

1 Dirk O. Julander, Bar No. 132313
 2 *doj@jbblaw.com*
 3 Catherine A. Close, Bar No. 198549
 4 *cac@jbblaw.com*
 5 M. Adam Tate, Bar No. 280017
 6 *adam@jbblaw.com*
 7 JULANDER, BROWN & BOLLARD
 8 9110 Irvine Center Drive
 9 Irvine, California 92618
 10 Telephone: (949) 477-2100
 11 Facsimile: (949) 477-6355
 12 Attorneys for Defendants
 13 KATHERINE MCNAMARA and
 14 JEREMY WHITELEY

15
 16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**
 18

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

21
 22 Plaintiff,

23 vs.

24 KATHERINE MCNAMARA, an
 25 Individual; JEREMY WHITELEY, an
 26 individual; and DOES 1 through 50,
 27 inclusive,

28 Defendants.

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

**DECLARATION OF M. ADAM
 TATE IN SUPPORT OF MOTION
 FOR SUMMARY JUDGMENT OR
 IN THE ALTERNATIVE PARTIAL
 SUMMARY JUDGMENT**

Date: January 2, 2024

Time: 10:00 a.m.

Crtrm: 690

[Assigned to the Hon. Maria A. Audero]





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DECLARATION OF M. ADAM TATE

I, M. ADAM TATE, hereby declare and state under penalty of perjury the following facts:

1. I am an attorney licensed to practice before this Court. I am a partner at the law firm of Julander, Bown & Bollard, the attorneys of record for Defendants KATHERINE MCNAMARA (“McNamara”) and JEREMY WHITELEY (“Whiteley;” collectively “Defendants”) in the above-captioned action. I have personal knowledge of the following facts and, if called upon to testify, I can and will competently testify thereto:

2. On March 21, 2023, I took the deposition of Vanessa Hughes, BCS’s Board President, in her capacity as a Person Most Qualified for BCS. True and correct copies of the cited portions of her Certified deposition transcript are attached collectively to the Index of Exhibits as **Exhibit 45**.

3. On March 31, 2023 I took the deposition of former BCS volunteer and Chief Operating Officer, Bobby Cook. True and correct copies of the cited portions of his Certified deposition transcript are attached collectively to the Index of Exhibits as **Exhibit 46**.

4. On March 31, 2023 I took the deposition of former BCS volunteer and Chief Communications Officer, Noelle Beauregard. True and correct copies of the cited portions of her Certified deposition transcript are attached collectively to the Index of Exhibits as **Exhibit 47**.

5. On April 14, 2023 I took the deposition of BCS’s Chief Information Security Officer, Jesse Jensen, as a Person Most Qualified for BCS. True and correct copies of the cited portions of his Certified deposition transcript are attached collectively to the Index of Exhibits as **Exhibit 48**.



1 6. On April 20, 2023 I took the deposition of former BCS volunteer and
2 board member, William Boyles, Jr. True and correct copies of the cited portions of
3 his Certified deposition transcript are attached collectively to the Index of Exhibits
4 as **Exhibit 49**.

5 7. On July 18, 2023, I took the deposition of Chelsea Filer, also known as
6 Chelsea Papciak. True and correct copies of the cited portions of her Certified
7 deposition transcript are attached collectively to the Index of Exhibits as **Exhibit 50**.

8 8. On June 14, 2022 my office propounded a First Set of Interrogatories to
9 BCS on behalf of McNamara. After granting extensions of time to respond, on
10 August 5, 2022, my office was served with Plaintiff Breaking Code Silence’s
11 Responses to Defendant Katherine McNamara’s First Set of Interrogatories from
12 counsel for BCS. A true and correct copy of BCS’s Responses to Defendant
13 Katherine McNamara’s First Set of Interrogatories, with the interrogatories
14 incorporated into the responses, is attached to the Index of Exhibits as **Exhibit 51**.

15 9. After “meeting and conferring” regarding BCS’s initial responses to
16 McNamara’s First Set of Interrogatories, on December 30, 2022, my office was
17 served with Plaintiff Breaking Code Silence’s Amended Responses to Defendant
18 Katherine McNamara’s First Set of Interrogatories from counsel for BCS. A true
19 and correct copy of BCS’s Amended Responses to Defendant Katherine
20 McNamara’s First Set of Interrogatories, with the interrogatories incorporated into
21 the responses, is attached to the Index of Exhibits as **Exhibit 52**.

22 10. On August 12, 2022, Second Set of Requests for Admissions to BCS
23 on behalf of McNamara. After granting an extension of time to respond, on
24 September 30, 2022, my office was served with Plaintiff Breaking Code Silence’s
25 Responses to Defendant Katherine McNamara’s Second Set of Requests for
26 Admission from counsel for BCS. A true and correct copy of BCS’s Responses to
27 Defendant Katherine McNamara’s Second Set of Requests for Admissions, with the
28 requests incorporated into the responses, is attached to the Index of Exhibits as



1 **Exhibit 53.**

2 11. On August 12, 2022, my office propounded a First Set of
3 Interrogatories to BCS on behalf of Whiteley. After granting extensions of time to
4 respond, and “meeting and conferring” regarding BCS’s initial responses, on
5 October 31, 2022, my office was served with Plaintiff Breaking Code Silence’s
6 Supplemental Responses to Defendant Jeremy Whiteley’s First Set of
7 Interrogatories from counsel for BCS. A true and correct copy of BCS’s
8 Supplemental Responses to Defendant Jeremy Whiteley’s First Set of
9 Interrogatories, with the interrogatories incorporated into the responses, is attached
10 to the Index of Exhibits as **Exhibit 54.** This document was also marked as
11 Deposition Exhibit 36 and discussed during the deposition of Jesse Jensen.

12 12. On January 4, 2023, my office Propounded a Third Set of Requests for
13 Production of Documents on BCS on behalf of Whiteley. After granting extensions
14 of time to respond, and “meeting and conferring” regarding BCS’s initial responses,
15 on March 10, 2023, my office was served with Plaintiff Breaking Code Silence’s
16 First Amended Responses to Defendant Jeremy Whiteley’s Third Set of Requests
17 For Production from counsel for BCS. A true and correct copy of BCS’s First
18 Amended Responses to Defendant Jeremy Whiteley’s Third Set of Requests For
19 Production, with the requests incorporated into the response, is attached to the Index
20 of Exhibits as **Exhibit 55.** In response to Request No. 31 which sought documents
21 reflecting the amounts paid to the BCS employees/volunteers/agents investigating
22 the allegations in the Complaint, BCS responded, “Plaintiff is unaware of any
23 documents responsive to this request.”

24 13. In response to Whiteley’s Request for Production of Documents, No.
25 32 which sought documents evidencing the work performed by BCS’s lawyers in
26 connection with investigating the allegations in the Complaint, BCS produced an
27 Excel Spreadsheet reflecting the actions taken by BCS’s attorneys as part of the
28 investigation prior to filing the Complaint, the dates of each task, and the fees

1 incurred. The spreadsheet produced was Bates stamped BCS_0770224 and is
2 designated as **Exhibit 56**. Because the spreadsheet was designated as “Confidential”
3 under the terms of the Protective Order, it is lodged concurrently herewith
4 conditionally under seal in connection with the Motion to Seal. A true and correct
5 copy of the February 22, 2023 letter I received from BCS’ counsel, Tamany Vincent
6 Bentz, advising that the spreadsheet was being produced in response to Whiteley’s
7 Request for Production (Set 3) No. 32 is attached to the Index of Exhibits as **Exhibit**
8 **57**. In her letter, Ms. Bentz also advised that “[w]ith respect to RFP No. 29 and 31,
9 there are not any documents responsive to your requests.”

10 14. On April 28, 2023, my office Propounded a Third Set of Interrogatories
11 on BCS on behalf of Whiteley. A true and correct copy of the screenshot that was
12 attached as Exhibit 1 to the third set of interrogatories, which was originally
13 produced by BCS designated as “Confidential,” but later downgraded to not
14 confidential and Bates stamped BCS_0777206, is attached to the Index of Exhibits
15 as **Exhibit 58**. **Exhibit 1** to the Index of Exhibits is a version of the same screenshot
16 that was produced by Noelle Beauregard in response to a subpoena issued by my
17 office, and is a more legible version of the same document. On May 30, 2023, my
18 office was served with Plaintiff Breaking Code Silence’s Responses to Defendant
19 Jeremy Whiteley’s Third Set of Interrogatories from counsel for BCS. A true and
20 correct copy of BCS’s Responses to Defendant Jeremy Whiteley’s Third Set of
21 Interrogatories, with the requests incorporated into the response, is attached to the
22 Index of Exhibits as **Exhibit 59**.

23 15. Attached to the Index of Exhibits as **Exhibit 65** is a true and correct
24 copy of Deposition Exhibit 9 which was authenticated and discussed during the
25 depositions of Jesse Jensen and Noelle Beauregard.

26 16. On January 13, 2023, my office was served with Plaintiff Breaking
27 Code Silence’s Second Amended Responses to Defendant Katherine McNamara’s
28 First Set of Interrogatories. A true and correct copy of BCS’s Second Amended



1 Responses to Defendant Katherine McNamara’s First Set of Interrogatories, with the
2 interrogatories incorporated into the responses, is attached to the Index of Exhibits
3 as **Exhibit 66**.

4 17. Attached to the Index of Exhibits as **Exhibit 67** is a true and correct
5 copy of Deposition Exhibit 23 which was authenticated and discussed during the
6 deposition of Noelle Beauregard at Exhibit 47, pp. 48:22-50:17.

7 18. Attached to the Index of Exhibits as **Exhibit 68** is a true and correct
8 copy of Deposition Exhibit 24 which was authenticated and discussed during the
9 deposition of Noelle Beauregard at Exhibit 47, pp. 50:18-52:3.

10 19. Attached to the Index of Exhibits as **Exhibit 69** is a true and correct
11 copy of Deposition Exhibit 26 which was authenticated and discussed during the
12 deposition of Noelle Beauregard at Exhibit 47, pp. 53:22-54:20.

13 20. Attached to the Index of Exhibits as **Exhibit 70** is a true and correct
14 copy of Deposition Exhibit 27 which was authenticated and discussed during the
15 deposition of Noelle Beauregard at Exhibit 47, pp. 54:21-58:13.

16 21. Attached to the Index of Exhibits as **Exhibit 71** is a true and correct
17 copy of Deposition Exhibit 28 which was authenticated and discussed during the
18 deposition of Noelle Beauregard at Exhibit 47, pp. 58:14-60:2.

19 22. Attached to the Index of Exhibits as **Exhibit 72** is a true and correct
20 copy of Deposition Exhibit 29 which was authenticated and discussed during the
21 deposition of Noelle Beauregard at Exhibit 47, pp. 60:3-24.

22 23. Attached to the Index of Exhibits as **Exhibit 73** is a true and correct
23 copy of Deposition Exhibit 37 which was authenticated and discussed during the
24 deposition of Jesse Jensen at Exhibit 48, pp. 108:24-112:19.

25 24. Attached to the Index of Exhibits as **Exhibit 74** is a true and correct
26 copy of Deposition Exhibit 38 which was authenticated and discussed during the
27 deposition of Jesse Jensen at Exhibit 48, pp. 120:5-123:15.

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1 25. Attached to the Index of Exhibits as **Exhibit 75** is a true and correct
2 copy of Deposition Exhibit 39 which was authenticated and discussed during the
3 deposition of Jesse Jensen at Exhibit 48, pp. 124:6-126:19.

4 26. Attached to the Index of Exhibits as **Exhibit 76** is a true and correct
5 copy of Deposition Exhibit 56 which was authenticated and discussed during the
6 deposition of William Boyles, Jr. at Exhibit 49, pp. 59:14-61:18.

7 27. Attached to the Index of Exhibits as **Exhibit 22** is a true and correct
8 copy of a screenshot which was produced by BCS in discovery in this action and
9 Bates stamped BCS_0577327.

10 28. On November 14, 2023 I took the deposition of BCS’s Chief Executive
11 Officer, Jennifer Magill, as a Person Most Qualified for BCS. True and correct
12 copies of the cited portions of Volume 1 of her Certified deposition transcript are
13 attached collectively to the Index of Exhibits as **Exhibit 77**.

14 29. On November 15, 2023 I took the deposition of BCS’s Chief Executive
15 Officer, Jennifer Magill, as a Person Most Qualified for BCS. True and correct
16 copies of the cited portions of Volume 2 of her Certified deposition transcript are
17 attached collectively to the Index of Exhibits as **Exhibit 78**.

18 30. In response to discovery in this action, BCS produced only three sets of
19 Google Drive logs which covered the following dates: December 1 through 31, 2021
20 (downloaded in early 2022); January through February 2022 (downloaded in early
21 2022); and July 2022 through January 2023 (downloaded in January 2023). None of
22 the Google Drive logs produced by BCS in this action included the dates of the
23 alleged unauthorized access or exceeding authorized access in March 2022.

24 31. Attached to the Index of Exhibits as **Exhibit 83** is a true and correct
25 copy of BCS’s PayPal Records which were produced by BCS in discovery in this
26 action, with redactions, and Bates stamped BCS_0784813.

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1 32. Attached to the Index of Exhibits as **Exhibit 99** is a true and correct
2 copy of a screenshot which was produced by BCS in discovery in this action and
3 Bates stamped BCS_0573687.

4 33. Attached to the Index of Exhibits as **Exhibit 100** is a true and correct
5 copy of log which was produced by BCS in discovery in this action and Bates
6 stamped BCS_0751998.

7 34. Attached to the Index of Exhibits as **Exhibit 101** is a true and correct
8 copy of a log which was produced by BCS in discovery in this action and Bates
9 stamped BCS_0751994.

10 35. Attached collectively to the Index of Exhibits as **Exhibit 104** are true
11 and correct copies of BCS’s bank statements which were produced by BCS in the
12 currently-pending state court action entitled, *McNamara et al., v. Breaking Code*
13 *Silence, et al.*, Los Angeles Superior Court Civil Case No. 22STCV14977 (the
14 “State Action”). BCS and Defendants have agreed that documents produced in
15 discovery in the State Action may also be used in this action. (See Dkt. 136.)

16 36. Attached to the Index of Exhibits as **Exhibit 105** is a true and correct
17 copy of a document entitled BCS Donation History Spreadsheet which was
18 produced in the State Action.

19 37. Attached to the Index of Exhibits as **Exhibit 106** is a true and correct
20 copy of a spreadsheet which was produced by BCS in discovery in this action and
21 Bates stamped BCS_0574188.

22 38. Although certain exhibits attached to the Index of Exhibits are labeled
23 as “Confidential,” after conferring with BCS’s counsel, Dennis Kiker, BCS agreed
24 to de-designate Exhibits 13, 22, and 73-75, 99-101 and 106. Mr. Kiker likewise
25 agreed to de-designate all of the exhibits that are Bates stamped with the DEFEXP
26 prefix which were originally deemed “Confidential” by agreement of the parties.

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39. **Compliance With Local Rule 7-3:**

a. On August 23, 2023, I sent a letter to BCS’s counsel pursuant to Local Rule 7-3 outlining each of the issues raised in the Motion for Summary Judgment and the evidence and testimony that refutes BCS’s claims against Whiteley in this action. The August 23 letter invited BCS’s counsel to confer by phone and provide me with any factual disputes and evidence that would support BCS’ claims. A true and correct copy of my August 23 letter is attached to the Index of Exhibits as **Exhibit 95**.

b. On October 12, 2023, I participated in a telephone conference with BCS’s counsel, Jason Leuddeke, Dennis Kiker, and John Gibson. During the conference we discussed the substance of this Motion for Summary Judgment and any potential resolution that might be reached short of filing the motion. Unfortunately, we were unable to reach a resolution which would eliminate the necessity of the motion.

c. Notwithstanding, on October 17, 2023, I received an email from John Gibson of DLA Piper agreeing to narrow the claims/allegations in the Complaint to only specific computers/accounts. A true and correct copy of the October 17, 2023 email I received from Mr. Gibson is attached to the Index of Exhibits as **Exhibit 96**. Based on that agreement, the parties (through counsel) entered into a Joint Stipulation to Strike Allegations and Limit Claims. (Dkt. 146.) The Court entered an order on the Stipulation on October 26, 2023. (Dkt. 147.) This Motion for Summary Judgment is based on this stipulated limitation of claims.

1 I hereby declare under penalty of perjury under the laws of the United States
2 of America that the foregoing is true and correct.

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4 DATED this 22nd day of November 2023

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/s/ M. Adam Tate

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M. Adam Tate

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CERTIFICATE OF SERVICE

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

/s/ Helene P. Saller

Helene P. Saller

