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and **Pastor Mike McClure**

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

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

14 Plaintiffs,

15 vs.

16 **SANTA CLARA COUNTY**; and
17 **SAFEGRAPH**;

18 Defendants.
19

Case No.:

COMPLAINT FOR DAMAGES

- 1) **Deprivation of the Fourth Amendment**
- 2) **Deprivation of the Establishment Clause to the First Amendment**
- 3) **Deprivation of the Free Exercise Clause to the First Amendment**
- 4) **First Amendment Retaliation**

20
21 **INTRODUCTION**

22 1. In early 2020, Santa Clara County (“the County”), at the behest of Dr.
23 Sara Cody and County Counsel James Williams, enforced the Nation’s first shelter-
24 in-place order to combat the spread of COVID-19. Governments across the country
25 followed suit and soon nearly the entire Nation was subject to stay-at-home orders.
26 Throughout the year, the County issued subsequent orders that dictated when, how,
27 and where individuals could go.

28 2. Many state and county agencies chose not to strictly enforce their

1 orders, leaving their edicts as guidelines that people could choose to follow or ignore.
2 However, the County vigorously enforced its orders and adopted a system that
3 authorized crippling fines on churches and other entities that did not comply.

4 3. Indeed, the County still seeks to collect millions in fines from Calvary
5 Chapel San Jose and Pastor Mike McClure (collectively, “Calvary”) for gathering
6 during the COVID-19 pandemic, even though the United States Supreme Court has
7 admonished the County for issuing unconstitutional COVID-19 orders. *See, e.g.,*
8 *South Bay Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Gateway City*
9 *Church v. Newsom*, 141 S. Ct. 1460 (2021).

10 4. Unbeknownst to the public, Defendants embarked on an invasive and
11 warrantless geofencing operation to track residents in the County.

12 5. Geofencing is a location-based tool used by the government to track
13 individuals through their cell phone data. This tool is generally used in police
14 investigations of criminal activity and requires the government to obtain a warrant,
15 which is limited in time and scope.

16 6. Defendants specifically targeted Calvary Chapel San Jose (“CCSJ”) using the geofencing tool without a warrant. The County sought to use the information in its ongoing state enforcement action against the County filed in the Santa Clara County Superior Court.

20 7. Defendants put multiple geofences around the church’s property so they could track when and where individuals were on the premises. This operation took place over a year with seemingly no oversight, boundaries, or limitations – meaning Defendants could track churchgoers in the sanctuary, prayer room, or bathroom.

25 8. This type of expansive geofencing operation is not only an invasion of privacy but represents a terrifying precedent if allowed to go unaddressed. As it stands, Defendants assert that, as long as they call it research, any level of government can target and spy on any individual or group at any time for any



1 duration. The government can then wield any collected data against said individuals
2 or groups who oppose their orders. This is not just un-American; it is downright
3 Orwellian.

4 9. Warrantless fishing expeditions, especially geared at individuals
5 exercising their First Amendment rights or individuals who fervently dispute the
6 government’s policies, is a practice counter to the foundational concepts upon which
7 this Nation was built.

8 10. Plaintiffs bring this lawsuit on behalf of themselves and all CCSJ
9 churchgoers who fell victim to Defendants’ geofencing surveillance during the
10 COVID-19 pandemic.

11 11. Through this lawsuit, Plaintiffs seek to ensure CCSJ and other churches
12 are protected from unlawful and invasive government surveillance and
13 entanglement.

14 **PARTIES - PLAINTIFF**

15 12. Plaintiff **CALVARY CHAPEL SAN JOSE**, a California non-profit
16 corporation (“CCSJ”), is a Christian church organized exclusively for religious
17 purposes. CCSJ is located in the city of San Jose, California.

18 13. CCSJ is comprised of churchgoers whose religious beliefs require they
19 gather for the teaching of God’s Word, worship, prayer, and fellowship. Church is
20 not treated as a social event for CCSJ churchgoers. CCSJ is an intimate setting where
21 churchgoers can worship and draw closer to God. Indeed, CCSJ believes its church
22 and sanctuary is a sacred place that should be free from government entanglement
23 and surveillance.

24 14. During the COVID-19 pandemic, CCSJ and its members vigorously
25 opposed the County’s COVID-19 orders. Unlike other churches, they chose to
26 ignore the orders and attend church in adherence to their sincerely held religious
27 beliefs.

28 15. Plaintiff **MIKE MCCLURE** is a resident of Santa Clara County and



1 serves as the lead pastor of CCSJ. He, too, vigorously opposed the COVID-19 orders
2 because they infringed upon the Church's religious tenets regarding worship,
3 fellowship, and prayer.

4 **PARTIES - DEFENDANT**

5 16. Defendant **SANTA CLARA COUNTY** is a political subdivision of the
6 State. It is sued herein under *Monell v. Department of Social Services*, 436 U.S. 658
7 (1978).

8 17. Defendant **SAFEGRAPH** is headquartered in Denver, Colorado but
9 has an office in San Francisco, California, where it conducts its business for its
10 California clients. It is a data company that obtains and sells location data from the
11 cell phones of millions of users. SafeGraph also acquires its location data from other
12 data brokers and government agencies. SafeGraph's clients include hedge funds,
13 real-estate investors, advertisers, governments, and more. SafeGraph is considered
14 one of the leading sources for points-of-interests data, business listings, and visitor
15 foot-traffic insights.

16 18. In 2019, SafeGraph launched its subsidiary, Veraset, which offers
17 granular population movement data and unaggregated visitation data. Together, they
18 offer expansive location-based data relied upon by marketers, retailers, advertisers,
19 investors, governments, and more.

20 **JURISDICTION AND VENUE**

21 19. This civil rights action raises federal questions under the United States
22 Constitution and federal law, particularly 42 U.S.C. § 1983.

23 20. This Court has subject matter jurisdiction over the federal claims
24 pursuant to 28 U.S.C. §§ 1331 and 1343.

25 21. This Court has authority to grant the requested declaratory relief under
26 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through
27 Rule 57 of the Federal Rules of Civil Procedure. This Court is also authorized to
28 grant injunctive relief and damages under 28 U.S.C. § 1343, pursuant to Rule 65 of



1 the Federal Rules of Civil Procedure, and reasonable attorney’s fees and costs under
2 42 U.S.C. § 1988.

3 22. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a
4 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred
5 in this district.

6 **STATEMENT OF FACTS**

7 **A. SafeGraph Tracked CCSJ Congregants’ Private, Sensitive Location**
8 **History At The Behest Of The County**

9 23. Throughout the COVID-19 pandemic, SafeGraph worked with
10 government entities like the Center for Disease Control and Prevention (“CDC”),
11 San Francisco, San Jose, and Santa Clara County to surveil the visit patterns at
12 various businesses and organizations.

13 24. SafeGraph’s research and data was derived from cell phone users’
14 location data.

15 25. At the behest of the County, SafeGraph put two geofences around CCSJ
16 and surveilled the churchgoers within the church premises for over a year during the
17 COVID-19 pandemic.

18 26. Defendants specifically targeted CCSJ because of the County’s
19 ongoing state enforcement action against Calvary. Defendants did not surveil all
20 businesses and entities in the County during the COVID-19 pandemic.

21 27. The first geofence, identified in red in Figure 1, surrounds the parcel of
22 CCSJ, including the lawn and parking lots and extends to the adjacent streets.

23 28. The second geofence, identified in yellow in Figure 1, surrounds the
24 buildings within the parcel of land, including the sanctuary, Calvary Christian
25 Academy (i.e., church school), and ministry housing.





29. Figure 1

30. The County simply did not approve or acquiesce to SafeGraph’s surveillance of CCSJ.

31. The surveillance was initiated by the County, and the County gave SafeGraph specific instructions to monitor the visit patterns of CCSJ congregants and employees.

32. The surveillance operation was ratified by County Counsel James Williams and County Health Officer Dr. Sara Cody – officials who are considered final policy makers in their respective departments.

33. Dr. Sara Cody oversees the County’s health department and had final authority regarding the implementation of policies related to COVID-19, as well as research projects analyzing the effects of the County’s orders.

34. James Williams oversaw the County’s legal department and provided legal advice to the County throughout the COVID-19 pandemic. Specifically, he was required to approve of Defendants’ geofencing operation to ensure it complied with the law.

35. Defendants gathered location information of all individuals who entered the geofences.

36. Defendants did not narrow the search parameters of their geofencing



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1 operation. In other words, Defendants were able to gather location data from
2 congregants from anywhere within the bounds of the geofences, including the
3 nursery, prayer room, offices, classrooms, sanctuary, and bathroom.

4 37. As ratified by Dr. Cody and James Williams, Defendants collected
5 location data from CCSJ and other businesses and organizations within the County
6 for over one year – as part of a well-orchestrated geofencing operation.

7 38. The County sought to weaponize the location data against CCSJ in its
8 ongoing state enforcement action filed in the Santa Clara County Superior Court,
9 where they seek to collect millions from the church for violating COVID-19 public
10 health orders.

11 39. Geofencing is a location-based tool that tracks individuals through their
12 cell phone data. Geofencing involves constructing a virtual boundary around a
13 geographic area using machine learning and identifying all users present within that
14 area during a given time window.

15 40. Geofences are created using mapping software and rely on location
16 data. Location data consists of data indicating the geographical position of a device,
17 including data relating to the latitude, longitude, and altitude of the device, the
18 direction of travel of the user, and the time the location information was recorded.

19 41. Generally, geofences are enforced by law enforcement after they
20 acquire a warrant from a judge. Warrants are limited in time and scope.

21 42. The Defendants did not acquire a warrant prior to putting a geofence
22 around CCSJ.

23 43. Even though geofences generally derive from anonymized data, the
24 privacy of users within the geofence is still at issue.

25 44. Location data is more precise and revealing than cell-site location
26 information, as it shows a person's pattern of life.

27 45. Geofences reveal sensitive, private information about where people
28 travelled and can create inferences about what a person might have been doing.



1 These tools provide a story about where and with whom people socialize, visit,
2 worship, and much more.

3 46. As the court in *United States v. Chatrie* astutely observed, “[e]ven
4 anonymized location data – from innocent people – can reveal astonishing glimpses
5 into individuals’ private lives when the Government collects data across even a one-
6 or-two-hour period.” 590 F. Supp. 3d 901, 931 n. 39 (E.D. Va. 2022).

7 47. Researchers have repeatedly demonstrated cross-referencing datasets
8 can reveal the identifying information of nearly every anonymized user.

9 48. Data scientists from Imperial College London and UC Louvain found
10 that it was not particularly hard for companies to identify the person behind
11 “anonymized” data using other data sets. The researchers developed a machine
12 learning model that was able to correctly re-identify 99.98% of Americans in any
13 anonymized dataset using just 15 characteristics including age, gender, and marital
14 status. A true and correct copy of this study is attached hereto as **Exhibit A**.

15 49. In another study that investigated smartphone location data, researchers
16 were able to uniquely identify 95% of the individuals in a data set with just four
17 spatial-temporal points. A true and correct copy of this study is attached hereto as
18 **Exhibit B**.

19 50. The County was also able to acquire private, sensitive information of
20 CCSJ congregants through its geofencing operation because of its prior knowledge
21 of CCSJ’s operations.

22 51. For instance, during its ongoing state enforcement action against
23 Calvary, the County took the depositions of numerous CCSJ employees and
24 congregants where it gleaned information such as when and where individuals
25 worked at CCSJ and where congregants prayed privately.

26 52. Thus, even if SafeGraph says its data is anonymized, it can still identify
27 the identities of CCSJ churchgoers within the geofences, including individuals
28 praying in private, intimate settings.



1 **B. SafeGraph Gathers Its Location Data Through Various Means**

2 1. *SafeGraph’s Software Development Kit (“SDK”)*

3 53. SafeGraph harvests its user location data from apps that use its SDK.
4 SafeGraph’s SDK gathers information from any geo-tracking feature in cell-phone
5 apps. Thus, if an app acquires a user’s location data, SafeGraph could also receive
6 that data.

7 54. Among the top apps that contain SafeGraph are a basketball forum
8 (RealGM Forum), a forum for firearms enthusiasts (Ruger Forum), an off-road travel
9 forum (SA 4x4 Community Forum), and an Apple products discussion forum (iMore
10 Forums).

11 55. Indeed, SafeGraph and its subsidiary, Veraset, have touted the fact that
12 it sources from thousands of apps and SDKs to avoid a biased sample.

13 56. Smartphone users who download these apps are not informed that
14 SafeGraph has access to their location data.

15 57. The apps do not inform smartphone users that their location data is
16 being disclosed to third-party data companies like SafeGraph.

17 2. *Google’s Real-Time Bidding Auctioning Process and Location*
18 *History*

19 58. SafeGraph also gathers location data through Google’s real-time
20 bidding (“RTB”) auction process. Google customers are not informed their personal
21 information is sold in Google’s RTB process.

22 59. RTB is the process by which internet publishers auction off ad space in
23 their apps or on their websites. In doing so, they share sensitive user data – including
24 geolocation, device IDs, and browsing history with dozens of different data
25 companies and data brokers like SafeGraph.

26 60. Each RTB auction typically sees user data passing through various
27 layers of companies on its way from a device to an advertiser. This convoluted
28 system of data collection enables surveillance by advertisers and data brokers like





1 SafeGraph. SafeGraph, therefore, can acquire data from Google’s location history
2 database.

3 61. In 2009, Google introduced location history, a feature that allows
4 Google to track users’ location.

5 62. Location history is collected from users of both Android devices and
6 Apple iPhones.

7 63. Google’s location history database contains information about
8 hundreds of millions of devices around the world.

9 64. Google’s location history is generated from search queries, users’ IP
10 addresses, device sensors, Global Positioning Systems (GPS), information from
11 nearby Wi-Fi networks, and information from nearby Bluetooth devices. *See*
12 *Chatrie*, 590 F. Supp. 3d at 908. This allows Google to determine where a user is at
13 a given date and time. *Id.* at 908.

14 65. Google captures location data from different services like the Android
15 operating system, Google-owned mobile applications, and in-browser mobile
16 searches via Google.

17 66. 85% of Americans currently own a smartphone with mobile internet.¹
18 Approximately 46.8% of these smartphone users operate on Google’s Android
19 operating system.

20 67. Google owns three of the five most popular smartphone applications in
21 the United States, including Gmail, Google Maps, and Google Search.²

22 68. Google controls about 62% of mobile browsers, 69% of desktop
23 browsers, and the operating systems of 71% of mobile devices. 92% of internet
24

25
26
27 ¹ *Mobile Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://perma.cc/5UX9-P7PU>.

28 ² S. O’Dea, *U.S. Smartphone Subscriber Share by Operating Platform 2012-2021, by Month*, STATISTA (Aug. 11, 2021), <https://perma.cc/3KRQ-TS53> (to locate, select “View the live page”).

1 searches go through Google.

2 69. Any smartphone user can opt into Google’s location history when they
3 create a Google account.

4 70. However, Google does not provide clear directions on how to opt out
5 and into Google’s location history.

6 71. On Google Maps, a user can inadvertently opt into location history by
7 clicking on “YES I’M IN” in response to the prompt, “Get the most from Google
8 Maps.” The prompt makes no mention of location history.

9 72. Within Google Maps, the “LEARN MORE” option does not direct the
10 user to any specific language concerning location data or location history.

11 73. Google’s Terms of Service does not mention location history, and
12 Google’s Privacy Policy, which is 27 pages, only mentions location history twice.
13 The court in *Chatrie* explains why the notice is inadequate and misleading:

14 In the first instance, it says, in full: “You can also turn on
15 Location History if you want to create a private map of
16 where you go with your signed-in devices.” If anything, the
17 phrase “private map” is misleading and suggests that
18 Google does not have access to the data. In the second
19 instance, the policy says, in full: “Decide what types of
20 activity you’d like saved in your account. For example, you
21 can turn on Location History if you want traffic predictions
22 for your daily commute, or you can save your YouTube
23 Watch History to get better video suggestions.” Of course,
24 “traffic predictions” do not begin to suggest that Google
25 will keep a 24/7 “journal” of a user’s whereabouts. But even
26 if it did, a user would have no way of knowing that the pop-
27 up “opt-in” screen relates to the Location History feature.

28 74. Opting into location history may be automatic on mobile devices
running the android operating system.

75. Users are not notified how frequently Google collects their data and the
amount of data Google collects.

76. Google does not inform users that location history is collected
regardless of whether users are actively engaging with Google apps and even when
users have their phones in airplane mode.



1 77. A user must also navigate a confusing maze to pause and delete location
2 history.

3 78. Internal communications among Google employees reveals that the
4 company's own engineers are not even sure how to delete location history.

5 79. Even if a user figures out how to delete his or her location history, that
6 information is still available to Google.

7 80. Google does not inform users that their data is being sold among
8 hundreds of unseen parties.

9 81. SafeGraph acquires location data from smartphones, including Android
10 and iPhone users whose data is stored in Google's location history database.

11 82. Plaintiffs are made up of Android and iPhone users whose location data
12 was derived through either Google's RTB process or SafeGraph's SDKs.

13 83. Plaintiffs never consented to SafeGraph or the County obtaining their
14 location data from their Smartphones.

15 **FIRST CAUSE OF ACTION**

16 **Violation of the Fourth Amendment to the United States Constitution**

17 **(42 U.S.C. § 1983)**

18 84. Plaintiffs re-allege and incorporate by reference the allegations in the
19 preceding paragraphs 1 through 83, as if fully set forth herein.

20 85. The Fourth Amendment protects "[t]he right of the people to be secure
21 in their persons, houses, papers, and effects, against unreasonable searches and
22 seizures." U.S. Const. Amend. IV.

23 86. "The 'basic purpose of this Amendment,' our cases have recognized,
24 'is to safeguard the privacy and security of individuals against arbitrary invasions by
25 governmental officials.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018)
26 (citing *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S.
27 523, 528 (1967)).

28 87. "When an individual 'seeks to preserve something as private,' and his



1 expectation of privacy is ‘one that society is prepared to recognize as reasonable,’ ...
2 official intrusion into that private sphere generally qualifies as a search and requires
3 a warrant supported by probable cause.” *Carpenter*, 138 S. Ct. at 2213 (quoting
4 *Smith v. Maryland*, 442 U.S. 735, 740 (1979)).

5 88. Defendants’ acquisition of location data through a geofence intruded
6 upon the Plaintiffs’ reasonable expectation of privacy because it disclosed private,
7 sensitive information about the Plaintiffs engaged in private worship and religious
8 practice.

9 89. As the Supreme Court in *Carpenter* affirmed, access to such
10 information implicates two lines of precedent: one addressing a “person’s
11 expectation of privacy in his physical location and movements” and the other
12 “draw[ing] a line between what a person keeps to himself and what he shares with
13 others.” 138 S. Ct. at 2215-16.

14 90. Defendants’ geofence operation implicated the Plaintiffs’ “reasonable
15 expectation of privacy in the whole of [their] physical movements.” *Id.* at 2217. By
16 obtaining historical location data generated by cell phone holders, the Defendants
17 could obtain “an all-encompassing record of the holder’s whereabouts,” thus
18 “revealing not only his particular movements” but the most intimate details of his or
19 her life. *Id.* at 2217-18; *see also Riley v. California*, 573 U.S. 372, 403 (2014) (“With
20 all [modern cell phones] contain and all they may reveal, they hold for many
21 Americans ‘the privacies of life.’”).

22 91. CCSJ is also a sacred place where congregants go to worship God in an
23 intimate setting. Plaintiffs do not go with the expectation that they will be covertly
24 surveilled by the government.

25 92. Defendants did not obtain a warrant before putting a geofence around
26 CCSJ’s property to track the church congregants.

27 93. Even if Defendants obtained a warrant, they did not have probable
28 cause. Plaintiffs were not suspected criminals. They were, and are, law-abiding



1 citizens who were exercising their constitutionally protected rights.

2 94. Defendants’ geofence operation was not limited in time and scope.
3 Indeed, the operation, which took place over one year, had seemingly no oversight,
4 boundaries, or limitations. Defendants had unbridled discretion to search any person
5 who came within the bounds of the geofence at any time and in any location such as
6 the parking lot, nursery, prayer room, church school, or bathroom.

7 95. The government’s goal of obtaining incriminating evidence against
8 CCSJ does not justify departure from the customary Fourth Amendment
9 requirements.

10 96. As a direct and proximate result of Defendants’ violation of the Fourth
11 Amendment, Plaintiffs have suffered the loss of their fundamental constitutional
12 rights. Plaintiffs are entitled to nominal damages, compensatory damages in an
13 amount to be proven at trial, and attorneys’ fees under 42 U.S.C. § 1988.

14 SECOND CAUSE OF ACTION

15 Violation of the Establishment Clause under the 16 First Amendment to the United States Constitution

17 (42 U.S.C. § 1983)

18 97. Plaintiffs re-allege and incorporate by reference the allegations in the
19 preceding paragraphs 1 through 96, as if fully set forth herein.

20 98. “[T]he First Amendment forbids an official purpose to disapprove of a
21 religion or of religion in general.” *Church of Lukumi Babalu Aye, Inc. v. City of*
22 *Hialeah*, 508 U.S. 520 (1993). The government neutrality required under the
23 Establishment Clause is thus violated as much by government disapproval of
24 religion as it is by government approval of religion. *Epperson v. Arkansas*, 393 U.S.
25 97, 104 (1968); *See also School Dist. of Abington particular v. Schempp*, 374 U.S.
26 203, 215 (1963).

27 99. The Supreme Court has instructed that “the Establishment Clause must
28 be interpreted by reference to historical practices and understandings.” *Kennedy v.*



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1 *Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022) (cleaned up). “The line that
2 courts and governments must draw between the permissible and the impermissible
3 has to accord with history and faithfully reflect the understanding of the Founding
4 Fathers.” *Id.*

5 100. SafeGraph, at the behest of the County, impermissibly targeted CCSJ,
6 so the County could obtain incriminating evidence against the church in their
7 ongoing state enforcement action where they seek to collect millions of dollars from
8 the church.

9 101. The surveillance was comprehensive and continuous.

10 102. There were no specific precautions taken to limit the scope and duration
11 of the surveillance.

12 103. Defendants’ conduct was a practice the Framers sought to prohibit
13 when they adopted the First Amendment.

14 104. As the Supreme Court affirmed, “[h]istory abundantly documents the
15 tendency of Government – however benevolent and benign its motives – to view
16 with suspicion those who most fervently dispute its policies....The price of lawful
17 public dissent must not be a dread of subjection to an unchecked surveillance
18 power.” *United States v. U.S. Dist. Ct. for E. Dist. of Mich., S. Div.*, 407 U.S. 297,
19 314 (1972).

20 105. Defendants did not implement their geofencing operation to advance a
21 legitimate, secular goal such as promoting public health or curtailing criminal
22 activity. If so, Defendants would have monitored all businesses and entities in the
23 County.

24 106. Defendants targeted CCSJ, so the County could weaponize potentially
25 incriminating evidence against the church in the County’s ongoing state enforcement
26 action.

27 107. Defendants ultimately demonstrated hostility towards religion –
28 namely CCSJ – because the impetus driving their surveillance operation was CCSJ’s



1 refusal to comply with the County’s orders restricting their religious exercise (i.e.
2 prayer, worship, etc). In other words, Defendants punished Calvary for exercising
3 their sincerely held religious beliefs.

4 108. As a direct and proximate result of Defendants’ violation of the First
5 Amendment, Plaintiffs have suffered irreparable harm, including the loss of their
6 fundamental constitutional rights. Plaintiffs are entitled to nominal damages,
7 compensatory damages in an amount to be proven at trial, and attorneys’ fees under
8 42 U.S.C. § 1988.

9 **THIRD CAUSE OF ACTION**

10 **Violation of the Free Exercise Clause under the**
11 **First Amendment to the United States Constitution**

12 **(42 U.S.C. § 1983)**

13 109. Plaintiffs re-allege and incorporate by reference the allegations in the
14 preceding paragraphs 1 through 108, as if fully set forth herein.

15 110. A regulation is not neutral and generally applicable if it discriminates
16 against a religious practice on its face, or if in its real operation it targets a religious
17 practice. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520,
18 534 (1993). Further, a regulation or practice is not generally applicable where it
19 “treat[s] any comparable secular activity more favorably than religious exercise.”
20 *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (emphasis in original).

21 111. Defendants’ geofencing operation was not neutral and generally
22 applicable because not all businesses and entities were subject to surveillance.

23 112. Defendants specifically targeted CCSJ because of the County’s
24 ongoing state enforcement action where it sought to weaponize potentially
25 incriminating evidence against Calvary.

26 113. The Defendants’ targeting of CCSJ through their geofencing operation
27 falls in line with the County’s history of discrimination against religion and CCSJ
28 during the COVID-19 pandemic. The County consistently imposed harsher



1 restrictions on churches and fined Calvary millions of dollars while overlooking
2 other large gatherings.

3 114. Similarly, the Defendants imposed an expansive geofencing operation
4 on CCSJ while overlooking other large gathering places like protests, weddings, and
5 graduation parties.

6 115. Defendants have no rational, legitimate, or compelling interest in
7 surveilling a church to obtain incriminating evidence against it.

8 116. As a direct and proximate result of Defendants' violation of the First
9 Amendment, Plaintiffs have suffered irreparable harm, including the loss of their
10 fundamental constitutional rights. Plaintiffs are entitled to nominal damages,
11 compensatory damages in an amount to be proven at trial, and attorneys' fees under
12 42 U.S.C. § 1988.

13 **FOURTH CAUSE OF ACTION**

14 **First Amendment Retaliation**

15 **(42 U.S.C. § 1983)**

16 117. Plaintiffs re-allege and incorporate by reference the allegations in the
17 preceding paragraphs 1 through 116, as if fully set forth herein.

18 118. Clearly established law bars the government from retaliating against
19 Americans for exercising their constitutional rights and from taking actions designed
20 to deter people from exercising their constitutional rights.

21 119. During the COVID-19 pandemic, Plaintiffs were exercising their
22 sincerely held religious beliefs by gathering at CCSJ in worship, prayer, and
23 fellowship.

24 120. In the fall of 2020, the County initiated a state enforcement action
25 against Calvary to collect unpaid fines relating to their violations of the County's
26 COVID-19 orders. The County sought to punish Calvary for exercising their
27 religious rights in violation of the County's draconian orders.

28 121. In addition to issuing crippling fines against Calvary, the County, with



1 the help of SafeGraph, sought to punish Calvary by spying on church congregants
2 during the COVID-19 pandemic. The County sought to weaponize location data
3 against Calvary in the County's ongoing state enforcement action.

4 122. Again, the impetus of Defendants' geofencing operation was Calvary's
5 refusal to abdicate their religious tenets during the COVID-19 pandemic.

6 123. As a direct and proximate result of Defendants' violation of the First
7 Amendment, Plaintiffs have suffered irreparable harm, including the loss of their
8 fundamental constitutional rights. Plaintiffs are entitled to nominal damages,
9 compensatory damages in an amount to be proven at trial, and attorneys' fees under
10 42 U.S.C. § 1988.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs pray for relief as follows:

- 13 A. Nominal damages for violation of their civil rights;
- 14 B. Compensatory damages in an amount to be proven at trial;
- 15 C. For costs, attorneys' fees, and interest, as allowed by law; and
- 16 D. For such other relief the Court determines is proper.

17 Respectfully submitted,

18 DATED: August 22, 2023

ADVOCATES FOR FAITH & FREEDOM

19
20 By: Mariah Gondeiro
21 Mariah Gondeiro, Esq.
22 Attorneys for Plaintiffs
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