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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; JESSICA WALKER, an
individual; JENNA BULIS, an individual;
MARTHA THOMPSON, an individual;
and BREAKINGCODESILENCE, INC. a
Florida Profit Corporation.

Defendants.

Case No. **'21CV0918 BAS DEB**

COMPLAINT FOR:

- (1) TRADEMARK
INFRINGEMENT 15 U.S.C. §
1125;**
- (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) FALSE LIGHT; and**
- (9) TORTIOUS
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE.**

(JURY TRIAL DEMANDED)

COMPLAINT

Case No. _____

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; (2)
5 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) false light; 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, under
19 28 U.S.C. § 1391, and 1400 as the Defendants provide services within California and
20 this Judicial District, the Defendants have conducted operations, published websites
21 and have derived benefit from the promotion of services to the public within this
22 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]

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

Breaking Code Silence Business and Trademarks

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. These rights have been
6 assigned to BCS.

7 15. BCS has a website located at www.breakingcodesilence.net created on
8 December 11, 2019 where it has multiple resources for parents and the general public.

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

- 16 • **Instagram:** <https://www.instagram.com/breakingcodesilence/>
- 17
- 18 • **Facebook**
- 19 **page:** <https://www.facebook.com/breakingcodesilencemovement>
- 20
- 21 • **Gmail account:** breakingcodesilence@gmail.com
- 22 • **Google Suite account:** info@breakingcodesilence.net &
- 23 inquiries@breakingcodesilence.net
- 24 • **Squarespace hosting account:** breakingcodesilence.net
- 25 • **Additional website:** breakingcodesilence.net
- 26
- 27 • **Twitter account:** <https://www.twitter.com/breakingcodesi3>
- 28

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

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

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

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

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

23 22. BCS has a Facebook Page located at
24 <https://facebook.com/BreakingCodeSilence> created on January 4, 2018. BCS also
25 has a business account with Facebook created on December 19, 2018. Facebook has
26 provided a business verification to BCS for its business account.

27 23. Plaintiff has continuously utilized its Trademarks for its services
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1 Nationwide since it commenced use of each.

2 **Defendants Infringement and Unlawful Acts**

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

7 25. Despite publicly separating themselves from BCS, Defendants are using
8 the marks BREAKING CODE SILENCE, BCS, and #breakingcodesilence
9 (“Infringing Marks”) without authorization of Plaintiff.

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

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

18 28. Defendants have taken many of Plaintiff’s social media and email
19 accounts and are holding them hostage and will not return them to Plaintiff despite
20 numerous requests. The accounts which have been taken are set forth below.

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

25 30. Defendants are using their control over the popular WWASP Survivors
26 Facebook group at <http://www.facebook.com/wwaspsurvivors> to actively allow,
27 participate in, and encourage inaccurate and defamatory posts and comments about
28

1 BCS.

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

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

8 33. Defendant BULIS and PAPCIAK are refusing to remove themselves as
9 administrators from BCS's public Facebook page, thus denying BCS access to this
10 page.

11 34. Defendants WALKER took the Squarespace hosting account for
12 breakingcodesilence.net.

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

15 36. Defendant PAPCIAK attempted to interfere with BCS's Hilton
16 Foundation grant by sending an email to the Hilton Foundation on April 14, 2010
17 requesting the Hilton Foundation halt any grant to BCS, (Exhibit "D")
18 after publicly stating and admitting on Facebook that she was no longer working at
19 BCS.

20 37. Defendants are posting on Plaintiff's Facebook page without
21 authorization and using Plaintiff's Trademarks without authorization. (Exhibit "E")

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

25 39. The statements made by Defendants are causing the public to question
26 Plaintiff's integrity. (Exhibit "G")

27 40. Defendants continue to misrepresent themselves as BREAKING CODE
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1 SILENCE on social media. An example of this is attached showing a May 4, 2021
2 post. (Exhibit “H”)

3 41. On April 27, 2021 Defendants BULIS and PAPCIAK and individual Jen
4 Barr, filed a registration for a Florida Profit Corporation by the name of
5 BREAKINGCODESILENCE INC. (Exhibits “I” and “J”). This was done without the
6 authorization of BCS, and after publicly falsely accusing BCS (a nonprofit) of
7 attempting to profit from the troubled teen survivor movement.

8 42. Defendants’ false and negative posts on social media are causing
9 members of the survivor community to think and speak negatively about Plaintiff.

10 43. Plaintiff has sent multiple demand letters to Defendants BULIS,
11 PAPCIAK, WALKER, and THOMPSON asking them to cease use of the Infringing
12 Trademarks, return Plaintiff’s property as outlined above, and cease making false and
13 harmful statements about Plaintiff. To date Defendants have ignored Plaintiff’s
14 demands and continued to escalate their infringing and wrongful conduct.

15 **FIRST CLAIM FOR RELIEF**

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

17 44. Plaintiff hereby repeats, realleges and incorporates by reference
18 Paragraphs 1 through 43 of this Complaint as if fully set forth herein.

19 45. This Cause of action arises under §43(a) of the Lanham Act, 15 U.S.C.
20 §1125(a).

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

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

27 48. Defendants’ Infringing Marks are for all intents and purposes identical to
28

1 Plaintiff's marks.

2 49. Defendants and Plaintiff compete in the same market space.

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

5 51. Given the foregoing, consumers would recognize Defendants' Infringing
6 Marks as the same, or a close approximation of, name or identity used by Plaintiff.

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

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

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

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

20 56. As the direct and proximate result of such unfair competition, Plaintiff
21 has suffered, and will continue to suffer, monetary loss and irreparable injury to its
22 operations, reputation, and goodwill. Given the foregoing, Plaintiff is entitled to an
23 injunction against Defendants, as well as all other remedies available under the
24 Lanham Act.

SECOND CLAIM FOR RELIEF

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

57. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 56 of this Complaint as if fully set forth herein.

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

59. 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.

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

THIRD CLAIM FOR RELIEF

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

61. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 60 of this Complaint as if fully set forth herein.

62. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and willfully copied and are using Plaintiff's Trademarks, and

1 likeness on the internet and in social media in an attempt to harm Plaintiff and offer
2 similar services to Plaintiff. Plaintiff is further informed and believes, and based
3 thereon alleges, that Defendants copied Plaintiff's marks for the specific purposes of
4 infringing upon Trademarks and falsely designating its services with Plaintiff.
5 Additionally, Plaintiff believes that Defendants are representing that they are
6 associated with, sponsored by, approved by and/or condoned by Plaintiff.

7 63. Unless enjoined by this Court, Defendants will continue their course of
8 conduct, wrongfully advertising, using, infringing upon and otherwise using Plaintiff's
9 Trademarks and similar services. As a direct and proximate result of the acts of
10 Defendants, Plaintiff will suffer irreparable damage and will sustain lost revenue by
11 way of lost funding. Plaintiff will lose the benefit of the advertising and goodwill for
12 which Plaintiff has expended large sums of money, time and effort promoting during
13 the past years, and Plaintiff will also lose members and support due to the diversion
14 by the Defendants.

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

19 **FOURTH CLAIM FOR RELIEF**

20 **(Declaratory Relief against all Defendants)**

21 65. Plaintiff hereby repeats, realleges and incorporates by reference
22 Paragraphs 1 through 64 of this Complaint as if fully set forth herein.

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

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

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

10 **FIFTH CLAIM FOR RELIEF**

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

13 69. Plaintiff hereby repeats, realleges and incorporates by reference
14 Paragraphs 1 through 68 of this Complaint as if fully set forth herein.

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

17 71. While continuously using its Trademarks and providing services to
18 survivors, Plaintiff has developed valuable goodwill in its Trademarks and services,
19 which have come to be associated exclusively with Plaintiff's nonprofit business by
20 the general public throughout the United States.

21 72. At all times herein mentioned, Defendants had actual knowledge of the
22 existence of Plaintiff's use its Trademarks and services.

23 73. Defendants are attempting to provide services which are deceptively
24 similar to Plaintiff's services and using Infringing Marks to do this. Additionally,
25 Defendants are making negative and false posts on internet social media sites all with
26 the intent to harm Plaintiff and unfairly compete with Plaintiff. The use of this
27 deceptively similar name by Defendants caused and will continue to cause the public,
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1 prospective customers, creditors, suppliers and others to confuse Plaintiff with
2 Defendants and vice versa. Plaintiff has made demands on Defendants to cease and
3 desist using the Infringing Marks and to cease making negative, false and confusing
4 comments. Defendants continue to use the Infringing Marks and make statements
5 despite Plaintiff's demands and will continue such use unless enjoined by this Court.

6 74. Defendants are attempting to provide essentially the same type of services
7 as Plaintiff. Defendants are attempting to provide these services and falsely passing
8 themselves off as Plaintiff on the internet to survivors of child abuse and using
9 Infringing Marks to do so. Defendants' Infringing Marks are identical to Plaintiff's
10 Trademarks, and Defendants' use of the Infringing Marks and false statements creates
11 a likelihood that Plaintiff's current customers, potential customers, and the general
12 public will be confused or misled as to the source of services because Defendants'
13 business is identical to or appears to be affiliated with Plaintiff.

14 75. Defendants' conduct amounts to unfair competition prohibited by the
15 California Business and Professions Code.

16 76. Defendants are using, and unless restrained, will continue to use the
17 Infringing Marks and make false and negative statements. As a result, the general
18 public will be misled and deceived into believing that Defendants are Plaintiff or that
19 there is an affiliation with Plaintiff, all to the irreparable injury of Plaintiff's nonprofit
20 business and goodwill, and to the unjust enrichment of Defendants. Plaintiff has no
21 adequate remedy at law because it is extremely difficult to ascertain the damage
22 proximately caused to Plaintiff's nonprofit business and goodwill.

23 **SIXTH CLAIM FOR RELIEF**

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

25 77. Plaintiff hereby repeats, realleges and incorporates by reference
26 Paragraphs 1 through 76 of this Complaint as if fully set forth herein.

27 78. Plaintiff is the rightful owner of its Instagram account, its G Suite
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1 accounts, its Facebook Page, its Twitter account, and its Squarespace account
2 (“Accounts”).

3 79. Defendants as set forth above have taken Plaintiff’s Accounts and are
4 refusing to return them despite numerous requests.

5 80. Plaintiff demanded return on and Defendants have failed to respond to
6 any of the demands.

7 81. Defendants have intentionally and substantially interfered with Plaintiff’s
8 property by taking possession of the Accounts and/or preventing Plaintiff’s from
9 having access to the Instagram Account, GSuite, Squarespace Account, Twitter
10 account, Facebook Page, and authentication codes for these accounts.

11 82. Plaintiff did not consent to Defendants taking possession of the Accounts.

12 83. Defendants’ conduct was a substantial factor in causing Plaintiff’s harm.

13 **SEVENTH CLAIM FOR RELIEF**

14 **(Tortious Interference with Prospective Economic Relations against Defendant**

15 **Chelsea Papciak)**

16 84. Plaintiff hereby repeats, realleges and incorporates by reference
17 Paragraphs 1 through 83 of this Complaint as if fully set forth herein.

18 85. At all times relevant hereto Plaintiff was in a precontractual economic
19 relationship with the Hilton Foundation for support and funding to be provided to
20 Plaintiff for its nonprofit services.

21 86. Defendant PAPCIAK knew of the prospective contract between BCS and
22 the Hilton Foundation.

23 87. Defendant PAPCIAK intended to and did disrupt the performance of the
24 contract and the economic relationship between Plaintiff and the Hilton Foundation by
25 engaging in the conduct alleged herein, including contacting the Hilton Foundation
26 and demanding that the Hilton Foundation not provide a grant to BCS.

27 88. Defendant PAPCIAK’s conduct resulted in harm to Plaintiff by
28

1 jeopardizing the potential contract from being consummated and by causing
2 performance under the potential contract and the economic relationship between the
3 Hilton Foundation and BCS to be more expensive and difficult.

4 89. As a result of Defendant PAPCIAK's act as aforesaid, Plaintiff suffered
5 damages as described herein.

6 90. The aforementioned act of Defendant PAPCIAK was willful and
7 malicious in that Defendant PAPCIAK engaged in said conduct with intent to cause
8 Plaintiff harm and with conscious disregard for the rights of Plaintiff. Plaintiff is
9 therefore entitled to punitive damages.

10 **EIGHTH CLAIM FOR RELIEF**

11 **(False Light Against all Defendants)**

12 91. Plaintiff hereby repeats, realleges and incorporates by reference
13 Paragraphs 1 through 90 of this Complaint as if fully set forth herein.

14 92. Plaintiff is dedicated to providing high quality service to its survivors and
15 customers.

16 93. Defendants have created and posted on social media, and made
17 statements which use Plaintiff's Trademarks, make false statements about Plaintiff and
18 are negative in nature in order to deceive the public including survivors, business
19 affiliates and donors. Defendants have made untrue and sometimes slanderous
20 statements about Plaintiff and its officers and board members to multiple third parties
21 and vendors, some of which have caused one of Plaintiff's board members and her
22 wife to be harassed.

23 94. Defendants have offended Plaintiff's nonprofit business reputation,
24 effectively limiting its business opportunities with potential clients, donors and the
25 public that it serves.

26 95. A reasonable business person, donor or potential client would identify
27 Defendants' social media posts and statements with Plaintiff.

1 96. The potential misrepresentations and/or lack of customer response by
2 Defendants will make it appear as though Plaintiff is inattentive to its high-quality
3 standards and high customer service and thus producing poor services. Persons
4 seeking these services will think little of Plaintiff as a result of Defendants' false
5 misrepresentation. In fact, the Public has already been fooled by some of Defendants'
6 false statements. Such a result is highly offensive to an ordinary business person, and,
7 as a result, BCS's professional reputation and nonprofit business opportunities were
8 and will be diminished.

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

12 98. Defendants' conduct described herein was done with a conscious
13 disregard of BCS's rights and with an intent to vex, injure, or annoy BCS, such as to
14 constitute oppression, fraud, and malice under California Civil Code § 3294, entitling
15 Plaintiff to punitive damages in an amount appropriate to punish or set an example of
16 Defendants.

17 **NINTH CLAIM FOR RELIEF**

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

20 99. Plaintiff hereby repeats, realleges and incorporates by reference
21 Paragraphs 1 through 98 of this Complaint as if fully set forth herein.

22 100. Plaintiff prides itself on high customer service and quality services.

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

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

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

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

15 105. Defendants' conduct described herein was done with conscious disregard
16 of Plaintiff's rights and with intent to vex, injure and annoy BCS, such as to constitute
17 oppression, fraud and malice under California Civil Code Section 3294 entitling
18 Plaintiff to punitive damages in the amount appropriate to punish or set an example of
19 Defendants.

20 **PRAYER FOR RELIEF**

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

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

- 23 1. That Defendants be adjudged to have infringed on Plaintiff's Trademarks
24 in violation of federal law;
- 25 2. For actual damages according to proof at trial;
- 26 3. For damages for lost revenue and goodwill in a sum according to proof
27 at trial pursuant to 15 U.S.C. § 1125;

4. For treble damages for willful infringement pursuant to 15 U.S.C. § 1117(b);

5. Injunctive relief to prevent ongoing infringement and unfair competition;
and

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

ON THE THIRD AND FOURTH CAUSES OF ACTION:

1. That Defendants, their agents, servants, officers, directors, employees, representatives and each of them, be enjoined during the pendency of this action and permanently thereafter from using the Infringing Marks in any manner, and from the following activities:

a. Soliciting and/or providing services bearing Plaintiff's Trademarks or confusingly similar marks;

b. Publishing or distributing advertisements or articles using Plaintiff's Trademarks; and

c. Making posts on social media or other internet platforms using 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 GSuite account for info@breakingcodesilence.net and inquiries@breakingcodesilence.net.
6. For the return of Plaintiff's Twitter account at <https://www.twitter.com/breakingcodesi3>
7. For monetary damages to compensate for the loss of these Accounts and access to the same.
8. For Attorney's Fees; and
9. For such other and further relief as the Court deems just and proper.

ON THE SEVENTH, EIGHTH AND NINTH CAUSES 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 prejudgment interest thereon according to law;
4. For punitive damages pursuant to Civil Code § 3294;
5. For costs of suit incurred herein;

1 6. For Attorney's Fees; and

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

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4 DATED: May 13, 2021

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

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6 By: s/Lisel M. Ferguson

Lisel M. Ferguson

Tiffany Salayer

Attorney for Plaintiff

BREAKING CODE SILENCE