

# **EXHIBIT 98**

**From:** Gibson, John <John.Gibson@us.dlapiper.com>  
**Sent time:** 10/17/2023 02:42:48 PM  
**To:** Adam Tate; Lueddeke, Jason <Jason.Lueddeke@us.dlapiper.com>; Kiker, Dennis <Dennis.Kiker@us.dlapiper.com>  
**Cc:** Catherine Close; Adam J Schwartz <adam@ajschwartzlaw.com>; Bekah Chamberlin  
**Subject:** RE: Meet-and-Confer Communications as to MSJ

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Hi Adam,

Thank you for the meet-and-confer call on Thursday, October 12. As a follow-up to the grounds you articulated for defendants' proposed MSJ, we have revisited the allegations in the complaint.

*First*, the complaint does *not* allege that Defendant Whiteley made or attempted unauthorized access of any account other than the BCS website or BCS's Google accounts to cause that website to be deindexed. Instead, it alleges that Mr. Whitely "access[ed] BCS's Google accounts to cause the website to be deindexed" and "accessed BCS's Website without permission and caused it to be deindexed." *E.g.*, Paragraphs 56 and 68. To the extent that the phrase "including but not limited to" in Paragraph 56 might be confusing, BCS is willing to remove that phrase from the complaint and generally amend the complaint to clarify that BCS does not allege Mr. Whitely attempted or obtained unauthorized access to any other accounts.

*Second*, although there is at least circumstantial evidence that Defendant McNamara attempted unauthorized access of accounts other than the BCS website and/or denied BCS access to those accounts, BCS is willing to amend the complaint to allege that Ms. McNamara attempted unauthorized access of only the BCS website and/or BCS's Google accounts to cause that website to be deindexed.

As we think you have seen, there is direct evidence of such unauthorized access attempts to the BCS website and/or BCS's Google accounts by both defendants.

Please let us know whether defendants will stipulate to the above-described amendments to narrow the complaint or whether BCS will need to move the Court for leave to amend.

Best,

John

John Samuel Gibson  
Partner

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**From:** Adam Tate <Adam@jbblaw.com>  
**Sent:** Friday, October 6, 2023 9:05 AM  
**To:** Lueddeke, Jason <Jason.Lueddeke@us.dlapiper.com>; Gibson, John <John.Gibson@us.dlapiper.com>; Kiker, Dennis <Dennis.Kiker@us.dlapiper.com>  
**Cc:** Catherine Close <cac@jbblaw.com>; Adam J Schwartz <adam@ajschwartzlaw.com>; Bekah Chamberlin <Bekah@jbblaw.com>  
**Subject:** RE: Settlement Discussions

Sorry, I meant to say telephonic meet and confer.  
The parties are obligated to conduct a telephonic meet and confer to “discuss thoroughly” the substance of a motion before the motion can be filed. (L.R. 7-3.) A significant portion of the motion will argue that BCS has no evidence supporting its claims. Accordingly, to be able to discuss the motion thoroughly, I need you to be able to tell me during the conference what claims BCS are still pursuing and what evidence supposedly supports them.

What time can you speak on Monday?

-Adam

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**From:** Lueddeke, Jason <[Jason.Lueddeke@us.dlapiper.com](mailto:Jason.Lueddeke@us.dlapiper.com)>  
**Sent:** Friday, October 06, 2023 8:48 AM  
**To:** Adam Tate <[Adam@jbblaw.com](mailto:Adam@jbblaw.com)>; Gibson, John <[John.Gibson@us.dlapiper.com](mailto:John.Gibson@us.dlapiper.com)>; Kiker, Dennis <[Dennis.Kiker@us.dlapiper.com](mailto:Dennis.Kiker@us.dlapiper.com)>  
**Cc:** Catherine Close <[cac@jbblaw.com](mailto:cac@jbblaw.com)>; Adam J Schwartz <[adam@ajschwartzlaw.com](mailto:adam@ajschwartzlaw.com)>; Bekah Chamberlin <[Bekah@jbblaw.com](mailto:Bekah@jbblaw.com)>  
**Subject:** RE: Settlement Discussions

Adam,

I think we both know that is not what I said. Your September 15 emails draws various inferences about BCS’s allegations and the evidence, and asks for our confirmation that those inferences are correct. I do not believe we have any obligation to “clarify” BCS’s claims, which have survived the pleading stage. You are free to file a motion for summary judgment and make whatever arguments you want.

I am having a medical procedure today and am unavailable to meet and confer. In any event, I don’t understand what the IDC is for. What is the dispute and what is the authority supporting your request?

Jason

Jason Taylor Lueddeke  
Associate

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**From:** Adam Tate <[Adam@jbblaw.com](mailto:Adam@jbblaw.com)>  
**Sent:** Thursday, October 5, 2023 11:28 AM  
**To:** Lueddeke, Jason <[Jason.Lueddeke@us.dlapiper.com](mailto:Jason.Lueddeke@us.dlapiper.com)>; Gibson, John <[John.Gibson@us.dlapiper.com](mailto:John.Gibson@us.dlapiper.com)>; Kiker, Dennis <[Dennis.Kiker@us.dlapiper.com](mailto:Dennis.Kiker@us.dlapiper.com)>  
**Cc:** Catherine Close <[cac@jbblaw.com](mailto:cac@jbblaw.com)>; Adam J Schwartz <[adam@ajschwartzlaw.com](mailto:adam@ajschwartzlaw.com)>; Bekah Chamberlin <[Bekah@jbblaw.com](mailto:Bekah@jbblaw.com)>  
**Subject:** RE: Settlement Discussions

 EXTERNAL MESSAGE

Jason,

I’m documenting the fact that DLA Piper apparently doesn’t even know which claims it is pursuing against my clients for purposes of the malicious prosecution we plan to bring. Please do give me a response, but either way, I need to schedule the telephonic IDC. What is your availability tomorrow?

-Adam

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**From:** Lueddeke, Jason <[Jason.Lueddeke@us.dlapiper.com](mailto:Jason.Lueddeke@us.dlapiper.com)>  
**Sent:** Wednesday, October 04, 2023 8:39 PM

To: Adam Tate <[Adam@jbblaw.com](mailto:Adam@jbblaw.com)>; Gibson, John <[John.Gibson@us.dlapiper.com](mailto:John.Gibson@us.dlapiper.com)>; Kiker, Dennis <[Dennis.Kiker@us.dlapiper.com](mailto:Dennis.Kiker@us.dlapiper.com)>  
Cc: Catherine Close <[cac@jbblaw.com](mailto:cac@jbblaw.com)>; Adam J Schwartz <[adam@ajschwartzlaw.com](mailto:adam@ajschwartzlaw.com)>; Bekah Chamberlin <[Bekah@jbblaw.com](mailto:Bekah@jbblaw.com)>  
Subject: RE: Settlement Discussions

Thanks Adam. We need time to consider your email and confer with our client regarding the claims at issue. We intend to respond next week once we are able to do so.

Jason

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Associate

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From: Adam Tate <[Adam@jbblaw.com](mailto:Adam@jbblaw.com)>  
Sent: Wednesday, October 4, 2023 1:08 PM  
To: Gibson, John <[John.Gibson@us.dlapiper.com](mailto:John.Gibson@us.dlapiper.com)>; Lueddeke, Jason <[Jason.Lueddeke@us.dlapiper.com](mailto:Jason.Lueddeke@us.dlapiper.com)>  
Cc: Catherine Close <[cac@jbblaw.com](mailto:cac@jbblaw.com)>; Adam J Schwartz <[adam@ajschwartzlaw.com](mailto:adam@ajschwartzlaw.com)>; Bekah Chamberlin <[Bekah@jbblaw.com](mailto:Bekah@jbblaw.com)>  
Subject: RE: Settlement Discussions

 EXTERNAL MESSAGE

John,

Thank you for your continued efforts to resolve this matter. My clients are reviewing BCS's offers and I will give you a response as soon as I am able.

In the interim, without jeopardizing settlement discussions, I would like to conduct the telephonic meet and confer conference for the MSJ's this week. I propose that we hold the conference either immediately before or immediately after tomorrow's IDC. Please let me know if that works for you and Jason. As I explained in the attached email, one of the primary things I would like to ascertain is what claims BCS is still pursuing against each of my clients. For example, if BCS is abandoning its claim that that Whiteley supposedly "changed the content of the website," it seems like a waste of everyone's time for us to brief that topic.

-Adam

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