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7 **and Pastor Mike McClure**

8  
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**  
13 **MCCLURE**, an individual;

14 Plaintiffs,

15 vs.

16 **SANTA CLARA COUNTY**; and **DANIEL E.**  
17 **HOE**;

18 Defendants.

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

**PLAINTIFFS’ REPLY IN SUPPORT OF**  
**MOTION TO LIFT STAY**

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

19 **I. INTRODUCTION**

20 The present matter involves significant infringements of Plaintiffs’ Constitutional rights brought  
21 about by Defendants’ use of a dystopian tracking system employed to secretly and virtually monitor  
22 congregants every move when they entered Plaintiffs’ church premises without either the congregants’  
23 or church’s knowledge. The issues involved are serious and cutting edge. The present matter was stayed  
24 pending the resolution of the *Cody* appeal. Because that appeal has been resolved, this Court should  
25 remove the stay and allow this case to continue in the normal course of litigation so that the novel issues  
26 presented may be resolved and Plaintiffs’ Constitutional rights can be upheld.

1 **II. II. LAW & ANALYSIS**

2 **A. The February 14, 2024, Order Is Controlling Because It Substantively Considered The**  
3 **Grounds For Staying the Case**

4 Defendants contend that the August 29, 2024, order is controlling over the February 14, 2024  
5 Order. *Opposition Br.*, p. 5. However, February 14 Order is the result of the Court considering the  
6 substantive arguments and merits of staying the case pending the *Cody* appeal. *See* ECF No. 57.  
7 Whereas the August 29 Order is the result of Plaintiffs and Defendant SafeGraph reaching a settlement  
8 agreement and the Order was issued for the purpose of dismissing SafeGraph from the case. *See* ECF  
9 Nos.85- 86.

10 Defendants argue that because the August 29 Order references the stay, that it is the controlling  
11 order on the issue. *Opposition Br.*, p. 2. However, the law of the case doctrine applies to substantive  
12 rulings by a Court. *See In re Mariner Post-Acute Network, Inc.*, 257 B.R. 723, 727 (2000). Because the  
13 merits of the stay were considered in the February 14 Order and not the August 29 Order, the prior order  
14 is controlling on the issue.

15 Defendants argue that the August 29 Order “logically followed from the developments of two  
16 other COVID-19 cases.” *Opposition Br.*, p. 5. However, as stated above, this statement is disingenuous  
17 because the August 29 Order was *not* the result of the developments of the other cases— it was issued  
18 for the purpose of dismissing SafeGraph, following the settlement agreement between SafeGraph and  
19 Plaintiffs. There was no nexus between developments between the other cases and the Court’s August  
20 29 Order, and the Court did not consider the substantive merits of continuing the stay. It is clear that  
21 the August 29 Order sought to ensure that the *only* change to the status quo at the time was to ensure  
22 that SafeGraph was conditionally dismissed with prejudice.

23 Accordingly, because the substantive merits of the stay were considered in the February 14  
24 Order it should be considered controlling. That Order stayed the case pending the *Cody* appeal, which  
25 has now concluded. Thus, the stay should be lifted and the case permitted to go forward.  
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1 **B. Judge Freeman Has Determined That There Is Not A Legally Sufficient Relationship**  
2 **Between This Case And The Federal Case, Therefore, The Stay Should Be Lifted**

3 Defendants' Response argues that the stay should remain in effect because of the  
4 interrelationship between the state court proceeding with the current proceeding. *Opposition Br.*, p. 2.  
5 However, there has been no finding that the present matter has significant interrelationship with the  
6 state case. Judge Freeman explicitly determined that the present case and the case before her are not  
7 substantially related—a conclusion that this Court is bound to uphold under the law of the case doctrine.  
8 *See Herrington v. City of Sonoma*, 12 F.3d 901, 904 (9th Circ. 1993); *see also* Motion to Lift Stay, p. 3  
9 (citing ECF No. 9.) Specifically, Judge Freeman held that the case before her and the present case “do  
10 not ‘concern substantially the same parties, property, transaction, or event,’ nor is there a danger of  
11 ‘unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted  
12 before different judges.’” *Plaintiffs' Motion*, p. 3 (citing ECF No. 79.) Judge Freeman then abstained  
13 from the state court case under the *Younger* doctrine. ECF No. 50. In other words, Judge Freeman found  
14 that her case was substantially related to the state court case, warranting *Younger* abstention, and that  
15 her case was entirely unrelated to the present matter. Accordingly, it is highly unlikely that a court could  
16 find the present case sufficiently related the state court case to similarly warrant staying the case.

17 This conclusion is borne out when considering this case and the state court case. The state court  
18 case was brought by the County against Calvary Chapel San Jose (“the Church”) and represents the  
19 second lawsuit in the matter (ECF No. 25.7)—as the Church filed the first lawsuit months before in  
20 federal court with Judge Freeman. ECF No. 25.2. The State claims allege that the Church failed to abide  
21 by the County’s unconstitutional mandates. *See* ECF No. 25.7. The State alleges that the Church  
22 continued to hold services without the mitigation required by the County, such as limiting the amount  
23 of people who could attend church, preventing worship, requiring masking and other alleged prevention  
24 methods, and reporting requirements. *Id.*

25 The present matter is brought by the Church and alleges claims entirely unrelated to the County’s  
26 case. It has nothing to do with the Church’s actions in response to Covid-19. Instead, it alleges violations  
27 of the First Amendment and Fourth Amendment of the United States Constitution for the County’s use  
28 of geofencing technology as well as a First Amendment retaliation claim. ECF No. 1. Accordingly, the

1 present matter deals entirely with the County and State’s use of geofencing technology, while the state  
2 case deals only with whether the Church followed the County’s masking and other COVID-19 related  
3 mandates. ECF No. 25.7. These issues present little, if any, overlap.

4 Defendants argue that Judge Freeman’s decision is not dispositive as to whether the stay should  
5 be continued because it does not speak to the relationship between the state court action and the issues  
6 in this case. *Opposition Br.*, p. 6. But Defendants do not point to any facts showing that the present case  
7 and the state case are related. The present case was stayed pending the review of Judge Freeman’s order  
8 in the *Cody* appeal which has been decided. *Calvary Chapel San Jose v. Cnty. of Santa Clara*, 2024 WL  
9 1635554.

10 Defendants further argue that no factors weigh in favor of lifting the stay. *Opposition Br.* p. 5-  
11 7. Defendants argue that there are no “efficiency concerns” and that lifting the stay will unnecessarily  
12 burden the Court. *Id.* Defendants argue that the state court will “narrow the issues” before this Court.  
13 *Id.*, p. 6. But Defendants’ argument is directly contradicted by Judge Freeman’s statement that there is  
14 “no danger of unduly burdensome duplication of labor or expense” by allowing the cases to run parallel  
15 to each other as they are not substantially related. *See* ECF No. 79 (emphasis added). The decision in  
16 the state case, whether the Church allegedly failed to abide by County orders to mask, socially distance,  
17 and have a reporting system for cases, will have no impact on the question of whether the warrantless,  
18 high-tech, surveillance system violated the Church’s Constitutional rights. As noted in the complaint  
19 before the state court, the State has evidence other than the geo-fencing data that it relies on. ECF No.  
20 25.7. The present matter has to do with the constitutionality of geo-fencing, an issue that is unrelated to  
21 the claims made in the state case. Defendants argue that “Plaintiffs’ claims are based on the County’s  
22 reliance on an expert” who is named in the case before Judge Freeman. *Opposition Br.* p. 6. But that is  
23 exactly Plaintiffs’ point, that there is no overlap between the present matter and the *state* court claim—  
24 Judge Freeman has already determined her case, and the present Action are unrelated. Defendants are  
25 simply trying to relitigate this already decided issue.

26 Likewise, Judge Freeman’s order covers the second factor identified by Defendants for lifting a  
27 stay, namely, that there is no burden that lifting the stay would impose on the parties and the courts.  
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1 The current stay is preventing Plaintiffs from vindicating their constitutional rights and Defendants are  
2 permitted to continue to use advanced technology to monitor every move of unwitting citizens.

3 While Defendants allege that the resolution of the state case will narrow matters in the present  
4 case, they cannot give any examples. Defendants state there are almost “certain to be issues” involved  
5 in discovery on the overlapping facts, but do not provide any actual examples, leaving their argument  
6 resting entirely on speculation. While in fact, discovery is not ongoing in the state case, so such issues  
7 are not relevant. The state court case is not concerned with the issue of geofencing, accordingly the  
8 issues in contention in the present case are not being addressed in the state case. There is no sufficient  
9 reason to wait. And while Defendants point out that the state case could plausibly end soon, it could  
10 also last for several years if an appeal is taken. Plaintiffs were the first parties to file suit regarding the  
11 first instances of County’s improper treatment of the Church. Only months after Plaintiffs filed suit in  
12 2020 did the County then file suit. Since that time the government has continually sought to delay the  
13 resolution of the case. This case was stayed pending the resolution of the *Cody* appeal. Since that appeal  
14 has ended, the stay in the present matter should be lifted.

15 **III. CONCLUSION**

16 For these reasons, Calvary Chapel San Jose and Pastor Mike McClure request the Court lift the  
17 stay as to all pending parties and motions.

18  
19 Respectfully submitted,

20 Dated: April 2, 2025

20 /s/ Julianne Fleischer  
21 Julianne Fleischer

22 Attorney for Plaintiffs  
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