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October 7, 2013

VIA ECF

Magistrate Judge Nathanael M. Cousins
United States District Court for the Northern District of California
Courtroom A - 15th Floor
450 Golden Gate Avenue
San Francisco, California 94102

Re: *Chevron Corp. v. Donziger*, No. 3:12-mc-80237-CRB (NC)

Dear Judge Cousins:

Google Inc. ("Google") respectfully submits this Discovery Letter Brief in response to the Discovery Letter Brief submitted by Chevron Corporation ("Chevron") on October 4, 2013. [Dkt. 89.][1] Chevron demands an immediate response to a subpoena served on Google in late 2012. The Court should deny that demand.

Background: In 2011, a court in Ecuador entered a $18.2 billion judgment against Chevron for "damage to the environment and the Ecuadorian people." *Chevron Corp. v. Donziger*, 886 F. Supp. 2d 235, 245 (S.D.N.Y. 2012). Chevron brought suit in the U.S. District Court for the Southern District of New York against various lawyers, organizations, and others involved in the Ecuador suit, alleging that the judgment was obtained by fraud. *See id*. at 248-49. According to Chevron, trial is set for October 15, 2013. [Dkt. 89.]

As part of its discovery in the New York action, Chevron issued subpoenas to Google and Yahoo! in late 2012. The subpoenas target email accounts Chevron believes were used by people involved in the alleged fraud. The subpoena to Google targets 44 accounts and seeks, for a nine-year period, the "identity of the user[s];" "names, mailing addresses, phone numbers, billing information, date of account creation, account information and all other identifying information;" and "computer usage logs." Owners of some of the targeted accounts (the "Doe Movants") filed a motion in this Court to quash the subpoenas to Google and Yahoo!. The Doe Movants argued, among other things, that the subpoenas violated their constitutional rights of anonymity, freedom of association, and privacy. This Court granted in part and denied in part the motion on August 22, 2013. [Dkt. 70 ("Order").]

The next day, Chevron demanded that Google respond to the subpoena. Google declined, explaining that the Doe Movants had the right to file objections to the Order (which they did), and that the Order contemplated

[1] Chevron contacted Google on Thursday, October 3, 2013, and demanded that Google join Chevron in a joint statement to this Court by the close of business that same day. Google suggested filing on Monday; Chevron rejected that request and informed Google that it would file a unilateral statement unless Google delivered its statement by 6 p.m. on Friday, October 4, 2013. At approximately 4 p.m. on Friday, as Google was finalizing its portion of the joint statement, Chevron informed Google that it had already gone ahead and filed a unilateral statement.

entry of a protective order before any production. After the District Court declined to rule on the Doe Movants' objections, Chevron again demanded that Google respond. But the Doe Movants appealed, so Google declined to disclose the very information at issue in the appeal. Chevron then informed Google that Chevron would file a motion to compel, notwithstanding the pending appeal. On October 4, 2013, the Doe Movants filed a motion to stay the Order pending appeal. [*See* Dkt. 90.]

Argument: Google intends to comply with this Court's lawful orders. The Court should deny Chevron's demand for immediate compliance, however, because that would moot both the Doe Movants' motion for a stay and the underlying appeal.

Chevron has repeatedly sought to undermine the orderly resolution of this matter. The day after this Court issued the Order, Chevron demanded that Google respond to the subpoena. Chevron insisted on immediate production even though this Court made clear that "[a]ny party may object to this order" under Federal Rule of Civil Procedure 72(a) [Dkt. 70 at 34], which gives aggrieved parties 14 days to file such objections. Chevron also ignored this Court's command barring production before entry of a protective order. [*See* Dkt. 70 at 33-34.]

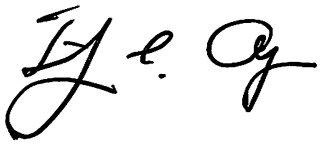
Now, Chevron again insists on compliance prior to a final judicial determination of the issues. Even though the Doe Movants have appealed the Order *and* sought to stay it, Chevron demands that Google produce the very information at issue in that appeal—or face a motion to compel. Thus, Chevron has put non-party Google to an impossible choice: undermine appellate review of the Order, or risk the wrath of this Court.

Chevron's latest attempt to short-circuit the judicial process should be rejected for two reasons. First, Chevron's argument has been overtaken by facts. According to Chevron, "no party has moved for a stay, and this Court has not entered a stay." The Doe Movants have now filed a motion to stay the Order. This Court should at least consider that motion before deciding whether Chevron is entitled to the Doe Movants' personal information ahead of an appellate ruling on Chevron's subpoena.

Second, any urgency in this matter is not of Google's making. Chevron filed the New York action in February 2011. Chevron did not serve its subpoena on Google until September 2012. The dispute over Chevron's subpoena has been hard-fought and protracted. The matter was not ripe for disposition until January 2013, and this Court did not issue the Order until August 2013. Chevron now claims that the information it seeks is essential, and that it must have the information in hand when trial starts in a matter of days. If that is true, then Chevron should have sought this discovery much earlier or should seek a trial continuance.

To reiterate, Google has every intention of complying with the lawful orders of this Court. The question is not whether Google will comply. Instead, the question is whether Google should be ordered to disclose the Doe Movants' personal information before the Doe Movants have had an opportunity to obtain a ruling on their request for a stay and before the Ninth Circuit has had an opportunity to decide whether Chevron is entitled to the information. Google respectfully submits that the answer to that question is "no."

Very truly yours,



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