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**UNITED STATES DISTRICT COURT  
FOR THE NOTHERN DISTRICT OF CALIFORNIA**

CHEVRON CORP.,

Plaintiff,

v.

STEVEN DONZIGER, *et al.*

Defendants.

) Case No. 5:12-mc-80237 CRB (NC)

) **NOTICE OF MOTION AND MOTION OF**  
) **NON-PARTY JOHN DOE MOVANTS TO**  
) **QUASH SUBPOENAS TO GOOGLE, INC.**  
) **AND YAHOO!, INC. SEEKING IDENTITY**  
) **AND EMAIL USAGE INFORMATION;**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION TO QUASH**

) Date: November 28, 2012  
) Time: 1:00 PM  
) Hon. Nathanael Cousins  
) Courtroom A - 15th Floor



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Federal Rule of Civil Procedure 45(c) and California Civil Procedure Code  
4 § 1987.1, the Non-Party John Doe Movants hereby move to quash Chevron's subpoenas issued  
5 from this Court on or around September 18, 2012 to Google and Yahoo! seeking identity and email  
6 usage information about 71 email accounts from 2003 to the present. In addition to linking their  
7 identities with their speech, this information will likely reveal the location and associations of these  
8 non-parties, traceable over nearly a decade.

9 Chevron's sweeping subpoenas would reveal an enormous amount of sensitive details about  
10 the Does, despite the fact that they are not parties to the underlying litigation. Chevron seeks  
11 identities and nine years of information about the Does' use of their email accounts—including IP  
12 addresses, which correlate to specific geographic locations, and the date and time of each log-in.  
13 This information would allow Chevron to create a comprehensive and detailed map of each  
14 person's movements over a nine-year period. This information would also allow Chevron a virtual  
15 itinerary of who each individual has met with, what buildings they have worked out of, what  
16 organizations they have worked with, and other potentially sensitive information implicating  
17 associational freedoms, which are protected by the First Amendment. In the aggregate, such  
18 information could be incredibly revealing—resulting in not only a violation of privacy, but for  
19 some, a fear for their personal safety. Furthermore, the subpoenas are facially overbroad and seek  
20 information well beyond the permissible scope of discovery.

21 **II. STATEMENT OF FACTS**

22 This case arises from two decades of contentious environmental litigation. In 1993, a group  
23 of Ecuadorian citizens sued Texaco, Inc. in the United States for pollution and other damage  
24 caused by oil extraction activities in the Amazon. Chevron Corporation acquired Texaco in 2001,  
25 and successfully fought to move the litigation to Ecuador's judicial system in 2003. In 2011, an  
26 Ecuadorian court handed down a judgment of more than \$17 billion against the oil company.

1 Chevron's strong feelings about its opponents in the litigation are well documented.  
 2 Chevron's former company spokesman Donald Campbell, for instance, once said, "we're going to  
 3 fight this until hell freezes over—and then we'll fight it out on the ice."<sup>1</sup> On February 1, 2011,  
 4 Chevron filed suit against more than 50 lawyers, organizations, plaintiffs, and other individuals  
 5 involved in the environmental case in Ecuador, alleging that they obtained the judgment through  
 6 fraud and other illegal means. *Chevron Corp. v. Donziger, et al.*, Case No. 11-cv-0691 (LAK)  
 7 (S.D.N.Y.). This case is the source of the subpoenas at issue here.

8 **A. Chevron's September 18, 2012 Subpoenas to Google, Yahoo!, and Microsoft**

9 On September 18, 2012, Chevron served sweeping subpoenas upon Google, Yahoo!, and  
 10 Microsoft demanding identity and email usage information associated with 101 email accounts  
 11 from 2003 to present. The subpoenas to Google and Yahoo! were issued by this Court, and are the  
 12 ones this motion seeks to quash.<sup>2</sup>

13 The subpoena to Google specifically seeks identity information and email usage records  
 14 associated with 44 email addresses. The subpoena issued to Yahoo! seeks the same information  
 15 with respect to 27 email addresses. They each demand the production of all documents related to

16 (A) identity of the users of all of the listed email addresses, including but not limited  
 17 to documents that provide all names, mailing addresses, phone numbers, billing  
 18 information, date of account creation, account information and all other  
 19 identifying information associated with the email address under any and all  
 names, aliases, identities or designations related to the email address; [and]

20 (B) the usage of all of the listed email addresses, including but not limited to  
 21 documents that provide IP logs, IP address information at time of registration and  
 22 subsequent usage, computer usage logs, or other means of recording information  
 concerning the email or Internet usage of the email address[.]<sup>3</sup>

23 <sup>1</sup> Barbara Leonard, *Ecuadoreans Win Asset Seizure Against Chevron*, COURTHOUSE NEWS SERVICE  
 24 (October 17, 2012) <https://www.courthousenews.com/2012/10/17/51369.htm>.

25 <sup>2</sup> The subpoena to Microsoft was issued by the District Court for the Northern District of New  
 26 York, and the Does have separately moved to quash that subpoena in that court.

27 <sup>3</sup> The Google subpoena contains an additional request for IP address information associated with a  
 28 specific email. Harrison Decl. Ex. 1. This information is also likely covered by category (B).

1 Declaration of Michelle Harrison (hereafter “Harrison Decl.”) Ex. 1.

2 Despite the broad wording of category (B), Chevron’s attorneys have verbally clarified that  
3 this description was not intended to include any contents of communications or email header  
4 information, which would reveal the names and IP addresses of senders and recipients of messages.  
5 Nevertheless, Chevron seeks IP addresses associated with the computers that logged into the email  
6 accounts, the dates and times of log-in, session durations, and possibly information about other  
7 services used by the account holder.<sup>4</sup> Based on informal conversations between Does’ counsel and  
8 Google and Yahoo!, it appears that the providers’ policy is not to keep nine years of this IP-related  
9 information. However, neither provider has given the precise timeframe or amount of information  
10 retained for each Doe.

11 Google and Yahoo! attempted to notify the affected account holders about the subpoenas by  
12 email, though it is unclear how many actually received notice. The account holders of 29 of these  
13 accounts now bring this motion to quash the subpoenas in their entirety because they infringe upon  
14 fundamental constitutional rights to anonymity, association, and privacy, and are facially  
15 overbroad.

16 **B. The Non-Party John Doe Movants**

17 None of the Does who bring this motion is a defendant in Chevron’s underlying case.

18 As the representative declarations submitted with this motion show, some of the Does  
19 worked briefly on the litigation in Ecuador as volunteer summer interns several years ago.<sup>5</sup> *See,*  
20 *e.g.,* Declaration of John Doe 1 (Owner of cortelyou@gmail.com) (hereafter “John Doe 1 Decl.”)  
21 ¶ 5; Declaration of John Doe 2 (Owner of firger@gmail.com) (hereafter “John Doe 2 Decl.”) ¶ 5.  
22 Others had no direct connection with the litigation, but have engaged in broader environmental  
23 advocacy efforts concerning oil extraction in the Amazon. *See, e.g.,* Declaration of Declaration of

24 <sup>4</sup> The information responsive to Chevron’s subpoenas may vary from provider to provider, because  
25 they may not all retain precisely the same data.

26 <sup>5</sup> As noted in the Harrison Declaration filed herewith, the Does have provided the Court  
27 representative declarations to illustrate the basic issues the Does here face. Should the Court deem  
28 it necessary, counsel can provide declarations from all 29 Does.

1 John Doe 3 (Owner of tegelsimeon@gmail.com) (hereafter “John Doe 3 Decl.”) ¶¶ 4-5;  
2 Declaration of Declaration of John Doe 4 (Owner of kevinkoenigquito@gmail.com) (hereafter  
3 “John Doe 4 Decl.”) ¶ 4. Some of the Does are attorneys who have worked on the litigation in the  
4 past. *See, e.g.*, John Doe 1 Decl. ¶¶ 4-5; John Doe 2 Decl. ¶¶ 4-5; Declaration of John Doe 5  
5 (Owner of ampaga@gmail.com) (hereafter “John Doe 5 Decl.”) ¶ 5. One Doe is an attorney who  
6 never worked on the litigation, but is simply a personal friend of Steven Donziger. Declaration of  
7 John Doe 6 (Owner of eriktmoe66@yahoo.com) (hereafter “John Doe 6 Decl.”) ¶¶ 4-5. These  
8 attorney Does have all use their email accounts not only for personal correspondence, but also to  
9 engage in privileged, confidential communications related to their legal representations, including  
10 legal work unconnected to the Chevron matter. John Doe 1 Decl. ¶ 7; John Doe 2 Decl. ¶ 7; John  
11 Doe 5 Decl. ¶ 7.

12 Some of the Does check their email accounts regularly when they travel, and are concerned  
13 that the disclosure of their IP logs to Chevron will produce a virtual itinerary of their whereabouts  
14 over nine years, including the places they have visited, the buildings they have worked out of, and  
15 the organizations they have worked with. *See* John Doe 2 Decl. ¶ 9; John Doe 5 Decl. ¶ 9.

16 A number of the Does are bloggers and/or journalists, and have been published in many  
17 well-known and respected newspapers and other media sources. *See, e.g.*, John Doe 2 Decl. ¶ 4;  
18 John Doe 3 Decl. at ¶ 4; Declaration of John Doe 7 (Owner of richard.clapp@gmail.com)  
19 (hereafter “John Doe 7 Decl.”) at ¶ 4. Some of these Does have used their email accounts to  
20 communicate with confidential sources. John Doe 2 Decl. ¶ 7; John Doe 3 Decl. ¶ 10. Sources  
21 may take great risks to speak with journalists, and one Doe has said his use of email account to  
22 communicate with them would be chilled if he believed Chevron might be able to obtain his  
23 account details. John Doe 3 Decl. ¶ 10.<sup>6</sup>

24 An example of the staggering overbreadth of Chevron’s demand is the fact that the email  
25 address kevinjonheller@gmail.com was originally included in the subpoena to Google. That email

26 \_\_\_\_\_  
27 <sup>6</sup> This motion’s use of masculine pronouns to refer to any John Doe is generic and should not be  
28 construed as an admission of gender.

1 account belongs to Kevin Jon Heller, an Australian law professor and well-known blogger and  
2 journalist. Professor Heller’s information was apparently sought because he had exchanged two  
3 non-substantive emails with the Ecuadorian plaintiffs’ lead attorney, Steven Donziger. Harrison  
4 Decl. Ex. 2. After Professor Heller learned of the subpoena for nine years of information about his  
5 email use and secured legal representation from the American Civil Liberties Union, Chevron  
6 abruptly withdrew its demand for information about his account. In a blog post about the incident,  
7 Professor Heller said he felt Chevron’s demand was nothing more than an attempt “to harass and  
8 intimidate me.” *Id.*

9         Some of the Does understand that others have been subjected to harassment, threats, and  
10 intimidation for working in connection with the litigation against Chevron in Ecuador or related  
11 activism efforts. *See* John Doe 4 Decl. ¶ 11; John Doe 5 Decl. ¶ 10. Indeed, some Does have  
12 declined opportunities to work on the case against Chevron for fear that they might experience  
13 retribution. John Doe 1 Decl. ¶ 10; John Doe 6 Decl. ¶ 9. Other Does are concerned that their  
14 personal safety could be endangered by the disclosure of the information Chevron seeks. John  
15 Doe 4 Decl. ¶¶ 8 & 10; John Doe 5 Decl. ¶ 10. Many of the Does assert that if their account  
16 information is disclosed to Chevron, their future expressive activities will be chilled. John Doe 1  
17 Decl. ¶ 11; John Doe 2 Decl. ¶¶ 11-12; John Doe 3 Decl. ¶¶ 9-10; John Doe 4 Decl. ¶¶ 11-13; John  
18 Doe 5 Decl. ¶ 11; John Doe 6 Decl. ¶¶ 10-11; John Doe 7 Decl. ¶¶ 10-11.

19         Chevron has made no attempt to explain why the Does—against whom Chevron has  
20 alleged no cause of action—have been targeted by these discovery requests, nor given any  
21 indication why it has demanded over nine years of usage records about each of them.

### 22         **C. The Nature of the Information Sought by Chevron**

23         The information Chevron seeks will enable the company to identify and track the locations  
24 of the Does over time, as well as learn when the Does likely met with other people. This is due to  
25 the nature of Internet Protocol (IP) addresses.

26         An IP address is a numeric value used to identify the network location of a computer or set  
27 of computers on the Internet. Internet routers use the IP address to decide where to send  
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1 communications addressed to a particular computer user. Declaration of Seth Schoen ¶ 3 (hereafter  
2 “Schoen Decl.”).

3 IP addresses are allocated to Internet service providers and often reflect the general physical  
4 location of the area they serve. This means that servers located in New York have IP addresses  
5 roughly trackable to New York, and servers in Ecuador have IP addresses roughly trackable to  
6 Ecuador. This geographic location information is generally publicly available. For instance, the IP  
7 address 199.83.220.233 is easily trackable to San Francisco through free public websites such as  
8 www.geobytes.com. Even when location information is not publicly available, a subpoena to an  
9 ISP can generally elicit the specific geographic location for a particular IP address. Schoen Decl.  
10 ¶ 12.

11 ISPs can further delegate these addresses to smaller entities such as businesses, Internet  
12 cafés, or smaller ISPs. ISPs can also assign an IP address directly to an individual computer.  
13 Schoen Decl. ¶ 4. Because IP addresses are allocated in this way, they can convey not only  
14 approximate information about a computer’s location, but also how the computer is connected to  
15 the Internet, and what individual or entity is using that computer to connect. Schoen Decl. ¶ 5.

16 Many host computers of websites, including the operators of popular web-based email  
17 services like Microsoft Hotmail, Yahoo! Mail and Gmail maintain logs that list the IP address of  
18 visitors along with date and time information. Websites that utilize a log-in feature typically  
19 maintain a log of IP addresses and other data associated with the particular user who logged in,  
20 such as the date and time of log-in and the duration of time the user visited the website. Schoen  
21 Decl. ¶ 8.

22 A large amount of data accumulated over a lengthy period of time that includes IP  
23 addresses and dates and times of usage sessions—as one might get from a heavily trafficked and  
24 frequently used web service such as an email provider—can readily present a detailed picture of a  
25 person’s movements from one location to another, especially if that person is an avid laptop or  
26 tablet user. Schoen Decl. ¶ 9. For instance, a laptop will receive a different IP address when it  
27 connects to the Internet from different locations. If a laptop’s owner uses the machine from her  
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1 workplace in the morning, a café in the afternoon, and her home in the evening, she will present at  
2 least three different IP addresses over the course of a single day. This information could  
3 demonstrate that a person accessed the Internet from a precise physical location, like a building or  
4 even a particular organization’s office. Schoen Decl. ¶ 11.

5 Moreover, this information can reveal a person’s physical proximity to other Internet users  
6 who may share the same IP address through a wireless device, a router or another form of shared  
7 Internet connection. Schoen Decl. ¶ 15. This information could be used to map a person’s  
8 associates. For example, if Internet usage records showed that two individuals were accessing the  
9 Internet from the same IP address on a particular day and time, this would tend to show that they  
10 were accessing the same Internet network at the same time. This would suggest they were in the  
11 same physical location at the same time, and could create a reasonable inference that they met with  
12 each other. Schoen Decl. ¶ 16.

13 A person who checks email frequently might access a given email service multiple times  
14 per day, and a long-term view of data about that use could reflect significant facts about that  
15 person’s work habits and personal relationships that could be quite intimate. For example, if the IP  
16 logs show that a person signed into his account from an IP address associated with another person’s  
17 home, that information suggests the user visited that home. If the user signs into his email account  
18 using that same IP address late at night and again the following morning, that information creates a  
19 reasonable inference that the user spent the night at that home, which may suggest that he has an  
20 intimate relationship with the person who lives there. If the user repeats this log-in pattern over  
21 time, it might suggest he spends many nights at that home, and that his relationship with the person  
22 living there is a relatively serious one. Schoen Decl. ¶ 18.

### 23 **III. LEGAL STANDARD**

24 The Federal Rules of Procedure generally provide that “[p]arties may obtain discovery  
25 regarding any nonprivileged matter that is relevant to any party’s claim or defense[.]” Fed. R. Civ.  
26 P. 26(b)(1). However, the courts impose a higher standard when a party seeks discovery  
27 encroaching upon freedoms protected by the First Amendment. Under those circumstances, the  
28

1 party must show that the “information sought is *highly relevant* to the claims or defenses in the  
2 litigation—a more demanding standard of relevance than that under Federal Rule of  
3 Procedure 26(b)(1).” *Perry v. Schwarzenegger*, 591 F.3d 1126, 1141 (9th Cir. 2010) (emphasis  
4 added). Furthermore, the discovery request must be “carefully tailored to avoid unnecessary  
5 interference with protected activities, and the information must be otherwise unavailable.” *Id.*

6 A court may quash a subpoena if it “requires disclosure of privileged or other protected  
7 matter” or “subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A)(iii), (iv). *See, e.g.,*  
8 *Mattel, Inc. v. Walking Mountain Productions*, 353 F.3d 792, 814 (9th Cir. 2003). Similarly, under  
9 the California Civil Procedure Code, a court may quash a subpoena and “make any other order as  
10 may be appropriate to protect the person from unreasonable or oppressive demands, including  
11 unreasonable violations of the right of privacy of the person.” Cal. Civ. Proc. Code § 1987.1; *see*  
12 *also, e.g., Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1587 (Cal. App. Ct. 1991).  
13 California Civil Procedure Code § 1987.1(b)(5) specifically authorizes “[a] person whose  
14 personally identifying information . . . is sought in connection with an underlying action involving  
15 that person’s exercise of free speech rights” to bring a motion to quash under section 1987.1.<sup>7</sup>

16 This Court is the appropriate venue for this motion because subpoenas must be challenged  
17 before the issuing court, not the court that oversees the underlying litigation. *See* FED. R. CIV.  
18 P. 45(c)(3)(A) (“On timely motion, the *issuing court* must quash or modify a subpoena[.]”)  
19 (emphasis added). *See also Highfields Capital Management, L.P. v. Doe*, 385 F. Supp. 2d 969, 972  
20 (N.D. Cal. 2005) (quashing subpoena issued under color of the Northern District of California in

21  
22 <sup>7</sup> While technically procedural, the specifically articulated protections for anonymous speakers in  
23 California Civil Procedure Code § 1987.1 are substantive and are based upon the same free speech  
24 concerns which animate California’s anti-SLAPP statute. *See, e.g., United States ex rel. Newsham*  
25 *v. Lockheed Missiles and Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999) (holding that California’s  
26 anti-SLAPP statute, while procedural, is manifestly substantive in design and intent and thus not  
27 barred in federal court under *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)). To the extent that  
28 Chevron seeks discovery in support of at least one non-federal claim challenging exercise of First  
Amendment rights, the movants’ motion to quash is appropriate under not only Federal Rule of  
Civil Procedure 45, but also California Civil Procedure Code § 1987.1. Here, the underlying  
complaint alleges non-federal claims for damages under New York state law.

1 civil action filed in District of Massachusetts); *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d  
 2 901, 905 (N.D. Cal. 2010) (“This motion to quash is properly before the Court pursuant to Fed. R.  
 3 Civ. P. 45(c) because the subpoena in question was issued to Yahoo! by the Northern District of  
 4 California.”).

#### 5 **IV. ARGUMENT**

##### 6 **A. The Subpoenas Violate the Does’ Constitutional Rights Under the First** 7 **Amendment.**

8 The subpoenas should be quashed in their entirety because they violate the Does’ First  
 9 Amendment rights to anonymous speech and association. The Court should treat these subpoenas  
 10 with particular skepticism because compliance will chill political speech about damage to the  
 11 environment and harm to people caused by oil exploration and related activities—speech that  
 12 receives the highest level of First Amendment protection. *Meyer v. Grant*, 486 U.S. 414, 422, 425  
 13 (1988) (describing the First Amendment protection of “core political speech” to be “at its zenith”).

##### 14 **1. The Subpoenas Violate the Does’ First Amendment Right to Anonymous** 15 **Speech.**

16 Under the broad protections of the First Amendment, speakers have not only a right to  
 17 organize and engage in political advocacy, but also the right to do so anonymously. Accordingly,  
 18 the First Amendment requires that those who seek to discover the identities of their critics  
 19 demonstrate a compelling need for such identity-related information before obtaining that  
 20 discovery. There is no such need in this case.

##### 21 **a. The Right to Engage in Anonymous Speech is Protected By the First** 22 **Amendment.**

23 The United States Supreme Court has consistently defended the right to anonymous speech  
 24 in a variety of contexts, noting that “[a]nonymity is a shield from the tyranny of the majority . . .  
 25 [that] exemplifies the purpose [of the First Amendment] to protect unpopular individuals from  
 26 retaliation . . . at the hand of an intolerant society.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S.  
 27 334, 357 (1995). *See also Talley v. California*, 362 U.S. 60, 64 (1960) (finding a municipal  
 28 ordinance requiring identification on hand-bills unconstitutional, noting that “[a]nonymous

1 pamphlets, leaflets, brochures and even books have played an important role in the progress of  
2 mankind”). Anonymity receives the same constitutional protection whether the means of  
3 communication is a political leaflet or an Internet message board or an email. *See Reno v. ACLU*,  
4 521 U.S. 844, 870 (1997). *See also, e.g., Doe v. 2theMart.com*, 140 F. Supp. 2d 1088, 1093 (W.D.  
5 Wash. 2001) (“The right to speak anonymously extends to speech via the Internet. Internet  
6 anonymity facilitates the rich, diverse, and far ranging exchange of ideas.”). These fundamental  
7 rights protect anonymous speakers from forced identification, be they from overbroad statutes or  
8 unwarranted discovery requests.

9 Email addresses that appear to reflect an individual’s name are entitled to just as much  
10 protection as email addresses that do not. By its very request for identity information associated  
11 with every email address listed in the subpoenas, Chevron apparently agrees that the identity of  
12 each account holder remains in dispute. In a statement to the San Francisco Chronicle, Chevron  
13 admitted as much, explaining that the company seeks the identities behind the accounts because it  
14 “is trying to find out whether some of the e-mail addresses actually belong to key figures in the  
15 case[.]”<sup>8</sup>

16 Yet in its Opposition to Defendants’ Motion to Quash these subpoenas, Chevron takes a  
17 different approach, claiming that it is entitled to learn the identities of the Does because it already  
18 knows them from the names embedded in some of the addresses. *See Chevron Corporation’s*  
19 *Opposition to the RICO Defendants’ Motion to Quash Subpoenas to Google Inc. and Yahoo! Inc.*  
20 (*“Chevron Opp. Defs.’ Mot. Quash”*), filed October 19, 2012, Docket No. 26, at 14-15. That, of  
21 course, would make these requests redundant and wholly unnecessary. Chevron further states that  
22 “participants in Defendants’ enterprise have [not] evinced a desire to conceal their identities  
23 [except to] facilitate fraudulent conduct.” *Id.* at 15. However, Chevron has made no allegations of  
24 fraud against the Does, the First Amendment right to anonymous speech does not place a burden  
25

26 \_\_\_\_\_  
27 <sup>8</sup> David R. Baker, *Chevron seeks e-mail logs in Ecuador suit*, S.F. CHRONICLE (Oct. 1, 2012),  
28 <http://www.sfgate.com/business/article/Chevron-seeks-e-mail-logs-in-Ecuador-suit-3904006.php>.

1 on a speaker to “evince a desire,” and, of course, many of the email addresses listed on the  
2 subpoenas clearly are not the names of the individuals involved (e.g., coldmtn@gmail.com).

3 If Chevron believes that some of the email addresses are owned, used, or controlled by the  
4 parties to the litigation, the proper vehicle for confirming that belief would be a discovery request  
5 directed to those parties. However, because Chevron has requested identifying information  
6 regarding non-parties—some of whose identities are not known with certainty by Chevron, and  
7 some of whose identities are entirely unknown by Chevron—this Court should treat all of the Does  
8 as anonymous speakers, regardless of whether their email addresses appear to reflect a name.

9 **b. Anonymous Speakers Enjoy a Qualified Privilege Under the First**  
10 **Amendment.**

11 Because the First Amendment protects anonymous speech and association, efforts to use  
12 the power of the courts<sup>9</sup> to pierce anonymity are subject to a qualified privilege. Courts must “be  
13 vigilant . . . [and] guard against undue hindrances to . . . the exchange of ideas.” *Buckley v. Am.*  
14 *Constitutional Law Found.*, 525 U.S. 182, 192 (1999). This vigilant review “must be undertaken  
15 and analyzed on a case-by-case basis,” where the court’s “guiding principle is a result based on a  
16 meaningful analysis and a proper balancing of the equities and rights at issue.” *Dendrite Int’l v.*  
17 *Doe No. 3*, 775 A.2d 756, 761 (N.J. App. 2001). Just as in other cases in which litigants seek  
18 information that may be privileged, courts must consider the privilege before authorizing  
19 discovery. *See, e.g., Sony Music Entm’t Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 565 (S.D.N.Y.  
20 2004) (“Against the backdrop of First Amendment protection for anonymous speech, courts have  
21 held that civil subpoenas seeking information regarding anonymous individuals raise First  
22 Amendment concerns.”); *Grandbouche v. Clancy*, 825 F.2d 1463, 1466 (10th Cir. 1987) (citing  
23 *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977)) (“[W]hen the subject of a  
24 discovery order claims a First Amendment privilege not to disclose certain information, the trial  
25 court must conduct a balancing test before ordering disclosure.”). As this Court described in an

26 <sup>9</sup> A court order, even if granted to a private party, is state action and hence subject to constitutional  
27 limitations. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254, 265 (1964); *Shelley v. Kraemer*,  
334 U.S. 1, 14 (1948).

1 early Internet anonymity case, “[p]eople who have committed no wrong should be able to  
2 participate online without fear that someone who wishes to harass or embarrass them can file a  
3 frivolous lawsuit and thereby gain the power of the court’s order to discover their identity.”  
4 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999).

5 The constitutional privilege to remain anonymous is not absolute. Plaintiffs may properly  
6 seek information necessary to pursue meritorious litigation. *Id.* at 578 (First Amendment does not  
7 protect anonymous Internet users from liability for tortious acts such as defamation); *Doe v. Cahill*,  
8 884 A.2d 451, 456 (Del. 2005) (“Certain classes of speech, including defamatory and libelous  
9 speech, are entitled to no constitutional protection.”). However, litigants may not use the discovery  
10 power to uncover the identities of people who have simply made statements the litigants dislike or  
11 who associate with those whom they dislike. Accordingly, courts evaluating attempts to unmask  
12 anonymous speakers in cases similar to the one at hand have adopted standards that balance one  
13 person’s right to speak anonymously with a litigant’s legitimate need to pursue a claim.

14 Here the subpoenas chiefly seek identity and location information from non-parties. While  
15 several of the email addresses do appear to belong to parties in the case, Chevron has made no  
16 attempt to identify them as such or segregate them from non-parties. *See* Defendants’ Motion to  
17 Quash Chevron Corporation’s Subpoenas to Google Inc. and Yahoo! Inc., filed October 5, 2012,  
18 Docket No. 4.

19 The seminal case setting forth First Amendment restrictions upon a litigant’s ability to  
20 compel an online service provider to reveal an anonymous non-party’s identity is *Doe v.*  
21 *2theMart.com*, *supra*, in which the Western District of Washington adopted a four-part test for  
22 protecting anonymous speakers that has been followed by courts around the country<sup>10</sup> (including  
23 by this Court in *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d at 906). In order for the litigant to  
24 obtain the anonymous non-party’s identity, he must show:

25  
26  
27 <sup>10</sup> *See, e.g., Enterline v. Pocono Medical Center*, 751 F. Supp. 2d 782, 787 (M.D. Pa. 2008);  
*Mobilisa, Inc. v. Doe*, 170 P.3d 712, 719 (Ariz. App. 2007).

1 (1) the subpoena seeking the information was issued in good faith and not for any  
improper purpose,

2 (2) the information sought relates to a core claim or defense,

3 (3) the identifying information is directly and materially relevant to that claim or  
4 defense, and

5 (4) information sufficient to establish or to disprove that claim or defense is  
6 unavailable from any other source.

7 *2theMart.com*, 140 F. Supp. 2d at 1095 (line breaks added for clarity). The district court further  
8 stated “non-party disclosure is only appropriate in the exceptional case where the compelling need  
9 for the discovery sought outweighs the First Amendment rights of the anonymous speaker.” *Id.*

10 As the *2theMart.com* court accurately and cogently outlined the important First  
11 Amendment interests implicated when a party seeks to unmask anonymous third-party speakers,  
12 and as this Court has already endorsed this approach in the past, the holding and reasoning of  
13 *2theMart.com* and its progeny should apply here.

14 **c. As Chevron’s Subpoena Demands for Identity Information Cannot**  
15 **Survive the Scrutiny Required By the First Amendment, It Must Be**  
16 **Quashed Under Federal Rule of Civil Procedure 45 and California**  
17 **Civil Procedure Code § 1987.1.**

18 At the outset, it appears clear that Chevron fails at least two of the four steps of the  
19 *2theMart.com* First Amendment test. While it has not yet made a showing on the remaining two  
20 steps, they seem unlikely to succeed on those, either. Thus, the subpoenas must be quashed.

21 **i. Chevron Did Not Issue These Subpoenas in Good Faith or**  
22 **for Any Proper Purpose.**

23 Chevron has failed to explain the purpose of its subpoenas for information regarding  
24 individuals against whom it has not alleged any causes of action. The subpoenas seek the identities  
25 of the owners of 71 email addresses, along with associated IP address and other information related  
26 to those accounts. Many of the addresses appear to include names similar to both parties and non-  
27 parties mentioned by Chevron in the underlying complaint, while others do not appear to include  
28 names at all.



1 Google associated with the accounts, over the course of nine years. It is exceedingly unlikely that  
2 all this information, or even a sizeable percentage of it, is in any way relevant to Chevron's claims,  
3 much less directly and materially relevant to those claims.

4 An example of the staggering overbreadth of Chevron's subpoenas is the inclusion of  
5 Professor Heller's email address in the subpoena to Google. Heller—a blogger, journalist, and law  
6 professor—has no apparent connection to Chevron's underlying lawsuit. The “sum total” of his  
7 interaction with defendant Steven Donziger was a pair of non-substantive emails. Harrison Decl.  
8 Ex. 2. Chevron has made no allegations against Professor Heller, has never sought to add him as a  
9 defendant to the underlying lawsuit, and was already aware of his identity at the time it issued the  
10 subpoenas. And yet, as Professor Heller notes, Chevron sought nine years of information related to  
11 his use of his email account. He considered it “a remarkably intrusive request; I haven't even been  
12 blogging for nine years.” Professor Heller secured counsel and attempted to ascertain why exactly  
13 Chevron was seeking such an extensive amount of his personal information. Although Chevron  
14 refused to explain why they sought his information in the first place, the company quietly dropped  
15 its request for information about him alone. *Id.*

16 Chevron could not show that its request for information about Professor Heller had the  
17 slightest relationship to any claim or defense it might have in the underlying litigation, much less  
18 that nine years of IP logs are directly and materially relevant to that case. Yet if Chevron's  
19 subpoenas are to survive, Chevron must now make this showing as to each email address listed in  
20 its subpoenas. It cannot.

21 **iii. Chevron Has Made No Showing that the Information Sought**  
22 **Is Unavailable from Any Other Source.**

23 In order for Chevron to enforce its subpoenas, it must demonstrate that “the information it  
24 needs to establish its defense is unavailable from any other source.” *See 2theMart.com*, 140 F.  
25 Supp. 2d at 1097. It cannot do so.

26 Chevron already has in its possession a vast amount of email from the parties and direct  
27 witnesses. Chevron Opp. Defs.' Mot. Quash at 4. If the question Chevron seeks to answer with

1 these subpoenas is truly whether the owners of the email addresses acted in concert with the  
2 parties, then surely the best way to learn the answer would be to ask the parties directly in regular  
3 discovery. If Chevron opposes this motion based on the grounds that the email addresses about  
4 which they seek information are in fact not anonymous, then the request to Yahoo! and Google for  
5 their identities is mere confirmation of what Chevron already knows. But if that is true, then  
6 Chevron cannot show that the information it seeks is unavailable from any other source; it could  
7 simply propound discovery on the people it suspects of controlling those addresses for any further  
8 confirmation it requires. If Chevron seeks to map the relationship between parties and non-parties  
9 via the IP logs it requests, then surely the best evidence of those relationships is the testimony of  
10 those very people, testimony that could be obtained in party discovery.

11 In sum, Chevron cannot satisfy the *2theMart.com* test, and its attempt to seek the identities  
12 of the Does must be quashed because it violates the Does' First Amendment right to anonymity.

## 13 **2. The Subpoenas Violate the Does' First Amendment Right to Association.**

14 Chevron's subpoenas intrude upon the Does' constitutionally guaranteed right to  
15 association. For this reason alone, the subpoenas should be quashed in their entirety.

### 16 **a. The Does Enjoy a First Amendment Right to Political Association 17 and to Advocate Controversial Views as a Group.**

18 The First Amendment protects the freedom to associate and express political views as a  
19 group. *NAACP v. State of Alabama ex rel. Patterson*, 357 U.S. 449, 460-62 (1958). This right is  
20 intertwined with the right to freedom of expression, and "like free speech, lies at the foundation of  
21 a free society." *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (quoting *Shelton v. Tucker*, 364 U.S. 479,  
22 486 (1960) (internal quotation marks omitted)). This constitutional protection is critical because  
23 "[e]ffective advocacy of both public and privacy points of view, particularly controversial ones, is  
24 undeniably enhanced by group association[.]" *NAACP v. Alabama*, 357 U.S. at 460; *Bates v. City  
25 of Little Rock*, 361 U.S. 516, 522-23 (1960) (the Constitution protects freedom of association to  
26 encourage the "advancing ideas and airing grievances"). The Does' politically charged advocacy  
27 efforts are precisely the sort of expression the First Amendment seeks to protect.

1           The Supreme Court has repeatedly held that compelled disclosure of an advocacy group’s  
2 membership lists harms freedom of association because “it may induce members to withdraw from  
3 the association and dissuade others from joining it because of fear of exposure of their beliefs  
4 shown through their associations and of the consequences of their exposure.” *NAACP v. Alabama*,  
5 357 U.S. at 462-63. *See also Bates*, 361 U.S. at 523; *Gibson v. Florida Legislative Investigation*  
6 *Comm.*, 372 U.S. 539 (1963). This rule applies with equal force to attempts to compel disclosure of  
7 the Does’ identities here.

8           Privacy in one’s associational ties is also closely linked to freedom of association:  
9 “Inviolability of privacy in group association may in many circumstances be indispensable to  
10 preservation of freedom of association, particularly where a group espouses dissident beliefs.”  
11 *NAACP v. Alabama*, 357 U.S. at 462. Allowing Chevron access to information about the Does’  
12 locations over time would reveal a wealth of details about their habits and day-to-day patterns that  
13 are intimately tied to their associational activities. *United States v. Jones*, 132 S. Ct. 945, 954  
14 (2012) (Sotomayor, J., concurring) (continual location monitoring over a prolonged period “reflects  
15 a wealth of detail about [a person’s] familial, political, professional, religious, and sexual  
16 associations.”). As the D.C. Circuit has noted, such observation of a person’s movements

17                   reveals types of information not revealed by short-term surveillance, such as what  
18 a person does repeatedly, what he does not do, and what he does ensemble. . . . A  
19 person who knows all of another’s travels can deduce whether he is a weekly  
20 church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an  
outpatient receiving medical treatment, an associate of particular individuals or  
political groups—and not just one such fact about a person, but all such facts.

21 *United States v. Maynard*, 615 F.3d 544, 562 (D.C. Cir. 2010), *aff’d sub nom. Jones*, 132 S.  
22 Ct. 945.

23           Chevron’s subpoenas are squarely aimed at identifying and mapping the movements of  
24 individuals it believes are involved in political expression: specifically, environmental litigation  
25 against the oil company and related activism activities, all of which is highly protected speech.  
26 *See, e.g., NAACP v. Button*, 371 U.S. 415, 429-31 (1963) (litigation is a form of political speech);  
27

1 *Thomas v. Collins*, 323 U.S. 516, 537 (1945) (First Amendment protects advocacy to “persuade to  
2 action”).

3 Among other things, the information Chevron seeks could tell the company when the Does  
4 were in the United States or Ecuador; when they were in a particular town, building, or even a  
5 particular organization’s office; and when each Doe was in the same place at the same time as  
6 other individuals whose email usage information is revealed, presumably meeting with each other.  
7 *See* Schoen Decl. ¶ 17. These discovery requests directly implicate the movants’ right to “engage  
8 in association for the advancement of beliefs and ideas,” and are therefore subject to heightened  
9 scrutiny. *NAACP v. Alabama*, 357 U.S. at 460.

10 **b. The Does Have a Qualified First Amendment Privilege Subject to**  
11 **Heightened Scrutiny That Can Only be Overcome by a Compelling**  
12 **Interest.**

13 Individuals may assert privilege to protect such information when a civil discovery request  
14 threatens the freedom of association. *NAACP v. Alabama*, 357 U.S. at 460-63; *Perry*, 591 F.3d at  
15 1140; *In re Motor Fuel Temperature Sales Practices Litig.*, 641 F.3d 470, 481 (10th Cir. 2011)  
16 (First Amendment privilege protects rights of association affected by civil discovery demands).  
17 When discovery requests infringe upon political expression and association, the courts apply  
18 heightened discovery standards to protect those constitutional values. *Perry*, 591 F.3d at 1140; *Fed.*  
19 *Election Comm’n v. Larouche Campaign*, 817 F.2d 233, 234-35 (2d Cir. 1987) (requiring agency  
20 to demonstrate need beyond mere relevance to an investigation to justify compelling disclosure of  
21 the names of campaign contributors).

22 The Supreme Court has made clear that infringements on freedom of association may be  
23 survive constitutional scrutiny only when they “serve compelling state interests, unrelated to the  
24 suppression of ideas, that cannot be achieved through means significantly less restrictive of  
25 associational freedoms.” *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984); *see also*  
26 *NAACP v. Button*, 371 U.S. at 341; *Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2291 (2012)  
27 (burden on freedom of association “must serve a compelling interest and must not be significantly  
28 broader than necessary to serve that interest.”).

1           The Ninth Circuit has held that members of an association may assert a qualified First  
2 Amendment privilege in associational information sought by a subpoena by making a *prima facie*  
3 showing that compliance “will result in (1) harassment, membership withdrawal, or  
4 discouragement of new members, or (2) other consequences which objectively suggest an impact  
5 on, or ‘chilling’ of, the members’ associational rights.” *Brock v. Local 375, Plumbers*  
6 *International Union of America, AFL-CIO*, 860 F.2d 346, 350 (9th Cir. 1988); *Dole v. Service*  
7 *Employees Union, AFL-CIO, Local 280*, 950 F.2d 1456, 1460-61 (9th Cir. 1991); *Perry*, 591 F.3d  
8 at 1140. Declarations are sufficient to make this showing. *Perry*, 591 F.3d at 1143.

9           When the Does satisfy this standard, the burden shifts to Chevron to show that the  
10 information sought is “rationally related to a compelling government interest . . . [and is] the ‘least  
11 restrictive means’ of obtaining the desired information.” *Id.* at 1140 (quoting *Brock*, 860 F.2d at  
12 350).

13           **i.       The Does’ Right to Association Will be Harmed if Their Identities and**  
14           **Email Usage Information is Disclosed.**

15           As the declarations filed with this motion show, disclosure of the Does’ identities and email  
16 usage information to Chevron is likely to result in harassment, membership withdrawal, and a  
17 chilling of the Does’ political expression.

18           As a practical matter, Chevron’s litigation tactics have already chilled the Does’ political  
19 expression and resulted in membership withdrawal. And as two declarants noted, they have refused  
20 opportunities to work on the Chevron litigation after seeing what Chevron had put others through  
21 who worked on the case and related activism. John Doe 1 Decl. ¶ 10; John Doe 6 Decl. ¶ 9.

22           Moreover, the Does feel harassed by Chevron’s attempt to obtain the information it seeks,  
23 and fear further harassment if Chevron actually gains access to personal information about their  
24 email use. *See* John Doe 1 Decl. ¶ 12; John Doe 2 Decl. ¶ 13; John Doe 3 Decl. ¶ 10; John Doe 4  
25 Decl. ¶ 9; ; John Doe 6 Decl. ¶ 12; John Doe 7 Decl. ¶ 12.

26           Some Does state that other individuals have been subjected to harassment, threats, and  
27 intimidation for working in connection with the litigation against Chevron in Ecuador or related  
28 activism efforts. *See* John Doe 4 Decl. ¶ 11; John Doe 5 Decl. ¶ 10. Two declarants express

1 concern for their physical safety if Chevron gains access to the information it seeks. John Doe 4  
2 Decl. ¶ 11; John Doe 5 Decl. ¶ 10.

3 The Does' declarations also reflect a likelihood of chilled expression in the future. Many of  
4 the Does state that if they had known that their email usage information and location would be  
5 revealed to Chevron, their political expression at the time they was assisting with the litigation or  
6 participating in related advocacy efforts would have been chilled. John Doe 1 Decl. ¶ 9; John Doe  
7 2 Decl. ¶ 10; John Doe 3 Decl. ¶ 8; John Doe 7 Decl. ¶ 9. They say their future political and  
8 associational activities related to Chevron will be chilled if the company obtains the personal  
9 information it seeks. John Doe 1 Decl. ¶ 10; John Doe 2 Decl. ¶ 11; John Doe 3 Decl. ¶ 9; John  
10 Doe 4 Decl. ¶ 11; John Doe 6 Decl. ¶ 9, John Doe 7 Decl. ¶ 9. They believe their associational  
11 activities will likely be chilled more generally, as well. John Doe 1 Decl. ¶ 11; John Doe 2 Decl. ¶  
12 10; John Doe 3 Decl. ¶ 10; John Doe 4 Decl. ¶ 12; John Doe 6 Decl. ¶ 11; John Doe 7 Decl. ¶ 11.

13 Thus, the Does have made a *prima facie* showing that the service providers' compliance  
14 with Chevron's subpoenas will chill their constitutionally protected associational rights.

15 **ii. Disclosure of the Does' Information Does Not Serve a Compelling**  
16 **Interest and Is Not the Least Restrictive Means of Furthering a**  
17 **Compelling Interest.**

18 Chevron cannot satisfy its burden of showing that the information it seeks about the Does is  
19 "rationally related to a compelling government interest . . . [and] the least restrictive means of  
20 obtaining the desired information." *Perry*, 591 F.3d at 1140 (internal quotation marks omitted). To  
21 determine whether Chevron should obtain the discovery it seeks, the Court must balance the  
22 "burdens imposed on individuals and associations against the . . . interest in disclosure" to  
23 determine whether the "interest in disclosure . . . outweighs the harm" to the Does' associational  
24 rights. *Perry*, 591 F.3d at 1140 (quoting *Buckley v. Valeo*, 424 U.S. at 72). Critically, Chevron  
25 must demonstrate that the information sought is "highly relevant to the claims or defenses in the  
26 litigation," that the subpoenas were "carefully tailored to avoid unnecessary interference with  
27 protected activities," and that the information sought is "otherwise unavailable." *Id.* Chevron can  
28 show none of these things.

1           The government may well have a compelling interest in making sure that parties to  
2 litigation receive the information they need to properly litigate their cases in the interest of the fair  
3 administration of justice. But the scope of Chevron’s subpoenas far exceed any such interest. The  
4 company seeks a vast amount of information that is not “highly relevant” to the claims in the  
5 underlying litigation. Indeed, a Chevron spokesman readily admitted to the press that some of these  
6 email accounts are likely to be “legitimate” and “used for benign purposes.”<sup>11</sup> Professor Heller’s  
7 experience, discussed above in Section A.1.b.ii, further underscores this likelihood: Chevron’s  
8 request for his information had no connection whatsoever to the company’s legal claims. There is  
9 no reason to believe this is not true the case for information sought about many other individuals  
10 through these subpoenas.

11           Furthermore, there is no indication that the subpoenas were carefully tailored to avoid  
12 infringing the Does’ associational freedoms. Indeed, the discovery demands indiscriminately seek  
13 information about each and every one of the 101 email accounts since 2003, without any tailoring  
14 or limitation whatsoever. The careless scope of these subpoenas is underscored by the fact that  
15 Google did not even launch Gmail until 2004, meaning that Google is unlikely to have any  
16 responsive information for more than a year covered by Chevron’s subpoena simply because its  
17 email service did not exist.<sup>12</sup>

18           Finally, the subpoenas to the email providers are not the least restrictive means of obtaining  
19 the information Chevron seeks. A company spokesperson told the San Francisco Chronicle that  
20 subpoenas were issued for the purpose of

21           trying to find out whether some of the e-mail addresses actually belong to key  
22 figures in the case, including the opposing side’s lawyers and a court-appointed  
23 expert whom Chevron accuses of fraud. Some of the participants, he said, have set  
up multiple e-mail accounts, and tracing the communication among them could

24 <sup>11</sup> Declan McCullagh, *Chevron targets Google, Yahoo, Microsoft e-mail accounts*, CNET (Oct. 11,  
25 2012), [http://news.cnet.com/8301-13578\\_3-57530915-38/chevron-targets-google-yahoo-microsoft-  
e-mail-accounts/](http://news.cnet.com/8301-13578_3-57530915-38/chevron-targets-google-yahoo-microsoft-e-mail-accounts/).

26 <sup>12</sup> Gmail, <http://en.wikipedia.org/w/index.php?title=Gmail&oldid=518861456> (last visited Oct. 22,  
27 2012).

1 help the company prove its contention that the lawsuit is nothing more than an  
2 elaborate extortion scheme.

3 Baker, *Chevron seeks e-mail logs in Ecuador suit*, S.F. CHRONICLE.<sup>13</sup> Chevron could learn this  
4 information by seeking discovery directly from those “key figures” and “participants” to ask  
5 whether the email addresses belong to them, rather than issuing sweeping subpoenas to third-party  
6 service providers that implicate the First Amendment rights of scores of people who are not parties  
7 to the case.

8 Chevron’s fishing expedition violates the Does’ associational rights, and the subpoenas  
9 should be quashed in their entirety for this reason alone.

10 **B. The Subpoenas Unnecessarily Violate The Does’ Privacy Interests Under the  
11 California Constitution.**

12 For many of the reasons why Chevron’s subpoenas fail under the United States  
13 Constitution, they independently violate the Does’ right to privacy under the California  
14 Constitution, Article 1, section 1. “The right of privacy is an ‘inalienable right’ secured by article  
15 I, section 1 of the California Constitution. It protects against the unwarranted, compelled  
16 disclosure of various private or sensitive information regarding one’s personal life, including his or  
17 her . . . political affiliations . . . and confidential personnel information.” *Tien v. Superior Court*,  
18 139 Cal. App. 4th 528, 539 (Cal. Ct. App. 2006). The right of privacy in California is “in many  
19 respects broader than its federal constitutional counterpart, [in that it] protects individuals from the  
20 invasion of their privacy not only by state actors but also by private parties.” *Leonel v. American  
21 Airlines, Inc.*, 400 F.3d 702, 711 (9th Cir. 2005). In order for information to be protected from  
22 discovery under the California right to privacy, the Does must demonstrate three elements: (1) a  
23 legally protected privacy interest; (2) a reasonable expectation of privacy under the circumstances;  
24 and (3) a showing that production would lead to a serious invasion of the protected privacy interest.

25 <sup>13</sup> Chevron explained its rationale similarly to another media outlet: “We know the plaintiffs’  
26 lawyers created e-mail addresses intended to be aliases to disguise the ultimate user, and used  
27 dozens of email accounts to transfer fraudulent documents and to try to conceal their scheme.  
28 Among other things, the subpoenas serve to flush out which e-mail addresses are legitimate and  
have been used for benign purposes.” McCullagh, *Chevron targets Google, Yahoo, Microsoft e-  
mail accounts*, CNET.

1 *Id.* at 712, citing *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 39-40 (1994). Movants'  
2 privacy interests on the one hand, must then be balanced against "right of a civil litigant to discover  
3 relevant facts" on the other. *Tien*, 139 Cal. App. 4th at 539, quoting *Hooser v. Superior Court*, 84  
4 Cal. App. 4th 997, 1004 (Cal. Ct. App. 2000).

5 The Does have a legally protected privacy interest in their identities and locations,  
6 particularly the location of their homes. *See, e.g., Planned Parenthood Golden Gate v. Superior*  
7 *Court*, 83 Cal. App. 4th 347, 358-60 (Cal. Ct. App. 2000) ("Human experience compels us to  
8 conclude that disclosure [of identity and location] carries with it serious risks which include, but  
9 are not limited to: the nationwide dissemination of the individual's private information, the  
10 offensive and obtrusive invasion of the individual's neighborhood for the purpose of coercing the  
11 individual to stop constitutionally-protected associational activities and the infliction of threats,  
12 force and violence."). The Does' privacy interests in their identities and locations are particularly  
13 potent in the context of a global activism campaign that has included threats to various Does'  
14 personal safety. Many of the individuals whose names and location information Chevron seeks  
15 have already been subjected to harassment due to their connection with the litigation against  
16 Chevron or related activism.

17 The Does have a reasonable expectation of privacy in their identity and location  
18 information. The mere fact that some Does participated in litigation against Chevron or associated  
19 advocacy gave them little reason to expect that their identities and information that could track  
20 their location over nearly a decade would be handed to Chevron. And finally, for all of the reasons  
21 discussed above, including harm to the Does' free speech and associational interests, the chilling  
22 effects of disclosure, the likelihood of harassment, and the threat to some of the Does' physical  
23 safety, disclosure of the information Chevron seeks would lead to a "serious invasion" of the Does'  
24 privacy interests. *See Hill*, 7 Cal. 4th at 37.

25 Balanced against Chevron's stated need for the information—to discover whether these  
26 email accounts belong to "key figures" in the litigation—the Does' privacy interests prevail. There  
27 are other, better, methods to discover the information Chevron seeks, such as in regular party  
28

1 discovery. Chevron cannot show that its need for these subpoenas, which seek nearly a decade's  
2 worth of location information for dozens of non-party lawyers, bloggers, journalists, and activists,  
3 outweighs the privacy interests of those non-parties. If Chevron is unable to make such a showing,  
4 the California Constitution mandates that these subpoenas be quashed. *See Planned Parenthood*  
5 *Golden Gate*, 83 Cal. App. 4th at 369.

6 **C. The Subpoenas Are Facially Overly Broad and Should be Quashed in Their**  
7 **Entirety.**

8 Finally, the Court should quash these subpoenas under Federal Rule of Civil  
9 Procedure 26(c) because they are grossly overbroad as drafted, and are therefore oppressive and  
10 unreasonable. *See, e.g., Compaq Computer Corp. v. Packard Bell Elecs.*, 163 F.R.D. 329, 335-36  
11 (N.D. Cal. 1995) (non-party may contest subpoena on irrelevancy grounds); *Fallon v. Locke,*  
12 *Liddell & Sapp, LLP*, 2005 U.S. Dist. LEXIS 46987, at \*\*4-5 (N.D. Cal. Aug. 4, 2005) (same);  
13 *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 638 (C.D. Cal. 2005) (subpoena overly broad where it  
14 sought 10 years of records); *Xcentric Ventures, LLC v. Arden*, 2010 U.S. Dist. LEXIS 13076, at  
15 \*\*5-8 (N.D. Cal. Jan. 27, 2010) (limiting scope of overly broad subpoena for user information  
16 served on Google).

17 The subpoenas are overly broad as drafted because they seek nine years of detailed email  
18 usage information about 71 separate email addresses, thus demanding a catalog of the account  
19 holders' daily movements since 2003. Even as verbally clarified by Chevron, the data disclosed  
20 here would not only constitute an invasion of the Does' personal privacy, but also include a  
21 tremendous amount of information wholly irrelevant to Chevron's claims and defenses, which is  
22 beyond the scope of reasonable or fair discovery.

23 Quashing the subpoenas in their entirety is especially important here, where it is likely that  
24 a number of the non-parties whose information is sought are not present in the United States and do  
25 not speak English sufficiently to engage in sophisticated American litigation. Many may not have  
26 understood the notices that Google and Yahoo! emailed (which were presumably in English), much  
27

1 less been able to muster the wherewithal to secure counsel in Northern California to represent them  
2 here.

3 It is also important because of the reasonable concern that the real purpose of these  
4 subpoenas is to harass and intimidate the activists, interns, young lawyers, volunteers and  
5 journalists, both in the United States and around the world, who have shown some sympathy for or  
6 supported the Ecuadoran plaintiffs who sought judicial recourse against Chevron. Regardless of  
7 whether those fears are well founded, the Court should not permit Chevron's unnecessary and  
8 unwarranted fishing expedition into these individuals' day-to-day activities without a serious and  
9 well-documented showing that each of these individuals was in fact part of the conspiracy it  
10 alleges.

11 **V. CONCLUSION**

12 For the foregoing reasons, the September 18, 2012 subpoenas served by Chevron upon  
13 Google and Yahoo! should be quashed in their entirety.

14 DATED: October 22, 2012

Respectfully submitted,

ELECTRONIC FRONTIER FOUNDATION

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