

EXHIBIT 77

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Certified Copy

vs.)

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

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

VOLUME I

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF JENNIFER MAGILL
PERSON MOST KNOWLEDGEABLE FOR BREAKING CODE SILENCE

Date and Time: Tuesday, November 14, 2023
9:02 a.m - 12:38 p.m.

Location: Remotely
(Via Videoconference)

Reported By: Cailey Nelson, CSR No. 14133
Certified Shorthand Reporter

Job No. 28156

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The videotaped deposition of Jennifer Magill, taken on behalf of the Defendants, before Cailey Nelson, Certified Shorthand Reporter 14133, for the State of California, commencing at 9:02 a.m., Tuesday, November 14, 2023, taken via remote videoconference.

1 A I've already answered.

2 Q John, control your client here.

3 MR. GIBSON: Okay. There's no need to control my
4 client, but it is -- first, objection. Asked and
09:10 5 answered.

6 I think the question, Ms. Magill, though is -- is --
7 is the WordPress something you include in your
8 understanding of the back end?

9 THE WITNESS: Yes.

09:10 10 MR. GIBSON: Okay.

11 BY MR. TATE:

12 Q I'll represent to you that Jesse Jensen, who
13 was the PMK, testified that he looked for evidence that
14 my clients accessed the WordPress, and he was unable to
09:11 15 find any. Did Jesse Jensen tell you that?

16 MR. GIBSON: Objection. Again, we're going to have
17 a running objection to the extent that your testimony
18 would include attorney-client communications with BCS's
19 attorneys. I want you to exclude that from your answer.

09:11 20 THE WITNESS: Absolutely.

21 MR. GIBSON: But if you can answer otherwise, you
22 may.

23 THE WITNESS: Jesse Jensen, yes. And Mr. Gibson's
24 question asked if it included the WordPress, not was
09:11 25 limited to.

1 BY MR. TATE:

2 Q Okay. When did Jesse Jensen tell you that he
3 could not find any evidence that my clients accessed the
4 WordPress?

09:11 5 A I don't believe he used the exact language, but
6 it would have been sometime last spring.

7 Q Before you filed the lawsuit?

8 A He provided a comprehensive summary of his
9 understanding and his investigation before the lawsuit.

09:12 10 Q Understood. Let me be more specific in my
11 question. Did Jesse Jensen tell you before you filed
12 the lawsuit, that he could find no evidence that my
13 clients accessed the WordPress?

14 A I don't remember --

09:12 15 MR. GIBSON: Objection. Attorney-client privilege.
16 Objection. Attorney-client privilege, but again, we're
17 into an area here, Ms. Magill, where it's running up to
18 the lawsuit.

19 If there were conversations that involved BCS's
09:12 20 attorneys, I'm instructing you not to answer with regard
21 to that, but if you had a separate conversation with
22 Mr. Jensen not involving attorneys or communications
23 from or to attorneys, then you can answer on that.

24 Would you like to have the question again?

09:12 25 THE WITNESS: Sure.

1 BY MR. TATE:

2 Q Let me try it differently, one way that it
3 cannot implicate the attorney-client privilege.

4 When did Mr. Jensen tell you that my clients
09:13 5 did not access the WordPress?

6 A I do not recall the exact date last spring.

7 Q Was it before you filed the lawsuit?

8 A Yes. Anything he spoke about the WordPress,
9 again, I don't believe he used that exact language, but
09:13 10 yes, he provided us everything before the lawsuit.

11 Q Then -- and then you filed a complaint saying
12 that my clients accessed the back end of the BCS
13 website, despite what Jesse Jensen told you; correct?

14 A Correct. As I said, back end is not limited to
09:13 15 the WordPress.

16 Q What else does it include?

17 A I'm not the technical expert on this case.

18 Q Well, you're -- you just told me it does --
19 it's not limited to WordPress. What else does it
09:13 20 include?

21 A I'm not the technical expert --

22 MR. GIBSON: Objection. Let me make an objection.
23 Objection. Asked and answered. You can answer one more
24 time.

09:13 25 THE WITNESS: I'm not the technical expert on this

1 BY MR. TATE:

2 Q Did you provide your laptop to BCS's counsel or
3 eDiscovery vendor?

4 A Through remote access, yes.

09:22 5 Q Okay. And did they take an image of your
6 laptop?

7 A I don't know exactly what they did. They were
8 on it for several, several hours.

9 Q And when did you do this?

09:22 10 A I don't know the exact date.

11 Q Can you give me an estimate?

12 A No, sir.

13 Q Okay. Your declaration, for some reason, even
14 though the court ordered to do it, does not mention
09:22 15 Cloudways or WordPress backups. Do you know why that
16 is?

17 MR. GIBSON: Objection. Speculation. Also, calls
18 for attorney-client privileged communications.

19 BY MR. TATE:

09:22 20 Q Go ahead.

21 A I said no.

22 Q Okay. I'll represent to you that BCS has
23 provided Google -- Google Drive logs to us in discovery
24 that show you deleting backups of the website within the
09:22 25 window of the EDO. Why were you deleting those backups?

1 A Because they were already present.

2 Q Say that one more time, they were already
3 present?

4 A Our website is backed up in multiple locations.
09:23 5 I keep a recent set on my Google Drive as a backup of a
6 backup. They take up a large amount of information. So
7 the ones that were deleted are deleted as new ones come
8 in.

9 Q So you understood that you're under a court
09:23 10 order not to delete documents and you deleted them
11 anyway; correct?

12 MR. GIBSON: Objection. Misstates testimony.

13 THE REPORTER: I didn't hear the answer.

14 THE WITNESS: I deleted a copy.

09:23 15 THE REPORTER: Okay. Everyone please speak one at a
16 time.

17 BY MR. TATE:

18 Q And at the time you deleted them, you knew that
19 BCS was contemplating filing a lawsuit against my
09:23 20 clients; correct?

21 A I don't know exactly when they were -- the
22 copies were deleted.

23 Q Let me show you the next document in order.
24 We'll mark it as Exhibit 124.

09:24 25 //

1 BY MR. TATE:

2 Q Okay. Well, let's figure this out then. When
3 did BCS discover that the website was not appearing on
4 the -- on Google Search?

09:29 5 A I'm not the expert for this.

6 Q And when did you learn that BCS was not --
7 BCS's website was not appearing on Google Search?

8 A I don't remember the exact date.

9 Q How much time did you spend investigating the
09:29 10 alleged indexing?

11 A A year and a half ago, quite a bit. But it was
12 a year and a half ago.

13 Q Before you submitted this FBI request, how much
14 time did you spend investigating the issue?

09:29 15 A I don't remember the exact amount of hours, but
16 quite a bit.

17 Q And yet you got the dates wrong?

18 MR. GIBSON: Objection. Misstates testimony.
19 Speculation.

09:29 20 BY MR. TATE:

21 Q What's the status of this FBI complaint today?

22 A It's in the hands of the FBI. I don't know.

23 Q Do you know if it's still active?

24 A It's in the hands of the FBI. I do not know.

09:30 25 Q When's the last time you heard anything about

1 A Yes.

2 Q Okay. So let's try this again. BCS

3 acknowledges that McNamara registered the dot org domain
4 a year before BCS was incorporated; is that true?

09:33 5 A Mh-hmm.

6 Q Okay. And BCS acknowledges that McNamara paid
7 for the registration when she -- when she purchased it;
8 correct?

9 A Correct. When she purchased it under direction
09:33 10 from fellow BCS leadership team members.

11 Q And BCS doesn't contend that Ms. McNamara is
12 the only one that has ever paid for the domain
13 registration?

14 A I'm sorry, repeat the question.

09:33 15 MR. GIBSON: Objection. Vague.

16 BY MR. TATE:

17 Q Let me let me try a different way.

18 Ms. McNamara has been the one that has paid to renew the
19 registration every year; correct?

09:34 20 A To the best of my knowledge, yes. She's also
21 asked for reimbursement for that expense.

22 Q But she's not received it, has she?

23 A No. We've been decimated.

24 Q And you believe that Ms. McNamara has asked for
09:34 25 reimbursement of the dot org domain?

1 A Yes.

2 Q It indicates that you signed this document on
3 July 10th, 2021. Do you have any reason to dispute that
4 date?

09:37 5 A No.

6 Q And do you have any reason to dispute that
7 Ms. McNamara signed this agreement on July 4th, 2021?

8 MR. GIBSON: Objection. Speculation.

9 BY MR. TATE:

09:37 10 Q Go ahead.

11 A I said no.

12 Q So this document was signed after Jeremy
13 Whiteley had already resigned; correct?

14 A Yes.

09:37 15 Q And it was signed more than a year after
16 Ms. McNamara purchased the dot org domain; correct?

17 A Correct.

18 Q And what, if anything, did Ms. McNamara receive
19 in exchange for signing this volunteer agreement?

09:38 20 MR. GIBSON: Objection. Speculation. Calls for
21 legal conclusion. But you can answer.

22 THE WITNESS: Nothing, to my knowledge. It's a
23 volunteer agreement.

24 BY MR. TATE:

09:38 25 Q All right. So Ms. McNamara was not paid any

1 money for signing this agreement; correct?

2 A Correct.

3 Q And you're not aware of any other consideration
4 that she got?

09:38 5 MR. GIBSON: Objection. Legal conclusion.

6 BY MR. TATE:

7 Q Go ahead.

8 A Can you clarify? I'm not sure I understand
9 what you're asking.

09:38 10 Q So a consideration is a legal term to indicate
11 that she got something in return for signing this
12 agreement. Can you think of anything?

13 MR. GIBSON: Same objection.

14 THE WITNESS: Anything? That's quite vague. Do you
09:38 15 mean money, do you mean a position in the organization,
16 what exactly are you referring to?

17 BY MR. TATE:

18 Q Anything.

19 A I'm really not sure where this is going, what
09:39 20 you're asking.

21 MR. GIBSON: Yeah. Same -- same objection, and
22 vague and ambiguous as well.

23 BY MR. TATE:

24 Q Yeah, BCS didn't give Ms. McNamara any sort of
09:39 25 property for signing this agreement; correct?

1 A Not to the best of my knowledge.

2 Q Okay. This version of the volunteer agreement
3 that we're looking at, was it ever voted on or approved
4 by the board?

09:39 5 A This was two and a half years ago. I don't
6 remember. But I would assume so.

7 Q And what are you basing that assumption on?

8 A The legal documents that we produced,
9 developed, edited, et cetera, with our attorneys.

09:39 10 Q Okay. Do you know why there's no board member
11 meeting -- minute meetings that were produced in this
12 action indicating that this agreement was ever ratified?

13 MR. GIBSON: Objection. Speculation. Legal
14 conclusion.

09:39 15 THE WITNESS: Not sure.

16 BY MR. TATE:

17 Q Okay. Did Jeremy Whiteley ever sign the
18 volunteer agreement?

19 A Did he ever sign a volunteer agreement, or this
09:40 20 volunteer agreement?

21 Q A volunteer agreement.

22 A He signed an agreement, the same one all of us
23 did at the very beginning when the organization was
24 about to incorporate and incorporated in March --

09:40 25 Q What was the title of that agreement?

1 A It appears to be so.

2 Q Okay. And you received it on or about December
3 15th, 2021?

4 A It appears so.

10:03 5 Q And you understood that Ms. Moorman was telling
6 BCS that she would not be signing the assignment;
7 correct?

8 A Correct.

9 Q And you also understood that Ms. McNamara was
10:03 10 refusing to sign the assignment; correct?

11 A Appears so.

12 Q Okay. Can you think of a specific writing in
13 which BCS told Ms. McNamara that BCS owned the dot org
14 domain before the complaint was filed?

10:03 15 MR. GIBSON: Objection. Ambiguous as to timeframe.
16 Also, calls for speculation.

17 THE WITNESS: Well, I'm not sure I can point to an
18 exact date or exact statement at this point two and a
19 half years later.

10:04 20 BY MR. TATE:

21 Q Okay. Can you recall a specific conversation
22 with Ms. McNamara before the complaint was filed, in
23 which you told her the dot org domain belongs to BCS,
24 not you?

10:04 25 A I don't believe I told her that. She said

1 letters that your attorney sent to Ms. McNamara after
2 her resignation did not state that BCS was the owner of
3 the dot org domain?

4 MR. GIBSON: Objection. Speculation.

10:08 5 THE WITNESS: I don't know.

6 BY MR. TATE:

7 Q Okay. Do you understand that the party -- just
8 recently, the parties entered into a stipulation, which
9 limits the claims in this case to just those related to
10:08 10 the alleged deindexing of BCS's website?

11 A Yes.

12 Q Okay. And you understand that you were a
13 person that's been designated to talk to me about the
14 damages that BCS has allegedly suffered as a result of
10:08 15 that deindex?

16 A Yes.

17 Q Okay. Show you a document, which we will mark
18 as Exhibit 131.

19 Let me know when you have it opened.

10:09 20 (Exhibit 131, Amended Responses to
21 Katherine McNamara, was marked for
22 identification.)

23 THE WITNESS: Okay.

24 BY MR. TATE:

10:09 25 Q Okay. Can you turn to page 8?

1 not able to focus on their cases.

2 Q Okay. You said that the general organization
3 was harmed.

4 What did you mean by that?

10:11 5 A We were not able to be contacted through the
6 website, we were not able to have exposure to the
7 public, as planned with the Lifetime feature.

8 Q And how much money did BCS lose as a result of
9 that?

10:11 10 A Impossible to --

11 MR. GIBSON: Objection. I'm sorry. Objection.
12 Speculation. And calls for a legal conclusion.

13 BY MR. TATE:

14 Q Go ahead.

10:12 15 A Impossible to give a specific number.

16 Q Okay. Let's go through the special
17 interrogatory response. So the three things that you
18 identified, the first one is time spent by plaintiff's
19 employees/volunteers/agents.

10:12 20 At the time of the alleged deindexing, did BCS
21 have any employees?

22 A No.

23 Q Okay. And then you've identified three
24 persons. Dr. Hughes, yourself, and Jesse Jensen.

10:12 25 Do you see that?

1 A Mh-hmm.

2 Q And did BCS pay Dr. Hughes anything to
3 investigate the alleged deindexing?

4 A Dr. Hughes herself?

10:12 5 Q Right.

6 A No.

7 Q Did BCS pay you anything to investigate the
8 alleged deindexing?

9 A No. We are all volunteers for the
10:13 10 organization.

11 Q Okay. Did BCS pay Jesse Jensen anything to
12 investigate the alleged deindexing?

13 A We are all volunteers for the organization.

14 Q I appreciate that. Did you pay Jesse Jensen
10:13 15 anything?

16 A No.

17 Q And did BCS pay anyone anything to investigate
18 the alleged deindexing?

19 A Not at that time. To the best of my knowledge.

10:13 20 Q At some subsequent time, did BCS pay somebody
21 to investigate the alleged deindexing?

22 A I don't believe so. However, we are in a --
23 we're in litigation, and there's been multiple experts
24 and outside vendors, so.

10:13 25 MR. GIBSON: Yeah, objection. Calls for a legal

1 conclusion.

2 BY MR. TATE:

3 Q Did BCS pay for any of those experts?

4 A Again, not sure.

10:13 5 Q Did BCS pay for any of those vendors?

6 A Again --

7 MR. GIBSON: Objection. Speculation.

8 BY MR. TATE:

9 Q Okay. Well, is -- you're the person most
10:14 10 knowledgeable on BCS's damages. So speak on behalf of
11 the organization, is BCS aware of it having to pay any
12 of its experts?

13 A At what time for what?

14 Q At any time for anything related to the alleged
10:14 15 deindexing.

16 A I know we've had expenses related, but I don't
17 know exactly when and which vendors.

18 Q All right. What expenses has BCS personally
19 paid for?

10:14 20 A I don't know exactly when and which vendors.

21 Q Can you -- can you point me to one?

22 A Not that I -- know for sure enough to speak
23 specifically on.

24 Q Okay. So let me take you back to the week that
10:14 25 the alleged deindexing occurred.

1 BY MR. TATE:

2 Q That's fine. Let's do this. I've put into --
3 copy of the complaint into the chat. Can you please
4 turn to page 10? And locate footnote number one.

10:17 5 Ms. Magill, you're muted.

6 A For some reason, the document is not opening.
7 It will download, but when I click to open, it doesn't
8 open.

9 Q That's okay. Let's do this.

10:17 10 A There we go.

11 Q Can you see -- can you see my screen?

12 A I've got it. It was just downloading. It took
13 a while.

14 Q Do you see the footnote on page 10?

10:17 15 A Oh, yes.

16 Q Okay. So the footnote states BCS only knew its
17 website had been deindexed by accident. One of its
18 current board members was making changes to the site and
19 wanted to see how the changes were reflected in a Google
10:17 20 search. Once he searched, she could not find the site.

21 My question is, who is the person referenced in
22 this -- in this footnote?

23 A That'd be Vanessa Hughes.

24 Q Okay. What changes was Dr. Vanessa Hughes
10:18 25 making to the website on or about March 11th?

1 A I don't know exactly.

2 Q You were aware that Ms. Hughes was making
3 changes to the website during that week that BCS
4 discovered that it had allegedly been deindexed;
10:18 5 correct?

6 A Are you referring to Dr. Hughes?

7 Q Yes.

8 A Can you repeat the question, please.

9 Q Yeah. You're aware that Ms. Hughes was making
10:18 10 changes to the website --

11 A Can you change the question if you're talking
12 about Dr. Hughes?

13 Q I'm going to refer to her as Ms. Hughes.

14 You knew that Ms. Hughes was making changes to
10:18 15 the website during the week that BCS discovered that its
16 website was not appearing on Google Search; correct?

17 MR. GIBSON: Objection. I just want to fair it out.
18 Because this is in the complaint but it also occurred in
19 real life, there's a distinction between anything you
10:19 20 learned, Ms. Magill, from conversations with BCS's
21 attorney's communications. On the one hand, which I
22 object to and instruct you not to answer, but on the
23 other hand, something you learned aside from the
24 attorneys may be communications directly with Dr. Hughes
10:19 25 not involving the attorneys or the attorney's thought

1 Q Okay. Put this document aside.

2 Do you recall if it was daytime or nighttime
3 when you discovered the -- that the website was not
4 appearing on Google Search?

10:22 5 A I don't remember.

6 Q Okay. And you don't remember the date either;
7 correct?

8 A I don't remember the exact date, no.

9 Q Okay. I'll represent to you that Jesse Jensen
10:22 10 testified that he was able to get the website back on
11 Google Search by midafternoon on March 12th. Does that
12 fit your understanding?

13 A If Jesse said that.

14 Q So as far as I can tell, at least, the website
10:22 15 was not appearing on Google Search for less than 24
16 hours. Do you have any reason to dispute that?

17 A I believe that it was longer than 24 hours.
18 I'm not sure because -- (indiscernible due to
19 cross-talk) -- we were going back and forth with the
10:23 20 defendants to get ownership of the website.

21 Q Why do you believe it was longer than 24 hours?

22 A Because multiple days we had to take turns, and
23 with legal search counsel trying to receive ownership
24 that kept being designated to Mr. Whiteley, and then to
10:23 25 e-mails at White House dot gov.

1 Q Okay. I understand -- I think I know what
2 you're referring to. Ownership was being delegated on
3 the Google webmaster central. My question's more
4 specific.

10:23 5 Do you know what period of time the website was
6 not appearing on the Google Search?

7 A I don't know specifically.

8 Q BCS does not know specifically; correct?

9 MR. GIBSON: Objection. Calls for speculation. BCS
10:23 10 has produced numerous documents. Calls for speculation
11 from this witness.

12 MR. TATE: Yet she's the person most knowledgeable
13 on BCS's damages, and one of the allegations is that
14 they lost web traffic during some specified period of
10:24 15 time. And I'm trying to figure out what specified
16 period of time that is, and it sounds like BCS doesn't
17 know.

18 THE WITNESS: (Indiscernible due to cross-talk.)

19 MR. GIBSON: Objection -- objection. Wait, let me
10:24 20 make an objection.

21 Objection. Speculation. It's not a memory test.
22 There are lots of documents that can pen down the
23 timeframe. Speculation.

24 But you can answer.

10:24 25 THE WITNESS: I would refer you to the documents

1 A Yes, but I don't have to remember everything
2 specifically date by date, time by time, number by
3 number, as you're well aware.

4 Q BCS does not know, does it? As we sit here
10:26 5 today, at least, you cannot tell me?

6 A That's not what I said.

7 MR. GIBSON: Yeah, objection. Asked and answered.
8 Speculation. And, you know, it's inappropriate. There
9 have been hundred -- thousands of documents produced on
10:26 10 this issue, but same objection.

11 You can answer one more time.

12 BY MR. TATE:

13 Q Let me -- let me get a more clean question.
14 As the representative of BCS, can you tell me
10:27 15 today how much time Dr. Hughes spent investigating the
16 alleged deindexing from the moment she discovered the
17 issue, to when Jesse Jensen fixed the issue on March
18 12th?

19 MR. GIBSON: Objection. Speculation.

10:27 20 THE WITNESS: I'm not Dr. Hughes. I can't tell you.

21 BY MR. TATE:

22 Q Okay. Same question for yourself. How much
23 time did you spend investigating the alleged deindexing
24 from the moment you learned that it was not appearing on
10:27 25 Google Search, to the moment that Jesse Jensen fixed the

1 A Sure.

2 Q Okay. So from the evening of March 11th to
3 midafternoon on March 12th when Jesse Jensen got the
4 website appearing on the web -- appearing on Google
10:30 5 Search again, how much time did Jesse Jensen spend
6 investigating the alleged deindexing?

7 MR. GIBSON: Objection. Speculation. For all these
8 questions, if -- if you have an estimate, I don't think
9 there's been a description of the difference between
10:30 10 estimate and speculation, but -- but if you can give an
11 estimate, that's okay to answer.

12 THE WITNESS: Okay. I'd say the majority of the
13 hours within those two events.

14 BY MR. TATE:

10:30 15 Q So your testimony is that for each of you, you
16 guys worked all the way through the night and into the
17 next day without sleep?

18 A I said the majority. Not all.

19 Q Okay. But you don't know -- you can't define
10:30 20 it any more than that?

21 A It was a year and a half ago.

22 Q Okay. So these hours that I see in this
23 special interrogatory response, what are they referring
24 to?

10:31 25 MR. GIBSON: Objection. Speculation. Calls for

1 legal conclusion, and attorney-client privilege --
2 attorney-client privilege and work product.

3 BY MR. TATE:

4 Q Go ahead.

10:31 5 A It's based on the data received by our
6 attorneys.

7 Q Well, let me ask you this:

8 When you drafted this response, you were still
9 alleging all sorts of other things against, particularly
10:31 10 Ms. McNamara, relating to the TikTok, the Instagram, et
11 cetera; is that correct?

12 A At the time, that's what reflected in the
13 complaint.

14 Q Okay. And so the time -- the hours that you
10:31 15 gave me here, 324 for Dr. Hughes, 368 for yourself, and
16 112 for Jesse Jensen, that's not just limited to the
17 deindexing issue, is it?

18 A I don't know for sure.

19 Q Okay. Can you tell me how much time Dr. Hughes
10:32 20 spent investigating the deindexing issue?

21 A Already answered this.

22 MR. GIBSON: Yeah, objection. Asked and answered.

23 I think it's vague as to timeframe, is the problem.

24 BY MR. TATE:

10:32 25 Q Yeah, this -- this has no timeframe imposed on

1 it, period.

2 How much time did Dr. Hughes spend

3 investigating the alleged deindexing as opposed to the

4 other allegations that used to be in the complaint?

10:32 5 MR. GIBSON: Objection. Speculation.

6 THE WITNESS: I'm not Dr. Hughes. I don't know.

7 BY MR. TATE:

8 Q Okay. How much time did you spend

9 investigating the alleged deindexing, as opposed to the

10:32 10 other allegations in the complaint?

11 A I don't remember exactly, but I know the

12 majority of the hours listed in the interrogatories were

13 related to the deindexing.

14 Q Can you give me a ballpark of how many hours

10:32 15 you spent?

16 A I don't feel comfortable doing that accurately.

17 Q Can you give me a rough ballpark?

18 A I just said no.

19 Q Okay. How many hours did Jesse Jensen spend

10:33 20 investigating the alleged deindexing as opposed to other

21 issues?

22 MR. GIBSON: Objection. Speculation.

23 But you can answer if you know.

24 THE WITNESS: I'm not him.

10:33 25 //

1 BY MR. TATE:

2 Q Do you know?

3 A No. I'm not him.

4 Q Okay. So we don't know how much time

10:33 5 Dr. Hughes spent alleging -- investigating the alleged
6 deindexing, but what's the value of her time?

7 MR. GIBSON: Objection. Legal conclusion.

8 THE WITNESS: Can you rephrase?

9 BY MR. TATE:

10:33 10 Q Yeah. You're alleging that BCS should recover,
11 as damages, Dr. Hughes's time.

12 How much per hour should my clients have to pay
13 for her time?

14 MR. GIBSON: Objection. Speculation. Legal
10:33 15 conclusion. Calls for expert testimony from a lay
16 witness.

17 THE WITNESS: Yeah, I'm not the person to determine
18 that.

19 BY MR. TATE:

10:33 20 Q You are the person most knowledgeable, and BCS
21 does not have an expert. So if anyone's going to be
22 able to prove this, it's you. Otherwise, you're not
23 going to be able to prove any damages whatsoever.

24 So what's Ms. Hughes's hourly rate?

10:34 25 MR. GIBSON: Objection. Argumentative.

1 Speculation.

2 THE WITNESS: I'm not the person to determine that.

3 BY MR. TATE:

4 Q Okay. You don't know?

10:34 5 A I did not say that.

6 MR. GIBSON: Objection -- objection. Asked and
7 answered.

8 BY MR. TATE:

9 Q Do you know?

10:34 10 A I've already answered.

11 MR. GIBSON: Same objections.

12 BY MR. TATE:

13 Q I don't believe I've got an answer to my
14 question.

10:34 15 What -- BCS is attempting to recover damages
16 for Dr. Hughes' time. How much money should my clients
17 have to pay for that?

18 MR. GIBSON: Objection. Calls for a legal
19 conclusion, and speculation.

10:34 20 BY MR. TATE:

21 Q Go ahead.

22 A Same answer. I've already answered this
23 question.

24 Q You have not answered this question. And if
10:34 25 you don't know, tell me you don't know.

1 A I --

2 MR. GIBSON: Objection -- hold on.

3 Objection. Argumentative. Asked and answered.

4 I'll let you answer one more time, then we're going

10:35 5 to cut it off.

6 THE WITNESS: Same answer.

7 BY MR. TATE:

8 Q You have to answer the question.

9 A I have. You just don't like my answer.

10:35 10 MR. GIBSON: Yeah, same objections.

11 MR. TATE: John, do you really want a motion to
12 compel on this?

13 MR. GIBSON: Well, if you can ask the question one
14 more time, cleanly, let's try it from there.

10:35 15 BY MR. TATE:

16 Q BCS is seeking to recover damages for
17 Dr. Hughes's time.

18 What is the dollar amount of those damages?

19 MR. GIBSON: Same objections.

10:35 20 You can answer if you know.

21 THE WITNESS: I'm not the person to determine that.

22 BY MR. TATE:

23 Q Do you know?

24 MR. GIBSON: Objection. Asked and answered.

10:35 25 THE WITNESS: I'm not going to answer again.

1 MR. TATE: John, what do you want to do here?

2 MR. GIBSON: Yeah, I -- so the last question,
3 though, is, do you know, which is a little different
4 than what's the -- than the previous questions.

10:36 5 THE WITNESS: So.

6 MR. GIBSON: Yeah.

7 THE WITNESS: Do I know exactly what her exact rate
8 should be? No.

9 BY MR. TATE:

10:36 10 Q So you're not going to tell me?

11 MR. GIBSON: Well, she just answered it.

12 MR. TATE: She doesn't know? Sorry, she cut out. I
13 didn't hear the answer.

14 THE WITNESS: I cannot tell you exactly the exact
10:36 15 number for her rate. That's not my role, my knowledge,
16 my specialization.

17 BY MR. TATE:

18 Q For your time spent investigating the
19 deindexing, how much do my clients need to pay BCS for
10:36 20 your time?

21 MR. GIBSON: Same objections.

22 But you can answer.

23 THE WITNESS: It's not my specialty or expertise. I
24 can tell you what I value my time at, but I don't know
10:37 25 that that's legally what my time would be valued at.

1 BY MR. TATE:

2 Q Okay. What do you value your time at?

3 A At that point in my life?

4 Q Sure.

10:37 5 A Invaluable. I was at a safe house with my
6 daughter for much of this event. I needed to be
7 focusing on my daughter and my safety. I should not
8 have been focusing on this, but I had to. I can't even
9 put a price tag on that.

10:37 10 Q Understood, but you are the person most
11 knowledgeable for damages here, and BCS is trying to
12 recover money.

13 How much money should BCS recover for the time
14 that you spent investigating the deindexing?

10:37 15 MR. GIBSON: Same objections.

16 But you can answer.

17 THE WITNESS: Same answer. I'm not an expert on
18 that in a legal sense, and I've already given you my
19 personal valuation.

10:38 20 BY MR. TATE:

21 Q Okay. Jesse Jensen, how much time -- how --
22 what is the value of the time that Jesse Jensen spent
23 investigating the alleged deindexing?

24 MR. GIBSON: Same objections.

10:38 25 THE WITNESS: I don't know. It's not my expertise.

1 BY MR. TATE:

2 Q Okay. Just a second here. I'm just hunting
3 down the next exhibit.

4 You know what, before we go, looking back at
10:39 5 Exhibit 131, your -- your special interrogatory response
6 you have -- the second category of damages is time
7 incurred by plaintiff's lawyers.

8 Do you see that?

9 THE REPORTER: You're muted, Ms. Magill.

10:39 10 THE WITNESS: Thank you. Sorry. I said just one
11 moment. I'm finding the document again. You said
12 Exhibit 131?

13 BY MR. TATE:

14 Q Yes.

10:40 15 A Okay. And what was the question?

16 Q Okay. Just asking, do you see where it's
17 listing the time spent by plaintiff's lawyers?

18 A On page --

19 Q Six.

10:40 20 A Yes.

21 Q I'll represent to you that under the -- the
22 applicable law, you can recover time for investigating
23 an alleged unauthorized access, but not for litigating
24 it.

10:40 25 Do you understand that difference?

1 A Yes.

2 Q So of the 101.6 hours that Tamany Bentz spent,
3 how much was that investigating the alleged deindexing,
4 as opposed to litigating?

10:40 5 MR. GIBSON: Objection. Speculation. Also, invades
6 the attorney-client privilege. No doubt.

7 MR. TATE: Well, John, that's going to be a problem
8 then, right? Because either she's going to have to --
9 if she wants to recover these times, then she's going to
10:41 10 have to waive the privilege. You can't -- you can't
11 walk into trial and not let me ask these questions. So
12 either she has --

13 MR. GIBSON: Yeah.

14 MR. TATE: -- withdraw those as damages, which she
10:41 15 can do, or she's got to answer the questions on it.

16 MR. GIBSON: Yeah, we're not -- but not at the
17 deposition. We're not -- there's no need to, you know,
18 withdraw anything at the deposition.

19 MR. TATE: Then she has to -- then she has to --
10:41 20 then she has to waive the privilege.

21 MR. GIBSON: No. We're standing on the privilege.
22 That's something we can work out, you know, between the
23 attorneys later.

24 MR. TATE: All right. I guess we're going to have
10:41 25 to move to compel on this.

1 BY MR. TATE:

2 Q Do -- does BCS know of the 101.6 hours that
3 Jess -- Tamany Vinson Bentz spent, does BCS know how
4 much time that was spent investigating the deindexing?

10:41 5 MR. GIBSON: And objection. I just want to,
6 Ms. Magill, you to exclude from your answer anything you
7 learn from BCS's attorneys in this case or discussed
8 with BCS's attorneys. If you know of your own separate
9 knowledge apart from attorney-client communications, you
10:42 10 can answer.

11 THE WITNESS: I don't know apart from
12 attorney-client communications.

13 BY MR. TATE:

14 Q And to save time, that would be the same answer
10:42 15 if I went down for each one of the persons listed by
16 your attorneys; correct?

17 A Correct.

18 Q I believe that you testified that the majority
19 of the 368 hours listed in special interrogatory was
10:42 20 time that you spent investigating the deindexing;
21 correct?

22 A Let me verify that number.

23 Yes.

24 Q Okay. So in the 368 -- something less than
10:42 25 368, but the majority of that time, did you learn what a

1 A Yes.

2 Q Do you see the three errors listed?

3 A I see at the bottom where it says details,
4 status error, and there's three lines, yes.

10:46 5 Q Okay. Is it true that Ms. Beauregard sent you
6 this screenshot on or about March 14th?

7 A I don't remember the exact date.

8 Q Do you recall what you did during all of these
9 hours that you were investigating it to look into the
10:46 10 submitted URL marked "no index error"?

11 A I don't remember specifically.

12 Q Can you -- do you know what any -- do you know
13 if anybody looked into that issue?

14 A I don't know specifically, but I would be
10:46 15 pretty sure that, yes, we looked into everything that we
16 found that could possibly be related or help us figure
17 out what was going on.

18 BY MR. TATE:

19 Q The redirect error, can you recall what you did
10:46 20 to look into that error?

21 A I don't remember specifically.

22 Q Okay. Can you recall what anybody did to look
23 into that error?

24 A I don't remember specifically.

10:46 25 Q The submitted URL appears to list -- appears to

1 be a soft 404 error. What did you do to investigate
2 that error?

3 A I don't remember specifically.

4 Q What did anybody else do to investigate that
10:47 5 error?

6 A I don't remember specifically, and I'm not the
7 technical expert here.

8 Q But you're -- you're confident that BCS looked
9 into these errors; correct?

10:47 10 A Yes.

11 MR. GIBSON: Yeah, just a late objection that
12 Mr. Jensen was designated on a number of IT and
13 technical issues, I believe testified as to those.

14 MR. TATE: Yeah, but I'm -- I'm entitled to explore
10:47 15 as the damages expert the veracity of her claim that she
16 spent 300 hours looking into this.

17 BY MR. TATE:

18 Q So -- about your -- so my question was, you're
19 confident that BCS looked into each one of these issues;
10:47 20 correct?

21 A Correct.

22 Q Give me one second here.

23 A I'm going to step away for just a moment to
24 refill my water glass.

10:48 25 MR. TATE: Well, do you want to take -- it's been a

1 while. Why don't we take a ten-minute break?

2 THE WITNESS: I'd prefer to just get water and keep
3 going, but if others need a break.

4 MR. TATE: Go ahead. Take a -- let's take a
10:48 5 five-minute break then, and we'll come back in five
6 minutes.

7 THE VIDEOGRAPHER: We are off the record at
8 10:48 a.m.

9 (Recess.)

10:55 10 THE VIDEOGRAPHER: We are on the record at 10:55
11 a.m.

12 BY MR. TATE:

13 Q Ms. Hughes -- Ms. Magill, I've put into chat a
14 document, which we'll mark as Exhibit 133. All I need
10:55 15 you to do is look at Exhibit 133 and, you know, verify
16 that it's essentially the same exhibit as 132. The
17 difference is this is the -- you know, poor quality
18 version that BCS produced, as opposed to the high
19 quality version that Ms. Beauregard produced.

10:56 20 A It appears to be.

21 Q Okay. Let me show you now Exhibit 134.
22 (Exhibit 134, BCS Response to Whiteley's
23 Third Set of Interrogatories, was marked
24 for identification.)

10:56 25 //

1 BY MR. TATE:

2 Q Do you have Exhibit 134 open?

3 A Yes.

4 Q Okay. These are more special interrogatory
10:56 5 responses. These ones, though, are verified by Jesse
6 Jensen, as you can see.

7 Do you see that?

8 A Yes.

9 Q And did you review these discovery responses
10:56 10 before they were submitted to me?

11 A I don't believe so.

12 Q Did Jesse Jensen come and ask you about how to
13 answer these questions?

14 MR. GIBSON: Objection. Just exclude from your
10:57 15 answer if that was in the context of an attorney-client
16 communication, but if you did that separately without --
17 without involving attorney communications, you can
18 answer.

19 THE WITNESS: Yeah, I don't -- remember any
10:57 20 conversations regarding it outside of conversations with
21 our attorney.

22 BY MR. TATE:

23 Q Okay. Special interrogatory number 13, I asked
24 what BCS did to investigate the soft 404 error that you
10:57 25 just told me you were certain that was investigated, and

1 the answer is, plaintiff's response, that no
2 investigation was done.

3 So which one is inaccurate, the special
4 interrogatory responses, or your testimony?

10:57 5 MR. GIBSON: Objection. Argumentative and misstates
6 testimony.

7 BY MR. TATE:

8 Q Go ahead.

9 A Restate the question, please.

10:58 10 BY MR. TATE:

11 Q So in the special interrogatories, BCS stated
12 under penalty of perjury that it did not investigate the
13 soft 404 error. That is the exact opposite of what you
14 just told me, so which -- which statement is correct?

10:58 15 MR. GIBSON: Same objections.

16 THE WITNESS: Well, I don't believe it's the exact
17 opposite.

18 BY MR. TATE:

19 Q Okay. Did BCS investigate the soft 404 error?

10:58 20 A I don't know. I told you I did not know
21 specifically.

22 Q And special interrogatory number 14, BCS said
23 it did not investigate the redirect error.

24 Did BCS investigate the redirect error?

10:58 25 MR. GIBSON: Same objections.

1 THE WITNESS: Same response. I already told you I
2 don't know specifically. Jesse is the expert on this.

3 BY MR. TATE:

4 Q Well, let me ask you. Did you investigate the
10:58 5 redirect error?

6 A Not to my recollection.

7 Q Okay. And did you investigate the soft 404
8 error?

9 A I thought I already answered this, but.

10:59 10 MR. GIBSON: Yeah, same -- same objections.

11 BY MR. TATE:

12 Q So going on to special interrogatory number 15,
13 the submitted URL marked no index, once again, the BCS
14 response is that no investigation was done into that
10:59 15 topic.

16 Did BCS investigate that topic?

17 MR. GIBSON: Same objections.

18 THE WITNESS: And same answer.

19 BY MR. TATE:

10:59 20 Q Which is?

21 THE WITNESS: Ms. Nelson, if you could read
22 back my previous answer.

23 BY MR. TATE:

24 Q No, it -- it's a different question. We need
10:59 25 to -- we need an answer to each question.

1 A I said that I do not remember specifically
2 investigating it.

3 Q Oh, okay.

4 A Myself. Individually.

11:00 5 Q So in special interrogatory number 16, asked
6 you to -- to describe in detail BCS's investigation into
7 the errors that were on Exhibit 133. And once again,
8 BCS said that no investigation into these errors was
9 done.

11:00 10 Do you -- do you have any reason to dispute
11 that special interrogatory response?

12 A I defer to Jesse on technical issues. He's the
13 expert.

14 Q Okay. But you don't recall yourself
11:00 15 investigating any of those errors in the hundreds of
16 hours that you spent supposedly investigating this
17 issue; correct?

18 MR. GIBSON: Same objections.

19 THE WITNESS: Same answer. I don't remember
11:00 20 specifically investigating these errors.

21 BY MR. TATE:

22 Q After Noelle sent you this screenshot showing
23 you these errors, was there a reason why you didn't look
24 into it?

11:01 25 A Me specifically, or BCS?

1 Q You, specifically.

2 A I'm not the technical expert. That wasn't my
3 role.

4 Q And are you aware of a reason why Jesse Jensen
11:01 5 didn't look into these errors?

6 A Seems to call for speculation. I'm not Jesse.

7 Q I appreciate that. I'm asking if you are aware
8 of a reason why he didn't look into these errors?

9 MR. GIBSON: Objection. Speculation.

11:01 10 THE WITNESS: I couldn't say.

11 BY MR. TATE:

12 Q Okay. Let's do this:

13 Let me show you the next document in order,
14 we'll mark it as Exhibit 135.

11:01 15 (Exhibit 135, Screenshot of Google Search
16 Console, was marked for identification.)

17 BY MR. TATE:

18 Q All right. Let me know when you have Exhibit
19 135 open.

11:02 20 A Okay.

21 Q I'll represent to you this is a screenshot
22 taken by my expert, and he was looking at the Google
23 Search Console through Jesse Jensen's credentials, and
24 on the right-hand side, you can see the messages that
11:02 25 Google sent to Mr. Jensen.

1 BY MR. TATE:

2 Q You, Ms. Magill, how do you believe that my
3 client supposedly deindexed this website based on the
4 hundreds of hours that you spent investigating it?

11:06 5 MR. GIBSON: Objection. Calls for a legal
6 conclusion, and speculation, but you can answer to the
7 extent you have a -- an estimate.

8 THE WITNESS: I'm going to defer to what has been
9 stated in documents produced in that complaint. I
11:06 10 wouldn't want to misstate anything.

11 BY MR. TATE:

12 Q No, that doesn't work, Ms. Magill.
13 Based on your own understanding, how do my
14 clients supposedly deindex the website?

11:06 15 MR. GIBSON: Yeah, objection in that calls for
16 speculation as to a technical aspects, because another
17 witness, who's the PMK for BCS, has testified as to
18 that, but you can state if you have a general
19 understanding, Ms. Magill, of what happened kind of in
11:07 20 lay person's terms.

21 THE WITNESS: Okay. That -- Ms. McNamara assigned
22 Jeremy Whiteley ownership of the site within the Google
23 Search Console, and that one of them requested that the
24 site be deindexed on Google.

11:07 25 //

1 BY MR. TATE:

2 Q And you don't know, you, Ms. Magill, you're not
3 sure whether it was Katie McNamara or Jeremy Whiteley
4 who was the one that pressed the button saying to
11:07 5 deindex?

6 A I believe that that was in multiple of these
7 screen-shots we had provided, but I do not recall today
8 exactly. But I'm not the technical expert.

9 Q Understood. All right. So going back to your
11:08 10 discovery response regarding the potential sources of
11 damages, the last potential source of damage that you
12 identified was lost donations due to decreased web --
13 web traffic.

14 How much in donations did BCS lose?

11:08 15 MR. GIBSON: Objection. Speculation. Legal
16 conclusion.

17 But you can answer, if you know.

18 THE WITNESS: He already asked this question. I
19 already answered it.

11:08 20 BY MR. TATE:

21 Q I did not ask this question, so give me an
22 answer.

23 A You did ask this question, and I said it is
24 impossible to give you an exact number.

11:08 25 Q Can you give me a ballpark?

1 A Impossible to know in terms of donations.
2 That's not how donations and fundraising works.

3 Q Can you identify a single person who was not
4 able to donate due to the website not appearing on
11:09 5 Google Search?

6 MR. GIBSON: Objection. Speculation.
7 Argumentative. Legal conclusion.

8 But you can describe, Ms. Magill, if you have a -- a
9 general understanding on behalf of BCS what -- what did
11:09 10 BCS miss out on as a result of this.

11 THE WITNESS: Yeah, I can't tell you a specific
12 person because I don't know individuals who watched the
13 Lifetime special, which was the major publicity at the
14 time.

11:09 15 However, we expected with some more national
16 publicity to when we were in Washington, D.C. in October
17 of 2021, which showed a pretty significant correlating
18 spike in visitors to our website, and correlating spike
19 in donations that would be similar. Instead, it was
11:09 20 completely flat.

21 BY MR. TATE:

22 Q How -- so you -- you -- you said it should have
23 been similar. How much in donations did you get from
24 that similar event?

11:10 25 A I don't remember the exact total.

1 Q Can you give me a ballpark?

2 A Tens of thousands of dollars, but it also lead
3 to future donations and relationships with donors who
4 ended up donating in the future, otherwise supporting
11:10 5 the organization. It's impossible to quantify the
6 specific event.

7 Q I just want to pin down this testimony. So you
8 believe that your time -- the damages to the Lifetime
9 show; correct? That if had the website been appearing
11:10 10 on Google Search during the time of the Lifetime show,
11 BCS would have received more donations. Am I
12 understanding you correctly?

13 A Yes, to the -- best of our knowledge.

14 Q Was the website appearing on Google Search when
11:11 15 the Lifetime show aired?

16 A I don't remember the specific dates.

17 Q Jesse Jensen testified it was appearing on
18 Google Search when the Lifetime show aired.

19 A Then I would defer to Jesse.

11:11 20 Q Okay. So, now that we've cleared that up, how
21 much in donations did BCS supposedly lose?

22 A I don't know.

23 MR. GIBSON: Objection. Asked and answered.
24 Speculation.

11:11 25 //

1 BY MR. TATE:

2 Q Go ahead.

3 A Donations don't work like that. It's not a
4 consistent average level. It goes up at the end of the
11:12 5 year for year-end donations, it goes up for publicity,
6 it goes up if Paris Hilton does a press conference. I
7 mean, there's no way to tell you that.

8 Q Okay. Between March 9th and about 2 or 3
9 o'clock on March 12th, do you have any idea how many --
11:12 10 how much in donations BCS lost?

11 MR. GIBSON: Objection. Speculation. There are,
12 you know, plenty of documents that trace the various
13 volumes, and so it's not a memory test, but if you do
14 remember, you can certainly answer, Ms. Magill.

11:13 15 THE WITNESS: I don't remember the specific numbers.
16 And you're asking me about what we lost, which asks me
17 to speculate as to what we would have gotten, which I
18 can't do.

19 BY MR. TATE:

11:13 20 Q Isn't it true that it's not uncommon for BCS to
21 go days without receiving a single donation?

22 MR. GIBSON: Objection. Vague as to timeframe.

23 THE WITNESS: Yeah.

24 BY MR. TATE:

11:13 25 Q Go ahead.

1 with the allegations in the complaint, we are stating
2 not that we specifically know the exact amount of
3 donations that we missed out on, but we're comparing,
4 again, national publicity of one kind to a similar level
11:15 5 of national publicity, which showed a spike in visitors
6 to our website before, during, and after that event, and
7 we did not see any spikes, we saw a flatline in terms of
8 visitors for a significant amount of the time period in
9 question.

11:16 10 BY MR. TATE:

11 Q That's not even close to responding to my
12 question.

13 My -- my question is, how does BCS know that
14 the lack of donations it received was caused by people
11:16 15 not donating, as opposed to the normal variations in the
16 donations that BCS received?

17 MR. GIBSON: Objection. Asked and answered.

18 THE WITNESS: Yeah. Same answer.

19 BY MR. TATE:

11:16 20 Q Are you -- are you going to answer my question?
21 You gave me a completely different answer.

22 MR. GIBSON: It is responsive.

23 BY MR. TATE:

24 Q All right. Well, let me -- let me ask this:
11:16 25 Does BCS know that the lack of donations it

1 received was caused by the alleged deindexing?

2 A I mean, I think it's hard to tell the cause and
3 effect of anything that didn't happen.

4 Q Okay.

11:17 5 A But to the best of our knowledge, it is a very
6 reliable conclusion.

7 Q And basically what you've done is you've looked
8 at your web traffic and you saw a drop in web traffic;
9 correct?

11:17 10 A That's one thing, yes.

11 Q Okay. How does BCS track its web traffic?

12 A Through analytics.

13 Q You use a Google Site plugin, don't you?

14 A That's one way, yes.

11:17 15 Q Did you know that Ms. Beauregard deactivated
16 the Google Site plugin during that time period?

17 MR. GIBSON: Objection. Calls for speculation.
18 Argumentative, as well.

19 THE WITNESS: Yeah. I don't know what
11:17 20 Ms. Beauregard -- what you are alleging is true or not.

21 BY MR. TATE:

22 Q This is the first time you've heard that?

23 A There's been all sorts of wild accusations this
24 whole entire case. I have no idea.

11:18 25 Q Well, so let me -- let me ask you differently,

1 BY MR. TATE:

2 Q Did BCS spend any donation money defending --
3 defending BCS against other survivors?

4 A So the way this is phrased and the intention is
11:28 5 it -- is that we did not pay attorneys to help us defend
6 against and to hopefully regain our natural property, et
7 cetera.

8 Q Okay.

9 A And that is true.

11:29 10 Q So let's break that down, just so we've got a
11 nice, clean record. BCS has not paid any of its
12 attorneys for anything related to the alleged
13 deindexing. True?

14 MR. GIBSON: Objection. Speculation.
11:29 15 Attorney-client privilege. And legal conclusion.

16 BY MR. TATE:

17 Q Go ahead.

18 A I'm not sure if I'm even able to discuss
19 financial arrangements with attorneys.

11:29 20 Q You are. Has BCS paid its attorneys anything
21 related to the investigation of the alleged deindexing?

22 A Which attorneys?

23 Q Any attorney.

24 MR. GIBSON: Yeah. You -- you're asking has BCS
11:29 25 paid BCS's attorneys anything?

1 MR. TATE: Yep.

2 MR. GIBSON: Okay. You can answer that.

3 THE WITNESS: Related to the -- for this litigation
4 is what you're specifically stating?

11:30 5 BY MR. TATE:

6 Q Related to the deindexing, yeah.

7 A For this litigation, no.

8 Q Has it paid its attorneys for anything related
9 to the deindexing whether it's a part of this litigation

11:30 10 or not?

11 MR. GIBSON: Calls for speculation.

12 THE WITNESS: Not that I know of. I'm still not
13 quite sure what all you're entailing, though.

14 BY MR. TATE:

11:30 15 Q Well, you made the -- you made the
16 clarification I was trying to figure out, you know, you
17 made -- you parsed that answer to suggest that maybe you
18 had paid the attorneys for something else, so I was just
19 trying to get to the bottom of it. But it sounds like

11:30 20 BCS has not paid its attorneys anything for anything to
21 do with the deindexing; correct?

22 A To the best of my knowledge, yes.

23 Q Okay. Has BCS paid anybody else anything
24 related to -- as a -- for investigating the alleged

11:31 25 deindexing?

1 that was easily fixed.

2 Q Do you know how long it was down for?

3 A I don't remember specifically.

4 Q Okay. Is BCS registered as a charity with the
11:51 5 California attorney general's registry of charitable
6 trusts?

7 A Yes.

8 MR. GIBSON: Objection. Vague as to timeframe.

9 THE WITNESS: Thank you.

11:51 10 BY MR. TATE:

11 Q I'm sorry, I didn't hear your answer. Is it
12 registered with the attorney general?

13 A Right now, yes.

14 Q When did it register with the attorney general?

11:51 15 MR. GIBSON: Objection. Speculation.

16 THE WITNESS: Yeah, I don't know the exact dates.

17 They don't even tell you exactly what date your
18 registration goes through.

19 BY MR. TATE:

11:51 20 Q Was it within the first 30 days of being
21 incorporated?

22 A No.

23 Q Was it in 2021?

24 A It was supposed to be. The person who was
11:52 25 supposed to do that did not do that.

1 Q Was it registered in 2022?

2 A We thought it was, because the person who was
3 supposed to do it in 2021 was supposed to. We did not
4 find out that it wasn't until later.

11:52 5 Q Okay. So I'm assuming that it was registered
6 in 2023?

7 A Yes.

8 Q Okay. And was it in -- can you give me -- tell
9 me which quarter?

11:52 10 A I don't know.

11 MR. GIBSON: Objection -- objection. Speculation.

12 BY MR. TATE:

13 Q Was it within the last few months?

14 A Sir, we sent in the documents to register
11:52 15 multiple times that then got lost in the mail, tracking,
16 I mean, I don't even remember which time actually went
17 through -- or know, if they'd even tell us.

18 Q And have you got a notification that you are
19 registered today?

11:53 20 A I'm sorry, repeat the question?

21 Q Do you know for a fact that BCS is registered
22 with the California Attorney General's Registry of
23 Trusts today?

24 A The most recent letter we received was from
11:53 25 September, and as of the date of that letter from the

1 AG's Charitable Trust division, it stated that we were
2 registered.

3 Q Did you -- how many letters did you receive in
4 September from the attorney general's office?

11:54 5 A (Indiscernible due to cross-talk).

6 MR. GIBSON: Objection. Asked and answered, and
7 speculation.

8 THE WITNESS: I don't remember.

9 MR. TATE: Put into the chat Exhibit No. 139.

11:54 10 Please let me know when you have it opened.

11 (Exhibit 139, Delinquency Notice, was
12 marked for identification.)

13 THE WITNESS: Okay.

14 BY MR. TATE:

11:54 15 Q Is this the letter you're referring to?

16 A That's one of the letters, yes.

17 Q Okay. And now, this letter is dated September
18 15th, 2023. And what it's stating is that BCS is
19 delinquent with the registry of charitable trusts.

11:55 20 Is BCS delinquent with the -- with the registry
21 of charitable trusts?

22 MR. GIBSON: Objection. Vague as to timeframe.

23 THE WITNESS: Can you be more specific?

24 BY MR. TATE:

11:55 25 Q Yeah, let me -- let's try this more

1 foundationally. Have you seen this letter before?

2 A Yes.

3 Q Now, what is your role at BCS?

4 A CEO.

11:55 5 Q All right. So as the CEO, documents like this
6 come to your attention; correct?

7 A Yes.

8 Q Okay. When you received this notice, what
9 action, if any, did you take?

11:55 10 A Contacting the attorney general's office
11 requesting clarification, connecting the attorney
12 general's office with representatives with the IRS that
13 we are working with to catch up on 990s, but we have
14 a -- the 404.

11:56 15 Q Did you ever provide the attorney general --
16 attorney general's office with copies of your 990s?

17 A We're still in communication with the attorney
18 general's office with required documentation. And
19 that's not just me. That's also our board president,
11:56 20 so.

21 Q Yeah. My question was, was -- let's do this
22 year by year.

23 Did you give the attorney general's office the
24 990s for 2021?

11:56 25 A For the calendar year ending, or starting in

1 2021? We have a June 30th end of the school year.

2 Q Okay. For the fiscal year ending June 30th,
3 2021, has BCS provided those 990s to the registry of
4 charitable trusts?

11:57 5 A I don't know specifically. Those were created
6 by our accountant, and then mailed to various places
7 that needed them. So.

8 Q For the fiscal year ending June 30th, 2022, has
9 BCS provided those 990s to the registry of charitable
11:57 10 trusts?

11 A Same thing. I don't know specifically. That's
12 why we're in discussions with the IRS to see what
13 they've received that we've mailed, what they -- or
14 sorry -- what the attorney general's office to see what
11:57 15 they received, what they still need, and what they would
16 like, along with the understanding of the limitations
17 with financials we have.

18 Q As the CEO of BCS, is it your understanding
19 that BCS is delinquent with the registry of charitable
11:58 20 trusts?

21 MR. GIBSON: Objection. Calls for a legal
22 conclusion and speculation.

23 THE WITNESS: Yeah, I don't know today what they
24 classify us as. Again, we've had ongoing discussions
11:58 25 for months.

1 BY MR. TATE:

2 Q Has anybody told you that you're no longer
3 delinquent?

4 MR. GIBSON: Objection. Speculation. It's also
11:58 5 vague.

6 THE WITNESS: Yeah. Can you rephrase the question?

7 BY MR. TATE:

8 Q All right. You received a letter stating that
9 BCS is delinquent with the attorney general's office;
11:58 10 correct?

11 A Yes. The September 15th letter.

12 Q Okay. Have you -- has anybody told you that
13 whether -- has anyone told you that BCS is no longer
14 delinquent?

11:59 15 A No one has stated those specific words to me,
16 no.

17 Q Why don't we go ahead -- I need to pull up a
18 new document. Why don't we go ahead and take a
19 five-minute break, come back at 12:05.

11:59 20 THE VIDEOGRAPHER: We are off the record at
21 11:59 a.m.

22 (Recess.)

23 THE VIDEOGRAPHER: We are on the record at 12:08
24 p.m.

12:08 25 MR. TATE: All right. So during the break, what I

1 did is I went onto the office attorney general's
2 website, and I grabbed some information off that as of
3 today.

4 So I put into the chat, Exhibit No. 140. Can you
12:08 5 please open that when you are ready?

6 (Exhibit 140, Registrant Details, was
7 marked for identification.)

8 THE WITNESS: Okay.

9 BY MR. TATE:

12:09 10 Q Again, I represent to you that this is what
11 the -- the DOJ's website shows today, and as of today,
12 Breaking Code Silence is listed as being delinquent in
13 its registry status.

14 Are you aware of any facts that would indicate
12:09 15 otherwise?

16 A Nope.

17 Q And as the CEO of Breaking Code Silence, you
18 understand that delinquent organization is not allowed
19 to receive any donations; correct?

12:09 20 MR. GIBSON: Objection. Calls for a legal
21 conclusion and speculation. Also, invades the
22 attorney-client privilege.

23 BY MR. TATE:

24 Q I'm just asking if you understand that or not.

12:09 25 MR. GIBSON: And just -- exclude from your answer

1 any understanding you gain from counsel, BCS's counsel.

2 THE WITNESS: Okay. I understand that you're saying
3 that is the general policy, yes.

4 BY MR. TATE:

12:09 5 Q Okay. So if you look at this document, you'll
6 see four hyperlinks to different documents you can
7 download. Just go quickly through each of those four.
8 The first one we will mark as Exhibit 141.

9 Please let me know when you have that opened.

12:10 10 (Exhibit 141, Notice to Register, was
11 marked for identification.)

12 THE WITNESS: Okay.

13 BY MR. TATE:

14 Q Have you seen Exhibit 141 before?

12:10 15 A We've seen a copy of it, but we did not receive
16 the original.

17 Q Okay. Do you remember when you first saw a
18 copy of Exhibit 141?

19 A I can't give you a date, hmm-mm.

12:10 20 Q Okay. Regardless, as the CEO of Breaking Code
21 Silence, you understood that to be able to collect
22 donations, you had to register with the attorney
23 general's office; correct?

24 A (Indiscernible due to cross-talk.)

12:11 25 MR. GIBSON: Objection.

1 THE WITNESS: I'm sorry.

2 MR. GIBSON: Objection. Legal conclusion.

3 THE WITNESS: In general, yes.

4 BY MR. TATE:

12:11 5 Q Okay. Let me show you Exhibit No. 142. Please
6 let me know when you have that one opened.

7 (Exhibit 142, Final Notice to Register, was
8 marked for identification.)

9 THE WITNESS: Okay.

12:11 10 BY MR. TATE:

11 Q Have you seen Exhibit 142 before?

12 A Again, I think I've seen a copy, but not the
13 original.

14 Q Okay. And you understood from -- well, when
12:11 15 did you understand that BCS had failed to register with
16 the attorney general's office?

17 A Repeat the question?

18 Q When did -- when did BCS understand that it had
19 failed to register with the attorney general's office?

12:12 20 A I don't remember the exact date.

21 Q Was it -- before or after you received this
22 letter?

23 A We didn't receive this letter. I said, I've
24 seen it, but we did not receive it. Notice that it's --

12:12 25 THE REPORTER: I'm sorry, can you repeat the last

1 Q Okay. Show you Exhibit 143. Have you seen
2 Exhibit 143 before?

3 A Most likely. It looks like it was sent by me.

4 Q And then you see the attachment there, CT 400
12:14 5 NTR under score breaking dot PDF?

6 A I see that's what the name of the attachment
7 is, yes.

8 Q Okay. So that matches the name of the document
9 of Exhibit 141.

12:14 10 Does that help refresh your recollection that
11 as of May 11th, 2022, you knew that Breaking Code
12 Silence had not registered with the attorney general's
13 office?

14 A There's no way I have a knowing that the
12:14 15 attachments match, despite the title. That can be
16 edited, as you know.

17 Q Fair enough, but I'm just trying to help
18 refresh your recollection of when you knew. And it
19 sounds like this does not help you remember at all?

12:15 20 A No.

21 Q Okay. But regardless, I think you just
22 testified that sometime in 2022, you became aware of
23 this issue; correct?

24 A Yes.

12:15 25 Q Okay. Show you the next document.

1 Showing you Exhibit 144. Please let me know
2 when you have it opened.

3 (Exhibit 144, Initial Registration Form,
4 was marked for identification.)

12:15 5 THE WITNESS: Okay.

6 BY MR. TATE:

7 Q Okay. Do you recognize this document?

8 A Yes.

9 Q Okay. These are -- is this the initial
12:16 10 registration form that you sent to the office of the
11 attorney general?

12 A This -- this is one of them, yes.

13 Q Okay. Why did -- in the top right-hand corner,
14 it indicates the attorney general's office received it
12:16 15 July 18th, 2023.

16 Why did you wait so long to submit this?

17 MR. GIBSON: Objection. Argumentative.

18 THE WITNESS: As I said, this isn't the only one
19 that we sent. We sent multiple. They kept saying they
12:16 20 hadn't received it, that it got lost in the mail, et
21 cetera.

22 BY MR. TATE:

23 Q You understand that up until July 18th, 2023,
24 BCS was not allowed to accept any donations?

12:16 25 MR. GIBSON: Objection. Calls for speculation, and

1 BY MR. TATE:

2 Q We'll move to compel.

3 Has BCS ever registered as a nonprofit
4 organization to accept donations in Colorado?

12:24 5 MR. GIBSON: I'm sorry, can you -- I didn't quite
6 get that.

7 BY MR. TATE:

8 Q Yeah. Has BCS registered as a nonprofit
9 organization to accept donations in Colorado?

12:24 10 A I completed our initial registration in
11 Colorado. I don't remember who handled subsequent
12 registrations.

13 Q According to BCS's verified discovery
14 responses, it has never filed, at least at the time you
12:24 15 submitted it, it has never filed a form 990 with the
16 IRS.

17 Has BCS subsequently filed those form 990s with
18 the IRS?

19 A Can you restate the question?

12:25 20 Q Yeah. BCS gave me a verified discovery
21 response saying that it has not filed any form of 990s
22 with the IRS, but time has passed. And I'm wondering if
23 BCS has subsequently done so?

24 A I don't know where in process our 990s are. I
12:25 25 know they've been completed by our accountants and were

1 in processing, but I have no idea where they are in the
2 chain.

3 Q All right. So you don't know if the IRS ever
4 received a 990 for BCS?

12:25 5 A I cannot tell you for sure, no.

6 Q Show you a document that was marked as Exhibit
7 No. 12.

8 A Okay.

9 Q Have you seen Exhibit No. 12 before?

12:26 10 Did you answer and I not hear?

11 A Yeah, I said yes.

12 Q Okay. When did you see this?

13 A When did I first see this document?

14 Q Yes.

12:27 15 A I can't give you a specific, but it looks like
16 I would have seen it close to -- yeah, it's not dated,
17 so impossible to know, but I knew it was filed.

18 Q Did -- you said you knew that it was filed.

19 How did you know it was filed?

12:27 20 A I don't remember exactly who sent it in, but --

21 Q Do you know who prepared it?

22 A Either myself or Bobby Cook. I don't see it.

23 Q Do you know if the extension was granted?

24 A Yes.

12:27 25 Q Now, do you see on the first page where Bobby

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

* * * * *

The undersigned Certified Shorthand Reporter of the State of California does hereby certify:

That the foregoing Proceeding was taken before me at the time and place therein set forth.

That the testimony and all objections made at the time of the Proceeding were recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy of the proceedings thereof.

In witness whereof, I have subscribed my name, this date: November 17, 2023.


CAILEY NELSON, CSR NO. 14133