

1 STEPHANIE M. HINDS (CABN 154284)
United States Attorney

2 THOMAS A. COLTHURST (CABN 99493)
3 Chief, Criminal Division

4 LLOYD FARNHAM (CABN 202231)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102-3495
7 Telephone: (415) 436-7200
lloyd.farnham@usdoj.gov

8 C. ALDEN PELKER (MD BAR)
Senior Counsel

9 Department of Justice
10 Computer Crime & Intellectual Property Section
11 1301 New York Avenue NW, Suite 600
Washington, D.C. 20005
12 Telephone: (202) 514-1026
catherine.pelker@usdoj.gov

13 Attorneys for United States of America

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 IN THE MATTER OF THE SEARCH OF
19 CONTENT STORED AT PREMISES
20 CONTROLLED BY GOOGLE INC. AND
AS FURTHER DESCRIBED IN
ATTACHMENT A

CASE NO. 16-MC-80263-RS

**STIPULATION AND JOINT REQUEST TO
CLOSE MATTER ADMINISTRATIVELY;
ORDER**

21
22
23 This stipulation is entered into between the United States of America, acting through the United
24 States Attorney’s Office and the United States Department of Justice, Computer Crime & Intellectual
25 Property Section (the “Government”), and Google LLC (“Google”), through their authorized
26 representatives.

27 WHEREAS, the parties have agreed to a resolution of all issues in and related to this case and
28 the proceedings related to Google’s compliance with the search warrant issued by the Honorable Laurel

1 Beeler, United States Magistrate Judge for the Northern District of California, on June 30, 2016,
2 captioned "In the Matter of the Search of CONTENT RELATED TO BTC-E THAT IS STORED AT
3 PREMISES CONTROLLED BY GOOGLE INC. AND FURTHER DESCRIBED IN ATTACHMENT
4 A," Case No. 3-16-70816;

5 WHEREAS, the resolution includes an Agreed Facts and Procedural History, attached hereto as
6 Attachment A, and an Agreement between the parties, attached hereto as Attachment B. The Agreement
7 involves continued and ongoing enhancements to Google's legal process compliance program, which is
8 intended to achieve timely and complete responses to certain legal process in compliance with
9 applicable laws, while permitting Google to safeguard users' privacy and limit Government access to
10 user data except for responses to valid legal process and only to the extent authorized by law; and

11 WHEREAS, Google estimates that it has spent more than \$90 million on additional resources,
12 systems, and staffing to implement improvements to its legal process compliance program, including in
13 response to these proceedings. In light of these significant expenditures, the parties agree that no further
14 remedial compensation is warranted.

15 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the
16 undersigned parties, through their respective counsel, that this matter is fully resolved, and the parties
17 jointly request that the Court close this case administratively.

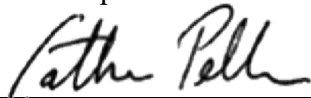
18 DATED: October 24, 2022

Respectfully submitted,

19 STEPHANIE M. HINDS
20 United States Attorney

21 
22 LLOYD FARNHAM
Assistant United States Attorney

23 JOHN LYNCH
24 Chief, Computer Crime & Intellectual
25 Property Section
U.S. Department of Justice

26 
27 C. ALDEN PELKER
28 Senior Counsel

1 DATED: October 21, 2022

WILMER CUTLER PICKERING
HALE AND DORR LLP



MARK D. FLANAGAN
Attorneys for Google LLC

7 **ORDER CLOSING MATTER ADMINISTRATIVELY**

8 Based on the above stipulation of the parties and considering the Agreed Facts and Procedural
9 History, attached hereto as Attachment A, and the Agreement of the parties, attached hereto as
10 Attachment B, the Court HEREBY ORDERS this matter closed, all issues having been resolved by the
11 parties.

12 This Court retains jurisdiction to resolve disputes regarding the resolution of this matter as set
13 forth in the Agreement of the parties.

14 IT IS SO ORDERED.

16 DATED: October 25, 2022



HONORABLE RICHARD SEEBORG
Chief Judge, United States District Court

ATTACHMENT A
AGREED FACTS AND PROCEDURAL HISTORY

1
2
3 1. On June 30, 2016, the Honorable Laurel Beeler, U.S. Magistrate Judge for the Northern
4 District of California, issued a search warrant pursuant to the Stored Communications Act (“SCA”),
5 captioned “In the Matter of the Search of Content Related to BTC-e that is Stored at Premises
6 Controlled by Google Inc. and further described in attachment A,” Case No. 16-70816-MISC-LB, (“the
7 Warrant”) requiring Google to produce materials relevant to the investigation of an illegal
8 cryptocurrency exchange called BTC-e and its administrators. On July 6, 2016, Homeland Security
9 Investigations Special Agent Michael Delaney served the Warrant on Google.

10 2. On July 14, 2016, the Second Circuit Court of Appeals issued its opinion in *In the Matter*
11 *of Warrant to Search a Certain E-Mail Account Controlled and Maintained by Microsoft Corp.*, 829 F.
12 3d 197 (2nd Cir. 2016) (the “Microsoft Decision”). That decision held that SCA search warrants did not
13 reach data stored outside the United States.

14 3. Following the Microsoft Decision, Google temporarily halted processing of the Warrant.
15 The Microsoft Decision was issued by the Second Circuit, in which Google operates but is not
16 headquartered; however, in the absence of contrary Court of Appeals authority directly on point, Google
17 conducted a legal analysis and decided to follow the Microsoft Decision in all Circuits, including the
18 Ninth Circuit and the Northern District of California.

19 4. At the time of the Microsoft Decision, in order to optimize performance, reliability, and
20 other efficiencies, Google stored certain data in an intelligent network, which moved component parts of
21 data seamlessly and automatically between locations. As a result, Google could not always determine
22 the country in which certain data was stored at a given time. Following the Microsoft Decision, Google
23 determined that in response to United States search warrants, Google was required to produce only data
24 that it could confirm was located in the United States. However, at the time, Google’s legal export tools
25 would collect information from across Google’s servers without regard to location and save the data
26 within the United States. Google believed that using its legal export tools to retrieve the data in
27 connection with the Warrant would exceed the scope of the SCA’s reach as interpreted by the Microsoft
28 Decision and thus started developing location-aware tooling.

1 5. From Fall 2016 through Spring 2017, Google worked to develop location-aware tools
2 that would allow the company to retrieve data in response to search warrants without bringing data that
3 was potentially stored outside of the United States into the United States so that it could be preserved
4 pending possible litigation.

5 6. On September 27, 2016, SA Delaney contacted Google asking for the status of Google's
6 response to the Warrant, acknowledging the "large volume of information" it requested from Google
7 and requesting a "partial or rolling production" if not all responsive records were available. On
8 September 28, 2016, Google produced some data and documents that it was able to ascertain were stored
9 in the United States in response to the Warrant. In its first production, Google acknowledged its
10 production was only a partial response to the Warrant and that the produced responsive records were
11 retrieved from "Google's U.S. servers," citing the Microsoft Decision. On October 3, 2016, HSI SA
12 Delaney contacted Google to ask whether responsive data were omitted from Google's production
13 because they were stored outside of the United States, what types of responsive data were stored in
14 foreign countries, and in which countries such data were stored. On October 12, 2016, HSI SA Delaney
15 and a Google representative discussed the Warrant. At that time, Google indicated that certain data
16 responsive to the Warrant were stored outside of the United States, and that Google would only produce
17 data stored in the United States in response to the Warrant consistent with its interpretation of the
18 Microsoft Decision.

19 7. On November 18, 2016, Google supplemented its production to the Government based on
20 new location-aware tooling it had developed since its first production. On November 21, 2016, Google
21 wrote a letter to the Government providing updates on the production. In particular, Google stated that
22 while it produced "all information it confirmed to be stored in the United States," it did not produce
23 other responsive data whose location Google could not determine and could not confirm to be in the
24 United States, consistent with Google's interpretation of the Microsoft Decision.

25 8. The Government informed Google that its incomplete production was not satisfactory,
26 and that if Google did not fully comply, the Government would petition the Court to hold Google in
27 contempt. On December 6, 2016, Google filed a Motion to Quash the Warrant.

28 9. On January 13, 2017, the Government filed an Opposition to the Motion to Quash and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.