No. 17-16783
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HIQ LABS, INC.,
Plaintiff and Appellee,

v.

LINKEDIN CORP.,

Defendant and Appellant.

On Appeal from the United States District Court For the Northern District Of California, Case No. 17-cv-03301-EMC

**BRIEF FOR *AMICUS CURIAE* SCRAPING HUB, LTD.
IN SUPPORT OF AFFIRMANCE**

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<u>CORPORATE DISCLOSURE STATEMENT</u>

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* Scraping Hub Ltd. states that there is no parent corporation or publicly-held corporation that owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, Scraping Hub, Ltd. ("Scraping Hub") is a start-up company founded in 2010 that offers "data on demand" as part of the growing data as a service ("DaaS") industry. Companies, journalists, academics and governments from across the web and around the globe have learned that having better access to more data leads to stronger decision making. Members of the DaaS industry service this need by gathering large quantities of data, either directly from their customers or from disparate locations across the web, and harnessing the value in that data through analytics and visualization, which reveal insights and trends only available when working with the data at scale.

Scraping Hub's mission is to "turn web content into useful data for your next great move." Scraping Hub created and continues to maintain "Scrapy," the most popular open source framework for web scraping. Empowered by the data obtained with Scraping Hub's help, Scraping Hub's customers gain insights about their customers, competitors, and their own companies and industries, which helps them create value through data-driven decisions.

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[1] Pursuant to Federal Rule of Appellate Procedure 29, both parties have consented to Scraping Hub filing this brief as an *amicus curiae*. In addition, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* made a monetary contribution to its preparation or submission.

More broadly, the insights gleaned through gathering, analyzing and visualizing big data compiled from publicly-available web sources are used in a broad range of applications, including sales lead generation, talent recruitment and retention, financial market analytics and trend assessment, investigative reporting, academic research, and dynamic, real-time pricing, just to name a few.

The critical issue underlying this appeal is whether a data monopolist such as LinkedIn may criminalize perfectly proper behavior and thereby selectively bar competitors and other entities from electronically accessing data (via crawling, scraping or other data mining) that its users otherwise make available to the public generally. The District Court correctly concluded that the law does not countenance such anti-competitive behavior.

As a pioneering member of the DaaS industry and a champion for an open Internet, Scraping Hub has a strong interest in the outcome of this appeal. Furthermore, Scraping Hub is currently defending against similar CFAA and related claims asserted against it by LinkedIn. *See* Appellant's Request for Judicial Notice, Ex. A: Second Amended Complaint, *LinkedIn Corporation v. Scraping Hub, Ltd. et al.*, Case No. 5:16-cv-04463-LKH (N.D. Cal. June 7, 2017), ECF No. 39. Thus, Scraping Hub is one of many companies whose legitimate activities and business model could be curtailed if the District Court's decision were overturned.

INTRODUCTION

LinkedIn argues the District Court erred in entering a preliminary injunction barring it from blocking a competitor, hiQ, from electronically accessing data that LinkedIn's users make available to the general public. LinkedIn does not try to block platforms it deems "popular and reputable,"[2] like Google.com and Bing.com. hiQ has persuasively demonstrated that the District Court correctly applied the law and exercised sound discretion in entering preliminary relief.

Amicus fully supports hiQ's Answering Brief in all respects, including its demonstration that LinkedIn's conduct (a) violates the spirit, indeed, the letter of the antitrust laws, and (b) is not immunized by the CFAA. It writes separately to place this dispute in a broader context, and to demonstrate the extent to which endorsement of LinkedIn's position would stifle both competition and innovation in the real world.

Three of LinkedIn's key contentions are manifestly, and seriously incorrect. First, LinkedIn is incorrect that its conduct at most injured a single competitor, as opposed to impairing competition generally. To the contrary, numerous companies crawl and scrape public data from a myriad of web sources,

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[2] *See LinkedIn Corporation v. Scraping Hub, Ltd. et al.*, Case No. 5:16-cv-04463-LKH (N.D. Cal.), Complaint ¶23 (ECF No. 1).

providing consumers and the general public with valuable analysis and analytical

tools. The fact that LinkedIn's position is supported by *amici* craigslist, Inc. and

CoStar Group, Inc., two entities that operate in fields entirely divorced from

LinkedIn's, reinforces the conclusion that this is not a single competitor issue, but

that the issue presented has ramifications beyond LinkedIn and hiQ.

Adopting LinkedIn's position would not only quash competition in

the market in which LinkedIn is a monopolist, but would also have a ripple effect

on unrelated markets. If the preliminary injunction were overturned, the viability

of numerous competitors and other companies in the big data space would be

jeopardized, while others, like academic institutions and journalists, would lose

access to rich sources of otherwise publicly-accessible information.

Second, LinkedIn is likewise incorrect that its position is essential to

ensure continued innovation in the technological marketplace. To the contrary,

monopolies rarely lead to innovation; maintenance of the existing preliminary

injunction and the status quo is therefore essential to protect and foster continued

technological innovation.

Finally, LinkedIn's conduct constitutes "unfair" competition under

California's Unfair Competition Law because it is contrary to the core principles

underlying the antitrust bans against attempted monopolization and impermissible

exclusionary conduct. Until recently, LinkedIn did not take the position that

scraping public user data from LinkedIn's public pages was improper. It was not until LinkedIn decided to offer a product like hiQ's (and other "people insights" companies') that it sought to bar perceived competitors from accessing this public information.

Allowing a data monopolist like LinkedIn to control and exploit, and selectively grant or deny access to public data for its own competitive gain, is improper.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY ENJOINED LINKEDIN FROM BARRING A COMPETITOR'S ELECTRONIC ACCESS TO PUBLIC DATA.

As hiQ argued below and Judge Chen concluded, "application of the CFAA to the accessing of websites open to the public would have sweeping consequences well beyond anything Congress could have contemplated." 1ER-11. Indeed, it would give a website owner the power to capriciously and selectively bar any user (including competitors) from accessing public information, potentially subjecting a disfavored user to crippling civil and criminal penalties. *Id.*

As now shown, allowing actors such as LinkedIn to wield such unfettered authority would be "deeply concerning," because it would substantially impair competition and stifle technological innovation. *Id.*

A. Affirmance Is Essential To Protect Myriad Existing Applications Currently Relied Upon By Numerous Industries, And To Foster Continued Technological Innovation.

Contrary to LinkedIn's position, the significance of the present issues far outstrips the dispute between it and hiQ. This fact is made abundantly clear by LinkedIn's lawsuit against Scraping Hub, initially fashioned as *LinkedIn v. Does 1-100*, by which LinkedIn has systematically sought to locate and criminalize the conduct of any entity that has scraped LinkedIn user data.[3] In so doing, LinkedIn seeks not just to eliminate a single competitor, but all competition that provides insight into LinkedIn user data. Indeed, LinkedIn's true motivation is illustrated by its CEO's 2014 statement that "we're trying to think about ways in which we can better leverage [our public profile information] to create value within an organization" (5ER-941), its 2016 filing of the *LinkedIn v. Does 1-100* lawsuit, its 2017 threat against hiQ resulting in the underlying lawsuit, and its subsequent announcement of its [Talent Insights](#)[4] product.

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[3] *See LinkedIn Corporation v. Does 1-100*, Case No. 5:16-cv-04463-LKH (N.D. Cal.), Complaint (ECF No. 1).

[4] LinkedIn's announcement can be found here: *See* [business.linkedin.com/talent-solutions/talent-insights](#). *See also* [techcrunch.com/2017/10/04/linkedin-to-launch-talent-insights-a-new-analytics-tool-as-it-dives-deeper-into-data/](#). All webpages cited herein were last visited on November 27, 2017.

Yet the scope and impact of the competitive harm that would ensue should the District Court's decision be overturned extends well beyond the market in which LinkedIn is a data monopolist.

There are numerous and varied examples of private- and public-sector products and applications that rely on gathering publicly-available data housed across the web by crawling and scraping, often referred to as "data mining." Allowing websites like LinkedIn to criminalize this valuable practice simply by sending a letter or email would intolerably chill innovation and restrict consumer choice.

By way of example,[5] the public record demonstrates that numerous businesses and applications would not exist but for web scraping, and would be severely limited, if not downright eliminated, if LinkedIn's position were adopted and websites could unilaterally restrict access to public data.

1. Scraped Data Support Lead Generation And Prospecting.

An entire industry has developed around collecting customer and potential-customer data from public information on the web to help companies

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[5] The website maintained for the Scrapy framework lists 39 self-identified entities that scrape data for a wide variety of uses (the "Scrapy User List") (scrapy.org/companies/), ranging from the government of the United Kingdom (data.gov.uk) to Allclasses (allclasses.com/Online/), an organization that matches users with on-line education courses.

generate business leads and connect potential customers with potential services providers. Examples of these companies include ZenProspect[6] and FullContact.[7] These companies create value by collecting information on business prospects from disparate sources across the web and combining it so sales organizations can view a more holistic picture of their prospect and gain a better understanding of their potential customer. This industry would be hamstrung if unable to glean the publicly-available data that its members synthesize in order to package data-driven products for their clients.

2.   Scraped Data Support Robust Job Boards.

Many companies use web scraping to collect job postings from various Internet job boards. Through data-mining, these companies collect job listings from thousands of companies' individual job boards and consolidate and organize information in one place to make job hunting more efficient. For instance, Propellum[8] offers a technology platform that aggregates jobs from employer and career sites, which allows its customers, like LinkedIn, to post large

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[6] www.zenprospect.com/; *see also* https://jobs.lever.co/zenprospect/b5d233e6-b1ee-4c63-98db-a371d6bf876b.

[7] www.fullcontact.com/; *see also* support.fullcontact.com/hc/en-us/articles/115002937047-FullContact-s-data-sources-accuracy-and-more.

[8] www.propellum.com; *see also* www.propellum.com/client.html ("Our scraping and aggregation services powers job board and networking site leaders.").

volumes of job data onto their sites through a completely automated process and no manual intervention.[9]

LinkedIn appears to have been relying on scraped data like that discussed above to populate job postings for some time. LinkedIn not only uses Propellum's services, it is listed as one of Propellum's partners and one of LinkedIn's employees has provided an endorsement which appears on Propellum's landing page as shown below.
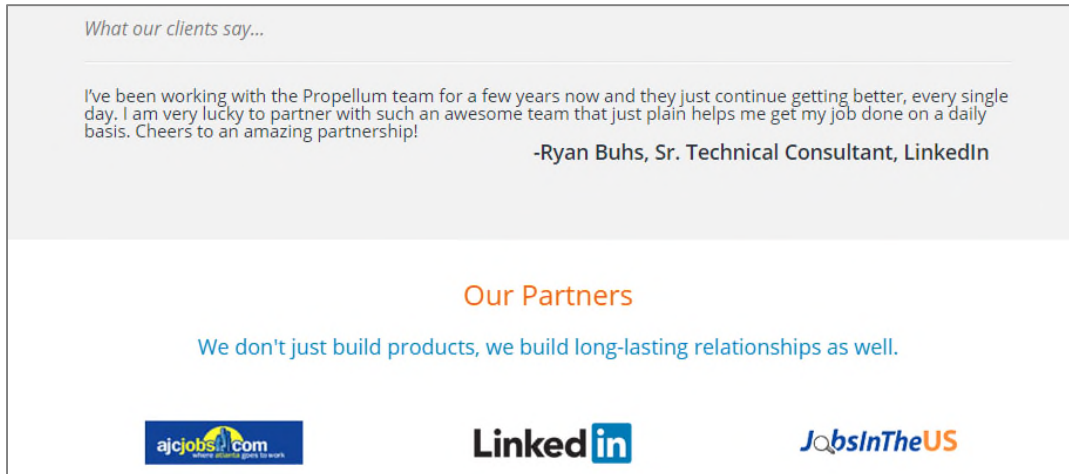
If scraping such public job data became an arbitrary crime, all of these players[10] would need to develop manual means of locating, collecting, and utilizing

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[9] *See* www.propellum.com/about-us.html.

[10] According to the Scrapy User List, two other United States-based organizations that use scraped data to power job aggregation sites: The Direct Employers Association (directemployers.org/), a non-profit that operates the My.Jobs (www.my.jobs/) website that lists over 1.9 million job openings in the United States, and Career Builder (www.careerbuilder.com/) a site that organizes available jobs by category, location, and company.

this data—data that exist expressly for the purpose of being found so employers and potential candidates can connect. Such unnecessary expenditures would inhibit innovation and stifle consumer choice.

3. Scraped Data Support Models For Competitive Intelligence And Price Comparisons.

Major retailers, including Amazon and Walmart, use bots and other tools to systematically scrape millions of data points every day, such as product and price information, to gather market intelligence that informs their merchandising and pricing strategies.[11]

This is nothing new—Amazon has been doing this for more than a decade and is viewed as one of the most sophisticated in this space. According to an article recently published in *Fortune* the e-commerce industry is ever more reliant on these competitive insights, and third-parties like Boomerang Commerce[12] have developed to satisfy the market need for this rich data that keep competition fierce, and in turn, price and product offers attractive for consumers.[13]

If LinkedIn's position were adopted, and retailers lost access to such data, their ability to set competitive prices would suffer, negatively impacting their

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[11] *See* fortune.com/2017/05/10/amazon-bots/.

[12] www.boomerangcommerce.com/

[13] *Id.*

sales.[14] Likewise, the secondary industry that has developed to support retail

pricing and merchandising strategy would be paralyzed as well.

4. Scraped Data Support News Media And Government Transparency.

Through scraping and archiving publicly-available content from

popular news sites like the *New York Times*, CNN and the BBC, NewsDiffs.org[15]

tracks changes to articles made after their initial publication, to expose after-the-

fact edits of these outlets' content. [16] In doing so, NewsDiffs provides powerful

transparency, and a public service that was previously unavailable at scale. Absent

the ability to mine data the service could not exist.

Similarly, OpenSecrets.org[17] is a comprehensive resource for federal

campaign contributions, lobbying data and analysis, which it compiles, at least in

part, through scraping public web data.[18]

Both of these applications provide the public with valuable

transparency into historically nebulous arenas, and do so thanks to creative use of

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[14] *Id.*

[15] newsdiffs.org/

[16] *See* newsdiffs.org/about/; *see also* github.com/ecprice/newsdiffs.

[17] www.opensecrets.org/

[18] *See* www.opensecrets.org/news/2014/07/opensecrets-org-adds-data-on-lawmakers-periodic-transaction-reports/.

public data. They would not exist if the websites hosting the data, such as CNN

news articles, could unilaterally restrict and impose liability on the entities

scraping their publicly-available information.

5. Scraped Data Support New And Innovative Financial Services.

The financial sector, too, is capitalizing on insights and trends

obtained through scraping. For instance, as detailed in a *Fortune* article:

> [w]hereas hedge funds once might have sent an
> analyst to count cars in retailers' parking lots to
> inform their earnings models, they're now
> deploying web-crawling bots to vacuum info from
> online job-listing sites, Amazon reviews,
> Wikipedia, Zillow home-value records, FDA
> patient complaints, and the remotest reaches of the
> internet.[19]

An innovator in the FinTech space is Selerity.[20] Selerity describes

itself as using "proprietary artificial intelligence to deliver content and data

solutions designed to automate inefficient workflows in finance."[21] It began as a

real-time search and breaking news platform for institutional and retail investors, a

service it was able to provide by scraping.[22] Selerity's Intelligence Platform pulls

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[19] Available at: fortune.com/2015/12/07/dataminr-hedge-funds-twitter-data/.

[20] www.seleritycorp.com/about.html

[21] *Id*.

[22] *Id*.

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market-relevant, factual information from public sources using proprietary real-time search and extraction technology. The result is an automated feed of market-relevant information geared to providing investment professionals real-time, data-driven insights.[23]

Scraping of public web data is also being used to improve the due diligence process in the private equity arena. According to a recent *Forbes* article, one way investors are looking to "gain an edge" and increase their bidding confidence is to mine insights from "the wealth of unstructured data available on the web . . . [f]rom scraping social media sites to mining e-commerce traffic . . . using web data to increase the speed and reliability of insights and thereby provide a competitive edge."[24] By leveraging scraping and big data intelligence, "[w]hat was a long, mostly manual, laborious effort to learn about the strengths and flaws of a business now can happen in just days."[25]

Additionally, by scraping public data from sources like the SEC and FINRA, BrightScope,[26] is providing financial transparency to individual investors as well as corporate plan sponsors, asset managers, broker-dealers and financial

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[23] *See* www.seleritycorp.com/products.html.

[24] Available at: www.forbes.com/sites/baininsights/2017/04/07/data-mining-your-way-to-better-due-diligence-in-private-equity/#5f628263243e.

[25] *Id.*

[26] www.brightscope.com/

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advisors. BrightScope's platform takes existing, public information that is typically buried in ways that make it difficult for people to find it, and transforms it to make it more accessible and useable.[27]

6. Scraped Data Support Industry Trend Mapping.

Data mining is also used to provide industry insights and geographic insights. For instance, the website Gamesmap.uk[28] uses web scraping to automatically populate the map with businesses, game developers, publishers, service companies and educational establishes connected to the U.K. gaming industry.[29] In this instance, scraping results in a visualization of the impact of an industry and its ever-changing components, geographically, and in real time.

7. Scraped Data Support Law Enforcement Activities.

The Defense Advanced Research Projects Agency ("DARPA"), whose mission is "to make pivotal investments in breakthrough technologies for national security" and is credited for helping develop the Internet itself, has developed a powerful new search engine dubbed "Memex."[30] By crawling and

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[27] *See* www.forbes.com/sites/halahtouryalai/2011/06/01/names-you-need-to-know-brightscope/#6c0b8fd512d3.

[28] gamesmap.uk/#/map

[29] *See* gamesmap.uk/#/about.

[30] *See* www.defense.gov/News/Article/Article/1041509/darpa-program-helps-to-fight-human-trafficking/ ("Defense.gov Article"); *see also* www.wired.com/2015/02/darpa-memex-dark-web/.

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scraping "dark web" [31] data in addition to traditional websites, Memex enables the government to search the dark web (which is otherwise unsearchable and is not indexed by traditional search engines) where criminals buy, sell, and advertise drugs, illegal weapons trade and sex trafficking.

According to an article published at Defense.gov on January 4, 2017,[32] Memex has resulted in "hundreds of arrests and other convictions by a variety of law enforcement agencies in the United States and abroad." Similarly, *The Economist* exposed otherwise hidden details on the drug deals occurring in dark web "cryptomarkets" by analyzing more than 18 months of illegal drug transaction data that was obtained through crawling and scraping.[33] Perversely, if LinkedIn's position were adopted, in theory criminals could cause third party scraping of their data to be deemed a criminal act.

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[31] The term "dark web" is used to refer to Internet content "that exists on darknets, overlay networks which use the Internet but require specific software, configurations or authorization to access." *See, e.g.*, en.wikipedia.org/wiki/Dark_web.

[32] *See* Defense.gov Article.

[33] *See* www.economist.com/news/international/21702176-drug-trade-moving-street-online-cryptomarkets-forced-compete.

8. Scraped Data Support Research And Academia.

The ImageNet[34] dataset was collected using web scraping; this dataset has been used to develop the cutting-edge computer vision and image recognition applications that are now driving machine learning technology and other popular applications.[35] And, in 2016, LinkedIn's parent company Microsoft opened up its database of academic publications, obtained through crawling, and made it available for academics.[36] Microsoft also funds research projects that leverage web crawling and scraping to obtain data.[37] The academic uses for scraped data are boundless and would suffer if LinkedIn's position were adopted.

9. The United States Government Recognizes The Societal Value To Sharing Publicly Available Data.

As set forth above, diverse DaaS industry segments, and commercial, academic and non-profit applications have emerged as a result of open access to public web data. Such applications creatively leverage, manipulate and transform public data into a sum that is far greater that its parts. Harnessing the power of this

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[34] www.image-net.org/

[35] *See* www.image-net.org/papers/imagenet_cvpr09.pdf.

[36] *See* www.microsoft.com/en-us/research/blog/microsoft-opens-up-online-infrastructure-to-the-research-community/.

[37] *See, e.g.*, journals.plos.org/plosone/article?id=10.1371/journal.pone.0067526.

publicly-available data has proven so vital the U.S. government, at Data.gov,[38]

makes available nearly 200,000 data sets that anyone can access and use without

restrictions. As stated on the site:

> American businesses depend on this government
> data to optimize their operations, improve their
> marketing, and develop new products and services.
> Federal Open Data also helps guide business
> investment, foster innovation, improve
> employment opportunities, and spur economic
> growth.
>
> The value of Federal Open Data to the United
> States has been estimated at hundreds of billions of
> dollars. The U.S. Department of Commerce
> calculates that internet publishing, consulting and
> market research firms use this data to generate
> more than $200 billion in revenues each year.
> Other studies have found that U.S. weather, GPS,
> Census, and health data support billions more in
> revenue in other sectors.[39]

In short, the accessibility and availability of public data is a vital

resource that must not be restricted.

Reversal of the preliminary injunction would immediately impair, and

inhibit, continued innovation. Many companies like hiQ might be forced to fold

for fear their models were no longer viable, or because their investors were

unwilling to tolerate the risk of civil and criminal penalties. Likewise, companies

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[38] www.data.gov/

[39] *Id.*

just now considering a move into this space might never launch their new ideas.

And the ultimate losers would be the general public, whose interests would be

subordinated to the whims of the companies whose servers house this public data.

B. LinkedIn's Conduct Is Anti-Competitive And Contrary To The Spirit Of The Antitrust Laws..

California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200

("UCL") prohibits any "unlawful, unfair or fraudulent business act or practices."

When a business competitor (as opposed to a consumer) invokes section 17200,

"unfair" means "conduct that threatens an incipient violation of an antitrust law, or

violates the policy or spirit of one of those laws because its effects are comparable

to or the same as a violation of the law, or otherwise significantly threatens

competition." *Cel-Tech Comms., Inc. v. L.A. Cellular Telephone*, 20 Cal. 4th 163,

187 (1999).

In other words, while an actual antitrust violation necessarily

constitutes unfair competition under the UCL, a UCL violation does not require an

antitrust violation. Rather, the UCL framework is more flexible, barring conduct

that is inconsistent with the core values underlying the antitrust laws. LinkedIn's

conduct satisfied the UCL test because it is anticompetitive and contrary to the

spirit of the antitrust laws in several respects.

First, a firm violates federal antitrust laws "when it acquires or

maintains, or attempts to acquire or maintain, a monopoly by engaging in

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exclusionary conduct 'as distinguished from growth or development as a consequence of a superior product, business acumen or historic accident.'" *U.S. v. Microsoft Corp.*, 253 F.3d 34, 58 (Fed. Cir. 2001) (quoting *U.S. v. Grinnell*, 384 U.S. 563, 571 (1996)).

That is exactly what LinkedIn has been, and is continuing to do, as the District Court correctly found. 1ER-21-23. Historically, LinkedIn has allowed *any* member of the public—be it an individual or a corporation—to freely view the profiles of all LinkedIn members who have not designated their profiles as private. 5ER-882(¶ 4), 899, 904, 906, 951. That policy continues to this day except as to a small handful of companies, such as hiQ and Scraping Hub, whom LinkedIn purportedly barred from its servers, and thereafter sued.

The motivation for LinkedIn's abrupt, and selective, turn-about was manifestly anti-competitive. LinkedIn's selective bar against accessing its users' publicly-available information coincided with the ramp up to its June 2017 announcement that it was developing a product that would compete directly with hiQ's Skill Mapper product. 4ER-582-83. LinkedIn's competing product has since been formally announced as Talent Insights,[40] with a mid-2018 anticipated launch.

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[40] *See* n.4, *supra*.

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Thus, LinkedIn is plainly attempting to ensure that no firm other than itself is able to profitably analyze the mountains of publicly-available information that it maintains on its servers. LinkedIn seeks that result not by producing superior analytical products, but by excluding its competitors from information that its users have placed in the public domain. Employing such exclusionary tactics to maintain or extend a monopoly violates the core principle underlying the antitrust ban against attempted monopolization. *Grinnell Corp.*, *supra,* 384 U.S. at 571.

Relatedly, LinkedIn's conduct also falls within the limited "circumstances" under which "a refusal to cooperate with rivals can constitute anticompetitive conduct," and hence violate the antitrust laws. *Verizon Comms., Inc. v. Trinko*, 540 U.S. 398, 409 (2004). Specifically, the hallmark of such impermissible refusals to cooperate is the "unilateral termination of a voluntary (and thus presumably profitable) course of dealing suggest[ing] a willingness to forsake short-term profits to achieve an anticompetitive end." *Id.*

Here, hiQ and LinkedIn had a preexisting business relationship. As reflected in the record, LinkedIn and hiQ had a partnership from at least October 2015 when LinkedIn employees began attending hiQ's Elevate conference. 5ER-989 (¶¶ 11-15). In fact, at hiQ's 2016 Elevate conference, LinkedIn received hiQ's "Impact Award" and a LinkedIn employee delivered a presentation regarding talent analytics at the conference. *Id.* at 990 (¶ 13).

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Then, abruptly, in the spring of 2017 (shortly after Microsoft's

LinkedIn acquisition closed), LinkedIn terminated this business partnership and

attempted to revoke hiQ's access to information LinkedIn's users made publicly

available. 5ER-990-91 (¶¶ 15-16). Similarly, at roughly the same time LinkedIn

attempted to bar the access of other companies it had come to regard as

competitors or potential competitors, such as Scraping Hub.[41]

Again, the motivation for LinkedIn's shift is self-evident: having

allowed other companies to develop, and demonstrate the efficacy of, analytical

tools premised on its users' publicly available data, it wanted to be the only firm

able to profit from that data. This is precisely the type of circumstance where "the

long recognized right" of a business to freely exercise independent discretion is not

"unqualified," but rather must yield to prevent the improper accretion of monopoly

power. *Trinko, supra*, 540 U.S. at 408-09.

Accordingly, LinkedIn's abrupt termination of a beneficial

relationship with hiQ for reasons that are mere pretext for its anticompetitive intent

evidences an antitrust violation, and at minimum, a violation of the spirit of the

antitrust laws. *Cel-Tech*, 20 Cal. 4th at 187.

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[41] *See, e.g.*, *LinkedIn Corporation v. Does 1-100*, Case No. 5:16-cv-04463-LKH
(N.D. Cal.), Complaint (ECF No. 1) and Second Amended Complaint (ECF
No. 39).

CONCLUSION

Overturning the District Court's well-reasoned decision would have far-reaching, negative consequences for the DaaS industry, the Internet and innovation. That result would squelch competition for juggernauts like LinkedIn, limit consumer choice, and reduce the world's access to public information and transformative means of leveraging and visualizing it. This Court should affirm the preliminary injunction entered by the District Court.

Respectfully submitted,

SEYFARTH SHAW LLP

Dated: November 27, 2017

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<u>CERTIFICATE OF COMPLIANCE</u>

I certify pursuant to Federal Rule of Appellate Procedure 32 and Circuit

Rule 32-1 that the attached brief is proportionately spaced, has a typeface of 14

points, and, according to the word count feature of the word processing system

used to prepare the brief (Microsoft Word 2016), contains 4,096 words.

SEYFARTH SHAW LLP

Dated: November 27, 2017   */s/ Kenneth L. Wilton*
                                            Kenneth L. Wilton

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the

Court for the United States Court of Appeals for the Ninth Circuit by using the

appellate CM/ECF system on November 27, 2017.

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I further certify that some of the participants in the case are not registered

CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage

prepaid, or have dispatched it to a third party commercial carrier for delivery

within 3 calendar days to the following non-CM/ECF participants:

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Dated: November 27, 2017   _/s/ Kenneth L. Wilton_
                                      Kenneth L. Wilton

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