

# **EXHIBIT 57**



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February 22, 2023

*VIA E-MAIL*

Dirk Julander  
Catherine A. Close  
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Julander, Brown & Bollard  
9110 Irvine Center Drive  
Irvine, CA 92618

**Re: *Breaking Code Silence v. McNamara et al.*, No. 2:22-cv-02052-MAA (C.D. Cal.)**

Dear Counsel:

We write in response to your February 10, 2023 letter regarding Plaintiff Breaking Code Silence's ("BCS" or "Plaintiff") responses to Defendant Jeremy Whiteley's ("Whiteley" and together with Katherine McNamara, "Defendants") Third Set of Requests for Production (the "RFPs"), and second amended responses to Defendant Katherine McNamara's First Set of Interrogatories (the "Interrogatories").

**I. BCS's Responses to RFP Nos. 29, 31 and 32**

As an initial matter, we disagree with your characterization of the scope of Interrogatory 9. As written, the Interrogatory seeks "harm" and "damages". While damages alleged in the Complaint include an investigation that occurred prior to the filing of the Complaint, among other things, we interpreted "harm" to include the attorney's fees that BCS would seek should it prevail under either the CFAA or CCDAFA. If you intended to limit the request to just damages plead in the Complaint, then you should have done so in the interrogatory.

With this clarification in mind, Plaintiff disagrees that it has waived privilege. A court in this circuit rejected the argument that by claiming damages associated with attorney's fees there has been a waiver over privileged statements in its billing statements. *See Sommer v. United States*, 2011 WL 4592788, at \*6 (S.D. Cal. Oct. 3, 2011) ("Plaintiff has not placed the attorney-client relationship directly at issue by including attorneys' fees as a measure of damages in this civil suit.").

Nonetheless, in response to RFP No. 32, Plaintiff will produce records that reflect the actions taken by attorneys as part of the investigation prior to filing the Complaint and the dates of each task. Plaintiffs will redact any portions of the records that reflect attorney opinion or work product, including work on this litigation since those items remain privileged or are claimed as the scope of damages. With



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respect to RFP No. 29 and 31, there are not any documents responsive to your requests. Plaintiff will supplement its RFP response to reflect this information.

## **II. BCS's Responses to RFP Nos. 34 and 38**

Upon diligent efforts, Plaintiff has been unable to access the Google Console Logs and Google Tag Manager version history described in RFP Nos. 34 and 38. Nonetheless, Plaintiff will continue to search for the records in order to confirm that the records are unavailable to the Plaintiff.

## **III. BCS's Response to RFP No. 39**

Plaintiff maintains that RFP No. 39 is overbroad and vague. RFP No. 39 requests all DNS records associated with the breakingcodesilence.com domain and website without any limitation. The request is inconsistent with the requirement under FRCP 26(b)(1), which outlines the scope of discovery as "relevant to any party's claim or defense and proportional to the needs of the case." On its face, RFP No. 39 is overbroad because there is no limitation on the DNS records. *See Sanchez Ritchie v. Energy*, 2015 WL 12914435, at \*2 (S.D. Cal. Mar. 30, 2015) ("[A] discovery request without any temporal or other reasonable limitation is objectionable on its face as overly broad."). Defendants omit any discussion in their letter as to how this request meets the proportionality requirement.

Furthermore, RFP No. 39 also suffers from ambiguity. The phrase "DNS Record" includes a broad array of information, and Defendants have not articulated what they intend in the request or in their letter. Given the uncertainty, it is difficult to determine what would be responsive to this request.

In an effort to compromise, Plaintiff asks that Defendants provide more clarification on what they mean by "DNS record." By providing more information, Defendants could help resolve Plaintiff's objection based on ambiguity.

This letter is not intended to be a complete recitation of BCS's rights, arguments, and remedies, all of which are expressly reserved.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tamany Bentz'.

Tamany Jean Vinson Bentz  
DLA PIPER LLP