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and **Pastor Mike McClure**

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

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

13 Plaintiffs,

14 vs.

15 **SANTA CLARA COUNTY, DANIEL E. HO**, an
individual;

16 Defendants.

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

**PLAINTIFFS’ NOTICE OF MOTION AND
MOTION TO LIFT STAY**

Date: April 17, 2025
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Dept.: Courtroom 4-17th Floor

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18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 NOTICE IS HEREBY GIVEN that on April 17, 2025, at 10:00 a.m., or as soon thereafter as the
20 matter may be heard in the above-entitled court, located at 450 Golden Gate Avenue, San Francisco,
21 CA 94102, in Courtroom 4 on the 17th Floor, of Judge Vince Chhabria, Plaintiffs Calvary Chapel San
22 Jose and Pastor Mike McClure (“Plaintiffs”) will and hereby do move the Court to grant Plaintiffs’
23 Motion to Lift Stay. This motion is based on this notice of motion and the memorandum of points and
24 authorities filed herewith, the pleadings and the papers on file herein, and upon such other evidence as
25 may be presented to the Court at the time of the hearing.

26 Respectfully submitted,

27 Dated: March 12, 2025

/s/ Julianne Fleischer
Julianne Fleischer, Esq.
Attorney for Plaintiffs

I. INTRODUCTION

On February 15, 2024, this Court stayed this Action pending the appeal in *Calvary Chapel San Jose v. Cody*, No. 20-cv-3794-BLF (N.D. Cal.) (“*Cody Appeal*”). See ECF No. 57. Plaintiffs Calvary Chapel San Jose and Pastor Mike McClure (collectively, “Plaintiffs” or “Calvary”) request that the stay be lifted because the *Cody Appeal* has been decided after the Ninth Circuit upheld District Court Judge Beth Labson Freeman’s decision to abstain under the *Younger* abstention doctrine. *Calvary Chapel San Jose v. Cnty. of Santa Clara*, No. 23-15445, 2024 WL 1635554, at *1 (9th Cir. Apr. 16, 2024). The Ninth Circuit also denied rehearing en banc. *Calvary Chapel San Jose v. Cnty. of Santa Clara*, No. 23-15445 (9th Cir. May 23, 2024). Furthermore, Judge Freeman refused to relate the *Cody* Action with the present Action. See ECF No. 79. Because the grounds for the original stay in this Action are no longer in effect, in the interest of justice, this Court should lift the stay.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

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

B. Procedural Background

Plaintiffs filed this action on August 22, 2023, against the County and SafeGraph challenging the constitutionality of the County’s geofencing surveillance operation. See Complaint, ECF No. 1. On October 27, 2023, Plaintiffs filed their FAC naming Professor Ho as another Defendant. See FAC, ECF No. 27. On February 15, 2024, this Court stayed proceedings pending Calvary’s appeal in the Ninth Circuit Court of Appeals of a *Younger* stay order entered by Judge Beth Labson Freeman in the earlier-

1 filed case between Calvary and the County.¹ See Order Staying Case, ECF No. 57. On April 16, 2024,
2 the Ninth Circuit affirmed Judge Freeman’s *Younger* stay order. *Calvary Chapel San Jose v. Cnty. of*
3 *Santa Clara*, No. 23-15445, 2024 WL 1635554, at *1 (9th Cir. Apr. 16, 2024). On May 23, 2024, the
4 Ninth Circuit denied Calvary’s petition for rehearing. *San Jose v. Cnty. of Santa Clara*, No. 23-15445
5 (9th Cir. May 23, 2024) (denying rehearing en banc).

6 On May 6, 2024, SafeGraph sought relief from this Court’s Order Staying Case. See Mot. for
7 Relief, ECF No. 60. On August 29, 2024, SafeGraph was dismissed from the case without prejudice
8 and its motion to lift the stay was denied as moot. See Order of Dismissal, ECF No. 86. On July 23,
9 2024, Judge Freeman denied Calvary’s administrative motion to relate *Calvary Chapel San Jose v.*
10 *Cody*, No. 20-CV-03794-BLF, 2023 WL 2638318 (N.D. Cal. Mar. 10, 2023) with the underlying matter
11 before this Court, holding that the cases “do not ‘concern substantially the same parties, property,
12 transaction, or event,’ nor is there a danger of ‘unduly burdensome duplication of labor and expense or
13 conflicting results if the cases are conducted before different Judges.’” See ECF No. 79 (citing Civil
14 Local Rule 3-12(a)). Plaintiffs now ask this Court to lift its stay of the current matter.

15 III. LEGAL STANDARD

16 Lifting a stay requires an “exercise of judgment, which must weigh competing interests and
17 maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). The Court must look at
18 “present day realities” and evaluate them in light of each situation. *Id.* at 258. Courts have repeatedly
19 held that courts may lift a stay “if the circumstances supporting the stay have changed such that the stay
20 is no longer appropriate.” *Samesurf, Inc. v. Intuit Inc.*, No. 22-CV-412-RSH-DDL, 2024 WL 4439257,
21 at *2 (S.D. Cal. Oct. 7, 2024) (granting a motion to lift stay after the resolution of IPR proceedings was
22 completed in a patent case); see also *Thomas v. Home Depot USA Inc.*, No. CO6-02705 MJJ, 2007 WL
23 2140917, at *3 (N.D. Cal. July 25, 2007) (granting a motion to lift stay because “[s]ince the California
24 Supreme Court has not issued its decision in that case, the grounds on which this Court originally issued
25 the stay no longer exist.”); see also *Rockhill Ins. Co. v. High End Dev., Inc.*, No. 22-cv-03104-VC, 2023
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28 ¹ *Calvary Chapel San Jose v. Cody*, No. 20-CV-03794-BLF, 2023 WL 2638318 (N.D. Cal. Mar. 10, 2023).

1 WL 4828516, at *1-2 (granting a motion to lift stay after a state court action with parallel factual facts
2 was settled).

3 IV. ARGUMENT

4 A. The Court Should Lift the Stay Because the *Cody* Appeal Has Concluded

5 District courts have broad discretion to lift stays in litigation when circumstances warrant such
6 a change. “A court may lift the stay if the circumstances supporting the stay have changed such that the
7 stay is no longer appropriate.” *Robert Bosch Healthcare Sys., Inc. v. Cardiocom LLC*, No. 14-CV-
8 01575-EMC, 2017 WL 6939167, at *1 (N.D. Cal. Mar. 16, 2017). A district court has “inherent power
9 to control the disposition of the causes on its docket in a manner which will promote economy of time
10 and effort for itself, for counsel, and for litigants.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
11 1962). Pursuant to this inherent power, it is within a district court’s discretion to lift a stay of litigation.
12 *See Ho Keung Tse v. Apple, Inc.*, No. C 06-06573 SBA, 2013 WL 5302587, at *2 (N.D. Cal., Sept. 19,
13 2013) (citing *Canady v. Erbe Elektromedizin GMBH*, 271 F.Supp.2d 64, 74 (D.D.C. 2002) (“The same
14 court that imposes a stay of litigation has the inherent power and discretion to lift the stay.”)).

15 Here, the circumstances have changed such that the stay in the present action is no longer
16 appropriate. *See Samesurf, Inc.*, 2024 WL 4439257, at *2. This Court issued a stay of the underlying
17 Action pending the outcome of the *Cody* Appeal at the Ninth Circuit. *See* Order Staying Case, ECF No.
18 57. Since this Court issued its stay order, the *Cody* Appeal has since been decided and resolved, with
19 the Ninth Circuit affirming Judge Freeman’s ruling. *Calvary Chapel San Jose v. Cnty. of Santa Clara*,
20 2024 WL 1635554. Thus, there is no final appeal or decision for this Court to await. Because the *Cody*
21 Appeal has been decided, the grounds on which this Court issued a stay no longer exist. *See Thomas*,
22 2007 WL 2140917, at *3.

23 B. The Court Should Lift the Stay Pending Appeal Because Judge Freeman Refused To 24 Relate The *Cody* Case With The Present Action

25 Judge Freeman declined to relate the *Cody* Case with the present action on the grounds that the
26 two cases were not substantially related. ECF No. 79, Order Denying Plaintiff’s Administrative Motion
27 to Relate Cases (citing Civil Local Rule 3-12(a)). Under the law-of-the-case doctrine, “a court is
28 generally precluded from reconsidering an issue previously decided by the same court” and “[f]or the

1 doctrine to apply, the issue in question must have been decided explicitly or by necessary implication
2 in [the] previous disposition.” *Herrington v. City of Sonoma*, 12 F.3d 901, 904 (9th Cir. 1993) (quoting
3 *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990)). Judge Freeman
4 reasoned that the *Cody* case and this Action are not related because “[t]he cases do not ‘concern
5 substantially the same parties, property, transaction, or event,’ nor is there a danger of ‘unduly
6 burdensome duplication of labor and expense or conflicting results if the cases are conducted before
7 different Judges.’” ECF No. 79, Order Denying Plaintiff’s Administrative Motion to Relate Cases
8 (citing Civil Local Rule 3-12(a)). Because Judge Freeman already determined that the two matters are
9 not related, this Court is precluded from reconsidering whether the present Action is related to the *Cody*
10 case because Judge Freeman decided the identical issue. *See Herrington*, 12 F.3d at 904.

11 In a minute order dated August 29, 2024, this Court stated that the stay in this Action would
12 remain in effect “pending the adjudication of the state court case.” *See* ECF No. 85. However, Plaintiffs
13 contend that the Court’s order from February 14, 2024, which stayed this Action pending the *Cody*
14 Appeal, is the controlling order. *See* ECF No. 57. In the *Cody* case, Judge Freeman abstained from the
15 state court action under the *Younger* abstention doctrine. *Calvary Chapel San Jose v. Cody*, No. 20-CV-
16 03794-BLF, 2023 WL 2638318, at *14 (N.D. Cal. Mar. 10, 2023). Judge Freeman also declined to
17 relate the *Cody* case to the present Action. *See* ECF No. 79. It would be illogical for this Court to
18 continue the stay in this Action pending the state court case’s outcome when Judge Freeman refused to
19 relate the *Cody* case to this Action and simultaneously abstained from the *Cody* case because of the
20 state court action. The outcome of the state court action has no bearing on the claims or parties of this
21 Action. Since the *Cody* Appeal affirmed Judge Freeman’s decision to abstain from the *Cody* action and
22 Judge Freeman determined that the *Cody* Appeal and this Action are not related, there are no longer any
23 grounds to maintain the stay in this Action. Under the law-of-the-case doctrine, this Court should accept
24 Judge Freeman’s ruling that the present action and the *Cody* case are unrelated. Therefore, this Court
25 should lift the stay in this case because the present action is not substantially related to any other matter
26 involving the County and Calvary.

V. CONCLUSION

For these reasons, Calvary requests that the Court lift its stay as to all parties and all pending motions.

Respectfully submitted,

Dated: March 12, 2025

/s/ Julianne Fleischer
Julianne Fleischer, Esq.
Attorney for Plaintiffs

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