

EXHIBIT 78

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BREAKING CODE SILENCE, a)	<i>Certified Copy</i> Contains Portions Designated - Confidential - Pursuant To Protective Order
California 501(c)(3) nonprofit,)	
)	
Plaintiff,)	
)	
)	Case No.
vs.)	2:22-cv-002052-SB-MAA
)	
KATHERINE MCNAMARA, an Individual;)	
JEREMY WHITELEY, an individual; and)	
DOES 1 through 50, inclusive,)	
)	
Defendants.)	
_____)	

VOLUME II

- CONTAINS CONFIDENTIAL PORTIONS -
VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF JENNIFER MAGILL
PERSON MOST KNOWLEDGEABLE FOR BREAKING CODE SILENCE

Date and Time: Wednesday, November 15, 2023
9:03 a.m. - 12:53 p.m.

Location: Remotely
(Via Videoconference)

Reported By: Tami L. Le, CSR No. 8716, RPR
Certified Shorthand Reporter

Job No. 28157

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BREAKING CODE SILENCE, a)	
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Defendants.)	
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V O L U M E II

REMOTE VIDEOTAPED DEPOSITION of JENNIFER
MAGILL, AS PERSON MOST KNOWLEDGEABLE OF BREAKING
CODE SILENCE, taken on behalf of the Defendants,
with all participants appearing remotely via Zoom
videoconference, commencing at 9:03 a.m., on
Wednesday, November 15, 2023, before Tami L. Le,
Certified Shorthand Reporter 8716, in and for the
State of California.

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09:06 1 If you don't want to see just yourself on here, you
2 can click up at the right-hand corner. There should
3 be a "View" button, and you can just click on
4 "Gallery View" so then that way you can see
09:06 5 everybody.

6 THE DEPONENT: Is there a reason that's
7 necessary today but was not yesterday?

8 THE VIDEOGRAPHER: Counsel, would you like
9 the witness spotlighted or...

09:06 10 MR. TATE: Yeah, of course. Yeah. When we
11 show it to the jury, the jury doesn't want to see
12 anyone else except for her.

13 THE VIDEOGRAPHER: Okay. You may proceed.

14 BY MR. TATE:

09:06 15 Q So as I was saying, I believe I had asked
16 the question that:

17 "BCS has not paid its attorneys

18 at DLA Piper anything?"

19 Is that true?

09:07 20 A Yes.

21 Q What is your current residential address?

22 A My address is confidential.

23 MR. GIBSON: Objection; privacy.

24 BY MR. TATE:

09:07 25 Q Well, we can do this two ways, Ms. Magill.

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09:10 1 in a deposition. But I'm not sure where this is --
2 how this could possibly be related to discovering
3 admissible evidence.

4 MR. TATE: Oh, it's going to come very
09:10 5 clear in a second.

6 BY MR. TATE:

7 Q How much were you making in 2021?

8 A I honestly don't know myself, but, yeah, it
9 wasn't very much myself. We primarily relied on my
09:11 10 husband's income.

11 Q Right. And your husband was a lawyer;
12 right?

13 A That's not his profession, no.

14 Q What did your husband do in 2021?

09:11 15 A The first half or the second half?

16 Q Why don't you give me both.

17 MR. GIBSON: Same objections.

18 THE DEPONENT: The first half, he worked
19 for the Federal Department of Labor as an
09:11 20 investigator. The second half, he worked with the
21 Department of the Interior as a special agent.

22 BY MR. TATE:

23 Q Okay. So flash forward to 2021, you,
24 Ms. Hughes, Jeremy Whiteley, and Katherine McNamara
09:11 25 organize Breaking Code Silence and become the first

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09:11 1 interim board members; correct?

2 A Repeat that, please.

3 Q Yes. So in 2021, you, Ms. Hughes, Jeremy
4 Whiteley, and Katherine McNamara organize Breaking

09:11 5 Code Silence; is that correct?

6 A Partially. There were more people
7 involved.

8 Q Okay. But the four persons that I just
9 mentioned were the first interim board members; is

09:12 10 that correct?

11 A Yes.

12 Q At some time after BCS was organized, you
13 put together a budget proposing to pay you a
14 six-figure salary; is that correct?

09:12 15 A I did not put together said budget.

16 Q Who did?

17 A Myself, Vanessa Hughes, and Rebecca -- I'm
18 trying to remember her last name. Paris Hilton's
19 Impact coordinator.

09:12 20 Q Yeah. So you participated in putting
21 together a budget, but you weren't the only one. Is
22 that the distinction you're trying to make?

23 A Correct.

24 Q Got it. Let me show you the budget. We'll
09:12 25 mark it as Exhibit 147 -- 146. Sorry.

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12:13 1 ratify preincorporation activities?

2 MR. GIBSON: Objection; privilege
3 potentially.

4 THE DEPONENT: I don't remember us using
12:13 5 those specific words, but, again, it was two and a
6 half years ago. Very long time.

7 BY MR. TATE:

8 Q So you don't recall one way or the other;
9 is that fair?

12:13 10 A I don't recall that phrase.

11 Q Whether you recall that phrase, do you
12 recall BCS ratifying preincorporation activities?

13 A Don't remember. It's been quite a while.

14 Q I believe yesterday we were talking about
12:13 15 BCS's damages, and you kept talking about a similar
16 promotional event in Washington, D.C.

17 Was that the -- the promotional event in
18 October? Is that the same event? Are we on the
19 same page?

12:14 20 MR. GIBSON: Objection; vague as to time
21 frame. You're asking October 2021?

22 MR. TATE: October 2021.

23 THE DEPONENT: Which event? There were
24 multiple events in October 2021.

25 ///

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12:14 1 BY MR. TATE:

2 Q Well, I guess that's what I'm trying to get
3 to the bottom of.

4 In your testimony yesterday, you indicated
12:14 5 that BCS should have received similar web traffic
6 and donations in March 20, 2021 that it later did --
7 or in March 2022 that it did in -- during the time
8 when it went -- when BCS went to Washington, D.C.

9 And I'm trying to figure out what event
12:14 10 you're referring to.

11 A I think your clients know very well which
12 events and, most likely, as well. But as I said
13 yesterday -- I'll repeat -- we went to Washington,
14 D.C. to promote the federal legislation that we had
12:15 15 drafted and were hoping to introduce to Congress
16 soon. We had a fundraising event. We had press
17 conferences. We had a panel discussion. We were
18 working with Paris Hilton's team.

19 Q When was it?

12:15 20 A October of 2021.

21 Q Okay. Let me show you Exhibit 164.

22 (Defendants' Exhibit 164 was subsequently
23 marked for identification.)

24 THE DEPONENT: Okay.

12:15 25 MR. TATE: Just out of clarity, John, I

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12:15 1 think you -- you'd put something under confidential
2 when we were talking about the settlement agreement.
3 I'm assuming you meant that the confidentiality
4 would only last for that portion and not -- and not
12:16 5 going forward. Is that -- is that -- is that right?

6 MR. GIBSON: Of the transcript, you mean?

7 MR. TATE: Yes.

8 MR. GIBSON: Yes, that's right. Yeah.

9 MR. TATE: We just forgot to take it off,
12:16 10 and I just want to make sure we do so now.

11 BY MR. TATE:

12 Q Okay. So Exhibit 164. Do you have that
13 open?

14 A Yes, I do.

12:16 15 Q Are these BCS's PayPal records?

16 A It appears to be so. I have no way of
17 knowing if they're exact copies, but it appears to
18 be so.

19 Q Sure. And if you look on the top of the
12:16 20 first page, the PayPal ID is tied to your Breaking
21 Code Silence email; right?

22 A That's what it states on this page.

23 Q Okay. Well, do you know one way or the
24 other if the PayPal account is done through your
12:16 25 email?

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12:16 1 A Do I know -- have our merchant account ID
2 memorized to be able to match it, or do I know if
3 this document is authentic that you're bringing
4 forward? I have no idea, but that's what it appears
12:17 5 to be.

6 Q I don't think you understood my question.
7 Do you know whether the PayPal account is
8 tied to your BCS email?

9 A Define "tied to."

12:17 10 Q To access BCS's PayPal account, do you use
11 your email?

12 A I use my email, yes.

13 Q All right. Can you please turn to Page 6
14 of this document.

12:17 15 A Okay.

16 Q And you see the date -- the donations
17 received in October 2021?

18 A Yes, I do.

19 Q And, I mean, we can take a look at it. It
12:17 20 appears to me that it received less than -- I don't
21 know, less than \$3,000 in October '21.

22 Do you agree?

23 A So what I was stating yesterday that I'm
24 not sure if you remember or not, but the financial
12:18 25 benefit from the event in D.C. was not limited to

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12:18 1 immediately-after donations. We were establishing
2 relationships with donors. We were establishing
3 media presence. We got contacts. We got potential
4 funders starting to talk to us.

12:18 5 So in no way did I represent that it would
6 be equal right then and there. However, as you will
7 see, there's no flat line there the way there was
8 for the March incident.

9 Q And then I think you testified in
12:18 10 connection with the Lifetime event that Lifetime did
11 a promotional before the event aired; right?

12 A Correct.

13 Q And that happened before March 9th, didn't
14 it?

12:18 15 A No idea of the dates.

16 Q And during the time that the website was
17 allegedly deindexed, Lifetime didn't run any
18 promotional things for BCS, did it?

19 A I have no idea.

12:19 20 Q And then by the time the Lifetime promotion
21 did air, the website was appearing on Google search
22 again; correct?

23 A Don't know.

24 Q Okay. Isn't it BCS's practice that after a
12:19 25 volunteer officer or director resigns from BCS, that

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12:20 1 Q But BCS did revoke their access; correct?

2 A At some point, yep.

3 Q Then when Mr. Whiteley quit, BCS also
4 revoked his access to his BreakingCodeSilence.org
12:20 5 email; correct?

6 A That, you'd have to ask Ms. McNamara. That
7 was her job.

8 Q Well, you were given his credentials,
9 weren't you?

12:21 10 MR. GIBSON: Objection; vague as to time
11 frame.

12 THE DEPONENT: What -- credentials for
13 what? When?

14 BY MR. TATE:

12:21 15 Q You were given Jeremy Whiteley
16 BreakingCodeSilence.org credentials; isn't that
17 true?

18 A I don't remember. We were all managing
19 that, but, yeah, I don't remember specifics.

12:21 20 I will note that Jeremy, unlike Katie, was
21 very supportive of the organization and followed
22 through on his commitment to turn over accounts he
23 created for the organization.

24 Q So why do you think Jeremy deindexed the
12:21 25 website?

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REPORTER'S CERTIFICATE

I, Tami L. Le, Registered Professional Reporter, Certified Shorthand Reporter in and for the State of California, do hereby certify:

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b), and prior to being examined, the witness was first duly administered an oath by me.

That the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

Before completion of the deposition, review of the transcript [] was [X] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

In WITNESS WHEREOF, I have subscribed my name this date: November 16, 2023.


TAMI L. LE
Certified Shorthand Reporter No. 8716, RPR