

13-2784-CV

**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
Honorable Lewis A. Kaplan, U.S. District Judge

**REPLY IN SUPPORT OF EMERGENCY MOTION TO TEMPORARILY
STAY PRODUCTION PENDING RESOLUTION OF THIS APPEAL**

**RELIEF REQUESTED NO LATER THAN
2:00 P.M. MONDAY, DECEMBER 16, 2013**

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ARGUMENT

The Non-Party Movants-Appellants (“Appellants”) hereby submit this brief Reply in support of their request for an emergency stay under Federal Rules of Appellate Procedure 8 and 27, and Local Rule 27.1(d), ECF No. 76.

As an initial matter, this appeal will be fully briefed on the merits by the end of today. The stay Appellants request will therefore naturally be of short duration.¹ Appellants file this Reply only to correct four misstatements by Chevron in its Opposition to Appellants request, ECF 84 (“Chevron Opp.”).

First, Chevron’s claim that none of Appellants are anonymous because they used their names in their email addresses is contrary to the facts. Chevron Opp. at 6-7. Three of the four Appellants’ email addresses do not appear to contain names at all. *See, e.g.*, this paper’s caption.

Second, Chevron presents a distorted picture of the actions of the district court and the Ninth Circuit in the related challenge to Chevron’s subpoenas to Google and Yahoo. Contrary to Chevron’s contention, the district court quashed as to 25 targets, and dramatically narrowed the scope of Chevron’s subpoenas as to others. *Chevron Corp. v. Donziger*, Case No. 12-MC-80237-CRB, 2013 WL 4536808, *11-17 (N.D. Cal. Aug. 22, 2013). In addition, although the Ninth Circuit denied a stay as to defendants and non-movants, it *granted* appellants’

¹ Appellants have no objection to an expedited determination of the merits of this appeal.

analogous emergency motion to stay production pending appeal as to all but one of appellants' addresses. *Chevron v. Donziger*, Case No. 13-16920 (9th Cir. October 25, 2013). Chevron would have this Court ignore the Ninth Circuit's holding that a stay was warranted there because of "a substantial question on the merits under the First Amendment." *Id.* at 2.

Third, contrary to Chevron's bald assertion of need, it has still provided no reasonable link between information it seeks here and any possible use in underlying trial (which of course is now over). Indeed, to the best of counsel's knowledge, Chevron made no reference at trial to the analogous discovery it obtained from Google and Yahoo, highlighting its irrelevance. Chevron here merely repeats its conclusory statement that it has "imminent need" for the information. Chevron's claim of need is unsupported on the now ample record.

And *fourth*, contrary to Chevron's assertion, Appellants have made a strong showing of likelihood of success on the merits. That showing is detailed, both in Appellants opening brief on the merits, and in the reply on the merits, to be filed today. Specifically, Appellants have made an unrebutted showing of First Amendment harm by way of declarations from the Does (JA10-12, JA216-17). Given the fact that trial is over, obviating any exigent need for this discovery, Chevron will face no harm if this Court grants a short stay. Furthermore, given the realistic specter of harassment of Appellants, the public interest in this situation

clearly favors a decision on the merits of the appeal before this Court allows production to take place.

As such, Appellants respectfully request a brief stay of enforcement pending this Court's determination on the merits.

Dated: December 16, 2013

By: /s/ Nathan D. Cardozo

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