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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

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

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

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15 Plaintiff,

**DECLARATION OF M. ADAM
TATE IN SUPPORT OF
DEFENDANTS' RESPONSE TO
REQUEST FOR DISMISSAL WITH
PREJUDICE**

16

17 vs.

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19 KATHERINE MCNAMARA, an
Individual; JEREMY WHITELEY, an
20 individual; and DOES 1 through 50,
inclusive,

[Assigned to the Hon. Maria A. Audero]

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22 Defendants.

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DECLARATION OF M. ADAM TATE

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

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

10 2. BCS’s claim that it only has one deposit account (Alpine Bank) is
11 bewildering because, in response to discovery in the State Action, BCS produced
12 account records for GiveButter, Stripe, and PayPal accounts through which it
13 collects donations. Jennifer Magill even relied on these accounts in her declaration
14 submitted in opposition to Defendants’ Motions for Summary Judgment. (See, e.g.,
15 Dkt. 187, ¶7, and 187-2 through 187-5.)

16 3. Attached hereto as **Exhibit 6** is an email that was produced by BCS in
17 this action as BCS_0786094. In the email, Vanessa Hughes instructs Jesse Jensen to
18 send someone a gift using “the Bank of America account.” When asked about the
19 account during her deposition, Hughes claimed it was a fake email designed to
20 somehow trick Defendants. Apart from this testimony, Defendants have no details
21 regarding this account.

22 4. Contrary to Magill’s claim that it has no access to BCS’s US Bank
23 statements, BCS actually produced US Bank statements in the State Action. Dkt.
24 152-121 is a compilation of BCS’s bank statements used in connection with
25 Whiteley’s Motion for Summary Judgment. The statements Bates stamped “BCS
26 Resp. to McNamara’s RFP, Set Two” were produced by BCS. (See, Dkt 152-121,
27 pp. 19-24 [January 2022 Statement], 27-38 [November and December 2021
28 Statements].)

1 5. On July 12, 2022, I learned that Whiteley received a random
2 notification from Facebook Support indicating that something was wrong with
3 BCS’s charity payout and requiring a response within 10 days. We immediately
4 forwarded the notice Whiteley received to BCS’s counsel, Tamany Bentz, along
5 with a June 28, 2021 confirmation that Whiteley no longer had access to BCS’
6 Facebook Business Manager account. A true and correct copy of the July 12 email
7 to Ms. Bentz, with attachments, on which I was copied, is attached hereto as **Exhibit**
8 **9**. The email is entitled “Credit Card Issue” because the original discussion dealt
9 with unauthorized charges that were made by BCS to McNamara’s credit card.

10 6. The following day, on July 13, my office sent Ms. Bentz another email
11 (using the same “Credit Card Issue” email chain) advising her that BCS needed to
12 remove Whiteley’s account from BCS’s Facebook account, advising her that the
13 “Account Owner” for BCS’s Facebook account was listed as Vanessa Hughes, and
14 requesting confirmation that Whiteley has been removed from all BCS accounts. A
15 true and correct copy of the July 13 email to Ms. Bentz, on which I was copied, is
16 attached hereto as **Exhibit 10**. To date, we have received no responses to the emails
17 regarding the Facebook account from any of BCS’s attorneys.

18 7. As set forth in Defendants’ response, BCS has known since at least
19 August 2023 that it would be responsible for paying monetary sanctions. In addition,
20 during the March 25, 2024 in-person informal discovery conference the Court
21 (again) informed BCS that it was almost certain to lose the pending evidentiary
22 sanctions motion and that it was just of matter of what evidentiary sanctions would
23 be issued. At the hearing, I argued that, as part of the evidentiary sanctions, the
24 Court should strike the declarations of Jesse Jensen and Jennifer Magill submitted
25 by BCS in opposition to the motions for summary judgment, effectively gutting
26 BCS’s oppositions. The Court entertained that as a possibility and further discussed
27 the idea of terminating sanctions.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2024, 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 Saller

Helene Saller

