be "irreparable" harm, 314 F.3d 612, 621-22 (D.C. Cir. 2003)—is inapposite here because the Does have established no privilege or protected interest in the subpoenaed information. The Does have therefore failed to establish that they will face irreparable harm if Microsoft complies with the subpoena.

III. A Stay Would Risk Harm To Chevron.

Chevron issued the subpoena here over a year ago to obtain information relevant to its claims in a proceeding that is now in the post-trial phase. If the Does obtain a stay, Chevron will be harmed because it will be effectively unable to obtain that information in time to use it in the RICO action.

There is accordingly no basis for the Does' assertion that "a stay will cause Chevron *no* harm." Mot. 4 (emphasis added); *see id.* at 16-17.

First, the Does contend that Chevron's need for the information "is not pressing" because the case is in its post-trial phase, "[t]here is no pending deadline regarding when a motion to augment the record can be filed," and "there is little reason to believe that Judge Kaplan's decision in the matter is imminent." Mot. 16. But Judge Kaplan made clear just this week that "[i]t remains important that the documents be produced promptly" because "post-trial briefing is underway" and "[f]urther delay is extremely undesirable." Dkt. 69 at 2. Indeed, now that the case is in the post-trial phase, Chevron needs the information even more quickly than before so that it can have some chance to use it.

Second, the Does contend that, "[a]s to the Appellants' identities," Chevron has no need for the subpoenaed information because it "has claimed that it already knows who the Appellants are." Mot. 16. This argument ignores Chevron's request for IP information, which will (among other things) show whether certain account holders had access to the RICO action defendants' internal documents and data, and prove that substantial portions of the RICO predicate acts took place in the United States. As to the Does' identities, Chevron explained the following in its opposition to the Does' motion to quash: "[A]lthough Chevron likely knows the Does' identities, Chevron remains entitled to regularly collected business

records to substantiate those identities at trial." Dkt. 35 at 11 (citing Fed. R. Evid. 803(6)). The Does never acknowledge this basic point.

IV. The Public Interest Militates Against A Stay.

Finally, the public interest favors timely compliance with well-reasoned court orders—particularly where, as here, an order supports a party's legal claims and that party has diligently pursued enforcement of the order. *See*, *e.g.*, *United States v. Maloney*, 406 F.3d 149, 154 (2d Cir. 2005) (Sotomayor, J.); *United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 759 (1st Cir. 1985). Prompt compliance with court orders supports "the public's interest in expeditious resolution of litigation" and the district court's ability to manage its docket. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). The public interest thus favors swift compliance with the orders upholding Chevron's subpoena.

The Does contend that the public interest counsels otherwise because "[a] compelling interest exists in protecting the loss of constitutionally-protected rights, and First Amendment rights in particular." Mot. 17. As already explained, the dispute before this Court does not implicate such interests. The Does have made sure of that, by shedding any anonymity they might once have enjoyed and by engaging in activities that do not implicate First Amendment interests.

CONCLUSION

The emergency motion for a stay should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2013, a true and correct copy of the foregoing Opposition of Plaintiff-Appellee Chevron Corporation to Emergency Motion for Stay was served on the following counsel of record in this appeal via CM/ECF pursuant to Local Rule 25.1(h)(1) & (2):

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