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COUNTY OF SANTA CLARA

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
(San Francisco Division)

11 CALVARY CHAPEL SAN JOSE; a California  
nonprofit corporation; PASTOR MIKE  
12 MCCLURE, an individual,

13 Plaintiffs,

14 v.

15 SANTA CLARA COUNTY; SAFEGRAPH; and  
16 DANIEL E. HO;

17 Defendants.

No. 23CV04277 VC

**DEFENDANT COUNTY OF SANTA  
CLARA’S STATEMENT IN RESPONSE  
TO SAFEGRAPH, INC.’S MOTION FOR  
RELIEF FROM ORDER FOR STAY  
PURSUANT TO FEDERAL RULE OF  
CIVIL PROCEDURE 60(b)**

Date: June 20, 2024

Time: 10:00 a.m.

Judge: The Hon. Vince Chhabria

Courtroom: Courtroom 4 – 17<sup>th</sup> Floor

18  
19 On February 15, 2024, after hearing argument on the motions to dismiss filed by defendants  
20 County of Santa Clara (“County”) and SafeGraph, Inc. (“SafeGraph”), this Court entered an order  
21 staying this case, pending plaintiffs Calvary Chapel San Jose’s and Mike McClure’s (collectively,  
22 “Calvary”) appeal in the Ninth Circuit Court of Appeals of a *Younger* stay order entered by Judge  
23 Beth Labson Freeman in the earlier-filed case between Calvary and the County. ECF 57.

24 SafeGraph has now moved for an order lifting the stay in the present action as to Calvary’s  
25 claims against it (hereinafter, the “Motion”). ECF 64. Because the relief sought by SafeGraph’s  
26 Motion would *not* lift the stay as to Calvary’s claims *against the County (or Professor Daniel Ho,*  
27 *who has not yet appeared)*, the County does not take any position on the Motion but respectfully  
28 submits this short Statement in Response to assist the Court by reporting on certain developments.

1 First, the stay entered by this Court—“pending the appeal in *Calvary Chapel San Jose v.*  
 2 *Cody*, No. 20-cv-3794-BLF (N.D. Cal.)”—is indisputably still in effect. ECF 57. On April 16,  
 3 2024, the Ninth Circuit issued a memorandum opinion affirming in all respects the *Younger* stay  
 4 issued by Judge Freeman and dismissing—for lack of jurisdiction—Calvary’s appeal of a particular  
 5 ruling in an interlocutory order entered by Judge Freeman. County’s Request for Judicial Notice,  
 6 Ex. A.<sup>1</sup> Later that day, the County’s attorneys asked counsel of record for Calvary and SafeGraph  
 7 whether they agreed that extending this Court’s stay to mirror the *Younger* stay would serve the  
 8 interest of judicial economy. Calvary responded that it intended to seek a rehearing *en banc*, and on  
 9 April 30, 2024, Calvary did file a petition for rehearing *en banc*. *Id.*, Ex. B. Therefore, Calvary’s  
 10 appeal is still “pending” within the meaning of the Court’s February 15 stay order.

11 Second, the stay is likely to continue for several months. The Ninth Circuit will not order a  
 12 rehearing without giving the County an opportunity to respond. *See* Ninth Circuit Rule 35-2. And  
 13 no such response may be filed unless the Ninth Circuit orders one. Fed. R. App. P. 35(e). Further,  
 14 the Ninth Circuit “has no time limit” on deciding a petition for rehearing, and it “may take a few  
 15 months or longer” for such a decision to issue.<sup>2</sup> As of this filing, the Ninth Circuit has not taken any  
 16 action on Calvary’s petition. When the pending appeal is complete, the parties will inform the Court  
 17 and propose case management solutions that make the most sense in view of the progress (at that  
 18 later time) of the other legal proceedings involving Calvary and the County.

19 Dated: May 20, 2024

Respectfully submitted,

20 TONY LOPRESTI  
 21 COUNTY COUNSEL

22 By: /s/ Xavier M. Brandwajn  
 23 XAVIER M. BRANDWAJN  
 24 Deputy County Counsel

25 Attorneys for Defendant  
 26 COUNTY OF SANTA CLARA

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27 <sup>1</sup> Although SafeGraph’s Motion purports to attach the Ninth Circuit’s decision, that exhibit appears  
 28 to be missing from SafeGraph’s papers.

<sup>2</sup> <https://www.ca9.uscourts.gov/general/faq/> (at Question No. 19).