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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 **CALVARY CHAPEL SAN JOSE**, a California
12 Non-Profit Corporation; **PASTOR MIKE**
MCCLURE, an individual;

13 Plaintiffs,

14 vs.

15 **SANTA CLARA COUNTY**; and **SAFEGRAPH**;

16 Defendants.
17
18

Case No.: 3:23-cv-04277-VC

PLAINTIFFS’ OPPOSITION TO
DEFENDANT SAFEGRAPH’S MOTION
FOR RELIEF FROM ORDER FOR STAY

Date: June 20, 2024
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Dept.: Courtroom 4-17th Floor

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20 **I. INTRODUCTION**

21 On February 15, 2024, this Court stayed this action pending the appeal in *Calvary Chapel San*
22 *Jose v. Cody*, No. 20-cv-3794-BLF (N.D. Cal.) (“*Cody Appeal*”). Defendant SafeGraph (“SafeGraph”)
23 now seeks relief from the stay as to its pending motion to dismiss. *See* SafeGraph’s Motion for Relief
24 From Order For Stay (“Mot. for Relief”), ECF 060. Plaintiff Calvary Chapel San Jose (“Church” or
25 “CCSJ”) is not opposed to a lifting of the stay to the extent that the Court lifts the stay as to all parties
26 and pending motions. However, if the Court is not inclined to lift the stay as to all parties, CCSJ is
27 opposed to SafeGraph’s Motion. Defendant Santa Clara County also has a pending motion to dismiss
28

1 before this Court that was affected by the Court’s stay. *See* ECF 033. Lifting the stay only as to
2 SafeGraph would result in a waste of party and judicial resources and piecemeal litigation.

3 Additionally, SafeGraph seeks relief under Federal Rule of Civil Procedure 60(b)(1) and
4 60(b)(6). Relief under Rule 60(b)(1) is not warranted, as courts are not required to rule on jurisdictional
5 issues prior to issuing a stay. *Sanchez v. Green Messengers, Inc.*, 666 F. Supp. 3d 1047, 1052–53 (N.D.
6 Cal. 2023). Relief under 60(b)(6) is also not warranted as this rule is “used sparingly as an equitable
7 remedy to prevent manifest injustice.” *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir.
8 2005). No such injustice is present here.

9 Accordingly, CCSJ requests that the Court lift its stay as to all parties and all pending motions.
10 Alternatively, if the Court is not inclined to lift the stay as to all parties, the entire stay should remain
11 in place to conserve resources.

12 II. FACTUAL AND PROCEDURAL BACKGROUND

13 A. Factual Background

14 During the COVID-19 pandemic, unbeknownst to the public and Plaintiffs Calvary Chapel San
15 Jose and Pastor Mike McClure (collectively, “Plaintiffs”), Defendant Santa Clara County (“County”)
16 and Defendant SafeGraph (“Defendant” or “SafeGraph”) (collectively, “Defendants”) embarked on an
17 invasive and warrantless geofencing operation to track county residents for research purposes. First
18 Amended Complaint (“FAC”), ECF 027, ¶ 4. Included as a target in this illegal operation was CCSJ.
19 *Id.* at ¶ 6. Defendants specifically targeted CCSJ using the geofencing tool without a warrant. *Id.*
20 Defendants put multiple geofences around the Church’s property so they could track when and where
21 individuals were on the premises. *Id.* at ¶ 7. This operation took place over a year with seemingly no
22 oversight, boundaries, or limitations – meaning Defendants could track churchgoers in the sanctuary,
23 prayer room, or bathroom. *Id.*

24 B. Procedural Background

25 On June 9, 2020, Plaintiffs, alongside another church and its pastor, filed a lawsuit in federal
26 court challenging the constitutionality of the County’s COVID-19 public health orders as applied
27 against churches. Defendant Santa Clara County’s Request for Judicial Notice (“SCC RJN”), ECF
28 033.1, Ex. 1. On March 10, 2023, Judge Freeman abstained from hearing the case until the final

1 resolution of the County’s state court enforcement action. *Id.* at Ex. 4. Plaintiffs appealed this decision
2 at the Ninth Circuit (the *Cody* Appeal). *See* Plaintiffs’ Request for Judicial Notice in Support of its
3 Opposition to Defendant SafeGraph’s Motion for Relief From Stay (“RJV”), Ex A. On April 16, 2024,
4 the Ninth Circuit affirmed the lower court’s ruling. *See* Mot. for Relief, Ex. A. Plaintiffs subsequently
5 filed a petition for rehearing en banc. *See* RJN, Ex B. On May 23, 2024, the Ninth Circuit denied
6 Calvary’s petition for rehearing. *See* RJN, Ex C. Calvary is still analyzing whether it will seek further
7 appellate review in the *Cody* Appeal. *See* Declaration of Bethany Onishenko (“Decl. Onishenko”), ¶ 5.

8 Plaintiffs filed this action on August 22, 2023, against the County and SafeGraph challenging
9 the constitutionality of the County’s geofencing surveillance operation. *See* Complaint, ECF 001. On
10 October 27, 2023, Plaintiffs filed their First Amended Complaint naming Professor Ho as an additional
11 Defendant. *See* FAC, ECF 027. On February 15, 2024, this Court stayed proceedings pending the
12 outcome of the *Cody* Appeal at the Ninth Circuit. *See* Order Staying Case, ECF 057. SafeGraph now
13 seeks relief from the Court’s Order for Stay. *See* Mot. for Relief, ECF 060.

14 III. LEGAL STANDARD

15 Federal Rule of Civil Procedure 60(b) allows parties to seek relief from an order by asking the
16 court to set aside the order. Fed. R. Civ. Proc. 60(b). Rule 60(b)(1) authorizes a court to relieve a party
17 from an order where the order is a result of “mistake, inadvertence, surprise, or excusable neglect....”.
18 *See* Fed. R. Civ. Proc. 60(b)(1); *Pincay v. Andrews*, 389 F.3d 853, 856, 860 (9th Cir.2004) (en banc)
19 cert. denied., 544 U.S. 961, 125 S.Ct. 1726, 161 L.Ed.2d 602 (2005) (noting that the standard was an
20 equitable one requiring a flexible approach).

21 Rule 60(b)(6) authorizes a court to relieve a party from an order for “any other reason justifying
22 relief from the operation of the judgment.” Fed. R. Civ. Proc. 60(b)(6). “Rule 60(b)(6) has been used
23 sparingly as an equitable remedy to prevent manifest injustice. The rule is to be utilized only where
24 extraordinary circumstances prevented a party from taking timely action to prevent or correct an
25 erroneous judgment.” *U.S. v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993).

IV. ARGUMENT

A. The Court Should Lift the Stay of Proceeding As To All Parties, Not Just SafeGraph

At the outset, CCSJ is unopposed to a lifting of the entire stay in this action. While Calvary is still analyzing whether it will seek further review in the *Cody* Appeal, CCSJ seeks a lift of the stay as to all parties and pending motions, not just for adjudication of SafeGraph’s motion to dismiss. *See* Decl. Onishenko, ¶ 5, 6.¹ A district court has “inherent power to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Pursuant to this inherent power, it is within a district court’s discretion to lift a stay of litigation. *See Ho Keung Tse v. Apple, Inc.*, 2013 WL 5302587, at *2 (N.D. Cal., Sept. 19, 2013, No. C 06-06573 SBA) (citing *Canady v. Erbe Elektromedizin GMBH*, 271 F.Supp.2d 64, 74 (D.D.C.2002) (“The same court that imposes a stay of litigation has the inherent power and discretion to lift the stay.”)).

This Court granted a stay in this action pending the outcome of the *Cody* Appeal at the Ninth Circuit. *See* Order Staying Case, ECF 057. Notably, this relief was not requested in the briefing by any party in this action. *See* ECFs 032, 033, 043, 044. While CCSJ is determining whether to seek further appellate review in the *Cody* Appeal, this case can nevertheless proceed forward. The outcome of the *Cody* Appeal will not affect the issues presented in this matter. As extensively briefed and argued in response to the County’s Motion to Dismiss, this action is entirely distinct from any prior actions between the parties. *See* Plaintiffs’ Amended Response to Defendant Santa Clara County’s Motion to Dismiss the First Amended Complaint Pursuant to Federal Rule 12(b)(6), ECF 042 at **4-6. Accordingly, the Court should lift the stay as to all parties and all pending motions.

B. Alternatively, The Court Should Keep The Stay In Place In Its Entirety

If the Court is not inclined to lift the stay as to all parties, the entire stay should remain in place to conserve resources. While the time when motions may be heard or determined is within the Court’s discretion (Fed. R. Civ. Proc. 12(d)), it would be a duplication of judicial and party efforts to litigate Defendant Santa Clara County’s and Defendant SafeGraph’s motions to dismiss on separate occasions.

¹ Considering the potential conclusion of the *Cody* Appeal following the Ninth Circuit’s denial of rehearing en banc, the Parties have agreed that the stay in this action will remain in place, at a minimum, until June 20, 2024. *See* Decl. Onishenko, ¶ 5, 6.

1 See Fed. R. Civ. Proc. 12(d). Separate adjudication of these motions would also risk piecemeal
2 litigation. In the interest of judicial economy, the Court should hear and adjudicate Defendants’
3 respective motions simultaneously.

4 SafeGraph argues that it alone is entitled to relief because the Court’s failure to rule on its motion
5 to dismiss for lack of subject matter jurisdiction “constitute[d] a mistake or other grounds necessitating
6 relief” under Rule 60(b)(1) or 60(b)(6). Mot. for Relief at *3. While the Court has discretion to lift its
7 stay, a lift of the stay pursuant to either Rule 60(b)(1) or Rule 60(b)(6) is improper.

8 1. There was no mistake, inadvertence, surprise, or excusable neglect under FRCP
9 60(b)(1)

10 SafeGraph contends that the Court erred in staying proceedings before determining its subject
11 matter jurisdiction over the matter and that pursuant to that mistake it is entitled to relief from the stay.
12 See Mot. for Relief at *5. This argument is without merit. Indisputably, courts must establish jurisdiction
13 to hear a case before considering questions relating to the *merits* of a case. See *Foster v. Chatman*, 578
14 U.S. 488, 496 (2016) (“Before turning to the merits of [the] claim, we address a threshold issue. Neither
15 party contests our jurisdiction to review [petitioner]’s claims, but we ‘have an independent obligation
16 to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any
17 party.’” (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006))).

18 However, the Supreme Court has expressly held that a court may, for the sake of efficiency,
19 decline to determine its subject matter jurisdiction prior to deciding a “threshold, nonmerits issue”
20 presented by a case. *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 433 (2007).
21 Indeed, the Ninth Circuit recognizes that “there is no mandatory sequencing of nonmerits issues,” and
22 it thus “ha[s] leeway ‘to choose among threshold grounds for denying audience to a case on the merits.’”
23 *Twitter, Inc. v. Paxton*, 26 F.4th 1119, 1124 (9th Cir. 2022) (citing *Ruhrgas AG v. Marathon Oil Co.*,
24 526 U.S. 574, 585 (1999)). The rationale for this rule is that “jurisdiction is vital only if the court
25 proposes to issue a judgment on the merits.” *Snoqualmie Indian Tribe v. Washington*, 8 F.4th 853, 861
26 (9th Cir. 2021) (cleaned up).

27 While in its discretion, a court may rule on subject matter jurisdiction (and some choose to do
28 so), SafeGraph has failed to identify a single case *requiring* that a court establish jurisdiction before

1 taking measures pursuant to its inherent power to manage its docket. *See* Mot. for Relief at **3-4 (citing
2 cases). SafeGraph primarily relies on *Goldstein v. Astrue*, No. 11-CV-898-PSG, 2012 WL 10545, *2
3 (N.D. Cal. Jan. 3, 2012) to support its position. *See* Mot. for Relief at *4. Yet, that case does not support
4 the categorical bar on the exercise of the Court’s inherent power to manage its docket. In *Goldstein*, the
5 Northern District dismissed a social security benefits claim for lack of subject matter jurisdiction where
6 the plaintiff had not exhausted administrative remedies as required by federal statute. *Id.* *Goldstein*
7 merely stands for the proposition that pursuant to federal law a court must determine subject matter
8 jurisdiction before reconsidering the *merits* of a social security action. *Id.*

9 Notably, many courts have issued stays prior to ruling on subject matter jurisdiction. For
10 instance, in *Hulley Enterprises Ltd. v. Russian Federation*, the court held that stays could be granted in
11 cases where subject matter jurisdiction has been challenged, as granting a stay does not involve ruling
12 on the merits. 211 F. Supp. 3d 269, 277 (D.D.C. 2016). The same concept was reiterated by this court
13 in the case of *Sanchez v. Green Messengers, Inc.*, where the court held that in the absence of concerns
14 that a stay would effectively deprive the federal court of jurisdiction, a court may issue a stay under its
15 power to control its docket and calendar. 666 F. Supp. 3d 1047, 1052–53 (N.D. Cal. 2023). Similarly,
16 in *Meyers v. Bayer AG*, the court held that granting a stay is not adjudicating the merits of a case and
17 that it can be considered before verifying subject matter jurisdiction. F.Supp.2d 1044, 1047 (E.D. Wis.
18 2001). Accordingly, this Court did not make a “judicial mistake” warranting relief under Rule 60(b)(1)
19 when issuing a stay of proceedings.

20 2. Rule 60(b)(6) is only applied in extraordinary circumstances, which are not present
21 here

22 SafeGraph additionally requests relief under Rule 60(b)(6) because it is being “held hostage to
23 an appeal in which is not a party.” Mot. for Relief at *6. This argument is a red herring for two reasons.
24 First, SafeGraph does not have to be a party to the *Cody* Appeal for the Court to issue a stay of the
25 present proceedings, as this authority is inherent in a court’s power to control its docket. *See CMAX,*
26 *Inc.*, 300 F.2d at 268 (The Court has inherent power to control its docket “in a manner which will
27 promote economy of time and effort for itself, for counsel, and for litigants.”); *Landis v. N. Am. Co.*,
28 299 U.S. 248, 254 (1936) (“[W]e find ourselves unable to assent to the suggestion that before

1 proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes
2 must be shown to be the same and the issues identical.”). Second, the Court only issued a stay as to the
3 *Cody* Appeal. *See* Order Staying Case, ECF 057. It did not issue a stay as to CCSJ and the County’s
4 related state action. *See* Mot. for Relief at *6. Accordingly, this case can proceed following resolution
5 of the *Cody* Appeal, regardless of the status of the parties’ parallel state proceeding.

6 Additionally, relief under Rule 60(b)(6) is unwarranted, as this rule is to be “used sparingly as
7 an equitable remedy to prevent manifest injustice.” *United States v. Washington*, 394 F.3d 1152, 1157
8 (9th Cir.2005). Rule 60(b)(6) is to be utilized only where “extraordinary circumstances prevent a party
9 from taking timely action to prevent or correct an erroneous judgment.” *Id.* Accordingly, a party who
10 moves for such relief “must demonstrate both injury and circumstances beyond his control that
11 prevented him from proceeding with ... the action in a proper fashion.” *Latshaw v. Trainer Wortham &*
12 *Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). No such extraordinary circumstances exist here, as nothing
13 has prevented SafeGraph from taking timely action to correct the Court’s issuance of a stay.
14 Accordingly, lifting the stay as to SafeGraph pursuant to Rule 60(b)(6) is improper.

15 V. CONCLUSION

16 For the foregoing reasons, CCSJ requests that the Court lift its stay as to all parties and all
17 pending motions. Alternatively, if the Court is not inclined to lift the stay as to all parties, the entire stay
18 should remain in place to conserve resources.

19 Respectfully submitted,

20 Dated: June 3, 2024

21 /s/ Bethany Onishenko, Esq.

22 Bethany Onishenko
23 Attorney for Plaintiffs
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