

EXHIBIT 48

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Certified Copy

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

KATHERINE MCNAMARA, an individual;)
JEREMY WHITELEY, an individual;)
and DOES 1 through 50, inclusive,)
)
Defendants.)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF
THE PERSON MOST QUALIFIED FOR BREAKING CODE SILENCE
JESSE JENSEN

Date and Time: Friday, April 14, 2023
9:03 a.m. - 4:06 p.m.

Location: Remotely
(Via Videoconference)

Reporter: Kimberly Reichert, CSR
Certificate No. 10986

Job No. 26529

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BREAKING CODE SILENCE, a)
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v.) Case No. 2:22-cv-002052-
SB-MAA

KATHERINE MCNAMARA, an individual;)
JEREMY WHITELEY, an individual;)
and DOES 1 through 50, inclusive,)

Defendants.)

_____)

Videotaped videoconference deposition of
the Person Most Qualified for Breaking Code Silence
JESSE JENSEN, taken on behalf of the Defendants,
remotely via videoconference, commencing at
9:03 a.m., Friday, April 14, 2023, before Kimberly
Reichert, Certified Shorthand Reporter No. 10986.

09:08:07 1 or alcohol here today?

2 A I am not.

3 Q Can you please open your chat?

4 A Okay.

09:08:18 5 Q And so what I'm going to do throughout
6 this deposition is drag and drop documents in the
7 chat for you to look at. In the old days you would
8 be in front of me and I would hand you a physical
9 document, but appearing virtually, this is the best
09:08:33 10 we can do.

11 So I'm dropping into the chat a document
12 that's been previously marked as Exhibit No. 1.
13 Please go ahead and let me know when you have it
14 opened.

09:08:43 15 (Exhibit 1 was previously marked for
16 identification.)

17 BY MR. TATE:

18 Q Have you ever seen that document before?

19 A I believe I have.

09:08:58 20 Q Do you understand that you've been
21 designated to speak as the person most qualified on
22 behalf of BCS?

23 A I do.

24 Q Can you please turn to page 18 of this
09:09:08 25 document?

09:33:56 1 Q So I don't want to know anything about
2 what you guys talked about when Ms. Bentz was
3 present.

4 But when Ms. Bentz was not present, what
09:34:06 5 did you guys talk about?

6 A Just little logistical details of life.
7 Dr. Hughes is on a cruise right now. We talked
8 about the boat. We talked about what they had for
9 dessert that night.

09:34:17 10 Q Okay. I'll represent that the complaint
11 filed against my clients refers to you as a forensic
12 data privacy expert. Actually, that's not true.

13 It states that BCS engaged forensic data
14 privacy experts and I'm making the assumption that's
09:34:37 15 you.

16 Did BCS actually engage someone other than
17 yourself that would be a forensic data privacy
18 expert?

19 A No.

09:34:46 20 Q Do you consider yourself to be a forensic
21 data privacy expert?

22 A So that term is not clearly defined in the
23 world of technology. I certainly qualify, but if
24 you're looking for a specific like certification or
09:35:02 25 something other than my degrees and my background as

09:35:05 1 an engineer, I don't have any specialized security
2 certifications.

3 But at the same time, given the vagueness
4 of that term and given my background in
09:35:17 5 cybersecurity, I'm amply qualified, especially given
6 the simplistic nature of this attack.

7 Q Okay. A week or two ago I deposed Noelle
8 Beauregard and she told me that she was not an
9 expert in any sense of the word.

09:35:31 10 Would you agree with that
11 characterization?

12 A Yes.

13 Q Okay. Let me show you a document which we
14 will mark as Exhibit No. 34.

09:35:40 15 (Defendants' Exhibit 34 was marked
16 for identification by the deposition officer and is
17 attached hereto.)

18 BY MR. TATE:

19 Q It is now in the chat. Please let me know
09:36:00 20 when you have it open.

21 A Okay.

22 Q Before I get into this, do you understand
23 that you're going to be BCS's expert witness in this
24 case?

09:36:12 25 A That has not been made clear to me. I was

09:36:14 1 told for now I would be a fact witness. A decision
2 on expert witness has not been finalized.

3 Q Understood. Exhibit 34, does this appear
4 to be a true and accurate copy of your LinkedIn
09:36:28 5 biography?

6 A Yeah. I mean, it's just -- glancing
7 through it quickly. If you want me to go through
8 every line and make sure that it hasn't been altered
9 or anything, I can do that. But cursory look, it
09:36:47 10 does look like content from my LinkedIn that has
11 been printed in a different format, different export
12 format.

13 Q Okay. The summary at the beginning, does
14 that look to be accurate?

09:37:02 15 A Looking.
16 Yes.

17 Q Your summary doesn't use the term
18 "forensic data privacy." Is there a reason why not?

19 A Yeah, so it's not my key area of focus.
09:37:23 20 Your LinkedIn, just like your resume, is about
21 selling, selling your skills, selling into jobs that
22 I want to do.

23 Generally I'm not specifically looking for
24 cybersecurity work. As you can see from my resume,
09:37:36 25 I have several items that are related, including

09:37:40 1 DLT, digital ledger technology, digital identity,
2 cryptographic algorithms.

3 All of those are security areas, but they
4 are areas where I focus instead of the more broad
09:37:53 5 general field of cybersecurity.

6 Q So we'll dive into this in a little more
7 detail.

8 Your profile indicates you got a
9 bachelor's degree from COLT College; correct?

09:38:07 10 A It is.

11 Q And did you get a B.S. in both physics and
12 computer science or is that one degree?

13 A So it's a B.A. It's one degree, but it's
14 double majors in physics and computer science with a
09:38:21 15 math minor.

16 Q Got you. While at COLT College, did you
17 have any classes on forensic data privacy?

18 A No.

19 Q Did you have any classes on cybersecurity?

09:38:33 20 A No.

21 Q And it indicates that -- well, not
22 immediately after, but at some point after you went
23 to Westminster College and got your MBA; is that
24 correct?

09:38:42 25 A That is correct.

09:38:44 1 Q And your MBA, you specialized in
2 technology commercialization; is that right?

3 A Yes.

4 Q As part of your MBA, did you take any
09:38:53 5 classes on cybersecurity?

6 A No.

7 Q As part of your MBA, did you take any
8 classes on forensic data privacy?

9 A No.

09:39:03 10 Q Have you ever received any education in
11 cybersecurity?

12 A No, it was all on-the-job training.

13 Q Have you ever received any education
14 related to forensic data privacy?

09:39:16 15 A No, but those areas of focus were not very
16 commonly offered when I went to college. That --
17 that major in computer science was the qualification
18 back then. It's only recently that you start to see
19 the field divide where you can really focus in one
09:39:37 20 area like that.

21 Q So post-education, have you gone back and
22 taken any -- any sort of formal education on -- on
23 security?

24 A No, I don't know of any formal education
09:39:53 25 options that keep pace with the way the landscape

09:40:00 1 continues to shift in the world of cybersecurity.

2 I would expect that basically any class
3 that I could take, by the time it's been developed
4 in any kind of curriculum, it's already obsolete.

09:40:13 5 Q Understood. I've been breaking out
6 forensic data privacy and cybersecurity. Is there a
7 difference in your mind between the two?

8 A Probably, but it's going to be subtle.

9 Q Okay. So let me ask the question again.

09:40:33 10 Since you finished your education, have
11 you received any formal training on forensic data
12 privacy?

13 A No. Didn't I say no?

14 Q I had -- I had asked about cybersecurity
09:40:45 15 and so I was asking the follow-up question with
16 regards to forensic data privacy.

17 But if I'm understanding correctly, you
18 haven't received any formal education on either
19 subject; correct?

09:40:58 20 MR. SONG: Objection; asked and answered.

21 THE WITNESS: No, not -- I'm sorry, David.

22 MR. SONG: Sorry. Objection; asked and
23 answered.

24 BY MR. TATE:

09:41:05 25 Q Go ahead.

09:41:08 1 A No, other than again, I submit my degree
2 in computer science is relevant, but I have not --
3 and it's more relevant than any specific certificate
4 or class I could take. But no, the short answer is
09:41:22 5 no, I have not gone to like a local university or
6 something and taken specifically focused classes on
7 cybersecurity, I've never done that or -- or data
8 privacy.

9 Q Have you taken any continuing education
09:41:36 10 courses or seminars on data privacy?

11 MR. SONG: Objection; asked and answered.

12 THE WITNESS: No.

13 BY MR. TATE:

14 Q Have you taken any continuing education or
09:41:48 15 seminars on cybersecurity?

16 MR. SONG: Objection; asked and answered.

17 THE WITNESS: No.

18 BY MR. TATE:

19 Q Do you have any technical certifications?

09:42:03 20 A Other than my degrees, no.

21 Q So you don't have any certifications, for
22 instance, in -- in cybersecurity; correct?

23 A No, there are none that I know of that I
24 think are credible. And there are none that I know
09:42:19 25 of that have ever been a requirement for me to get a

09:42:22 1 job, including in cybersecurity.

2 Q Have you ever given a professional
3 presentation on cybersecurity?

4 A Certainly.

09:42:36 5 Q Let me -- let me rephrase that.

6 Have you ever given a presentation to
7 somebody outside -- to somebody other than persons
8 that you've worked for on cybersecurity?

9 A Probably not.

09:42:48 10 Q Well, my question probably stinks. Let me
11 try it even better.

12 Have you gone -- have you presented in a
13 seminar as a speaker on cybersecurity at any point?

14 A No.

09:43:03 15 Q Have you published any publications on
16 cybersecurity at any point?

17 A No.

18 Q Do you belong to any professional
19 memberships or organizations relating to

09:43:14 20 cybersecurity?

21 A No, for the same reason. There are none
22 that I think are necessarily credible.

23 Q Okay. Do you have a background in law or
24 law enforcement relating to cybersecurity?

09:43:33 25 A No.

09:43:34 1 Q Have you ever been formerly employed as a
2 forensic investigator?

3 A No.

4 Q How many -- how many forensic
09:43:41 5 investigations have you been involved in in your
6 entire career?

7 A Probably four or five.

8 Q Let's talk about each of those four to
9 five. What can you -- what other investigations
09:43:52 10 have you performed?

11 MR. SONG: Objection; outside of the scope.

12 BY MR. TATE:

13 Q Go ahead.

14 A So I had a client many years ago when I
09:44:03 15 was an independent consultant for six years, but I
16 got hired to work on security software for them.
17 And part of that was that we had products that would
18 occasionally come back with a complaint that their
19 security had been compromised.

09:44:23 20 And so the typical model for that kind of
21 investigation was that we would take apart obviously
22 in the system, study all the software that was on it
23 looking for any indication that there was a breach
24 or malware or anything like that and sometimes you
09:44:39 25 can take it apart at a hardware level if we had to.

09:44:43 1 So we would do complete teardowns of the
2 systems and try to analyze the root cause so we can
3 alleviate it and obviously fix it and the product
4 rolling forward if there was any kind of real
09:44:56 5 vulnerability.

6 Q Were all your other investigations at the
7 same company and under similar circumstances that
8 you just described?

9 MR. SONG: Objection; outside of the scope.

09:45:09 10 THE WITNESS: No. So I've done this kind of
11 thing a few times. When I say four or five, I mean
12 I have -- I do it for friends, business contacts.
13 It's not always in a paid professional capacity.

14 BY MR. TATE:

09:45:25 15 Q So let's go back to the circumstance you
16 were explaining where you -- where you were working
17 as a consultant relating to software.

18 How long ago were those?

19 MR. SONG: Outside of the scope and I'd like to
09:45:44 20 instruct the witness not to answer.

21 MR. TATE: Why are you instructing him not to
22 answer, Counsel?

23 MR. SONG: I think this is going outside the
24 scope that was designated for our witness to talk
09:45:55 25 about.

09:45:56 1 MR. TATE: So I don't mean to talk down to you,
2 but that's not a proper basis to instruct someone
3 not to answer. It's not even a proper objection.

4 The way that works is that if he's
09:46:10 5 answering questions that he's not the -- he's not
6 the PMK for, down the road you can say he's not the
7 PMK, that's not binding on the company, but you
8 certainly can't instruct him not to answer the
9 question.

09:46:23 10 MR. SONG: Then I'll just preserve that
11 objection then.

12 MR. TATE: And I don't want to get into an
13 argument, Mr. Song. Any time you think you have an
14 objection and I think you're dead wrong, that's
09:46:34 15 fine. Put it on the record and the judge will rule
16 on it some day. But I do strongly believe that's
17 not a proper basis to instruct him not to answer.

18 MR. SONG: We can agree to disagree. I just
19 think that it's not part of the topics that was
09:46:48 20 related to our witness so, yeah.

21 MR. TATE: Okay. So you preserved your
22 objection. Let's go forward.

23 Kim, can you find my question and read it
24 back to us? I've completely forgotten what it was.

09:47:05 25 (Whereupon, the record was read as

09:47:05 1 follows:

2 "Question: So let's go back to
3 the circumstance you were explaining
4 where you -- where you were working
09:47:05 5 as a consultant relating to
6 software. How long ago were
7 those?")

8 BY MR. TATE:

9 Q Go ahead, Mr. Jensen.

09:47:37 10 A I worked as an independent software
11 consultant from 2011 to 20 -- the end of 2017.

12 Q When was the last time that you did a
13 forensic investigation as a consultant?

14 A Not -- not including this -- the subject
09:47:59 15 of this litigation?

16 Q Exactly.

17 MR. SONG: Outside of the scope.

18 BY MR. TATE:

19 Q Go ahead.

09:48:11 20 A So it would have been for another charity.
21 I couldn't tell you exactly what year, but I had
22 another friend who owns another charity or operates
23 another charity, I should say, contact me about some
24 issues they were having with their e-mail system.

09:48:27 25 That was probably the most recent time. I would

09:48:30 1 roughly put it for you maybe 2016, 2017.

2 Q Okay. I believe you had described when
3 you were working as a consultant that you would
4 basically tear everything down including looking at
09:48:43 5 the hardware.

6 Did you do that level of analysis in this
7 case?

8 A Sorry, are you referring to the case I
9 just described or the case that is the subject of
09:48:55 10 this litigation?

11 Q The subject of this litigation.

12 A In this case I had no access to hardware
13 to tear down.

14 Q Okay. We'll get into I think your
09:49:09 15 investigation in a little bit.

16 Looking at your LinkedIn profile, can you
17 tell me which of these -- you've had a lot of jobs
18 and I don't want to go through each one of them.

19 Can you tell me which of those jobs had to
09:49:21 20 do with cybersecurity?

21 A Yeah, let me pull the -- the thing back
22 up. So Dapper Labs had a security component because
23 they -- they are a crypto company I believe that
24 relied on cryptographic algorithms.

09:49:32 25 IMSAR is a radar company so they did still

09:49:39 1 have security and privacy concerns with their
2 software because all of their stuff is based on
3 trade secrets and they have very limited patents for
4 very sophisticated technology. So they had a
09:49:50 5 component.

6 The years when I was independent there,
7 the Jensen Business Intelligence, LLC is the name of
8 -- that was the name of my consulting practice. And
9 during that time I worked for many clients that had
09:50:05 10 security things to bring up with me. That's where I
11 did the work that I was describing for one of my
12 clients there.

13 And -- but, I mean, yeah, coming back,
14 Credential Master, Evernym both -- both
09:50:18 15 cryptosecurity sensitive companies, In8Sync so --
16 but, yeah, there -- there's several of them,
17 especially in more recent years, the ones that I
18 just named, all of them have security crypto
19 components involved.

09:50:36 20 Q Let me ask maybe a different question.
21 Did you do any forensic investigations
22 into cyber hacking at any of these companies?

23 A Jensen Business Intelligence, LLC.

24 Q Okay.

09:50:55 25 A So I was self-employed, in other words,

09:50:57 1 when I did the investigations that I mentioned, most
2 of them. Probably all of them except for the one
3 that is the subject of this litigation.

4 Q Great. All right. Let's move on.

09:51:11 5 You've been designated as the person at
6 BCS most qualified to talk to me about BCS's current
7 and historical information technology.

8 So my questions are going -- may ask for
9 information that happened before you joined BCS, but
09:51:29 10 do you understand you're speaking on behalf of BCS
11 and so I'm still entitled to an answer?

12 Does that make sense?

13 A I will answer to the best of my ability.
14 I may have to answer that I don't know if it's
09:51:40 15 something I didn't see with my own eyes or haven't
16 heard about.

17 Q Fair enough.

18 When did you join BCS?

19 A When did I join? Would have been probably
09:51:52 20 January 2022, thereabouts.

21 Q Did you ever overlap at all at BCS with my
22 clients?

23 A No.

24 Q What positions have you held at BCS since
09:52:05 25 you joined in January 2022?

10:19:10 1 just the natural -- the capabilities that are built
2 into Google Workspace, but there's no documented
3 policy that I know of.

4 Q Has BCS created a security awareness and
10:19:23 5 training policy?

6 A Nothing formal.

7 Q Has BCS created a data retention policy?

8 A Nothing formal.

9 Q Do you know -- do you know of any
10:19:40 10 information assurance policies that have ever been
11 voted on by the board of directors?

12 A I do not.

13 Q Okay. Do I understand correctly that BCS
14 does not currently have a document and log retention
10:19:59 15 policy?

16 A Not that I know of.

17 Q Does BCS retain logs, technical logs?

18 A Yes.

19 Q How does it do that?

10:20:12 20 A So the logs that we would retain -- a lot
21 of our productivity is in Slack and Google
22 Workspace. So my expectation is that all of the
23 logging capabilities of those tools are operating in
24 default configuration as I have not modified the
10:20:28 25 configuration, nor am I aware -- or nor am I aware

10:20:30 1 of anyone else modifying it.

2 And the same for the web server that has
3 internal logging capability. My expectation is that
4 that is operating in default configuration.

10:20:42 5 Q Are you backing up those logs to some
6 secure space?

7 A I am not.

8 Q Is anyone at BCS?

9 A Not that I know of.

10:20:52 10 Q How does BCS ensure the nonrepudiation of
11 those logs?

12 A That is -- it's a great question. So I
13 guess the short answer to that -- this may come up
14 with some of your other questions about security
10:21:06 15 policy -- we have been in such a difficult position
16 with the domain name compromised. Basically that's
17 on the edge of an all-is-lost scenario from a
18 security perspective.

19 And because all is lost, as long as a
10:21:23 20 hostile entity has administrative control over the
21 domain, I have not bothered to set up lesser
22 security protocols like that because, frankly, the
23 defendants could take down the entire infrastructure
24 related to the subject domain name in an instant.
10:21:42 25 It's hardly worth my limited time to go set up

10:32:58 1 money from Ms. McNamara's insurance policy?

2 A Certainly not.

3 Q Are you aware -- are you aware that there
4 were discussions about having others sue Katie

10:33:08 5 McNamara and splitting the bounty?

6 MR. SONG: Objection; calls for speculation and
7 outside the scope.

8 THE WITNESS: No, I am not aware of any
9 discussions ever about suing either defendant about

10:33:31 10 anything other than the attack that we've been
11 discussing.

12 BY MR. TATE:

13 Q Let me show you a document that was
14 previously marked as Exhibit 9.

10:33:46 15 (Exhibit 9 was previously marked for
16 identification.)

17 BY MR. TATE:

18 Q Take as much time as you need to read the
19 document and let me know when you're ready to

10:34:13 20 discuss.

21 A Okay, I don't need time to read this one.

22 This is one of the ones I reviewed as part of the
23 prep.

24 Q Did you draft this letter?

10:34:22 25 A Yes.

10:34:24 1 Q And the letter purports to be dated
2 April 14, 2022. Is that the date that you drafted
3 it?

4 A It's either the date I drafted it or the
10:34:34 5 date I sent it out.

6 Q How many days did it take you to write
7 this letter?

8 A It was probably written on the same day.

9 Q Is everything in the letter true and
10:34:46 10 correct to the best of your knowledge?

11 MR. SONG: Objection; vague.

12 THE WITNESS: So some of what's in the
13 letter -- much of it is -- it remains true and
14 correct to the best of my knowledge.

10:35:03 15 Some of what's there represents sort of
16 aggregated views from the people who were involved
17 in the response that was our impression at the time
18 that these were concerns, but I never actually
19 unearthed hard evidence on a couple of the claims,
10:35:20 20 so it's what I thought at the time on a couple of
21 sentences and it's not necessarily what I think now.

22 BY MR. TATE:

23 Q And what about this letter do you believe
24 to no longer be accurate?

10:35:32 25 A So I'm not going to go as far as to say

10:35:35 1 it's no longer accurate as to say that I can't
2 exactly prove or disprove. But if I could draw your
3 attention to the second-to-last paragraph, last
4 line:

10:35:47 5 "There have also been malicious
6 attempts to access the WordPress
7 admin console on
8 BreakingCodeSilence.org."

9 That was something I was told at the time
10:35:56 10 and I included it, but I never unearthed evidence of
11 it. Now, given the nature of WordPress and the
12 nature of the administrative control that I observed
13 the defendants had when I initially started with the
14 response, I can't assure you that they didn't have
10:36:13 15 some kind of malware or other strange configuration
16 going in WordPress.

17 I did everything I could to secure the
18 server in the aftermath, obviously. So I can't tell
19 you with certainty that they did not maliciously
10:36:29 20 intend to access that. It certainly looks like they
21 had access, but that could also mean they had access
22 in the past. But I can't put hard proof on the
23 table that they did, in fact, maliciously attempt to
24 access the WordPress console.

10:36:44 25 Q Who was the person who told you that my

10:43:31 1 A I believe it was the Saturday following
2 March 10th. I would have to pull up last year's
3 calendar to tell you exactly what date.

4 Q Let's move on. Let me show you a document
10:44:17 5 which we'll mark as Exhibit No. 36.

6 (Defendants' Exhibit 36 was marked
7 for identification by the deposition officer and is
8 attached hereto.)

9 BY MR. TATE:

10:44:32 10 Q It is in the chat.

11 A Okay. I'm opening it. Supplemental
12 responses, okay. I have the document open.

13 Q And did you help prepare the answers to
14 these interrogatory responses?

10:44:57 15 A I'm going to have to scroll to the section
16 of the document to confirm. I believe that I did,
17 off the cuff, but if you want me to actually confirm
18 that my words are in the copy, I'll need you to
19 point me to a specific section.

10:45:11 20 Q I want to talk about our outline -- let's
21 see here, on page 5 where it says "Supplemental
22 Response to Interrogatory No. 2."

23 Let me know when you can navigate there.

24 A Page 5, No. 2. On page 5 it says
10:45:36 25 Interrogatory No. 3 and Response to Interrogatory

10:45:39 1

No. 3.

2

Q Go up one page. So the pdf is page 5, but

3

the page numbers on the bottom say 4.

4

A I got it. Okay, so Supplemental Response

10:45:49 5

to Interrogatory No. 2.

6

Q Gotcha. So that's the one I want to talk

7

about. The first sentence of the second

8

paragraph starts with:

9

"The investigation began on

10:46:01 10

March 11, 2022 when BCS was alerted

11

to the fact its website had been

12

deindexed."

13

And we'll stop there.

14

So this is the source of my confusion.

10:46:12 15

Your letter stated that you resolved the issue on

16

March 10th and this response states that you were

17

alerted to the effect on March 11th.

18

Do you know which day you actually learned

19

that the site had been, to use your words,

10:46:30 20

deindexed?

21

A I can tell you pretty precisely what

22

happened in my memory, but there's a chance it's off

23

by one day.

24

Q And why don't you tell me what you recall

10:46:42 25

from your memory.

10:46:44 1 A What I recall is I was brought in on --
2 that my piece of the investigation started on a
3 Friday and that the Lifetime premier was to be on a
4 Saturday. And that's one of the things that could
10:46:59 5 be off by one day. Because my memory is really
6 relative to when the Lifetime premier happened.
7 So what I understand is, I believe, it was
8 a Friday that I was brought in to investigate and we
9 worked late into the night on that Friday and then I
10:47:13 10 went to bed. In the morning I got a call from BCS
11 indicating there was still a problem and spent a
12 second very long call leading up to when I was able
13 to remove the deindex request, which I think was
14 approximately 3:00, 4:00 in the afternoon Mountain
10:47:31 15 time, and I think it was right before the premier.
16 I think the premier was a few hours from when I was
17 able to remove the deindex request.
18 But as to whether that was a Friday,
19 Saturday, and it even could have been a day before
10:47:49 20 the premier. So if I have to say best of my memory,
21 if the premier was on a Saturday, which I believe
22 that it was, then I think I was mainly working with
23 the team -- and it doesn't mean, by the way, I
24 wasn't called in before that. It just means that
10:48:05 25 the first time I had a time block to sit down and

10:48:08 1 work with the team would have been that Friday night
2 into the night followed by a block during the day on
3 Saturday which resulted in successful removal of the
4 deindex request.

10:48:19 5 Q Thank you. So focusing on this, it says
6 "BCS was alerted to the fact that its website had
7 been deindexed."

8 How did BCS first learn that the website
9 had supposedly been deindexed?

10:48:41 10 A I don't know how they first learned. The
11 answer is going to be one of the volunteers noticed
12 it wasn't showing up on Google and started the
13 response. Now, remember at this point I'm still a
14 data entry volunteer. Except that some of the
10:48:54 15 leadership, they knew that I was an engineer and
16 they decided to call me.

17 I believe Ms. Beauregard had been
18 troubleshooting for a while before I became
19 involved. And when I joined her, she already knew
10:49:07 20 about things like the -- well, the Google Console
21 issue, she knew about the Squirrly SEO tag. So I
22 think Ms. Beauregard had been working on it for at
23 least a few hours before I joined her, if not more
24 than a day.

10:49:24 25 Q Okay. So you're speaking on behalf of BCS

10:49:26 1 in a representative capacity.

2 Does BCS know when it first learned that
3 the website was not showing up on Google search?

4 A I don't know when we first learned it. I
10:49:38 5 know precisely when the deindex records were placed
6 because we have records of that, but I don't know
7 when we learned that they had been placed.

8 Q Okay. I don't want to jump ahead too
9 much, but you're able to see on the Google Search
10:49:53 10 Console that a request to temporarily remove the
11 website was made on March 8th and March 9th;
12 correct?

13 A Yes.

14 Q And in your investigation, did you look at
10:50:05 15 how long it usually takes those type of temporary
16 removal requests to become effective?

17 A I -- that's not something I would look at
18 as part of my investigation.

19 Q Do you understand it usually takes about a
10:50:19 20 day for those things to actually become live?

21 A Makes sense.

22 MR. SONG: Objection; lack of foundation.

23 BY MR. TATE:

24 Q So if the request is made on
10:50:28 25 March 9th supposedly to temporarily remove the

10:53:04 1 Q And when you looked at those Google search
2 results, you could not see BreakingCodeSilence.org
3 on the first page of the results; is that correct?

4 A Yes.

10:53:17 5 Q Did you take a screenshot of that?

6 A Not that I recall.

7 Q Did anyone at BCS take a screenshot of
8 their website not showing up on the first page of
9 Google results?

10:53:33 10 A Not that I know of.

11 Q Did anyone at BCS take any effort to
12 document or otherwise preserve evidence that their
13 website was not showing up on the Google search
14 results?

10:53:45 15 A You have the screenshot in evidence with
16 the deindex request.

17 Q I've seen that. Anything else?

18 A You also have the logs that show the
19 strange back and forth over privileges on the Google
10:53:57 20 Search Console, which I'm sure you'll probably ask
21 questions about that later, but those are the two
22 most salient things.

23 I'm not aware of anyone documenting the
24 actual Google search results. I know that I
10:54:13 25 searched it to confirm because that's something you

10:54:16 1 would do in responding to a cybersecurity attack is
2 immediately try to reproduce and verify the problem.

3 So I know that what I did is I searched it
4 on my phone and I'm located in Salt Lake City, Utah.
10:54:29 5 I would have been on Wi-Fi. So I can confirm in
6 Salt Lake City, searching Breaking Code Silence did
7 not find BreakingCodeSilence.org on the first page,
8 like you pointed out, because I wouldn't have
9 checked the second page.

10:54:42 10 But I also believe that every other time I
11 Googled Breaking Code Silence, we were first, at
12 least in Salt Lake City.

13 Q And my question is about preservation of
14 evidence. So you did a search, it's not coming up,
10:54:56 15 and you did nothing to preserve that evidence;
16 correct?

17 A No.

18 Q And as far as you're aware, no one at BCS
19 preserved any evidence showing that the website was
10:55:06 20 not actually showing up on Google search on the
21 11th; correct?

22 A Again, I have to note that the deindex
23 screenshot, the deindex request is sufficient to
24 show that, from a technical perspective, that the
10:55:25 25 site was gone from Google.

10:58:05 1 So I ultimately reached out to Google to
2 say hey, what's going on? I don't understand what
3 I'm seeing here. I have these people who have
4 access and I can't remove them.

10:58:17 5 Q And what did Google tell you?

6 A Google told me that it was because
7 Defendant McNamara was using domain TXT records,
8 whereas I had used what's known as file validation
9 to gain administrative control. But since I
10:58:36 10 couldn't -- getting back to the fact that I didn't
11 have administrative control, could not change the
12 domain name configuration, that's where Google was
13 basically saying that they couldn't give me
14 authority to remove Ms. McNamara because of her TXT
10:58:54 15 record validation.

16 Q Did you ask Google who it was that
17 submitted the temporary removal request?

18 A I don't think I specifically asked that
19 question. But I don't recall every -- so my focus
10:59:06 20 when I contacted Google was on removing their
21 privileges. It was not on fingering which one of
22 them made the request.

23 Q Well, so why didn't you ask Google who it
24 was that submitted the request?

10:59:27 25 MR. SONG: Objection; asked and answered.

10:59:32 1 THE WITNESS: My -- my answer is we already
2 knew.

3 BY MR. TATE:

4 Q If you knew, which one of my clients did
10:59:40 5 it?

6 A Well, the one that I can see has access is
7 Mr. Whiteley. But if you're saying which one, I
8 don't know which one did it. My understanding is
9 that they were collaborating. It doesn't matter to
10:59:53 10 me which one.

11 Q And how do you know it was one of them?

12 A Because I know that they're the only ones
13 who had access to do it until I did the file
14 validation fix.

11:00:02 15 Q How do you know they're the only ones that
16 had access?

17 A Because I was on a call with the whole
18 Breaking Code Silence team and none of them, myself
19 included, had the authority to remove the deindex
11:00:15 20 request.

21 Q I understand. How do you know that --
22 let's focus on Mr. Whiteley.

23 How do you know that Mr. Whiteley had
24 access to the Google Search Console on March 9th?

11:00:25 25 A There's a screenshot that shows the user

11:00:27 1 list that's been submitted into evidence, and
2 there's also a screenshot of the logs that show
3 Defendant McNamara reinstating his access as quickly
4 as we could remove it.

11:00:39 5 Q Do you have any screenshots from
6 March 9th?

7 A I don't know that I do.

8 Q We're going to get into this in detail.

9 But for my question right now, Google

11:00:55 10 didn't tell you who it was that submitted the
11 temporary removal request, did it?

12 A No, I don't think they did.

13 Q Okay. So going back to your special
14 interrogatory response here, it states that you
11:01:11 15 temporarily remediated the situation by using a file
16 base domain control validation.

17 Can you please describe for me exactly
18 what you did step by step?

19 A Certainly. So I'll answer this question.
11:01:27 20 I think we've been going for two hours and after my
21 answer, maybe we can take a short break?

22 Q Yes, answer this question, then we'll take
23 a ten-minute break. No problem. I'm happy to give
24 it to you.

11:01:43 25 A Okay. So Google, as you know, is

11:07:43 1 If what you're asking was related to your
2 earlier request about when did BCS become aware, I
3 would honestly -- you would have to trace that back
4 to Ms. Beauregard. Like I said, she was already
11:07:53 5 working on it. So somebody told her -- either she
6 found it or somebody told her. And you could
7 potentially trace back from her exactly who found
8 out when and that would give us a clearer picture of
9 how long it was offline. But I can tell you it was
11:08:07 10 a minimum of a day that I saw with my own eyes.

11 Q Okay, great. Why don't we take
12 approximately a ten-minute break and come back --
13 what would that be -- at 11:20 my time, 12:20 your
14 time?

11:08:25 15 A Okay, very good.

16 Q Thank you.

17 THE VIDEOGRAPHER: We are off the record at
18 11:08 a.m.

19 (A recess was taken from 11:08 a.m.
11:08:29 20 to 11:21 a.m.)

21 THE VIDEOGRAPHER: We are on the record at
22 11:21 a.m.

23 BY MR. TATE:

24 Q All right. Mr. Jensen, I'm putting into
11:22:05 25 the chat a document which we will mark as

11:22:07 1 Exhibit 37.

2 (Defendants' Exhibit 37 was marked
3 for identification by the deposition officer and is
4 attached hereto.)

11:22:24 5 THE WITNESS: Okay. That document is giving me
6 a security warning on Zoom.

7 MR. SONG: Same here.

8 BY MR. TATE:

9 Q It's one of the documents, the TIFF, that
11:22:35 10 was produced to me by your counsel. I can represent
11 I haven't done anything to it.

12 If you feel more comfortable, I can share
13 my screen. Or you can open the document. I'll
14 leave that up to you.

11:22:45 15 A If you're willing to share your screen, I
16 think that's preferable.

17 Q Sure.

18 Can you see my screen?

19 A Yes.

11:23:00 20 Q All right. we will mark this as Exhibit
21 No. 37.

22 Do you recognize this document?

23 A Yes, I believe I do.

24 Q What is it?

11:23:14 25 A So this is the log screenshot that I

11:23:17 1 mentioned previously that shows the ownership
2 history in Google Search Console. So this shows who
3 had administrative privileges, when they're being
4 added and verified.

11:23:32 5 Q Did you take this screenshot?

6 A I most likely did. It's also possible
7 that Ms. Beauregard did.

8 Q In the top right-hand corner there's a
9 "J". Does that help refresh your recollection?

11:23:50 10 A The "J" is a strong indication that I took
11 the screenshot.

12 Q And in the top left-hand corner there's a
13 date of 3/6/23 of this year. Is that when you took
14 the screenshot?

11:24:03 15 A 3/6, no.

16 Q Okay.

17 A I mean, unless the logs are still there.

18 I can't -- so I did -- in a recent discussion with

19 our counsel, I showed them some of the things in

11:24:22 20 Google Search Console and I thought -- I know one of

21 the things I showed them was the user list. I don't

22 know that I went over ownership history. It is

23 possible. I guess I'll say it's possible that I

24 captured this on that date.

11:24:36 25 Certainly the date stamp implies it, but

11:24:39 1 this is information that dates back -- as you can
2 see from the inline dates, it dates back to the time
3 of the attack.

4 Q Okay. So let's break this down.

11:24:53 5 I see the third row from the bottom,
6 March 12 at 2:24 p.m., Jesse Jensen verification
7 succeeded, method HTML file.

8 Is that what you were explaining to me
9 where you used the file-based domain validation?

11:25:12 10 A Yes.

11 Q So on March 12th you were able to get
12 validation on the Google Search Console; correct?

13 A Yes.

14 Q Okay. And this document shows right below
11:25:29 15 that that Mr. Whiteley was delegated ownership on
16 March 11th at 6:12 p.m.; correct?

17 A Yes.

18 Q Is there something about this document
19 that led you to the presumption that my client --
11:25:44 20 that Mr. Whiteley had access to the Google Search
21 Console on March 9th when the request was made?

22 A So he already had access when I initially
23 logged in, so you're looking at a log that shows --
24 excuse me -- that shows part of the history, but his
11:26:09 25 access was already there when I initially accessed

11:26:12 1 it.

2 As I think I mentioned briefly, after
3 that, there was kind of a ridiculous chase that
4 involved Breaking Code Silence team members trying
11:26:23 5 to delete Mr. Whiteley's access while it was
6 continually being reinstated. And so I think you're
7 seeing a later date here for when he was added. I
8 suspect that that is probably part of that chase.

9 Q Okay. But we can agree that this document
11:26:42 10 at least doesn't show that Mr. Whiteley had access
11 on the 9th when the temporary removal request was
12 made; correct?

13 A This document does not show that.

14 Q And this document in fact doesn't show
11:26:56 15 Ms. McNamara having any ownership access to the
16 Google Search Console, does it?

17 A No, not this document. There's a related
18 document that shows that she does have access, but,
19 yeah.

11:27:11 20 Q Let me get you another document and we'll
21 see if you feel more comfortable opening this one.
22 It was previously marked as Exhibit No. 24.

23 (Exhibit 24 was previously marked for
24 identification.)

11:27:37 25 THE WITNESS: Okay, I see it.

11:27:37

1 BY MR. TATE:

2 Q I'll represent Ms. Beauregard testified
3 she took this screenshot at or about the time
4 indicated on March 11th at 10:37 p.m.

11:27:51

5 Is there something about this document
6 that tells you that Mr. Whiteley had access to the
7 Google Search Console on March 9th when the
8 temporary deindex request was made?

11:28:10

9 A So there's -- I just want to make sure I
10 understand your verbiage so I can answer correctly.

11 You're saying this was captured on
12 March 11 and there's evidence that he had access on
13 March 11. As there is no historical data shown in
14 this log that shows when he was given access, I
15 can't tell you that this document proves that he had
16 access on March 9th.

11:28:26

17 As I said before, I know that he had
18 access when I was given access in the response, but
19 specifically March 9th, I don't know.

11:28:41

20 Q Okay. All you know is that he had access
21 when you became involved on the 11th; correct?

22 A Yes.

23 Q Okay. Let's go back to the special
24 interrogatory response. So can you pull back open

11:29:05

25 Exhibit No. 36 on page -- the supplemental response

11:29:10 1 to Interrogatory No. 2?

2 A Okay, I've got it.

3 Q So we're just working our way through this
4 document. The next sentence that we want to talk
11:29:21 5 about states:

6 "While several BCS volunteers
7 were involved, the principal
8 investigators were Mr. Jensen and
9 Noelle Beauregard."

11:29:29 10 Who were the several other volunteers
11 involved in the investigation?

12 A So I think I listed them earlier, but just
13 to repeat, I know that Dr. Vanessa Hughes, Ms. Jenny
14 Magill were involved. They're our senior
11:29:50 15 leadership. Obviously myself and Ms. Beauregard. I
16 know that Bobby Cook was on the call intermittently.
17 I know that Captain Megan Hurwitt was on the call
18 for some of the time that we were troubleshooting
19 but I cannot say that that is a comprehensive list.
11:30:08 20 I didn't capture the list of participants in the
21 Zoom call.

22 Q What participation -- what did Dr. Hughes
23 do -- what part of the investigation did Dr. Hughes
24 do?

11:30:21 25 A Dr. Hughes is not a technically

11:30:23 1 sophisticated person. She was more there in a
2 management capacity to learn and observe and
3 understand. I would not make any statement that she
4 helped meaningfully with the investigation of the
11:30:38 5 technical components.

6 However, she was obviously aware of the
7 history and could talk about the individuals
8 involved and confirm things like e-mail addresses
9 and whatnot.

11:30:51 10 Q Okay. What involvement, if any, did
11 Ms. Magill have in the investigation?

12 A So Ms. Magill is more sophisticated
13 technically than Dr. Hughes, but again, she's not an
14 engineer or a trained technology person, so she was
11:31:07 15 operating in essentially the same capacity.

16 Q Okay. What involvement did Mr. Cook have
17 in the investigation?

18 A It's literally the same answer. He was --
19 he was leadership, but he's not qualified to do
11:31:26 20 anything technically.

21 Q And what involvement did Ms. Hurwitt have
22 in the investigation?

23 A Captain Hurwitt had more to say because
24 she has some background in technology, specifically
11:31:44 25 web marketing she knows pretty well, so she was

11:33:01 1 able to view the deindex request myself.

2 Q So using my own words, you logged into
3 Google Search Console and you saw the three requests
4 to temporarily remove the search listings; correct?

11:33:16 5 A Correct.

6 Q Did the Google Search Console tell you who
7 it was that made those requests?

8 A No, it doesn't show that in the console
9 that I looked at. It wasn't in the logs that I
10 could see either.

11:33:30 10
11 Q Let me show you a document that's
12 previously been marked as Exhibit No. 23.

13 (Exhibit 23 was previously marked for
14 identification.)

11:33:50 15 THE WITNESS: Okay, I have it open.

16 BY MR. TATE:

17 Q I'll represent to you this is another
18 screenshot that Ms. Beauregard testified that she
19 took and the date on it is March 11, 2022.

11:34:04 20 Is this more or less what you saw when you
21 went onto the Google Search Console?

22 A Yeah, I believe it's exactly what I saw.

23 Q Why does -- why do you -- why does BCS use
24 the term "deindexing"?

11:34:23 25 A Well, I guess I don't know. I think they

11:37:04 1 their access started or stopped. It's just the fact
2 that they already had access when I logged in. And
3 as far as I know, that was also true when
4 Ms. Beauregard logged in.

11:37:18 5 Q Let's go through a bunch of screenshots
6 here and maybe we'll get on the same page. Let me
7 mark for you Exhibit No. 38.

8 (Defendants' Exhibit 38 was marked
9 for identification by the deposition officer and is
11:37:28 10 attached hereto.)

11 BY MR. TATE:

12 Q It's another TIFF. It's probably -- are
13 you getting the same error?

14 A Yes.

11:37:40 15 Q I will share my screen for you. I just
16 put it in the chat. If you want to open it, you
17 can, but I'm happy to share screen.

18 A If you wouldn't mind sharing your screen.

19 Q Yes. Is this another screenshot that you
11:37:53 20 took?

21 A It's really, really small. The text is
22 really, really small there.

23 Q Did you take this screenshot?

24 A I almost certainly did.

11:38:08 25 Q And did you take it in March of this year?

11:38:15 1 A It looks like I did.

2 Q How did you capture this screenshot?

3 A Well, your export format here is strange
4 to me. I haven't seen it exported in this format,
11:38:29 5 but the only way I could have captured the
6 screenshot is to log into Google Search Console and
7 then do a screen capture over where the logs are
8 displayed.

9 Q I guess that's my question. When you did
11:38:45 10 the screen capture, there's different ways to
11 capture a screen. Did you use the Snipping Tool?
12 Did you do control print? Did you go get the actual
13 MHT file?

14 What did you do to capture this?

11:39:03 15 A So assuming I captured it myself, I want
16 to say the commands. I would have been using the
17 same laptop that I'm using to speak to you now and
18 I'm pretty sure the command is control shift 4 -- or
19 command shift 4 to capture a screenshot.

11:39:20 20 I realize now that we're talking, because
21 you asked me a related question on the dates of some
22 of these, there was a point where I shared control
23 on Zoom with Consilio and I allowed them to access
24 my account and pull some things from -- specifically
11:39:41 25 from the Google tooling so it is possible that they

11:39:44 1 captured this screenshot. But it would still show
2 my name because it was literally the Consilio
3 operator who had remote control via Zoom of my
4 console and was capturing screenshots.

11:39:59 5 Q Just so we're clear, you're not even sure
6 if you're the one who captured this screenshot?

7 MR. SONG: Objection; argumentative.

8 THE WITNESS: It was either me or it was a
9 Consilio staff member operating my account with my
11:40:18 10 direct supervision, with my eyes on it.

11 BY MR. TATE:

12 Q All right. And then did you create a PNG?
13 Is that -- is that the format that you captured it
14 in?

11:40:34 15 A It would have been whatever the default --
16 again, if it was me that captured it, it would have
17 been one of its defaults, iOS -- or I'm sorry, macOS
18 form.

19 Q And did you go get any more reliable
11:40:50 20 formats than whatever the default is through iOS?

21 MR. SONG: Objection; vague and argumentative.

22 THE WITNESS: So I'm not sure that there is any
23 technical reason that I would have gone for a
24 different format, but the answer to your question is
11:41:10 25 no, I did not.

11:41:11 1 BY MR. TATE:

2 Q Okay. PNGs are easily editable; right?

3 A Yeah, most image files.

4 Q That's what you captured was an image

11:41:25 5 file, you didn't capture any of the metadata

6 associated with it; correct?

7 A No. If I captured a screenshot, it was an

8 image file.

9 Q Okay. So is there something about this

11:41:42 10 document that suggests that either of my clients had

11 access to the Google Search Console on March 9th?

12 A The log that we're looking at doesn't go

13 back to March 9th. So if you're speaking

14 specifically of March 9th, I -- this log does not

11:42:01 15 show that.

16 Q In fact, what this log shows is that

17 Mr. Whiteley was not given access until March 11th;

18 correct?

19 A It shows that his access was restored on

11:42:12 20 March 11th. That's an important distinction.

21 Q Sure. But it does not show that he had

22 access on -- during the time that the temporary

23 removal requests were made, does it?

24 A No.

11:42:30 25 Q And this document also doesn't show that

11:42:32 1 Ms. McNamara had access to the Google Search Console
2 at the time that the temporary removal request was
3 made, does it?

4 A This log doesn't show anything about
11:42:44 5 Defendant McNamara.

6 Q I'll show you another -- another
7 screenshot. We'll mark this one as Exhibit No. 39.
8 I'll put it in the chat and then I'll share my
9 screen with you.

11:43:09 10 (Defendants' Exhibit 39 was marked
11 for identification by the deposition officer and is
12 attached hereto.)

13 BY MR. TATE:

14 Q Is this another screenshot that you took?

11:43:22 15 A Sorry, at this Zoom level it's not very
16 legible to me.

17 Q Does that help?

18 A It does. Yeah, I mean it certainly looks
19 like another screenshot that I took, yes.

11:43:37 20 Q Okay. And do you know -- this one doesn't
21 have a date on it.

22 Do you know when you took this screenshot?

23 A I don't know exactly when. This -- it
24 would have been in the aftermath of the deindex.

11:43:56 25 Q Sir, are you confident that you're the one

11:43:58 1 that took this screenshot?

2 A Not necessarily. Like I said, both myself
3 and Ms. Beauregard were capturing data so I'm fairly
4 confident that I'm the one who took it, but it was a
11:44:15 5 team effort and you've already put a couple of
6 screenshots up that were captured by Ms. Beauregard.
7 I wasn't keeping a log of which of the two of us
8 captured each thing.

9 Q The last several screenshots I showed
11:44:30 10 purport to be captured in March of this year.

11 Do you know whether this screenshot was
12 captured in March of this year or March of 2022?

13 A There's no date stamp on it, but
14 nonetheless, it appears to be basically the same
11:44:47 15 data.

16 Q Go ahead.

17 A Go ahead.

18 Q No, please, you're the witness. I only
19 ask questions. You're probably more important than
11:44:58 20 me. Go ahead.

21 A Okay. So just pointing back to what I
22 said about within the last few weeks, like I said, I
23 worked with Consilio to enable them to capture these
24 kinds of data with my account. I believe I captured
11:45:14 25 a couple of additional screenshots and sent them

11:45:17 1 directly to our counsel after our prep discussions.
2 But they reflect the same data that we captured
3 because I know that we also captured screenshots of
4 this log data in the aftermath of the attack. So

11:45:32 5 this is why we're seeing redundancy here, is that
6 these -- basically the shots of these data were
7 captured multiple times.

8 Q If you look at the top on this sheet, it's
9 April 13, 2022. So we can agree that this was not
11:45:50 10 captured at least in March of 2022; correct?

11 MR. SONG: Objection -- oh, okay.

12 THE WITNESS: Right, your conclusion is
13 correct. That means it has to have been captured
14 after -- on or after April 13th.

11:46:11 15 BY MR. TATE:

16 Q Is there something about this document
17 that would suggest that either of my clients had
18 access to the Google Search Console on March 9th?

19 A No.

11:46:29 20 Q And if you look at the bottom there, you
21 see results per page 1 of 13 of 13; correct?

22 A Uh-huh.

23 Q Do you see that? So this is showing all
24 of the ownership history; is that correct?

11:46:44 25 MR. SONG: Objection; lack of foundation, also

11:46:48 1 speculation.

2 THE WITNESS: No, it does not show all of the
3 ownership history. So Google shows you some of the
4 information that they have when you access consoles
11:47:00 5 like this. But my expectation is this log doesn't
6 go back further than six months. Typically -- and
7 maybe in some cases it does. But this is -- this is
8 not -- at some point there's going to be a cutoff
9 where if someone was given access before a certain
11:47:17 10 point in time, then it's not going to show them.

11 BY MR. TATE:

12 Q We just looked at several logs that were
13 taken in March of this year so they clearly go back
14 more than six months.

11:47:29 15 Do you have another explanation why this
16 document doesn't show anything beyond March 11?

17 A I don't know if the limit is six months or
18 not.

19 Q You're saying that it's your belief that
11:47:38 20 there's more beyond March 11, 2022 and it just
21 happens to be the cutoff is two days before -- two
22 days after the deindexing?

23 A All I'm saying, there has to be more
24 because, as I said, when I was given access, one of
11:47:55 25 the defendants already had access. So at some point

11:47:58 1 in the history they were granted access.

2 Q And you were given access on the 11th;
3 correct?

4 A I think I was given access on the 11th,
11:48:12 5 yeah, I think that's correct.

6 Q And we see right there that Jeremy was
7 given access on the 11th?

8 A His access was restored.

9 Q All right. When you looked at the Google
11:48:24 10 Search Console, did you see anything that showed
11 definitively that Jeremy Whiteley had access on
12 March 11th -- on March 9th, excuse me?

13 A No, he didn't.

14 Q Let me state that again for a better
11:48:36 15 record.

16 When you looked at the Google console, did
17 you see anything that suggested that Jeremy Whiteley
18 had access on March 9th?

19 A I saw the fact that he had access.

11:48:49 20 Q Okay. And on the 11th you saw that he had
21 access; correct?

22 A Uh-huh.

23 Q Now I'm going to ask -- focus on my
24 question.

11:48:57 25 When you logged in at -- on March 11th,

11:49:00 1 did you see anything on the Google console that
2 suggested that Mr. Whiteley had access on March 9th?

3 A No.

4 Q And when you logged in on the Google
11:49:10 5 console March 11th, did you see anything on the
6 Google console that suggested that Ms. McNamara had
7 access on March 9th?

8 A No. So the one log that -- that connects
9 anything to Ms. McNamara, much like this log, it
11:49:28 10 doesn't show the initial point at which they had
11 access. So I can't tell you that -- that it proves
12 that they did or did not have access on March 9th,
13 but I know that they had access predating my
14 invitation to the Google console.

11:49:50 15 Q Maybe I'm misunderstanding what you're
16 saying.

17 So you're saying there are other persons
18 besides what we see on this list who had access;
19 correct?

11:49:58 20 A There is one other person.

21 Q And how did you determine that?

22 A So it's present in a different log. I'm
23 pretty sure -- no, it is here. Although that's not
24 the one that is the most probative, but if you look
11:50:20 25 at the second-to-last line, there's a reference to

12:08:42 1 is so illegible that when I look at the top right
2 corner that usually indicates who's logged in, that
3 looks like maybe a B in there, maybe a -- but I
4 don't -- and also I should note that the line items
12:08:59 5 under details are illegible in my copy. So I guess
6 I can't say definitively who took this, no.

7 Q And understanding that the quality is not
8 great, is there something about this document which
9 would lead you to believe that Mr. Whiteley had
12:09:20 10 access to the Google Search Console on March 9th?

11 A I can't read it so I'm going to say no.
12 But the line items there -- what I can extract from
13 the text doesn't appear to point to -- I don't see
14 anything that I can read here that indicates that
12:09:45 15 Mr. Whiteley had access on March 9th.

16 Q I'm fairly confident I have shown you
17 every screenshot of the Google Console and the
18 Google Webmaster Central that has been produced by
19 BCS in this case.

12:10:02 20 MR. SONG: Objection; calls for speculation.

21 MR. TATE: I haven't even asked a question yet.

22 MR. SONG: Okay.

23 BY MR. TATE:

24 Q Are you aware of any other screenshots --
12:10:16 25 we'll do this one at a time.

12:10:18 1 Are you aware of any other screenshots
2 that BCS took of the Google Webmaster Central?

3 A I am not aware of anything specifically
4 that you haven't shown me. As I said, there was a
12:10:34 5 lot of data capturing going on. There may have been
6 redundancy. But I believe what you have shown me
7 includes all of the significant things that I do
8 know about.

9 Q Are you aware of any other screen shops --
12:10:47 10 screenshots of the Google Search Console?

11 A I am not aware of any screenshots that
12 have not been submitted into evidence.

13 Q Let me try that again.

14 I've shown you what I believe to be all of
12:11:04 15 the screenshots that BCS has produced of the Google
16 Search Console.

17 Are you aware of any other screenshots
18 besides -- of the Google Search Console besides what
19 I've shown you?

12:11:16 20 MR. SONG: Objection; lack of foundation, calls
21 for speculation.

22 BY MR. TATE:

23 Q Go ahead.

24 A There is nothing that I can recall that
12:11:27 25 meets the criteria you are describing. What I

12:11:31 1 cannot do is give you a comprehensive guarantee that
2 there is no other screenshot that exists anywhere.

3 Q Right. But you as the person most
4 knowledgeable and the person who spearheaded this
12:11:43 5 investigation, you're not aware of any other
6 screenshots; correct?

7 A I don't think I am.

8 MR. SONG: Lack of foundation, calls for
9 speculation, argumentative.

12:11:51 10 BY MR. TATE:

11 Q Did you take screenshots in March 2022?

12 A I certainly did.

13 Q Do you know why those haven't been
14 produced in this action?

12:12:04 15 MR. SONG: Objection; lack of foundation, calls
16 for speculation, argumentative.

17 THE WITNESS: You -- you've shown screenshots
18 that I captured.

19 BY MR. TATE:

12:12:13 20 Q Well, those screenshots were all captured
21 in March of this year; correct?

22 A Oh, yeah, so that's when we're talking
23 about, whether it was with Consilio or whether they
24 include things that I submitted to our counsel,
12:12:26 25 yeah.

12:12:26 1 But, yeah, I did capture screenshots at
2 the time and I sent those screenshots to our counsel
3 in March or April of 2022. I would be very
4 surprised to learn that they have not made it into
12:12:39 5 evidence.

6 Q Are the screenshots that we looked at
7 today those screenshots that you captured in March
8 of 2022?

9 A They have the same information that you've
12:12:51 10 shown me with the dates -- that's why I was saying
11 there's going to be some redundancy.

12 As you're asking about screenshots, I
13 realized there's one that you haven't shown me. But
14 your question was specifically about Google Search
12:13:02 15 Console and there was nothing that I know of from
16 Google Search Console that you haven't shown me,
17 that we haven't discussed.

18 Q What's the one screenshot that I haven't
19 shown you that you're thinking of?

12:13:13 20 A The screenshot with the TXT records
21 themselves.

22 Q Okay. And is that -- did you capture that
23 on the WordPress or where did you capture that
24 screenshot?

12:13:23 25 A I think I used just a free DNS Explorer

12:13:30 1 website.

2 Q Okay. We've looked at all these
3 screenshots. Do they substantially reflect what you
4 saw when you did your investigation?

12:13:41 5 A Yeah. I have seen them all before and you
6 didn't show me anything that was strange or new to
7 me.

8 Q And could we -- could we agree none of the
9 screenshots that I showed you show that Jeremy
12:13:56 10 Whiteley had access to Google Search Console on
11 March 9th?

12 A No, none of them showed that.

13 Q When you did your investigation, you
14 didn't see anything that showed Jeremy Whiteley had
12:14:09 15 access on March 9th?

16 MR. SONG: Objection; calls for a narrative
17 answer, lack of foundation, calls for speculation,
18 argumentative. Okay.

19 BY MR. TATE:

12:14:22 20 Q Go ahead.

21 A I did not have access on March 9th.

22 Q Let me repeat the question. I appreciate
23 that, but when you looked at everything on
24 March 11th, you didn't see anything that told you
12:14:39 25 Jeremy Whiteley had access on March 9th, did you?

12:14:41 1 MR. SONG: Objection; lacks foundation, calls
2 for speculation, argumentative.

3 THE WITNESS: No, what I saw indicates he had
4 access before I did.

12:14:48 5 BY MR. TATE:

6 Q Right. You got access on the 11th and
7 what we've seen today is that Jeremy Whiteley also
8 got access on the 11th; isn't that correct?

9 MR. SONG: Objection; lacks foundation, calls
12:14:58 10 for speculation, argumentative, also calls for a
11 narrative answer.

12 BY MR. TATE:

13 Q Go ahead.

14 A Broadly, yes. But per my earlier
12:15:09 15 explanation about extrapolating information, I think
16 it's probably advisable to review the logs from
17 Webmaster Central and the log that you keep pointing
18 to, the one that shows the access delegation on the
19 11th. I think that probably warrants a little
12:15:26 20 further review.

21 But the short answer to your question is
22 yes, I believe what you said is correct.

23 Q Did you not do that further review at the
24 time in March 2022?

12:15:47 25 MR. SONG: Objection; vague, unintelligible,

12:15:49 1 ambiguous question.

2 BY MR. TATE:

3 Q I'll ask you again.

4 You just testified that -- that whether or

12:15:57 5 not my client had access on March 9th warrants a
6 further review.

7 Did it not warrant a further review in
8 March 2022?

9 MR. SONG: Objection; misstates testimony.

12:16:11 10 BY MR. TATE:

11 Q Go ahead.

12 A There's no reason that I would have done
13 that review then. So when I -- when I got into the
14 thick of it and when we found out everything that
15 was happening, when we got to the root cause being
16 Google Search Console, I see that a handful of
17 people have access. Two of them are known hostile
18 to Breaking Code Silence because of their past.

19 So it's a necessary conclusion at that
12:16:39 20 point for me to make that it is the hostile
21 individuals who are most likely to have placed the
22 deindex request versus those people who called me in
23 a panic earnestly asking me to do everything I can
24 to help them remove it.

12:16:57 25 Q Did you discuss the possibility that

12:16:59 1 Vanessa Hughes did it?

2 A That's absurd.

3 Q Is it?

4 A Yes.

12:17:05 5 MR. SONG: What's absurd? Argumentative, calls
6 for a narrative answer, lack of foundation.

7 BY MR. TATE:

8 Q Why is it absurd?

9 A Dr. Hughes is an extremely intelligent
12:17:17 10 person in her field. She's an expert in her field.
11 But from a technology standpoint, she's extremely
12 unsophisticated.
13 Dr. Hughes wouldn't have even known about
14 -- I think she still doesn't know how the server
12:17:34 15 stack works or how the Google interface works or any
16 of that.

17 Q Sir, this isn't very complicated. You log
18 into the Google Search Console and you press remove.
19 And, you, know, anyone can do that; correct?

12:17:48 20 MR. SONG: Objection; argumentative, lack of
21 foundation, calls for speculation.

22 THE WITNESS: It requires working knowledge of
23 Google Search Console, working knowledge of DNS, the
24 ability to authenticate yourself with Google as I
12:18:01 25 described earlier, all of that. And you are correct

12:18:03 1 that it's not very sophisticated from a technical
2 standpoint, but it is sophisticated enough to put it
3 in the realm of a basic webmaster and certainly not
4 someone who is not barely computer literate at all.

12:18:17 5 BY MR. TATE:

6 Q So to answer my question, you didn't even
7 look into that possibility, did you?

8 MR. SONG: Objection; lack of foundation,
9 argumentative, calls for speculation, calls for a
12:18:24 10 narrative answer.

11 THE WITNESS: Dr. Hughes is one of the people
12 who called me in a panic desperately asking me to
13 help. You're suggesting that she could have somehow
14 done this herself and then would have called me in a
12:18:40 15 panic to ask me to mitigate it?

16 BY MR. TATE:

17 Q I'm only asking the question. And the
18 question is very simple: Did you look into the
19 possibility that Vanessa Hughes is the one who
12:18:52 20 submitted the temporary deindexing request?

21 Yes-or-no question.

22 A There was no evidence uncovered in my
23 investigation that indicated that Dr. Hughes or
24 anyone else inside of BCS was responsible for
12:19:05 25 placing this. In fact, all the evidence was

12:19:08 1 contrary, so I had no reason to conduct any in-depth
2 investigation of any BCS individuals.

3 Q So that's really -- focus on my question.
4 It is really yes or no.

12:19:18 5 Did you look into the possibility that
6 Dr. Hughes was the person who submitted the
7 temporary request to deindex?

8 A Yes.

9 Q What did that investigation entail?

12:19:32 10 A That investigation entailed looking at the
11 records that we've discussed and looking for simple
12 things like who had access. And I don't believe
13 I've seen a single piece of evidence that indicates
14 that Dr. Hughes had access.

12:19:48 15 Q Right. So you haven't seen a single piece
16 of evidence that suggests that my clients had access
17 on March 9th?

18 MR. SONG: Objection; calls for speculation,
19 lack of foundation, argumentative.

12:19:59 20 BY MR. TATE:

21 Q Can you point to a single piece of
22 evidence that says that Mr. Whiteley had access on
23 March 9th when the deindexing request was made?

24 A We've produced ample evidence that
12:20:12 25 Mr. Whiteley had access eventually. And like I

12:20:15 1 said, I know that he had access before I did. I
2 can't speak specifically to March 9th, but I know he
3 had access before I did. And as far as I know,
4 Dr. Hughes never had access.

12:20:27 5 Q Let's be very clear here because you are
6 the representative of BCS.

7 BCS has no evidence that my clients had
8 access on March 9th, does it?

9 MR. SONG: Objection; lack of foundation, calls
12:20:38 10 for speculation, argumentative, calls for a
11 narrative.

12 THE WITNESS: With the clarifications I
13 provided, the answer to your question is yes. We
14 have no evidence specifically pointing to March 9th.

12:20:51 15 BY MR. TATE:

16 Q Great. As far as you're concerned, it
17 must have been Jeremy Whiteley who deindexed it
18 because you saw that he had access on March 11th;
19 correct?

12:21:07 20 A As far as I mentioned, with my level of
21 access in Google Console, I can't see or
22 administrator -- or administrate Ms. McNamara's
23 access, so I cannot tell you definitively whether it
24 was Mr. Whiteley or it was Ms. McNamara. I know
12:21:20 25 that they both have access.

12:37:52 1 principally controlled -- or composed of promise
2 survivors who have poor responses to any kind of
3 attack.

4 But the harm, I mean, it's taken hours,
12:38:03 5 days to try to mitigate that risk as best we can and
6 to try to move on with the legal action that we're
7 discussing. There was a brief harm while the site
8 was offline or off of Google, I should say, but the
9 harm of not having control of the domain name and
12:38:27 10 these -- these games that you're seeing reflected in
11 the evidence base, that is -- it's a lasting source
12 of harm to the sense of stability and cohesion and
13 safety of the team at Breaking Code Silence.

14 And fundamentally, it remains to be a hole
12:38:50 15 that has stopped me from being able to entirely
16 secure our infrastructure. This is why we're using
17 Signal. This is why we're using personal Gmail
18 accounts, is that I know while hostile entities
19 control that domain, I can't trust our Gmail or our
12:39:04 20 Slack or anything else connected to that domain with
21 anything sensitive. And almost everything we touch
22 is sensitive in one way or another.

23 Q I want you to focus just on the act of
24 delegating ownership repeatedly to Jeremy Whiteley.

12:39:20 25 Did BCS lose any money because of that?

12:39:26 1 A Did we lose money? I mean, we lost hours
2 and hours of volunteer time. But is there a direct
3 cash cost due to delegating access, no. I mean,
4 it's illegal access of a computer system. It's
12:39:43 5 hacking. But is there an immediate monetary cost?
6 Do we have to write a check that we otherwise
7 wouldn't have to write?

8 I mean, so there's the cost of the efforts
9 to recover the domain. That's what we're doing
12:40:00 10 right now. But is there an immediate payment that
11 we had to make out of some budget over it, no. We
12 bled a lot of other resources, but I don't know that
13 we bled much cash.

14 Q The act of repeatedly delegating ownership
12:40:18 15 to Jeremy Whiteley, did that cause damage to a
16 computer?

17 MR. SONG: Objection; vague and ambiguous
18 question.

19 THE WITNESS: So damage, you mean hardware
12:40:33 20 damage or like did it -- damage has a very broad
21 definition in the world of IT.

22 BY MR. TATE:

23 Q Under any definition, was a computer
24 damaged because -- because ownership was delegated
12:40:53 25 to Jeremy Whiteley?

12:42:06 1 delegated to Mr. Whiteley on March 11, 2022. Is BCS
2 aware of Mr. Whiteley ever doing anything with that
3 access that he was delegated?

4 A I mean, other than -- like I said, I know
12:42:24 5 it was one of the defendants that filed the deindex
6 request. I don't have other indications that
7 Mr. Whiteley did anything with that access, no.

8 But as far as I know, they didn't do
9 anything like deindex the website again. I don't
12:42:40 10 know that they redirected any of the other DNS
11 records or anything like that.

12 After the attack that is the main subject
13 here, I don't know that they did anything to the
14 website or to the Google Console other than
12:42:55 15 eventually I know that -- I don't know exactly what
16 Ms. McNamara did, but eventually she found a way to
17 reinstate Mr. Whiteley's access in a way that I
18 could not revoke it anymore, which is why he has
19 access today.

12:43:15 20 Q And -- well, Jeremy Whiteley still has --
21 if I'm understanding correctly, you believe Jeremy
22 Whiteley has had access since March 2022 to the
23 present?

24 A I believe he has access right now. But
12:43:28 25 the last I looked was a few days ago, so I can't say

12:43:31 1 exactly at this moment without literally pulling up
2 the Google Search Console on my machine here.

3 Q Are you aware of Mr. Whiteley doing
4 anything with that access he was given?

12:43:42 5 A Other than the deindexing.

6 MR. SONG: Calls for a narrative answer.

7 BY MR. TATE:

8 Q And your answer was other than the
9 deindexing that happened two days before the

12:43:58 10 delegation?

11 A Yeah, two days before. Again, I don't
12 think that that -- that that delegation was the
13 first thing that gave the defendants access to the
14 system.

12:44:18 15 Q Are you aware of any -- after his
16 resignation up until March 11th, are you aware of
17 any other instances where Mr. Whiteley was given
18 access to the system?

19 A No.

12:44:30 20 Q We've been going for a long time, I
21 apologize. I was lost -- I was having fun. So why
22 don't we take a lunch break. Do you want a half
23 hour or a one-hour lunch break?

24 MR. SONG: I can do a half hour if that is

12:44:43 25 comfortable for everyone else. If someone wants an

12:44:44 1 hour, we can do an hour.

2 MR. TATE: Why don't we go off the record and
3 we'll talk lunch.

4 THE VIDEOGRAPHER: We are off the record at
12:44:51 5 12:44 p.m.

6 (A recess was taken from 12:44 p.m.
7 to 1:15 p.m.)

8 THE VIDEOGRAPHER: We are on the record at
9 1:15 p.m.

13:15:19 10 BY MR. TATE:

11 Q Welcome back, Mr. Jensen. I hope you had
12 a good lunch. I'm putting into the chat a document
13 which was previously marked as Exhibit 9.

14 Can you please go ahead and open that for
13:15:31 15 us.

16 A Okay.

17 Q You already testified that you drafted
18 this letter on or about March 14, 2022.

19 Is this the only report that you made of
13:15:45 20 the alleged -- the allegations against my clients?

21 A I think this was the only written report.

22 Q Is there -- was there a nonwritten report
23 somewhere?

24 A So as I mentioned, there were several
13:16:01 25 phone calls and Zoom calls on this matter in the

13:16:05 1 aftermath and I reported repeatedly on the events
2 that we're discussing during those calls.

3 Q Any of those calls recorded?

4 A Not that I'm aware of.

13:16:20 5 Q Did you take any notes during your
6 investigation?

7 A I don't think I took any formal notes, no.

8 Q Any informal notes?

9 A No. When I'm responding to something like
13:16:34 10 this, I'm really just on the computer. I'm on the
11 keyboard jumping from item to item and not --
12 because the nature of this attack is not terribly
13 sophisticated, it wasn't necessary.

14 I mean, occasionally it can come up in
13:16:49 15 crypto or something where you may have to take
16 step-by-step notes about things that happened. We
17 found the root cause quickly and went about
18 troubleshooting the root cause. There wasn't any
19 basis for me to take notes, formal or informal.

13:17:05 20 Q How many hours did you spend drafting this
21 report?

22 A How many hours? The sum total of drafting
23 this report is probably one hour or less.

24 Q All right. Do you think that you got the
13:17:22 25 dates wrong in the second paragraph?

13:20:10 1 they make available to you aren't great for
2 forensics.

3 Q Did you ask Google for better logs?

4 A I don't think I did.

13:20:18 5 Q Why not?

6 A The conversation I had with Google was
7 very narrowly focused on whether and how I could
8 remove the defendants' access. I really didn't ask
9 other questions that weren't related to that
10 subject.

11 Q Let me show you Exhibit No. 8.

12 Oh, before I move on, did you do any
13 investigation into whether or not Jenny Magill was
14 responsible for the alleged deindexing?

13:20:54 15 A I mean, no more than in the question you
16 asked me earlier where I -- I clarified that --
17 where there was no indication of that. I mean,
18 generally I came in, like I said, open to every
19 possibility, looking for what evidence there was,
13:21:10 20 but I never found any indication that Ms. Magill was
21 involved in deindexing.

22 And I believe in a manner similar to the
23 question you asked about Dr. Hughes, I'm not sure
24 that Ms. Magill ever had privileges on the Google
13:21:23 25 Search Console.

13:28:34 1 almost nothing that WordPress can do would surprise
2 me, but the -- the format you're suggesting -- I'm
3 sorry, the manner in which you're describing is not
4 the manner in which one would view or verify a TXT
13:28:50 5 record.

6 Q Well, that's hence my confusion. BCS is
7 saying that the WordPress account showed the
8 malicious TXT record.

9 Do you know why BCS made that statement?

13:29:05 10 A That copy could be cleaned up, but...

11 Q What should it say?

12 A Well, so I viewed the TXT records. TXT
13 records, like all DNS records, are public. But the
14 way that -- so I mean, I would say you could put my
13:29:27 15 name in there and say the BCS's IT administrator
16 discovered malicious TXT records.

17 The tool that I use is just the basic
18 command line DNS lookup tool. It's called Nslookup.
19 And you can put -- you type literally that command
13:29:47 20 and put in whatever the control parameters are, but
21 it will go out to the DNS system and look up
22 whatever records you want.

23 Q Is BCS alleging that my clients unlawfully
24 accessed the WordPress?

13:30:09 25 A Speaking on behalf of BCS --

13:30:14 1 MR. SONG: Objection; legal -- calls for a
2 legal theory or reasoning.

3 BY MR. TATE:

4 Q Go ahead.

13:30:23 5 A No. So that's something that I -- I
6 thought might be occurring at the time and certainly
7 others that were involved in the response with me
8 thought that there was illicit access. And there
9 was ample evidence when I went to review the server

13:30:42 10 itself, the configuration of the server and the
11 configuration of the Cloudways console that the
12 defendants had had access at some point. But as
13 we've discussed, I know there was a lengthy period
14 where they were managing the IT structure for BCS.

13:30:57 15 So the fact that they had had access at
16 some point doesn't prove they maliciously accessed
17 WordPress. I don't have any hard evidence of that.
18 It is not necessary to access WordPress to perform
19 the deindex attack as we described it. So at this
13:31:13 20 point I make no accusation that they illicitly
21 accessed WordPress.

22 Q You're familiar with WordPress? If I were
23 to show you a WordPress backup, you would be
24 competent enough to be able to talk through it with
13:31:31 25 me? Is that fair?

13:36:49 1 innocently while they were working for BCS; correct?

2 A Yes.

3 Q And if I'm understanding your testimony
4 correctly, the fact that adding the tag didn't harm
13:37:09 5 BCS, but if my clients used that tag after their
6 resignations, that may have harmed BCS.

7 Is that a fair summary of what you
8 explained to me?

9 A It is.

13:37:22 10 Q I just want to be clear, is that I'm
11 prepared to go through administrative privileges on
12 WordPress, but I think I understood you pretty
13 clearly that BCS is not alleging that my clients
14 accessed the WordPress; correct?

13:37:37 15 A Correct.

16 Q I'll jump ahead of all that then.

17 A I think generally I would have to say I
18 don't have any evidence that they did not do that.
19 As I mentioned, there are many, many ways to inject
13:37:54 20 vulnerabilities into WordPress. This is an area
21 where I have done some real security work in the
22 past trying to fight those vulnerabilities.

23 So I can't tell you definitively that they
24 do not have access even now, but I also can't pull a
13:38:09 25 log and say, yes, they did this on this day. And as

13:55:48 1 BY MR. TATE:

2 Q Go ahead, Mr. Jensen.

3 A Can you point me to the word back-end in
4 the context of your question in Exhibit 8?

13:55:58 5 Q That's where I'm going with this.
6 Exhibit 8 doesn't, as far as I know, hasn't alleged
7 any access to the back-end, but the complaint does.
8 And I'm trying to figure out if it's just my
9 technical ineptitude is making it so I don't
13:56:15 10 understand the allegation.

11 Let's put it this way. When you hear
12 "back-end of a website," what does that mean to you
13 as somebody who has more experience than I?

14 A The database, the code, the infrastructure
13:56:30 15 that ties into other things on the Internet. So
16 it's really kind of a semantic question. Technical
17 people might not perfectly agree on what is and is
18 not properly categorized as back-end.

19 In this case it certainly would include
13:56:45 20 the WordPress administration console, the
21 lower-level access that I mentioned, you know, the
22 SSH terminal and things like that.

23 I don't know whether every technical
24 person would include things like the Google
13:56:59 25 interfaces, Google Webmaster Central and Google

13:57:03 1 Search Console as part of the back-end. I would be
2 inclined to do so.

3 Q Okay.

4 A I wouldn't dispute the wording saying they
13:57:10 5 accessed the back-end, but I wouldn't want that to
6 be misinterpreted, lining up with what I said a few
7 moments ago that I don't have hard evidence to show
8 that they accessed the WordPress administration
9 console as part of the attack and I don't have hard
13:57:24 10 evidence to show that they accessed at a lower level
11 than that, such as the Cloudways Console or via SSH.
12 All of those things are arguably part of the
13 back-end.

14 Q So just evidentiary-wise, I'm going to
13:57:39 15 break apart some of the things you said to make sure
16 that the record is nice and clear.

17 We talked about the WordPress, I don't
18 think we need to do that again. Does BCS believe
19 that my clients unlawfully accessed the Cloudways
13:57:52 20 account?

21 A No.

22 Q Does BCS believe that my clients
23 unlawfully accessed any of the lower-level things
24 that you were just describing?

13:58:10 25 A No. That's one of those areas where it's

14:10:30 1 A I think I may have heard that they
2 contacted Twitter, but I didn't hear that in a
3 definitive way and I didn't hear anything about the
4 outcome as I recall.

14:10:44 5 Q Are you aware of BCS expending any money
6 to investigate this Twitter issue?

7 A Not that I'm aware of.

8 Q I find it unusual that the first
9 paragraph basically alleges that somebody accessed
14:11:02 10 the Twitter handle and deleted it.

11 Does BCS believe that either one of my
12 clients is the one that did that?

13 A I believe so, yeah. I would have to refer
14 you to Ms. Magill for a final answer on that, but my
14:11:19 15 understanding was with all of the accounts that are
16 listed in these interrogatories, that the defendants
17 are accused because the defendants had access to
18 these accounts and they changed the password or, in
19 this case, deleted the account and now no one at
14:11:34 20 Breaking Code Silence has access and our expectation
21 is that the defendants still do.

22 We're not frivolously accusing them of
23 stealing the accounts. They took that access away
24 from us and took the accounts with them when they
14:11:51 25 left.

14:29:17 1 A Yes.

2 Q Did BCS look at the possibility of one of
3 those other social media members being the ones who
4 deleted the Instagram?

14:29:27 5 A I only would have looked at that in the
6 context of a formal investigation, which I mentioned
7 I did not do.

8 Q Do you know if somebody else at BCS did
9 that type of investigation?

14:29:37 10 A The reason I keep referring to Jenny is
11 that I think she's your best chance of getting
12 straight information on who had access to what when.
13 I actually -- I think that's a really interesting
14 question because more than one person -- I see what
14:29:50 15 you're getting at. If other people that left BCS,
16 specially if they were also hostile to BCS, had
17 access, then that could put into question the idea
18 that Ms. McNamara stole the account. And I think
19 that definitely bears some review, but I have to
14:30:08 20 review -- I have to refer all of those questions to
21 Ms. Magill.

22 Q Do you know why BCS did not do a further
23 investigation into this issue before it filed a
24 complaint against my clients?

14:30:26 25 MR. SONG: Objection; argumentative and calls

14:30:28 1 for a narrative answer.

2 MR. TATE: I didn't hear his response. Did
3 you?

4 THE REPORTER: No. I have no answer.

14:30:44 5 BY MR. TATE:

6 Q Go ahead, Mr. Jensen.

7 A Just to clarify the question, why didn't
8 BCS -- do I know why BCS did not do a deeper
9 investigation before filing a complaint?

14:30:53 10 Q Yes.

11 A So to the best of my knowledge, and this
12 gets to part of the reason that I'm with Breaking
13 Code Silence, is I have absolute trust in Ms. Magill
14 that she wouldn't have made that move without
15 sufficient knowledge of who the guilty parties are.

16 Q Let's go on to the next row in Appendix A.
17 It's discussing a Facebook financial administration
18 account.

19 Once again, I know that Ms. Magill is
14:31:28 20 going to talk to me about this, but you are the
21 person designated to talk about whatever
22 investigation BCS did.

23 Did BCS do an investigation into the
24 Facebook financial administration account issue?

14:31:41 25 MR. SONG: Objection; outside the scope of

14:43:40 1 tedious. Why don't we take a ten-minute break.

2 A Okay. See you in ten.

3 THE VIDEOGRAPHER: Just a moment. We are off
4 the record at 2:43 p.m.

14:43:54 5 (A recess was taken from 2:43 p.m. to
6 2:55 p.m.)

7 THE VIDEOGRAPHER: We are on the record at
8 2:55 p.m.

9 BY MR. TATE:

14:55:42 10 Q Mr. Jensen, I'm dropping into the chat a
11 document which we will mark as Exhibit No. 45.

12 (Defendants' Exhibit 45 was marked
13 for identification by the deposition officer and is
14 attached hereto.)

14:55:59 15 THE WITNESS: Okay. I have it open.

16 BY MR. TATE:

17 Q Do you recall receiving this e-mail from
18 Ms. Magill?

19 A I am reading it now.

14:56:15 20 Q Please take as much time as you need. I'm
21 not trying to trick you into anything.

22 A Certainly not. I loosely recall it. This
23 one is -- is less significant in my memory. Let's
24 see, so it's a disk space warning and Jenny asked me
14:56:40 25 to look into it. Yeah.

14:56:45 1 Q So foundationally, does this appear to be
2 an e-mail that you received?

3 A Yes.

4 Q When did BCS first discover it was running
14:56:54 5 into disk space problems with the cloud-based
6 server?

7 A I don't know exactly when they first got a
8 notification. It's not a very significant problem
9 so it doesn't stand out in my mind.

14:57:11 10 Q Okay. Did you do anything to fix the
11 space problems?

12 A I think the first time, as this e-mail is
13 dated in May of 2022, I don't recall that I did
14 anything the first time.

14:57:31 15 Q So Ms. Magill's e-mail suggests two
16 options: We can increase the server disk space or
17 we can delete files.

18 Did you do either one of those things?

19 A Not that I recall.

14:57:44 20 Q Okay. At any point have you -- since this
21 e-mail was sent, have you increased the server disk
22 space?

23 A (No audible response.)

24 Q I don't think I heard your answer if you
14:58:05 25 answered.

14:58:06 1 A Oh, no, it sounded to me like David was
2 going to say something. I don't believe that I have
3 increased the server disk space.

4 Q Have you gone in to delete unnecessary
14:58:17 5 files?

6 A Yes, in one specific instance.

7 Q Okay, what was that instance?

8 A I believe it was earlier this year,
9 January, maybe February. There was an issue with a
14:58:32 10 backup plugin installed on the server that was
11 creating so many backups that it was filling up the
12 disk.

13 And it got to the point where it
14 temporarily knocked the server offline, and so in
14:58:52 15 that case I accessed it. Because the server was in
16 a bad state, I actually had to contact Cloudways and
17 have them do some deletion for me of unnecessary
18 files.

19 But after that, I was able to access the
14:59:07 20 server, I changed the configuration of that plugin.
21 It basically was configured so the server only had
22 so many gigabytes of storage and this thing was
23 configured to take a full backup of the website
24 every day. So it was doing a real big backup, like
14:59:26 25 every day up to 60 backups and it was more than

14:59:29 1 enough to fill up the drive.

2 So I want to say January or February this
3 year is when I went in, I reconfigured that plugin
4 so it would do backups less frequently and I deleted

14:59:39 5 a lot of the unnecessary backup files.

6 Q And those backup files, what was the date
7 range of the backup files you deleted?

8 MR. SONG: Objection; relevance.

9 THE WITNESS: I'm giving you just rough dates.

14:59:53 10 I believe it was in January or February and the
11 configuration was to go every day for up to 60 days.

12 So I would take whatever the day I did intervene in
13 January or February, it was up to 60 days back from
14 that. So it could go into December or November of

15:00:11 15 2022 where there were excessive backup files.

16 BY MR. TATE:

17 Q Okay. And help me understand. You said
18 it was a plugin that was causing this thing to --the
19 Cloudways server to back up daily?

15:00:29 20 A Yes.

21 MR. SONG: Relevance and outside of the scope
22 assigned to the witness.

23 BY MR. TATE:

24 Q What was the plugin?

15:00:38 25 A It's called Updraft.

15:10:23 1 never had any reason to lie or mislead anyone.

2 Q Would you agree with me that preserving
3 the HTML files would give more validity or certainty
4 to show screenshots?

15:10:36 5 MR. SONG: Objection; lack of foundation, calls
6 for speculation, argumentative.

7 THE WITNESS: I don't know that I would agree
8 with you. Frankly, I think it would actually be
9 much easier to alter an HTML file than it would be
10 to alter a PNG. HTML file is just text. You don't
11 need a photo editing tool.

12 BY MR. TATE:

13 Q At any point, did BCS obtain any IP logs
14 from Google?

15:11:13 15 A What logs?

16 Q So let me back up. BCS is alleging that
17 my clients submitted the request to deindex the
18 website, and in conjunction with that, did you ask
19 Google for IP logs?

15:11:29 20 A I don't remember if I asked them
21 specifically.

22 Q Is there a reason why not?

23 A I don't think I had any expectation that
24 Google would share that kind of information.

15:11:45 25 Q Did BCS obtain any logs from the various

15:11:48 1 social media companies?

2 MR. SONG: Objection; outside the scope the
3 witness is assigned to.

4 THE WITNESS: Not that I know of.

15:11:59 5 BY MR. TATE:

6 Q BCS is contending that Ms. McNamara
7 accessed the BCS Google Drive. My understanding is
8 BCS has produced some Google Drive logs, but the
9 earliest one that has been produced is from

15:12:14 10 July 2022. And the latest one is July 2023 (sic).

11 Does BCS have Google Drive logs
12 contemporaneous with December 2022 to March --
13 December 2021 to March 2022?

14 A I'm sorry, sir, did you say July of 2023?

15:12:37 15 Q No, the Google Drive logs that I've been
16 provided are from July '22 to January '23. So they
17 do not cover the time period when Ms. McNamara
18 supposedly accessed the Google Drive.

19 Does BCS have those logs during that time
15:12:57 20 period?

21 MR. SONG: Objection; compound and vague,
22 ambiguous and unintelligible.

23 BY MR. TATE:

24 Q Do you understand my question, Mr. Jensen?

15:13:10 25 I'm happy to rephrase.

15:13:14 1 A I think you garbled the date when you
2 first said it, but...

3 Q Let's try again.

4 A Okay.

15:13:22 5 Q The earliest Google Drive log that has
6 been produced is July 2022.

7 A Okay.

8 Q Does BCS have Google Drive logs before
9 July 2022?

15:13:35 10 A Not that I know of.

11 Q When you were doing your investigation, is
12 there a reason why you didn't preserve the Google
13 Drive logs?

14 A The investigation that I conducted ended
15:13:52 15 when we found the domain name was stolen. There
16 wasn't much to do after that with the scope of that
17 investigation.

18 Now, if at the time I had been asked to
19 also investigate Google Drive, then there would have
15:14:09 20 been a basis to preserve those logs, as you say, but
21 at the time I wasn't investigating Google Drive.

22 Q Right. But there is an allegation that
23 Ms. McNamara unlawfully accessed the Google Drive.
24 So I'm trying to figure out what efforts BCS took to
15:14:29 25 preserve evidence of that allegation.

15:14:31 1 Are you aware of any efforts of BCS to
2 preserve any evidence of that allegation?

3 A No.

4 Q BCS contends that Ms. McNamara also
15:14:45 5 accessed the AdWords account. We looked at a
6 special interrogatory response that had a log. Are
7 you aware of BCS having any other AdWord logs?

8 A No, I'm not aware of anything that hasn't
9 been submitted into evidence.

15:15:05 10 Q Do you know where those Google AdWord logs
11 would be stored today?

12 A Where they would be stored? So, I mean,
13 Google AdWord logs are going to come directly from
14 the tool. So my expectation is I would have to log
15:15:25 15 into the Google AdWords control console and look for
16 logs.

17 Q Do you know how long Google maintains
18 those logs for?

19 A Well, I threw out the number six months
15:15:36 20 earlier, but it sounds like I was wrong about that.
21 So I'm inclined to say six months, but perhaps it's
22 longer, perhaps it's not that long.

23 Q Right. But the point is your expectation
24 is if you were to try to get those logs today, that
15:15:52 25 you wouldn't be able to get logs going back to the

15:18:44 1 but nslookup is trustworthy. So as I recall, I did
2 it both ways to confirm I was getting consistent
3 results.

4 There's no reason that I took a screenshot
15:18:54 5 of one or the other. What I did was do it both ways
6 and then confirm that both results were consistent.
7 And then I grabbed a screenshot of one.

8 Q I think we discussed this earlier, that
9 there's communications relating to these allegations
15:19:13 10 against my client on Slack.

11 Did BCS ask Slack to put a litigation hold
12 on the Slack workspace?

13 MR. SONG: Objection; outside the scope of what
14 the witness is assigned to.

15:19:36 15 BY MR. TATE:

16 Q Go ahead.

17 A I don't know. We were given direction to
18 put a litigation hold on everything, to not delete
19 anything as soon as the process started, but I don't
15:19:49 20 know that anyone contacted Slack and made that
21 request.

22 Q Do you know if anyone contacted Google and
23 asked them to put a litigation hold on any of their
24 services?

15:20:02 25 A No.

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

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I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the deponent was first duly sworn by me. (Civ. Proc. 2025.320, 2025.540(a))

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record of the testimony given. (Civ. Proc. 2025.540(a))

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16 (Civ. Proc. 2025.320(c))

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18 Dated: May 1, 2023

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