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7 Attorneys for Defendants  
KATHERINE MCNAMARA and  
8 JEREMY WHITELEY

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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12

13 BREAKING CODE SILENCE, a  
California 501(c)(3) nonprofit,

14  
15 Plaintiff,

16  
17 vs.

18  
19 KATHERINE MCNAMARA, an  
Individual; JEREMY WHITELEY, an  
20 individual; and DOES 1 through 50,  
inclusive,

21  
22 Defendants.

Case No. 2:22-cv-002052-SB-MAA

**DECLARATION OF BRIAN  
BERGMARK, MBA, CPA, ABV,  
ASA IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT OR  
IN THE ALTERNATIVE PARTIAL  
SUMMARY JUDGMENT**

Date: January 2, 2024

Time: 10:00 a.m.

Crtrm: 690

[Assigned to the Hon. Maria A. Audero]

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**DECLARATION OF BRIAN BERGMARK**

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2 I, BRIAN BERGMARK, hereby declare and state under penalty of perjury  
3 the following facts:  
4

5 1. I am over the age of eighteen and not a party to the within action. I  
6 submit this Declaration in support of the Motion for Summary Judgment filed on  
7 behalf of Defendant JEREMY WHITELEY (“Whiteley”). I have personal  
8 knowledge of the following facts and, if called upon to testify, I can and will  
9 truthfully testify thereto.

10 2. Since issuing my initial report dated April 3, 2023 (“Initial Report”)  
11 and supplemental report dated July 10, 2023 (“Supplemental Report”), although  
12 other aspects of my background have not changed, Torrey Partners has joined Stout,  
13 where I am Managing Director. Similar to Torrey Partners, Stout provides services  
14 related to business valuation, financial disputes, claims, and investigations. In  
15 addition, Stout is a global investment bank and advisory firm offering a broad range  
16 of corporate finance, accounting and transaction advisory services, A true and  
17 correct copy of my updated CV is Exhibit 96 in the Index of Exhibits.

18 3. I am licensed in the State of California as a Certified Public  
19 Accountant. I am accredited in Business Valuation by the American Institute of  
20 Certified Public Accountants and as a Senior Appraiser by the American Society of  
21 Appraisers. I attended the University of California at Los Angeles (Bachelor of  
22 Science, Economics-Systems Science graduate), and San Diego State University  
23 (Master of Business Administration, emphasis in Finance).

24 4. I have extensive experience providing business analysis and qualified  
25 testimony on complex business, wage loss, wage and hour, economic, valuation, and  
26 marital dissolution matters in Federal and State Superior Courts. The scope of my  
27 involvement in litigation matters includes discovery assistance, causation analysis,  
28 damage quantification and forensic accounting / fraud investigations.



1           5.     I have been retained on behalf of Katherine McNamara (“McNamara”)  
2 and Whiteley, (collectively referred to as “Defendants”) to evaluate the economic  
3 damages claims of Breaking Code Silence (“BCS” or “Plaintiff”) related to the  
4 alleged actions of the Defendants.

5           6.     My CV, Ex. 96 in the Index of Exhibits, also includes a list of my  
6 deposition, arbitration, and trial testimony since November 2020.

7           7.     My rate for analysis and testimony is \$450 per hour. I bill for my  
8 Firm’s services on an hourly basis, and my fees are not dependent upon the results  
9 of this matter.

10          8.     In connection with my continuing review and analysis, I have  
11 considered, reviewed, and relied upon materials and information that may be cited  
12 directly in this report and include without limitations: deposition excerpts from  
13 Bobby Cook, Noelle Beauregard, William Boyles, Jr., Jesse Jensen, and Vanessa  
14 Hughes, Ph.D.; Plaintiff’s responses to various interrogatories and admissions;  
15 BCS’s organizational budget planning and salary documents; banking documents  
16 including with Alpine Bank, US Bank, and PayPal, and various Facebook messages  
17 and emails.

18          9.     BCS claims that it has suffered damages related to “investigating the  
19 Defendants’ wrongful conduct and hiring forensic experts, lost business  
20 opportunities and monetary donations, and disclosure of misleading information to  
21 the public.”

22          10.    I have been asked to address the Plaintiff’s claims related to potential  
23 economic loss resulting from the alleged actions of the Defendants. I understand that  
24 BCS is claiming economic damages associated with its claims in this matter  
25 including time spent investigating the Defendants’ alleged conduct and hiring  
26 forensic experts, lost business opportunities and monetary donations, and disclosure  
27 of misleading information to the public. Upon receipt of BCS’s economic damages  
28 analysis and report, I expect to prepare a supplemental rebuttal analysis and report



1 addressing BCS’s specific claims. At this time and based on the information  
2 provided to me to date, it is my opinion that I have seen no evidence that BCS  
3 incurred any damages associated with the claims in this matter. The following is a  
4 summary of my observations supporting this opinion.

5 11. In order to establish any potential economic loss claim, BCS must  
6 establish that Defendants in this matter acted inappropriately. My opinions do not  
7 address these liability claims, rather they are only relevant if liability is established,  
8 or for the purpose of determining whether Plaintiff meets the statutory requirements  
9 regarding economic harm to bring a civil action against Defendants for unauthorized  
10 access or exceeding authorized access of a BCS computer.

11 12. Related to BCS claims related to excess time associated with the  
12 investigation of the claims:

13 a. To establish damages related to this issue BCS must establish  
14 that additional costs were incurred. Accordingly, it must first establish that  
15 additional effort took place related to the claims, then that those resulted in  
16 additional expenses to BCS. Although I understand BCS has identified various  
17 employees, volunteers, agents, and lawyers who spent time to investigate the issues  
18 associated with BCS’s claims, at this time, I have not been provided with any  
19 testimony or documents that establish that time was related to the investigation or in  
20 excess of time that would have normally been incurred.

21 b. I understand that BCS “is a charitable organization classified as a  
22 501(c)(3) that is run by volunteers” and that it “is unable to quantify the monetary  
23 value of the amount of time Plaintiff’s employers and/or representatives, including  
24 Plaintiff’s lawyers.” If all of the time spent was performed by volunteers or done by  
25 lawyers on a pro bono basis and BCS did not have to pay any related costs, there is  
26 no resulting damage to BCS.

27 13. Related to BCS claims related to excess time associated with the  
28 investigation of the claims:



1 a. Bobby Cook, who performed services for BCS as scheduling  
2 coordinator, Chief Communications Officer, and Chief Operating Officer, testified  
3 that he was not paid for his work at BCS. Mr. Cook further testified that he was not  
4 aware of BCS paying any money to do an investigation into the alleged cyber  
5 hacking and that everyone at BCS was an unpaid volunteer. Additionally, Mr. Cook  
6 testified that the only expert brought on for the investigation was Mr. Jesse Jensen.  
7 Mr. Jensen testified as a Person Most Qualified for BCS that he was the only person  
8 that BCS engaged as a forensic data privacy expert.

9 b. Noelle Beauregard, who performed services for BCS as Director  
10 of Front End Web Development and Chief Communications Officer, testified that  
11 she was not paid for work at BCS.

12 c. William Boyles, Jr., a board member of BCS that performed  
13 other work with social media and technology projects, testified that he was never  
14 paid for work at BCS.

15 d. Vanessa Hughes, Ph.D., BCS's President, testified as Person  
16 Most Qualified for BCS that she was unsure if BCS spent any money on  
17 investigations related to various BCS accounts including Google Drive, Google  
18 AdWords, Twitter, Hootsuite, Zotero, Instagram, Facebook, YouTube and TikTok.  
19 Additionally, Mr. Jensen testified that he was not aware of BCS spending any  
20 money related to investigations of BCS accounts including AdWords, Zotero,  
21 Instagram, Facebook, and YouTube.

22 14. Related to other expenses incurred by BCS:

23 a. Ms. Beauregard testified that she was not aware of BCS paying  
24 any money related to an investigation.

25 b. Mr. Jensen testified that BCS lost hours of volunteer time but  
26 there was "no cash cost." Mr. Jensen further testified that there was a "cost of the  
27 efforts to recover the domain...[which] we're doing right now" and that "we bled a  
28 lot of other resources, but I don't know that we bled much cash."



1           15. Related to lost business opportunities:

2           a. Mr. Cook further testified that the only loss was a “\$70 million  
3 endorsement value of Paris Hilton[’s] support,” but that was related to an  
4 “organizational split that was partly headed up by [REDACTED], [REDACTED]  
5 and Jeremy [Whiteley] and Katie [McNamara].” Mr. Boyles, Jr. testified that Ms.  
6 Hilton “offered to fund [REDACTED] [REDACTED]’s work in particular...on legislation to the  
7 tune of something like 100- or \$150,000” and that Dr. Hughes “responded with a  
8 proposed budget that was about an order of magnitude higher.” Mr. Cook and Mr.  
9 Boyles Jr. provide no support for the values they attribute to Ms. Hilton.

10           b. Dr. Hughes testified that the loss of the BCS Twitter account was  
11 worth approximately \$75 million “alone of advertising” and “would guess a  
12 minimum of probably 7- to \$10,000 in donations, if not significantly higher.” Dr.  
13 Hughes references [REDACTED] telling her that funding that had previously  
14 been promised would no longer be coming to BCS related to a federal legislative  
15 bill. Dr. Hughes testified that she did not recall Ms. [REDACTED] ever mentioning the  
16 alleged hacking incidents. To date, I have not seen any support for the basis of Dr.  
17 Hughes’ valuations. Should additional relevant information regarding these  
18 valuations become available, I reserve the right to further supplement my opinion.

19           16. Related to potential lost donations:

20           a. Mr. Cook testified that BCS was “reached out to by a Jewish  
21 Foundation in San Diego...stating that they had mailed us a check that we had never  
22 received or never deposited, and they needed a current address to mail that to.”

23           b. Ms. Beauregard testified that she was told that BCS was not  
24 registered with the Attorney General’s office in California which would prevent  
25 BCS from legally accepting donations. Mr. Boyles Jr. additionally testified that he  
26 has been told that BCS was not legally able to accept donations.

27           c. Ms. Beauregard further testified that the website was de-indexed  
28 “the day of or the day after the show on “The Doctors” on the 10th” and was re-



1 indexed prior to the “Cruel Intentions” show on the 12th.” Additionally, Ms.  
2 Beauregard testified that she was not aware of BCS losing any money related to the  
3 de-indexing or hearing anybody at BCS state that they lost donations related to the  
4 de-indexing.

5 d. Dr. Hughes testified that BCS has been unable to transfer  
6 donations made through Facebook to the BCS bank account related to Mr. Whiteley  
7 not returning the financial administrator account log in. US Bank Statements for  
8 BCS’s Non-Profit Checking Account 157522095809 show electronic deposits from  
9 Facebook payments beginning July 6, 2021, through January 4, 2022, totaling  
10 \$4,520.67.46 Additionally, Mr. Whiteley’s access to the Facebook Business Page  
11 for BCS was revoked on June 28, 2021.

12 17. Related to other expenses incurred by BCS: to date no information has  
13 been provided regarding specific expenses related to experts hired or other potential  
14 costs incurred related to the alleged actions of the Defendants.

15 18. Related to lost business opportunities: no specific business  
16 opportunities have been identified as being lost due to the alleged actions of the  
17 Defendants.

18 19. Related to potential lost donations:

19 a. BCS claims that it has lost potential donations related to the de-  
20 indexing of its website. It is unclear over what time period that potential deindexing  
21 occurred and BCS has not identified any specific donations that it has lost. Further,  
22 the documents provided indicate that donations received by BCS are sporadic in  
23 nature and it would be speculative to assume that the de-indexing over a discrete  
24 period of time would result in any loss of donations.

25 b. PayPal transaction records indicate that from June 19, 2021,  
26 through March 9, 2022, the day prior to BCS’s claim that its website received zero  
27 traffic as a result of the de-indexing, BCS averaged approximately \$37.62 per day in  
28 donations and \$6.59 per day in subscriptions. The PayPal records further indicate

1 that in that same period BCS received a donation or subscription on 59 days out of a  
2 total of 264 days, or approximately 22 percent of total days. From March 7, 2022,  
3 through March 11, 2022, BCS did not receive any donation or subscription  
4 payments. On March 12, 2022, BCS received four separate donations totaling  
5 \$170.23 There is no evidence that any of the days with no donations or subscriptions  
6 received were the result of the alleged actions of the Defendants or just the result of  
7 the normal variability in donations received.

8  
9 I hereby declare under penalty of perjury under the laws of the United States  
10 of America that the foregoing is true and correct.

11  
12 DATED this 20<sup>th</sup> day of November 2023 and executed in the State of  
13 California and under the laws of the State of California.

14  
15   
16 \_\_\_\_\_  
17 BRIAN BERGMARK

JULANDER BROWN  
& BOLLARD  
JB



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22 of November, 2023, I electronically filed the foregoing paper(s) with the Clerk of the Court using the ECF system which will send notification to all parties of record or persons requiring notice.

*/s/ Helene P. Saller*  
\_\_\_\_\_  
Helene P. Saller

