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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 JOBIAK, LLC, a Delaware Limited
17 Liability Company,

18 Plaintiff,

19 vs.

20 BOTMAKERS LLC, d.b.a. TARTA.AI,
21 a Delaware Limited Liability Company

22 Defendant.

Case No.: 2:23-cv-8604-
MEMF(MRW)

**PLAINTIFF JOBIAK, LLC'S
OPPOSITION TO MOTION TO
DISMISS**

Date: July 11, 2024

Time: 10:00 a.m.

Judge: The Honorable Frimpong
Courtroom: 8B, 8th Floor, United
States District Court, 350 West First
Street, Los Angeles, CA 90012.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff’s California UCL claim is subject to copyright preemption, as
3 defendant contends. Other than that, defendant’s arguments should not prevail. The
4 court has personal jurisdiction over defendant, this action is properly venued in the
5 Central District of California, and the individual claims are adequately pleaded.

6 **I.**

7 **THE COURT HAS PERSONAL JURISDICTION OVER TARTA.AI AND**
8 **VENUE IS APPROPRIATE IN THE CENTRAL DISTRICT**

9
10 The basis for general jurisdiction over a legal entity typically lies in the
11 entity’s place of incorporation and its principal place of business. These are
12 considered the “paradigm” bases for jurisdiction, as they are places where the entity
13 is essentially at home. *GeoSolutions B.V. v. Sina.Com Online* (N.D.Cal. Oct. 26,
14 2023, No. 21-cv-08019-PCP) 2023 U.S.Dist.LEXIS 192674.

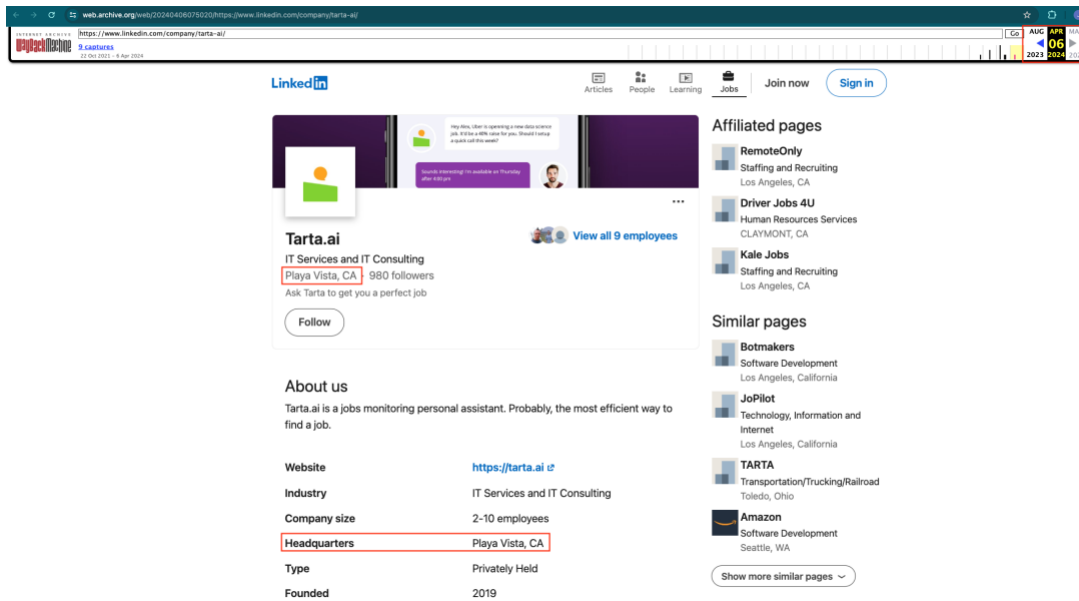
15
16 **A. There is General Personal Jurisdiction over Tarta.Ai**

17 As alleged in the complaint, personal jurisdiction over the Defendant is
18 established as Defendant maintains a principal place of business in Playa Vista, CA.
19 *See* Dkt. 1, ¶12. In addition, Defendant has purposefully availed itself of the benefits
20 and privileges of transacting business within the State of California. *Id.*

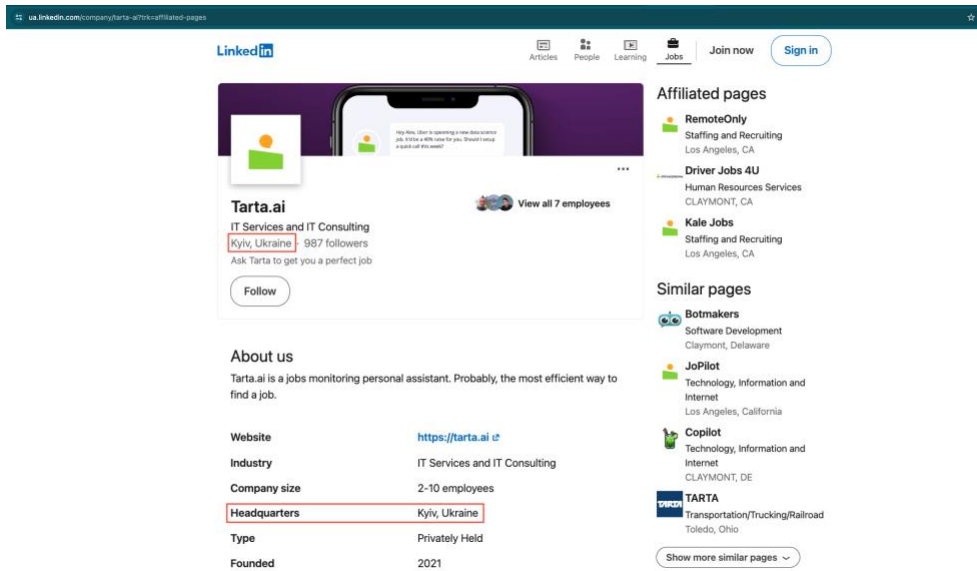
21 The Defendant contends that its principal place of business is in Ukraine and
22 has provided declarations to support this claim. *See* Dkt. 20, p.5, Smirov Decl.,
23 Gamaniuk Decl.. The Defendant also asserts that the allegation regarding its
24 principal place of business is conclusory.

25 Prior to initiating this complaint, the Plaintiff conducted a search on the
26 Defendant's place of business. Although the Defendant is incorporated in Delaware,
27 an internet search revealed that Tarta.ai is headquartered in California, as
represented on the Defendant's LinkedIn and Twitter pages. (Khalifeh Decl. ¶¶3-4)

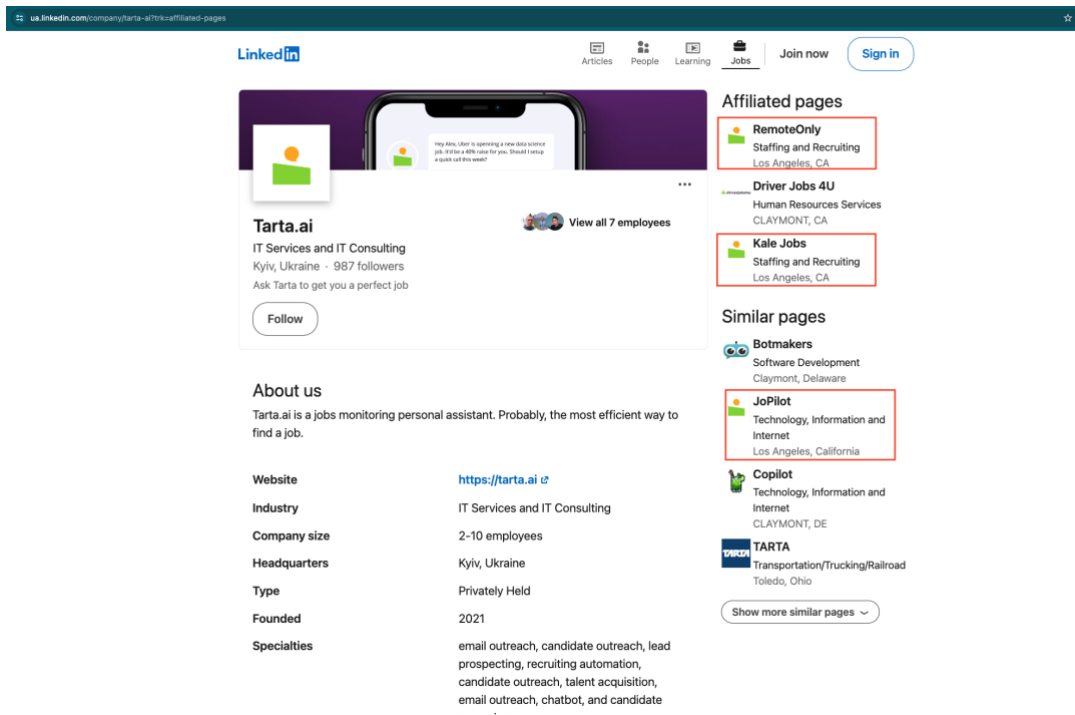
1 At least as of April 6, 2024, Tarta.ai's LinkedIn page listed Playa Vista, CA,
2 as its headquarters. (Khalifeh Decl. ¶5)



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12 However, by the time the Defendant filed this motion, the headquarters had
13 been changed to Kyiv, Ukraine, potentially indicating an attempt by the Defendant
14 to evade jurisdiction in this district. (Khalifeh Decl. ¶7)



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25 Additionally, affiliated LinkedIn pages related to Tarta.ai indicate that their
26 headquarters is in Los Angeles, CA. Upon information and belief, these entities are
27 connected to Tarta.ai, particularly as they share the same operating logo. (Khalifeh
Decl. ¶8)



As Defendant has its principal place of business within this district, general jurisdiction over it exists. When general jurisdiction is established, the forum state has jurisdiction over the defendant regardless of where the events giving rise to the litigation occurred. *See Creer v. World Reserve Monetary Exch.*, 2011 U.S. Dist. LEXIS 165356. This holds true despite the Defendant's surreptitious attempt to change its corporate profile subsequent to the initiation of this lawsuit.

The Defendant alleges that there is no specific jurisdiction over them. However, this discussion is moot due to the existence of general jurisdiction. Nevertheless, the Plaintiff maintains its position in the complaint that the Defendant has purposefully directed its activities within this forum. *See* Dkt. 1.

II.

VENUE IS PROPER IN THIS FORUM ON ALL CLAIMS

Venue for copyright claims essentially boils down to whether there is personal jurisdiction over the copyright defendant in the forum. There is personal jurisdiction over Tarta.ai in this forum, so the venue requirement is satisfied as well.

1 Proper venue for Jobiak’s other claims exists if there is personal jurisdiction
2 over Tarta.Ai in this district. There is such jurisdiction for the reasons previously
3 discussed, and venue is appropriate.

4 **III.**

5 **JOBIAK’S COPYRIGHT CLAIM IS ADEQUATELY PLEADED**

6 As mentioned in Defendant’s motion, the elements of a copyright
7 infringement claim are (1) ownership of a valid copyright; and (2) that defendant
8 violated the copyright owner’s exclusive rights under the Copyright Act.” See Dkt.
9 20, citing *Ellison v. Robertson*, 357 F. 3d 1072, 1076 (9th Cir. 2004).

10
11 **A. Jobiak owns a valid copyright**

12 Plaintiff is the owner of U.S. Copyright Registration. No. TX 0-309-827, for
13 its Automated Database Entitled “ALL JOBS by Jobiak”. See Dkt. 1 ¶16. This
14 copyright registration covers a compilation of database information including job
15 descriptions, categories, job listings, and layout designs. Plaintiff’s automated
16 database consists of wholly original material, which is copyrightable subject matter
17 pursuant to 17 U.S.C. § 101 *et seq.*

18 It has been held in this circuit that an automated database can be
19 copyrightable, this is determined by the originality of its selection, coordination, or
20 arrangement. Under 17 U.S.C. § 101, if these elements are arranged in such a way
21 that the resulting work as a whole constitutes an original work of authorship, the
22 database can be protected by copyright. See *PhantomALERT, Inc. v. Google Inc.*,
23 2015 U.S. Dist. LEXIS 167754.

24
25 **B. Tarta.Ai violated Jobiak’s exclusive rights**

26 Tarta.ai has been “scraping” the data from Plaintiff’s website and using the
27 individual listings from its Database on at least the Tarta.Ai website. See Dkt.1 ¶18-
20.

1 The defendant argues that these individual listings are not protected by
2 Jobiak’s copyright registration. However, Jobiak’s copyright covers a database that
3 includes these individual listings. Copying any part of a copyrighted database, even
4 if it comprises individual listings, still constitutes copyright infringement.

5 In the case of *Suzhou Angela Online Game Tech. Co. v. Snail Games USA*
6 *Inc.*, 2023 U.S. Dist. LEXIS 40924, the court rejected the argument that copying "24
7 lines of code which represented less than 1/100th of one percent of the overall
8 codebase" was de minimis copying. In the context of copyright infringement, this
9 Circuit has established that the key factor is not merely the quantity of the copied
10 material, but whether the copied portion is material and substantial. See *Bell v.*
11 *Wilmott Storage Servs., LLC*, 12 F.4th 1065, and *James W. Newton v. Diamond*, 204
12 F. Supp. 2d 1244. Whether the copied portion is material and substantial is a question
13 of fact that Plaintiff and Defendant may demonstrate in the course of this proceeding.

14
15 **IV.**

16 **JOBIAK’S CFAA AND CDAFA CLAIMS ARE ADEQUATELY PLEADED**

17
18 Defendants allege Jobiak has not sufficiently alleged that Tarta.Ai acted
19 without authorization or exceeded authorized access. Plaintiff alleged in its
20 Complaint that it has implemented a comprehensive security strategy, including
21 servers that restrict access to the job listings to prevent scraping, limiting access to
22 the listings, and detection mechanisms designed to identify and block unauthorized
23 access. Specifically, Jobiak employs protocols that detect and prevent an unusually
24 high volume of requests from a single IP address, thereby thwarting automated
25 scraping efforts. These security measures are robust and specifically tailored to
26 prevent the very type of unauthorized access that Tarta.Ai engaged in. By
27 circumventing these security measures, Tarta.Ai acted without authorization and

1 exceeded any permissible access, thereby violating the CFAA and the CDAFA. See
2 Dkt.1, ¶ 47-48.

3 Defendant makes a mention of *hiQ Labs, Inc. v. LinkedIn Corp.* in support of
4 its argument. The only issue before the 9th Circuit in *hiQ Labs, Inc. v. LinkedIn Corp.*,
5 31 F.4th 1180 (9th Cir. 2022) was whether LinkedIn could use the CFAA to prevent
6 scraping of information regarding LinkedIn members that was in their public
7 profiles, and generally available to any other LinkedIn member. 31 F.4th at 1184 –
8 1185. The only issue decided was that in the pre-trial phase of the litigation, hiQ was
9 entitled to an injunction against LinkedIn preventing hiQ from accessing that
10 generally available information. *Id.* at 1202. hiQ has very limited relevance to this
11 action because Jobiak’s ALLJOBS database is not generally available to the public;
12 instead, individuals or business entities are required to obtain a license and access
13 credentials to use specified data, and access to and use of the data is restricted in a
14 variety of ways.

15 As for the allegations of damages under the CFAA, Jobiak’s complaint is
16 adequate. The allegation found inadequate as a formulaic recitation in *DocMagic,*
17 *Inc. v. Ellie Mae, Inc.*, 745 F.Supp.2d 1119, 1150 (N.D. Cal. 2010) was:

18 “Ellie Mae has suffered damages and loss . . . including, without
19 limitation, harm to Ellie Mae's data and/or computer(s) and other
20 losses and damages in an amount to be proven at trial, but in any
21 event, over \$5000 aggregated over a one-year period.”

22 Jobiak’s allegation at paragraph 52 of the Complaint is:

23 “Plaintiff has suffered damage and loss by reason of these violations,
24 including, without limitation, harm to Plaintiff's computer systems,
25 expenses associated with being forced to investigate and respond to
26 the unauthorized access and abuse of its computers and servers, and
27 other losses and damage in an amount to be proven at trial, in excess
of \$ 5,000 aggregated over a one-year period.”

28 Jobiak’s allegation is still “formulaic” but does contain more factual detail
referencing expenses of investigation and response than the allegation deemed

1 insufficient in DocMagic. If the court deems Jobiak’s allegation of damages
2 inadequate, then it should grant leave to amend, which is exactly what Ellie Mae was
3 granted. *DocMagic*, *Id.*

4 **V.**

5 **JOBIAK’S DMCA CLAIM IS ADEQUATELY PLEADED**

6 Tartar.Ai maintains that Jobiak’s claims are insufficiently pled because the
7 website is accessible to the general public. While it is true that Jobiak intends for the
8 public to access its services, this does not extend to Jobiak’s proprietary, copyrighted
9 ALLJOBS database, which is not openly available to the public. Access to portions
10 of that database is protected by protocols, restricted access and other means, as
11 alleged at paragraphs 47 and 48 of the Complaint:

12 47. As a precautionary measure against computer fraud and abuse,
13 Plaintiff has implemented a comprehensive security strategy. This
14 includes utilizing AWS servers and the security features they provide,
15 restricting access to the job listings to prevent scraping and permitting
16 only specific IP addresses to access the listings and implementing
17 protocols designed to detect and prevent an unusually high volume of
18 requests originating from a single IP address within a short time frame.

19 48. Defendant knowingly and intentionally accessed Plaintiff’s
20 computers and servers without authorization or in excess of
21 authorization. They have circumvented various technological barriers
22 Plaintiff has employed to protect its computers, servers, and automated
23 database against unauthorized access.

24 Jobiak’s allegations are sufficient at this stage of the litigation.

25 **VI.**

26 **TARTA.AI’S REFERENCE TO OTHER CASES**

27 In its Motion, Defendant includes as an exhibit and repeatedly references the
case of *Jobiak LLC v. Aspen Technology Labs*, which also involves the Plaintiff.
However, it is crucial to recognize that the circumstances and facts of the Aspen
Technology Labs case are significantly different from those of the present case. By

1 highlighting the Aspen case, Defendant seems to be attempting to divert the Court's
2 attention away from the specific facts and issues pertinent to this action. This tactic
3 is misleading and should not detract from the Court's focus on the merits of the case
4 at hand. The factual and legal context here is distinct and warrants independent
5 consideration without the undue influence of unrelated cases.

6
7 **VII.**
8 **CONCLUSION**

9 Tarta.Ai's Motion should be denied. Jurisdiction and venue are proper in this
10 district, and all of Plaintiff's claims are sufficiently pleaded to proceed with the fact-
11 finding stage of the litigation. Should the Court find that the Plaintiffs have not
12 plausibly established jurisdiction and venue, Plaintiffs respectfully request
13 permission to conduct limited-scope discovery on the issue of jurisdiction. This
14 would enable the Plaintiffs to gain further insight into the Defendant's
15 representations under oath, particularly where these representations appear to
16 conflict with the facts presented. Furthermore, the Plaintiff would seek leave to
17 amend the Complaint based on any findings and requests additional time to conduct
18 this targeted jurisdictional discovery.

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20
21 Dated: May 22, 2024

OMNI LEGAL GROUP

22
23 /s/ Omid E. Khalifeh
24 Omid E. Khalifeh
25 Ariana Santoro
26 Louise Jillian Paris
27 Attorneys for Plaintiff
Jobiak, LLC