UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CHEVRON CORPORATION,

Plaintiff,

-against- 1:12-MC-00065-LAK-CFH

STEVEN DONZIGER, et al.,

Defendants.

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ORDER

LEWIS A. KAPLAN, *District Judge.*

Non-Party Movants seek a stay of enforcement pending appeal of the Court's June 25, 2013 order granting in part and denying in part motions to quash (the "June Order") and its July 29, 2013 order granting reconsideration thereof in part (the "July Order"). DI 50, 57. The term "Non-Party Movants" is not defined in the motion [DI 62], but appears to be limited – as it must be given the record – to the three owners of three of the thirty email accounts at issue who actually moved to quash.

This all began with a subpoena to Microsoft to provide certain limited information with respect to thirty identified email accounts. Three John Does, who claim to own three of the thirty email addresses, and the defendants in the New York action to which this controversy relates, moved to quash the subpoenas. The three John Does who filed the motion to quash purported to do so on behalf of the unidentified owners of the other twenty seven email accounts. Following the June Order, these three John Does – plus the unidentified alleged owner of a fourth email account mentioned in the subpoena – filed a notice and an amended notice of appeal, again presumably purporting to represent the interests of the owners of the more than two dozen account owners who never sought relief in this Court.

In any case, these individuals now seek a stay pending appeal.

There is no need to write extensively on this point. The standards governing such applications are set out in *Nken v. Holder,* 5566 U.S. 418, 419 (2009). Substantially for the reasons advanced in Chevron's papers opposing the motion [DI 63], the Court is unpersuaded by the appellants' arguments. It writes to note only this:

1. There 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. Indeed, only last month, the Ninth Circuit denied a stay pending appeal with respect to those parts of the contested subpoenas that related to email account information with respect to accounts that were not owned by the litigants in a closely related and highly similar case, writing;:

> "The remainder [of the email addresses] are addresses for which appellants have not claimed ownership. We are not presented with a facial challenge to an allegedly overbroad statute, where First Amendment concerns may justify a lessening of prudential limitations on standing ([citations omitted]), but rather, an as-applied challenge to two specific subpoenas. Appellants have not raised a substantial question on the merits with respect to the district court's holding that appellants lack standing to quash the subpoenas as to these email addresses." *Chevron Corp. v. Donziger,* No. 13-16920 (9th Cir. filed Oct. 25, 2013, at 3).

Appellants' contrary argument is frivolous.

2. The suggestion that this "Court erred by holding that there is an affirmative duty to plead citizenship in a First Amendment case, even in the absence of any party having challenged standing" [DI 62, at 4], is frivolous, as the Court held no such thing. Rather, the Court held that, as the Supreme Court has held, "any person invoking the power of a federal court must demonstrate standing to do so." *Hollingsworth v. Perry,* 133 S.Ct. 2652, 2661 (2013). The three individuals who claimed to be the owners of three of the thirty email addresses initially failed to allege or prove that they were U.S. citizens[1] rather than "foreign nationals acting outside the borders, jurisdiction, and control of the United States" and thus persons whose interests did "not fall [outside] the interests protected by the First Amendment." June Order, at 9-10 (quoting *DKT Memorial Fund Ltd. v. Agency for Int'l Dev.*, 887 F.2d 275, 283–85 (D.C. Cir. 1989)). Nor did they ever make any such allegations or offer any such proof as to the owners of the twenty seven other email accounts in which they claimed no ownership interest.

In all the circumstances, the motion is denied in all respects.

SO ORDERED.

Dated: December 9, 2013

Lewis A. Kaplan
United States District Judge

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1 The owner of one of the three accounts later asserted on a motion for reconsideration that he is a U.S. citizen. The Court accepted that assertion for pleading purposes in the July Order.