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BREAKING CODE SILENCE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BREAKING CODE SILENCE, a
California Public Benefit Corporation;

Plaintiff,

v.

CHELSEA PAPCIAK aka FILER, an
individual; JENNIFER WALKER, an
individual; JENNA BULIS, an individual;
MARTHA THOMPSON, an individual;
and BREAKINGCODESILENCE, INC. a
Florida Profit Corporation.

Defendants.

Case No. 21-cv-0918-BAS-DEB

**SECOND AMENDED
COMPLAINT**

- (1) **TRADEMARK
INFRINGEMENT 15 U.S.C. §
1125 (a);**
- (2) **UNFAIR COMPETITION
UNDER THE LANHAM ACT
15 U.S.C. §1125(a);**
- (3) **INJUNCTIVE RELIEF
UNDER THE LANHAM ACT
15 U.S.C. § 1116;**
- (4) **DECLARATORY ACTION;**
- (5) **UNFAIR COMPETITION
CALIFORNIA BUSINESS
AND PROFESSIONS CODE §
17200;**
- (6) **CONVERSION;**
- (7) **TORTIOUS
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
RELATIONS;**
- (8) **DEFAMATION; and**
- (9) **TORTIOUS
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE.**

(JURY TRIAL DEMANDED)

1 Plaintiff BREAKING CODE SILENCE (“BCS” or “Plaintiff”) hereby alleges
2 as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a Complaint for (1) trademark infringement 15 U.S.C. § 1125 (a);
5 (2) unfair competition under the Lanham Act 15 U.S.C. §1125(a); (3) injunctive relief
6 under the Lanham Act 15 U.S.C. § 1116; (4) declaratory action; (5) unfair competition
7 under California Business and Professions Code § 17200; (6) conversion; (7)
8 intentional interference with contractual relations; (8) defamation; and (9) tortious
9 interference with prospective economic advantage.

10 2. This Court has subject matter jurisdiction over this action pursuant to 15
11 U.S.C. § 1121(a), and 28 U.S.C. §§ 1331, 1332, 1338(a) and (b). This Court has
12 supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. §
13 1367.

14 3. The Court has personal jurisdiction over Defendants because Defendants
15 have purposely availed themselves of the opportunity to conduct commercial activities
16 in this Judicial District by promoting, advertising infringing marks and services, by
17 interfering with contracts and making false statements in this Judicial District.

18 4. Venue in this action properly lies in the Southern District of California,
19 under 28 U.S.C. § 1391, and 1400 as the Defendants provide services within California
20 and this Judicial District, the Defendants have conducted operations, published
21 websites and have derived benefit from the promotion of services to the public within
22 this Judicial District and a substantial part of the events or omissions giving rise to
23 Plaintiff’s claims occurred in this District.

24 **PARTIES**

25 5. Plaintiff BREAKING CODE SILENCE (“BCS”) is a California
26 Nonprofit Public Benefit Corporation with an address of [REDACTED]
27 [REDACTED]

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant JENNIFER WALKER (“WALKER”) is an individual residing at [REDACTED]
[REDACTED]

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant JENNA BULIS (“BULIS”) is an individual residing at [REDACTED]
[REDACTED]

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant MARTHA THOMPSON (“THOMPSON”) is an individual residing at [REDACTED] [REDACTED] and

10. Plaintiff is informed and believes, and based thereon alleges, that Defendant BREAKINGCODESILENCE, INC. is a Florida Profit Corporation incorporated on April 27, 2021 with an address of [REDACTED]

11. Defendants are subject to the jurisdiction of this Court by virtue of their substantial contacts with California, including participation in the acts and events occurring within this District as described herein.

FACTS

12. Plaintiff is a nonprofit public benefit corporation incorporated by survivors of institutional child abuse and activists with the mission of helping survivors of institutional child abuse. The mission of BCS is to raise awareness of the problems in the troubled teen industry and the need for reform. BCS empowers adult survivors to engage in positive self-advocacy.

13. BCS's aim is to use the voices of its members to tell their stories and

1 create change to protect vulnerable youth from abuse. BCS provides a number of
2 services to assist troubled teens and parents.

3 14. One of the volunteers of BCS started branding BREAKING CODE
4 SILENCE in October of 2010 with his books, blogs, posts and speaking engagements
5 aimed at helping survivors of institutional child abuse. This mark was used in the
6 community from 2010 through the present for books, posts, speaking engagements,
7 websites and articles. These rights have been assigned to BCS.

8 15. BCS has a website located at www.breakingcodesilence.net created on
9 December 11, 2019 where it has multiple resources for parents and the general public
10 where it used the mark BREAKING CODE SILENCE.

11 16. In 2019, a group of survivors of troubled teen residential facilities joined
12 together to formalize BCS as an organization. This group started by holding informal
13 meetings; reaching out to survivors and assisting them; establishing a further presence
14 through a website and Facebook community on the internet; Facebook page; Instagram
15 account; Gmail account and Squarespace hosting account; a Twitter Page and by
16 organizing events in 2020. To this end, the following accounts were established by
17 the BCS group in 2019 and 2020:

- 18 • Instagram: <https://www.instagram.com/breakingcodesilence/>
- 19
- 20 • Facebook
- 21 page: <https://www.facebook.com/breakingcodesilencemovement>
- 22
- 23 • Gmail account: breakingcodesilence@gmail.com
- 24 • Google Suite account: info@breakingcodesilence.net &
- 25 inquiries@breakingcodesilence.net
- 26 • Squarespace hosting account: breakingcodesilence.net
- 27 • Additional website: breakingcodesilence.net
- 28

- 1 • **Twitter account: <https://www.twitter.com/breakingcodesi3>**

2 17. The BCS group started applying for grants by October 15, 2020.

3 18. In particular, on or around December 20, 2020, the BCS group applied to
4 the Conrad N. Hilton Foundation (“Hilton Foundation”) for a grant in the amount of
5 \$499,877 to increase access to quality psychosocial support and education for
6 survivors of institutional abuse by funding BCS’s work in psychosocial education &
7 peer support for survivors, education of mental health professionals, and the use of
8 trauma intervention retreats

9 19. BCS was incorporated as an entity on March 22, 2021, when it received
10 its file-stamped Articles of Incorporation from the California Secretary of State.

11 20. On April 29, 2021, BCS was notified of a pending donation from Paris
12 Hilton in the amount of \$15,000 to educate, advocate, and support research endeavors
13 for youth and survivors of residential facilities, to be funded once BCS obtains its
14 determination of tax-exempt status pursuant to Internal Revenue Code Section
15 501(c)(3) no later than July 31, 2021. On May 19, 2021, the Internal Revenue Service
16 determined BCS is tax-exempt pursuant to Internal Revenue Code Section 501(c)(3),
17 effective retroactively to March 22, 2021.

18 21. BCS uses the trademarks BREAKING CODE SILENCE, BCS and
19 #breakingcodesilence to brand its services, mission, and publications, and it has
20 common law trademark rights in these marks which date back to October 18, 2010.
21 BCS also has multiple pending trademark applications filed with the United States
22 Patent and Trademark Office which include BREAKING CODE SILENCE ACTION
23 NETWORK SN. 90583389; BREAKING CODE SILENCE SN. 90692440; and
24 BREAKING CODE SILENCE SN. 90693777 (“Trademarks”).

25 22. BCS has a Facebook Page located at
26 <https://facebook.com/BreakingCodeSilence> created on January 4, 2018, this page
27 uses the mark BREAKING CODE SILENCE. BCS also has a business account with
28

1 Facebook created on December 19, 2018. Facebook has provided a business
2 verification to BCS for its business account.

3 23. Plaintiff and its assignors have continuously utilized the Trademarks for
4 services Nationwide since they commenced use of each.

5 **Defendants' Infringement and Unlawful Acts**

6 24. Defendants PAPCIAK, WALKER, BULIS and THOMPSON were
7 involved with BCS from 2019 through early 2021. In or around February and March
8 of 2021 these Defendants publicly separated themselves from BCS and no longer
9 actively participate in the organization.

10 25. Despite publicly separating themselves from BCS, Defendants are using
11 the marks BREAKING CODE SILENCE, BCS, and #breakingcodesilence
12 ("Infringing Marks") without authorization of Plaintiff.

13 26. Defendant PAPCIAK is falsely representing herself as being a Co-
14 Founder and COO at Breaking Code Silence, which can be seen in her LinkedIn page.
15 (Exhibit "A".) She is not an officer or on the board of directors of BCS and has no
16 affiliation or association with this entity.

17 27. Defendant BULIS is falsely representing herself as being a Director and
18 CEO at Breaking Code Silence, which can be seen on her Facebook page. (Exhibit
19 "B".) She is not an officer or on the board of directors of BCS and has no affiliation
20 or association with this entity.

21 28. Defendants have taken many of Plaintiff's social media and email
22 accounts and are holding them hostage and will not return them to Plaintiff despite
23 numerous requests. The accounts which have been taken are set forth below.

24 29. Defendants are holding Plaintiff's Facebook page at
25 <https://www.facebook.com/breakingcodesilencemovement> hostage and are actively
26 posting comments about BCS on this page in addition to making inaccurate statements
27 that they are working for BCS on legislation and support for survivors.

1 30. Defendants are using their control over the popular WWASP Survivors
2 Facebook group at <http://www.facebook.com/wwaspsurvivors> to actively allow,
3 participate in, and encourage inaccurate and defamatory posts and comments about
4 BCS.

5 31. Defendants BULIS and WALKER are holding the two-factor
6 authentication code for BCS's Instagram account hostage and will not return it to
7 Plaintiff. Plaintiff is therefore unable to access its Instagram account.

8 32. BCS owns a G Suite Administration Account, which is where its emails
9 are accessed at this Gmail account. Defendants PAPCIAK, THOMPSON, BULIS and
10 WALKER have changed the password so that Plaintiff cannot access their accounts.

11 33. Defendant THOMPSON threatened to create a corporation without BCS
12 and steal Plaintiffs marks. Later attempting to do just that THOMPSON took control
13 of the breakingcodesilence@gmail.com and ttisurvivorresearch@gmail.com accounts.
14 On or about March 14, 2021, THOMPSON removed BCS' access to the
15 ttisurvivorresearch@gmail.com account. This email account was originally created
16 for the purpose of BCS' survey of the survivors they serve.

17 34. Defendant BULIS and PAPCIAK are refusing to remove themselves as
18 administrators from BCS's public Facebook page, thus denying BCS access to this
19 page.

20 35. Defendant WALKER contacted Squarespace support and convinced
21 them to reinstate her access to the hosting account for breakingcodesilence.net after
22 her separation from BCS.

23 36. On March 2, 2021 Defendant PAPCIAK conducted a webinar on
24 Breaking Code Silence without the authorization of Plaintiff. (Exhibit "C".)

25 37. Defendant PAPCIAK attempted to interfere with BCS's Hilton
26 Foundation grant by sending an email to the Hilton Foundation on April 14, 2021
27 requesting the Hilton Foundation halt any grant to BCS, (Exhibit "D") after publicly
28

1 stating and admitting on Facebook that she was no longer working at BCS.

2 38. Defendants are posting on Plaintiff's Facebook page without
3 authorization and using Plaintiff's Trademarks without authorization. (Exhibit "E")

4 39. Defendants continue to make public posts on social media alleging that
5 Plaintiff is committing theft, bullying and threatening survivors. These posts are seen
6 by over 4,000 members of the survivor community. (Exhibit "F")

7 40. The statements made by Defendants are causing the public to question
8 Plaintiff's integrity. (Exhibit "G")

9 41. Defendants continue to misrepresent themselves as BREAKING CODE
10 SILENCE on social media. An example of this is attached showing a May 4, 2021
11 post. (Exhibit "H")

12 42. On April 27, 2021 Defendants BULIS and PAPCIAK and individual Jen
13 Barr, filed a registration for a Florida Profit Corporation by the name of
14 BREAKINGCODESILENCE INC. (Exhibits "I" and "J"). This was done without the
15 authorization of BCS, and after publicly falsely accusing BCS (a nonprofit) of
16 attempting to profit from the troubled teen survivor movement.

17 43. Defendants' false and negative posts on social media are causing
18 members of the survivor community to think and speak negatively about Plaintiff.

19 44. Plaintiff has sent multiple demand letters to Defendants BULIS,
20 PAPCIAK, WALKER, and THOMPSON asking them to cease use of the Infringing
21 Trademarks, return Plaintiff's property as outlined above, and cease making false and
22 harmful statements about Plaintiff. To date Defendants have ignored Plaintiff's
23 demands and continue to escalate their infringing and wrongful conduct.

24 **FIRST CLAIM FOR RELIEF**

25 **(Trademark Infringement: 15 U.S.C. § 1125(a) against all Defendants)**

26 45. Plaintiff hereby repeats, realleges and incorporates by reference
27 Paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. This Cause of action arises under §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

47. Plaintiff and its predecessors have used its marks BREAKING CODE SILENCE, BCS, #breakingcodesilence and marks including these terms continuously in commerce since at least October 2010.

48. Plaintiff's Trademarks have acquired a secondary meaning in the market based on the long-term use and its recognition within the survivor community.

49. Defendants are using the infringing marks BREAKING CODE SILENCE and #breakingcodesilence in the same channels of trade as Plaintiff offers its services.

50. Defendants' Infringing Marks are for all intents and purposes identical to Plaintiff's marks.

51. Defendants and Plaintiff compete in the same market space.

52. Defendants' and Plaintiff's services are both for assisting survivors of child abuse and these services travel in the same channels of trade.

53. Given the foregoing, consumers would confuse Defendants' Infringing Marks as the same, or a close approximation of, and originating from Plaintiff.

54. Plaintiff never abandoned or discontinued use of its BREAKING CODE SILENCE, BCS, and #breakingcodesilence trademarks in connection with its operations and services.

55. As such, Defendants' use in commerce of the Infringing Marks, as used in connection with services and posts which do not emanate from Plaintiff constitute trademark infringement.

56. Defendants have deliberately and willfully attempted to trade on Plaintiff's longstanding goodwill in Plaintiff's name, trademarks, and reputation that Plaintiff has established in connection with its services and has done so to confuse consumers as to the origin, association, and sponsorship of Defendants' services.

57. Defendants' conduct has confused or is likely to confuse consumers as to the origin, association, connection, or sponsorship of Defendants' services in violation of 15 U.S.C. § 1125(a).

58. As the direct and proximate result of such trademark infringement, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its operations, reputation, and goodwill. Given the foregoing, Plaintiff is entitled to an injunction against Defendants, as well as all other remedies available under the Lanham Act.

SECOND CLAIM FOR RELIEF

(Unfair Competition Under Lanham Act: 15 U.S.C. § 1125(a) against all Defendants)

59. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. Plaintiff is an organization which provides services and assists survivors of institutional child abuse.

61. Defendants are attempting to provide similar services in the same manner using the Infringing Trademarks. The services provided by Defendants under the Infringing Trademarks will confuse and deceive the public into thinking that the services provided by Defendants are Plaintiff's services, or that there is some connection or affiliation between Plaintiff and Defendants.

62. As a result of Defendants' acts, Plaintiff will continue to suffer harm and will lose funding and support for those services diverted away by Defendants. Further, Plaintiff will lose goodwill because of the potentially poor quality of Defendants' services, social media posts and advertisements used in connection with Defendants' infringing services. Moreover, Defendants' infringing services are likely to be inferior to those offered by Plaintiff, which will reflect negatively on Plaintiff, thus harming Plaintiff's nonprofit business reputation. As a direct and proximate result of

1 Defendants' unlawful conduct, Plaintiff will be damaged, and is thus entitled to relief
2 in an amount to be determined according to proof at the time of trial.

3 **THIRD CLAIM FOR RELIEF**

4 **(Injunctive Relief Under Lanham Act: 15 U.S.C. § 1116 against all Defendants)**

5 63. Plaintiff hereby repeats, realleges and incorporates by reference
6 Paragraphs 1 through 62 of this Complaint as if fully set forth herein.

7 64. Plaintiff is informed and believes, and based thereon alleges, that
8 Defendants knowingly and willfully copied and are using Plaintiff's Trademarks, and
9 likeness on the internet and in social media in an attempt to harm Plaintiff and offer
10 similar services as Plaintiff. Plaintiff is further informed and believes, and based
11 thereon alleges, that Defendants copied Plaintiff's marks for the specific purposes of
12 infringing upon Trademarks and falsely designating its services with Plaintiff.
13 Additionally, Plaintiff believes that Defendants are representing that they are
14 associated with, sponsored by, approved by and/or condoned by Plaintiff.

15 65. Unless enjoined by this Court, Defendants will continue their course of
16 conduct, wrongfully advertising, using, infringing upon and otherwise using Plaintiff's
17 Trademarks and similar services. As a direct and proximate result of the acts of
18 Defendants, Plaintiff will suffer irreparable damage and will sustain lost revenue by
19 way of lost funding. Plaintiff will lose the benefit of the advertising and goodwill for
20 which Plaintiff has expended large sums of money, time and effort promoting during
21 the past years, and Plaintiff will also lose members and support due to the diversion
22 by the Defendants.

23 66. Plaintiff has no adequate remedy at law to address all of the injuries
24 Defendants have caused, and intend to cause by their conduct. Plaintiff will suffer
25 irreparable damage and sustain loss of revenue until Defendants' actions alleged
26 herein are enjoined by this Court.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief against all Defendants)

67. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 66 of this Complaint as if fully set forth herein.

68. An actual and justifiable controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties.

69. Defendants deny all of Plaintiff's contentions. Therefore, Plaintiff requests a judicial determination of its' rights and duties and a declaration as to which party's contentions are correct. A judicial determination is necessary and appropriate at this time so that Plaintiff may stop Defendants from further disseminating and infringing upon its' protected Trademarks and that the pending trademarks which include the names of Defendants BULIS, PAPCIAK and THOMPSON are abandoned or assigned to Plaintiff. These marks include United States Patent and Trademark Office Serial Numbers 90157154 for BREAKINGCODESILENCE and 90208204 for BREAKING CODE SILENCE.

70. Plaintiff is entitled to a declaratory judgment that Defendants do not have the right to use the mark BREAKING CODE SILENCE, BCS or #breakingcodesilence or anything similar as marks for their services.

FIFTH CLAIM FOR RELIEF

**(Unfair Competition California Business and Professions Code § 17200 *et seq.*
against all Defendants)**

71. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 70 of this Complaint as if fully set forth herein.

72. This is a cause of action under California state law pursuant to the Business and Professions Code § 17200 *et seq.*

73. While continuously using its Trademarks and providing services to survivors, Plaintiff has developed valuable goodwill in its Trademarks and services,

1 which have come to be associated exclusively with Plaintiff's nonprofit business by
2 the general public throughout the United States.

3 74. At all times herein mentioned, Defendants had actual knowledge of the
4 existence of Plaintiff's use of its Trademarks and services.

5 75. Defendants are attempting to provide services which are deceptively
6 similar to Plaintiff's services and using Infringing Marks to do this. Additionally,
7 Defendants are making negative and false posts on internet social media sites all with
8 the intent to harm Plaintiff and unfairly compete with Plaintiff. The use of this
9 deceptively similar name by Defendants caused and will continue to cause the public,
10 prospective customers, creditors, suppliers and others to confuse Plaintiff with
11 Defendants and vice versa. Plaintiff has made demands on Defendants to cease and
12 desist using the Infringing Marks and to cease making negative, false and confusing
13 comments. Defendants continue to use the Infringing Marks and make statements
14 despite Plaintiff's demands and will continue such use unless enjoined by this Court.

15 76. Defendants are attempting to provide essentially the same type of services
16 as Plaintiff. Defendants are attempting to provide these services and falsely passing
17 themselves off as Plaintiff on the internet to survivors of child abuse and using
18 Infringing Marks to do so. Defendants' Infringing Marks are identical to Plaintiff's
19 Trademarks, and Defendants' use of the Infringing Marks and false statements creates
20 a likelihood that Plaintiff's current customers, potential customers, and the general
21 public will be confused or misled as to the source of services because Defendants'
22 business is identical to or appears to be affiliated with Plaintiff.

23 77. Defendants' conduct amounts to unfair competition prohibited by the
24 California Business and Professions Code.

25 78. Defendants are using, and unless restrained, will continue to use the
26 Infringing Marks and make false and negative statements. As a result, the general
27 public will be misled and deceived into believing that Defendants are Plaintiff or that
28

1 there is an affiliation with Plaintiff, all to the irreparable injury of Plaintiff's nonprofit
2 business and goodwill, and to the unjust enrichment of Defendants. Plaintiff has no
3 adequate remedy at law because it is extremely difficult to ascertain the damage
4 proximately caused to Plaintiff's nonprofit business and goodwill.

5 **SIXTH CLAIM FOR RELIEF**

6 **(Conversion against Defendants BULIS, WALKER, PAPCIAK and**
7 **THOMPSON)**

8 79. Plaintiff hereby repeats, realleges and incorporates by reference
9 Paragraphs 1 through 78 of this Complaint as if fully set forth herein.

10 80. Plaintiff is the rightful owner of its Instagram account, its G Suite
11 accounts, its Facebook Page, its Twitter account, and its Squarespace account
12 ("Accounts").

13 81. Defendants as set forth above have taken Plaintiff's Accounts and are
14 refusing to return them despite numerous requests.

15 82. Plaintiff had demanded return on numerous occasions and Defendants
16 have failed to comply with any of the demands.

17 83. Defendants have intentionally and substantially interfered with Plaintiff's
18 property by taking possession of the Accounts and/or preventing Plaintiff's from
19 having access to the Instagram Account, G Suite, Squarespace Account, Twitter
20 account, Facebook Page, and authentication codes for these accounts.

21 84. Plaintiff did not consent to Defendants taking possession of the Accounts.

22 85. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

23 **SEVENTH CLAIM FOR RELIEF**

24 **(Tortious Interference with Prospective Economic Relations against Defendant**
25 **Chelsea Papciak)**

26 86. Plaintiff hereby repeats, realleges and incorporates by reference
27 Paragraphs 1 through 85 of this Complaint as if fully set forth herein.

1 87. At all times relevant hereto Plaintiff was in a precontractual economic
2 relationship with the Hilton Foundation for support and funding to be provided to
3 Plaintiff for its nonprofit services.

4 88. Defendant PAPCIAK knew of the prospective contract between BCS and
5 the Hilton Foundation.

6 89. Defendant PAPCIAK intended to and did disrupt the performance of the
7 contract and the economic relationship between Plaintiff and the Hilton Foundation by
8 engaging in the conduct alleged herein, including contacting the Hilton Foundation
9 and demanding that the Hilton Foundation not provide a grant to BCS.

10 90. Defendant PAPCIAK's conduct resulted in harm to Plaintiff by
11 jeopardizing the potential contract from being consummated and by causing
12 performance under the potential contract and the economic relationship between the
13 Hilton Foundation and BCS to be more expensive and difficult.

14 91. As a result of Defendant PAPCIAK's act as aforesaid, Plaintiff suffered
15 damages as described herein.

16 92. The aforementioned act of Defendant PAPCIAK was willful and
17 malicious in that Defendant PAPCIAK engaged in said conduct with intent to cause
18 Plaintiff harm and with conscious disregard for the rights of Plaintiff. Plaintiff is
19 therefore entitled to punitive damages.

20 **EIGHTH CLAIM FOR RELIEF**

21 **(Defamation Against all Defendants)**

22 93. Plaintiff hereby repeats, realleges and incorporates by reference
23 Paragraphs 1 through 92 of this Complaint as if fully set forth herein.

24 94. Plaintiff is dedicated to providing high quality service to its survivors and
25 customers.

26 95. Defendants have created and posted on social media, and made
27 statements which use Plaintiff's Trademarks, made false statements about Plaintiff and
28

1 are negative in nature in order to deceive the public including survivors, business
2 affiliates and donors. (See Exhibit F.) Defendants have made untrue and sometimes
3 slanderous statements about Plaintiff and its officers and board members to multiple
4 third parties and vendors, some of which have caused one of Plaintiff's board members
5 and her spouse to be harassed. (*Id.*)

6 96. Defendants have offended Plaintiff's nonprofit business reputation,
7 effectively limiting its business opportunities with potential clients, donors and the
8 public that it serves.

9 97. A reasonable business person, donor or potential client would identify
10 Defendants' social media posts and statements with Plaintiff.

11 98. The potential misrepresentations and/or lack of customer response by
12 Defendants will make it appear as though Plaintiff is inattentive to its high-quality
13 standards and high customer service and thus producing poor services. Persons
14 seeking these services will think little of Plaintiff as a result of Defendants' false
15 misrepresentation. In fact, the public has already been fooled by some of Defendants'
16 false statements. Such a result is highly offensive to an ordinary business person, and,
17 as a result, BCS's professional reputation and nonprofit business opportunities were
18 and will be diminished.

19 99. As a direct and proximate result of Defendants' unlawful conduct
20 Plaintiff has been damaged, and will continue to be damaged until Defendants actions
21 are stopped. Plaintiff is thus entitled to relief in an amount to be determined according
22 to proof at the time of trial.

23 100. Defendants' conduct described herein was done with a conscious
24 disregard of BCS's rights and with an intent to vex, injure, or annoy BCS, such as to
25 constitute oppression, fraud, and malice under California Civil Code § 3294, entitling
26 Plaintiff to punitive damages in an amount appropriate to punish or set an example of
27 Defendants.

NINTH CLAIM FOR RELIEF

**(Intentional Interference with Prospective Economic Advantage
Against All Defendants)**

101. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

102. Plaintiff prides itself on high customer service and quality services.

103. Plaintiff is informed and believes that Defendants know that BCS is engaged in the business of providing services to survivors of institutional child abuse. Defendants also have knowledge of the terms and conditions of the relationship between Plaintiff and their clients.

104. Despite said knowledge, Defendants have maliciously and wrongfully obstructed and interfered with BCS's business relationships with its customers by passing themselves off as BCS and making false statements about BCS.

105. BCS is organized to derive its revenue from grantors and donors as a result of its good reputation. BCS also connects with its target community of survivors through its good reputation and word of mouth. Once a donor or survivor comes to BCS they will generally continue to use BCS for these needs. BCS reasonably relies on this return business for much of its revenue and also to carry out its nonprofit mission. BCS's ability to receive the grants and donations it needs to help survivors and further its charitable purposes come from these relationships, which have been and will be directly affected by Defendants' interference with Plaintiff's grantors, donors, survivors and the general public.

106. As a direct and proximate result of Defendants' unlawful conduct, BCS will be damaged, and is thus entitled to relief in an amount to be determined according to proof at the time of trial.

107. Defendants' conduct described herein was done with conscious disregard of Plaintiff's rights and with intent to vex, injure and annoy BCS, such as to constitute

1 oppression, fraud and malice under California Civil Code Section 3294 entitling
2 Plaintiff to punitive damages in the amount appropriate to punish or set an example of
3 Defendants.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for relief as follows:

6 **ON THE FIRST AND SECOND CAUSES OF ACTION**

- 7 1. That Defendants be adjudged to have infringed on Plaintiff's Trademarks
8 in violation of federal law;
- 9 2. For actual damages according to proof at trial;
- 10 3. For damages for lost revenue and goodwill in a sum according to proof
11 at trial pursuant to 15 U.S.C. § 1125;
- 12 4. For treble damages for willful infringement pursuant to 15 U.S.C.
13 § 1117(b);
- 14 5. Injunctive relief to prevent ongoing infringement and unfair competition;
15 and
- 16 6. For such other and further relief as the Court deems just and proper.

17 **ON THE THIRD AND FOURTH CAUSES OF ACTION:**

- 18 1. That Defendants, their agents, servants, officers, directors, employees,
19 representatives and each of them, be enjoined during the pendency of this action and
20 permanently thereafter from using the Infringing Marks in any manner, and from the
21 following activities:
- 22 a. Soliciting and/or providing services bearing Plaintiff's Trademarks
23 or confusingly similar marks;
- 24 b. Publishing or distributing advertisements or articles using
25 Plaintiff's Trademarks; and
- 26 c. Making posts on social media or other internet platforms using
27 Plaintiff's Trademarks or confusingly similar marks.

2. Declaring that Defendants have no trademarkable interest in the pending Applications for USPTO SNs. 90157154 and 90208204.

3. Invalidating or assigning the pending trademark applications to Plaintiff.

4. Enjoining Defendants, preliminarily and permanently, from interfering with Plaintiff's possession and use of its Trademarks or any similar marks.

5. For such other and further relief as the Court deems just and proper.

ON THE FIFTH CAUSE OF ACTION:

1. For general and special damages in a sum according to proof at trial;

2. For an award of damages equal to the revenue realized from Defendants' conduct, as alleged;

3. For costs of suit incurred herein;

4. For any revenue obtained by Defendants;

5. For attorneys' fees, costs, and prejudgment interest; and

6. For such other and further relief as the Court deems just and proper.

ON THE SIXTH CAUSE OF ACTION:

1. For the return of the Plaintiff's Instagram account at <https://www.instagram.com/breakingcodesilence/>.

2. For the return of Plaintiff's Facebook Page at <https://www.facebook.com/breakingcodesilencemovement>.

3. For the return of Plaintiff's Gmail account breakingcodesilence@gmail.com

4. For the return of Plaintiff's Square space hosting account for breakingcodesilence.net.

5. For the return of Plaintiff's G Suite account for info@breakingcodesilence.net and inquiries@breakingcodesilence.net.

6. For the return of Plaintiff's Twitter account at <https://www.twitter.com/breakingcodesi3>.

1 7. For monetary damages to compensate for the loss of these Accounts and
2 access to the same.

3 8. For Attorney's Fees; and

4 9. For such other and further relief as the Court deems just and proper.

5 **ON THE SEVENTH, EIGHTH AND NINTH CAUSES OF ACTION:**

6 1. For general and special damages in a sum according to proof at trial;

7 2. For an award of damages equal to the revenue realized from Defendants'
8 conduct, as alleged;

9 3. For prejudgment interest thereon according to law;

10 4. For punitive damages pursuant to Civil Code § 3294;

11 5. For costs of suit incurred herein;

12 6. For Attorney's Fees; and

13 7. For such other and further relief as the Court deems just and proper.

14
15 DATED: June 23, 2021

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

16
17 By: s/Lisel M. Ferguson

18 Lisel M. Ferguson

19 Tiffany Salayer

Attorney for Plaintiff

BREAKING CODE SILENCE

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 525 "B" Street, Suite 2200, San Diego, California 92101. On **June 23, 2021**, I served the foregoing document.

☒ *(Federal)* **BY CM/ECF NOTICE OF ELECTRONIC FILING** by causing such document(s) above to be served through this Court's electronic transmission facilities via the Notice of Electronic Filing (NEF) and hyperlink, to the parties and/or counsel who are determined this date to be registered CM/ECF Users set forth in the service list obtained from this Court on the Electronic Mail Notice List.

☒ *(Federal)* I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 23, 2021, at **San Diego**, California.

s/Lisel M. Ferguson

Lisel M. Ferguson