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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

hiQ Labs, Inc.,

Plaintiff,

vs.

LinkedIn Corp.,

Defendant.

Case No. 3:17-cv-03301-EMC

AMENDED COMPLAINT FOR VIOLATIONS OF THE SHERMAN ACT (15 U.S.C. §§ 1 AND 2) AND THE CLAYTON ACT (15 U.S.C. §§ 15 AND 16)

DECLARATORY JUDGMENT UNDER 22 U.S.C. § 2201 THAT PLAINTIFF HAS NOT VIOLATED: (1) THE COMPUTER FRAUD AND ABUSE ACT (18 U.S.C. § 1030); (2) THE DIGITAL MILLENNIUM COPYRIGHT ACT (17 U.S.C. §1201);(3) COMMON LAW TRESPASS TO CHATTELS; OR (4) CAL. PENAL CODE § 502(c);

INJUNCTIVE RELIEF TO ENJOIN: (1) VIOLATIONS OF THE SHERMAN ACT (15 U.S.C. §§ 1 AND 2); (2) INTENTIONAL INTERFERENCE WITH CONTRACT AND PROSPECTIVE ECONOMIC ADVANTAGE; (3) UNFAIR COMPETITION (CAL. BUS. & PROF. CODE § 17200); AND RELATED MONETARY RELIEF

Plaintiff hiQ Labs, Inc. ("hiQ"), by its undersigned counsel, hereby brings this action against Defendant LinkedIn Corporation ("Defendant" or "LinkedIn") and alleges as follows:

INTRODUCTION

1. hiQ brings this action under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. hiQ seeks to recover the damages it suffered as a result of LinkedIn's anticompetitive conduct, as well as obtain a declaration from the Court that hiQ has not violated and will not violate federal or state law by accessing and copying wholly public information from LinkedIn's website. hiQ further seeks injunctive relief preventing LinkedIn from misusing the law to complete its attempted destruction of hiQ's business, and prevent LinkedIn from continuing to strangle competition by giving itself an unfair competitive advantage through unlawful and unfair business practices.

2. LinkedIn is the world's largest professional social network, with over 660 million members. Particularly relevant here is that LinkedIn rose to dominance in the professional social networking platform market because it created a social network platform in which users could publicly post all or portions of their resumes and work history, so that those users could connect with potential employers or other potential professional contacts. The public portion of LinkedIn users' profiles has long been one of the network's primary selling points, and LinkedIn's website and user agreement have long stated that the information users chose to make public remained theirs to provide to whomever viewed it online. These fundamental representations helped fuel LinkedIn's massive growth, which resulted in it obtaining undisputed monopoly power in the professional social networking platform market.

3. hiQ, in contrast, is a tech startup nowhere near LinkedIn's size. hiQ identified an opportunity for a new kind of "people analytics" service based on the massive trove of public information individuals chose to share in their professional social networking. By collecting and analyzing public profile information on LinkedIn, hiQ provided its clients – mostly large companies – with insights and other data analytics about their employees, such as which

employees are most at risk to leave the company or which skills its employees have. This service – the likes of which did not exist before hiQ and constitutes its own unique relevant market today – provides enormous value to both employers and employees, because it creates a way for employers to, *inter alia*, approach those employees that are at the highest risk of leaving the company in order to either renegotiate their pay and benefit packages (*i.e.*, provide better compensation to the employee), or otherwise address concerns those employees might have with their current employment situation, instead of incurring the significant cost and disruption of replacing a departed employee. Similarly, people analytics help employers identify better positions and potential training for their employees within the company, so that their skillsets are further developed and put to their fullest and best use. Enabling these types of proactive activities results in a win-win situation for all involved. As reported by LinkedIn's 2020 Global Talent Trends report, "55% of talent professionals say they still need help putting basic people analytics into practice." hiQ's services did just that.

4. In order to provide people analytics services to its clients, hiQ does not analyze the private sections of LinkedIn, such as profile information that is only visible when you are signed-in as a member, or member private data that is visible only when you are "connected" to a member. Rather, the information hiQ uses is wholly public information visible to anyone with an internet connection. And, as noted, far from harming LinkedIn members, hiQ's access to this public information promotes precisely the type of professional and employment opportunities that lead LinkedIn members to make all or even just a portion of their profiles public in the first place.

5. For years, LinkedIn knew about and sanctioned hiQ's services, because LinkedIn profited from doing so. hiQ increased employer engagement on LinkedIn, because those employers paid more attention to their employees' LinkedIn public profiles to see when they might leave the company, and/or whether they might be better placed elsewhere within the organization. It also incentivized employers to either directly or implicitly encourage their employees to use LinkedIn in the first place. Employer participation in the LinkedIn network distinguishes that network from other social networks, and, indeed, it is one of the company's *raisons d'etre*. As LinkedIn advertises on its website, it is a social network meant to help users

"[f]ind the right job or internship for you," "post your job for millions of people to see," and act as the social network for "[a]nyone looking to navigate their professional life." Moreover, employers, employees, and recruiters often choose to pay LinkedIn subscription and other fees for a variety of reasons. Increased employer and employee engagement through the "free advertising" LinkedIn received from hiQ's services directly led to higher revenues for LinkedIn.

6. LinkedIn eventually realized that it might be able to profit by providing the same type of innovative and revolutionary analytics hiQ pioneered, and it developed its own competing version of that analytics service. Then, in May 2017, LinkedIn abruptly, unlawfully and without cause denied hiQ access to the portion of the LinkedIn website containing wholly public member profiles. hiQ relies on that public data, available nowhere but LinkedIn, for its data analytics business, which, prior to LinkedIn's conduct described herein, served well-known, innovative clients including eBay, Capital One, and GoDaddy.

7. More specifically, on May 23, 2017, LinkedIn sent hiQ a cease-and-desist letter ordering hiQ to stop accessing LinkedIn and asserting that hiQ's continued access to the website violated the Computer Fraud and Abuse Act, Digital Millennium Copyright Act, and California Penal Code § 502(c) and constituted common law trespass to chattels. This came as a surprise to hiQ, given that LinkedIn was aware of hiQ's activities for several years and never once objected to hiQ's use of this public information.

8. In an attempt to justify this about-face, which followed years of profitable dealing with hiQ and other people analytics providers, LinkedIn asserted (pretextually) that it needs to protect LinkedIn member data even though LinkedIn members have expressly made that information public and LinkedIn has identified no harm to itself or its members. LinkedIn publicly acknowledges on its own website that public profile data belongs to LinkedIn members, not to LinkedIn, and that each member is free to choose the level of public disclosure allowed for his or her own information. LinkedIn members can choose to (1) keep their profile information private; (2) share only with their direct connections; (3) share with connections within three degrees of separation; (4) allow access only to other signed-in LinkedIn members, or (5) allow access to everyone, even members of the general public who may have no LinkedIn account and

who can access the information without signing in or using any password. It is only this fifth category of information – wholly public profiles – that is at issue here: hiQ only accesses the profiles that LinkedIn members have made available to the general public.

9. LinkedIn's entire stated complaint is that hiQ "copies" the data its members have made public, but LinkedIn asserts no copyright or other exclusive propriety interest in the data and it clearly has none. Moreover, hiQ does not collect all (or even a substantial proportion) of the member profiles on LinkedIn, nor does it compete with LinkedIn by creating a substitute social network or job posting forum. Rather, hiQ accesses public data for a limited subset of users – usually its client's employees – and uses scientific methodologies to analyze the information. hiQ then provides its clients with this new, refined data that it produced in a form that is by necessity very different from the public profile pages on LinkedIn.

10. Because LinkedIn has no legitimate copyright claim, it has instead resorted to self-help by actively preventing hiQ from obtaining the public data in LinkedIn users' profiles through systematic means. LinkedIn also threatened to sue hiQ under federal and state laws pertaining to hacking and unauthorized computer and network access in order to intimidate hiQ and force it to stop accessing these public profiles. But LinkedIn cannot use those laws for an improper purpose to obtain exclusive proprietary control over wholly public data in which it otherwise has no exclusive interest and which hiQ, and anyone else, can freely access on the world wide web with no log-in credentials or password. Indeed, LinkedIn would not have that data on its website in the first place but for its promise to LinkedIn members that they can publicly disclose that information on LinkedIn for all the world to see and use.

11. LinkedIn's about-face and active attempts to prevent hiQ (and, on information and belief, all other people analytics providers) from obtaining employment data LinkedIn users make public has had massive, immediate consequences for hiQ. Suddenly, the public data source on which all of its and its non-LinkedIn competitors' people analytics services rely was taken away. This was long after LinkedIn told its members their profile information was their own and locked them into its professional social networking platform based on that promise. LinkedIn's about-face, which followed years of profitable dealing with hiQ, prevented hiQ and other people

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