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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

X Corp.,

Plaintiff,

v.

BRIGHT DATA LTD.

Defendant.

Case No. 23-cv-03698-WHA

Hon. William H. Alsup
Courtroom 12 – 19th Floor
July 25, 2024 at 8 a.m.

BRIGHT DATA’S MOTION TO DISQUALIFY QUINN EMANUEL

NOTICE OF MOTION

PLEASE TAKE NOTICE that the hearing on Bright Data’s Motion to Disqualify Quinn Emanuel will take place on July 25, 2024, at 8:00 AM.

The motion seeks disqualification of X’s new counsel, Quinn, Emanuel, Urquhart & Sullivan, LLP (“Quinn”), under the California Rules of Professional Conduct (“RPC”).

STATEMENT OF ISSUES TO BE DECIDED

1. Does RPC 1.9(a), and associated case law, prohibit Quinn from representing X in this matter, because *current* Quinn attorneys previously represented Bright Data in connection with the “substantially related” matter *Meta Platforms, LLC v. Bright Data Ltd.*, 23-cv-00077 (N.D. Cal.)?

2. Does RPC 1.9(b), and associated case law, prohibit Quinn from representing X in this matter, because Quinn obtained, or is presumed to have obtained, confidential Bright Data information, including client confidences, attorney-client privileged information, and attorney work product in connection with its prior representation of Bright Data?

3. Does RPC 1.10(a), and associated case law, require that Quinn be disqualified?

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¹ Unless otherwise noted, all emphasis added, initial capitalizations conformed without brackets, and internal citations and quotation marks omitted. “Ex.” refers to exhibits accompanying the Declaration of David Munkittrick.

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1 **I. INTRODUCTION.**

2 When Meta and Bright Data filed dueling lawsuits against each other, Bright Data engaged
3 Quinn, Emanuel, Urquhart & Sullivan, LLP for advice. Now, Quinn has switched sides,
4 representing X in suing Bright Data to prevent public web scraping and to shut down the same
5 services at issue in the *Meta* case. Doing so violates the core tenets of loyalty and confidentiality
6 under California’s Rules of Professional Responsibility. Quinn must be disqualified.

7 When Bright Data engaged Quinn, Quinn had just concluded its litigation (on behalf of a
8 scraper) of the highest-profile scraping case ever filed in the federal courts. Though it ultimately
9 lost the bulk of the case on summary judgment, Quinn succeeded in establishing the principle,
10 cited by this Court in dismissing X’s First Amended Complaint, that giving social media
11 companies “free reign to decide ... who can collect and use data ... risks the possible creation of
12 information monopolies that would disserve the public interest.” *See* ECF 83 at 2 (quoting *hiQ*
13 *Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1202 (9th Cir. 2022)). Having litigated against one
14 of the most dominant social media platforms – and having secured a ruling supporting the core
15 principle undergirding Bright Data’s business and mission – Bright Data sought Quinn’s counsel
16 and advice.

17 Quinn jumped at the opportunity, touting its experience representing scrapers and battling
18 social media platforms. Bright Data formally engaged Quinn to provide behind-the-scenes
19 strategic advice concerning the litigation. Quinn was paid nearly \$40,000, prepared a detailed
20 strategic assessment, and participated in multiple calls and virtual meetings with Bright Data’s
21 senior leaders, including its General Counsel, CEO, and the board. This was not merely a pitch
22 for a prospective client, but a full-blown, paid-for engagement.

23 Quinn’s attempt to lead Bright Data into battle failed, however, and ultimately, Bright Data
24 secured the victory that Quinn was unable to obtain for *hiQ*. Unable to represent the leading public
25 web data company, and fresh off a stinging loss in the *hiQ* case, Quinn decided to switch sides.
26 After this Court dismissed X’s complaint, X hired Quinn to help revive it. But because the *Meta*
27 and *X* cases are “substantially related” – involving virtually identical conduct, claims, defenses,
28

1 and legal issues – California’s ethics rules preclude Quinn from representing X.

2 Both the duties of loyalty and confidentiality compel disqualification. The duty of loyalty
3 precludes a firm from switching sides on substantially related matters. X previously represented
4 to this Court that the *X* and *Meta* cases “involve[] similar allegations of data scraping from social
5 media platforms” and overlapping legal issues. ECF 51 at 10. Indeed, X’s Complaint largely
6 mirrors Meta’s allegations, in many instances copying allegations verbatim. In providing strategic
7 litigation advice to Bright Data, Quinn recognized that the *Meta* case could set precedent for any
8 future claims by other website operators, and advised Bright Data on how it might seek to vindicate
9 its business model through litigation. But now it seeks the opposite: to drive a stake through Bright
10 Data’s business. The duty of loyalty does not permit this. *Knight v. Ferguson*, 149 Cal.App.4th
11 1207, 1216 (2007) (“The law regards the shifting of loyalty and allegiance from one of two adverse
12 interests to the other as impossible, and will have none of it.”).

13 The duty of confidentiality also prevents Quinn from switching sides. When successive
14 matters are “substantially related,” the exchange of confidential information is “conclusively
15 presumed” as a matter of law. This avoids requiring a former (or current) client to disclose
16 attorney-client communications in order to seek (or resist) disqualification. Indeed, it is hard to
17 fathom how Quinn could even respond to this motion *factually* without Quinn’s Bright Data Team
18 improperly disclosing privileged attorney-client communications to its X Team.

19 But even aside from any presumption, Quinn became privy to Bright Data’s core client
20 confidences. Just as any lawyer would and must do, Quinn probed Bright Data for information to
21 enable it to provide detailed strategic advice. This advice concerned, not just Bright Data’s
22 dealings with Meta, but also information about Bright Data’s business, technology, priorities, and
23 objectives. Quinn also *received* attorney-client privileged and attorney work product from Bright
24 Data’s litigation counsel discussing the *Meta* litigation, strategy, and Quinn’s strategic assessment.
25 Quinn then participated in a lengthy meeting with Bright Data’s Board, senior leaders, and
26 litigation counsel, discussing how best to defeat what Quinn has publicly stated were
27 “unconscionable” efforts by dominant social media platforms to control the Internet. Litigation
28

1 strategy, including discussions about the strength and weaknesses of claims and defenses, are client
2 secrets or confidences worthy of protection.

3 Before joining arms with X, Quinn must have known that its representation of Bright Data
4 posed a conflict. It had a formal, executed engagement with Bright Data, sent invoices to Bright
5 Data, and received payments from Bright Data. A large, global firm like Quinn certainly has
6 robust processes to identify potential conflicts before engaging a new client or new matter. Yet
7 Quinn remained silent while it worked on X's Second Amended Complaint, only disclosing its
8 involvement late last week, days before filing. It did not provide any notice to its former client.
9 When it appeared, it excluded the lawyers who had developed expertise in scraping matters,
10 presumably because of the fact they worked on the *hiQ* and Bright Data matters, and were thus
11 conflicted. But the *firm* is disqualified, not just particular lawyers. The rules of imputed conflicts
12 do not allow Quinn, or any of its lawyers, to turn on its former client. Lawyers may switch firms,
13 but firms may not switch sides. Quinn must be disqualified.

14 **II. FACTUAL BACKGROUND.**¹

15 On January 6, 2023, Bright Data and Meta filed competing lawsuits in Delaware state court
16 and the Northern District of California. Bright Data sought a Declaratory Judgment that its
17 scraping services neither violated Meta's contractual rights nor any other law. Meta, conversely,
18 asserted that Bright Data breached its Terms of Service and tortiously interfered with third-parties.

19 On February 15, 2023, while the parties were engaged in preliminary motion practice,
20 Bright Data's General Counsel, Mor Avisar, reached out to Hope Skibitsky at Quinn, seeking to
21 retain its services. Avisar Decl., Ex. 1 ¶ 3. Ms. Skibitsky and her colleagues, including Adam
22 Wolfson and Zane Muller, were fresh off their representation of *hiQ* in the highly publicized and
23 long-running litigation, *hiQ v. LinkedIn*, 17-cv-03301 (N.D. Cal.).

24 In that matter, the Ninth Circuit ruled in *hiQ*'s favor on the question of whether logged-off,
25

26 ¹ In order to preserve Bright Data's attorney-client privilege, Bright Data is not disclosing the
27 substance of any communications between Quinn and Bright Data or the substance of Quinn's
28 advice or assessments, but rather is limiting its recitation of facts to public information or
information that would otherwise appear on a Privilege Log.

1 or public scraping, violated the Computer Fraud and Abuse Act. Central to the Ninth Circuit’s
2 ruling was its view that “giving companies like LinkedIn free rein to decide, on any basis, who
3 can collect and use data — data that the companies do not own, that they otherwise make publicly
4 available to viewers, and that the companies themselves collect and use — risks the possible
5 creation of information monopolies that would disserve the public interest.” *hiQ Labs Inc. v.*
6 *LinkedIn Corp.*, 31 F.4th 1180, 1202 (9th Cir. 2022). This was a watershed ruling, essentially
7 eliminating liability for scrapers under the CFAA. But the case was not over. Litigation in the
8 district court proceeded on other theories, including breach of contract. On November 4, 2022,
9 the district court, Judge Edward Chen presiding, granted summary judgment in LinkedIn’s favor
10 on the question of whether logged-on, or non-public search, violated LinkedIn’s Terms. 639
11 F.Supp.2d 944 (N.D. Cal. 2022). The Court left certain issues open relating to logged-off search,
12 but the judgment in LinkedIn’s favor killed most of hiQ’s defenses, and the matter soon settled.

13 Despite Quinn’s *hiQ* loss, Bright Data was still interested in Quinn’s counsel given its
14 experience litigating scraping cases against social media giants. Bright Data formally engaged
15 Quinn to provide a detailed strategic assessment of the *Meta* cases, with fees prior to the entry of
16 appearance in the litigation capped at \$40,000. Ex. 2. In their Engagement Letter, the parties
17 agreed that Quinn would “provid[e] an analysis of the Litigation, including an analysis of the
18 arguments that may be raised and defended against in the Litigation and an overview of what
19 [Quinn] sees as potential next steps in the Litigation, and participat[e] in calls with Bright Data’s
20 senior management to answer any questions arising following review of our analysis by Bright
21 Data’s senior management.” Ex. 2 at 2. “In order [for Quinn] to represent [Bright Data]
22 effectively,” Bright Data also committed to “provide [Quinn] with complete and accurate
23 information regarding the subject matter of the Engagement, and [to keep Quinn] informed on a
24 timely basis of all relevant developments.” *Id.* at 4.

25 Quinn got to work immediately. It prepared a series of questions for Bright Data regarding
26 its business, the litigation, its priorities, and strategies, which it discussed with Bright Data’s
27 general counsel telephonically on or about February 26, 2023. Avisar Decl., Ex. 1 ¶ 9. Bright
28

1 Data also provided confidential documents to Quinn, at its request. *Id.* On March 2, 2023, Quinn
2 sent a detailed 24-page (single spaced) assessment of Bright Data’s litigation and other strategies,
3 including procedural considerations, substantive arguments, potential affirmative defenses and
4 counterclaims, discovery, and other potential avenues of attack (the “Quinn Report”). *Id.* ¶ 10.
5 Importantly, the Quinn Report focused not just on Bright Data’s continued ability to scrape Meta,
6 it “approached the analysis’ from the perspective that the Meta litigation could have implications
7 ‘beyond [the] particular dispute’ with Meta, including Bright Data’s legal rights with respect to
8 ‘*others like Meta*’ who may try to enforce their Terms of Service.” *Id.*

9 After receiving the Quinn Report, Bright Data asked its current Litigation Counsel to
10 review the Report and comment on Quinn’s proposed strategy. Bright Data provided Litigation
11 Counsel’s responsive analysis to Quinn, and scheduled an all-hands video meeting on March 12,
12 2023 to discuss. *Id.* ¶¶ 11-13. The meeting included Bright Data’s board, its CEO, its General
13 Counsel, three lawyers from Quinn (Ms. Skibitsky, Mr. Wolfson, and Mr. Muller), and two
14 lawyers from Bright Data’s current Litigation Counsel. *Id.* Over several hours, the client and the
15 two outside law firms discussed website operators’ claims, the likely defenses to such claims, and
16 the procedural and substantive strategies to best advance Bright Data’s principal contention that it
17 had an unqualified right to freely search the public web. *Id.* ¶ 14. As with the Quinn Report, the
18 discussion was not limited to Meta’s claims, but also focused on implications for future litigations
19 and website operators’ legal attacks to Bright Data’s services. *Id.* Following the all-hands
20 meeting, Bright Data continued with its current litigation counsel, and the Quinn Engagement
21 came to an end. *Id.* ¶ 15.

22 While the *Meta* case was pending, X Corp. filed suit against Bright Data on July 26, 2023.
23 ECF 1. X’s initial Complaint was a copycat, modeled extensively on Meta’s. X subsequently
24 amended the Complaint to add a few additional claims in response to Bright Data’s motion to
25 dismiss. *See* ECF 36. But the similarities persist. As the following chart shows, the facts, claims,
26 and issues are virtually identical in both cases:
27
28

<i>Meta Complaint</i>	<i>X Proposed Second Amended Complaint</i>
31. “Defendant was bound by Facebook’s and Instagram’s Terms and Policies.”	76. “Defendant ... is ... bound by those Terms.”
77. “All Facebook and Instagram users must agree to the Facebook and Instagram Terms.”	124. “All X users must agree to abide by the Terms...”
78. “Defendant is aware that the Facebook and Instagram Terms govern...”	125. “As a user of X Corp.’s platform, ... Defendant is aware of the Terms...”
35. “Defendant used its Facebook and Instagram accounts to promote its automated scraping services...”	82. “Defendant ... used these X accounts to ... promote their data-scraping products and services...”
36. “Defendant has used automated means to scrape and facilitate the scraping of data from Facebook and Instagram.”	83. “Defendant ... has engaged in widespread scraping of X Corp.’s data, ... Defendant has also facilitated the scraping of data from X...”
57. “Defendant took these steps to evade Meta’s detection systems...”	95. “[Bright Data’s] tool ... is designed to evade anti-scraping measures...”
68. “Defendant has breached ... Instagram’s Terms and Facebook’s Terms [by] (i) using automated means without Meta’s permission to scrape data ..., (ii) facilitating others to scrape data from Facebook and Instagram without Meta’s permission, and (iii) selling data obtained from Facebook or Instagram.”	115. “Defendant has repeatedly violated the Terms ... by (i) accessing the X platform through automated means without specific authorization from X Corp.; (ii) scraping data from the X platform ...; (iii) selling tools that enable others ... to scrape data; ... and (v) selling data ... scraped from the X platform.”
80. “By offering services and tools designed to scrape data from Facebook and Instagram ... Defendant induced a breach or disruption of [Meta’s] Terms by other ... users.”	128. “By offering services and tools designed ... to scrape data from the platform, Defendant induced a breach or disruption of the Terms by X users.”
8. “The Court has personal jurisdiction ... because Facebook’s Terms ... contain a forum selection clause...”	9. “This Court has personal jurisdiction ... because ... X Corp.’s Terms ... require all disputes ... be brought in ... California.”
10. “Defendant knowingly directed and targeted its conduct at California and at Meta, which has its principal place of business in California.”	10. “Defendant knowingly directed prohibited conduct to California ... and [at] X Corp., which has its principal place of business in California...”

Following this Court’s dismissal of X’s First Amended Complaint, X retained Quinn as lead counsel going forward. Quinn entered its appearance on June 4, 2023. *See* ECF 84-86. Just

two days later, on June 6, 2022, Quinn filed a Motion for Leave to Amend the Complaint, asserting the same claims X had previously asserted. The Quinn lawyers appearing in this matter are not the same as those that billed time to the Bright Data matter. But the lawyers who worked on the Bright Data engagement remain at Quinn. And all the Quinn attorneys on both matters work in the same two offices (New York and San Francisco).

III. STANDARD OF REVIEW.

“Every attorney before this district court must comply with the standards of professional conduct required of the members of the State Bar of California.” *Talon Rsch., LLC v. Toshiba Am. Elec. Components, Inc.*, 2012 WL 601811, *1 (N.D. Cal. 2012) (Alsup, J.). “Accordingly, California law governs the issue of disqualification.” *Id.* Under California Model Rule of Professional Conduct 1.9,

- “(a) A lawyer who has formerly represented a client in a matter ***shall not*** thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client [absent informed consent]; [and]
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter ***shall not*** thereafter ... use [or] reveal [the client’s confidential information except as specified].” RPC Rule 1.9.

As the Comments to the Rule make clear, this imposes ***two*** separate and independent duties on counsel with respect to former clients: “The lawyer may not (i) do anything that will injuriously affect the former client in any matter in which the lawyer represented the former client, ***or*** (ii) at any time use against the former client knowledge or information acquired by virtue of the previous relationship.” *See id.*, Comment 1 (citing cases).²

These Rules are “written in the disjunctive,” and emanate from two separate ethical canons: the duty of loyalty preventing lawyers from switching sides in substantially-related matters, and

² *See also Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*, 809 F. Supp. 1383, 1387 (N.D. Cal. 1992) (“an attorney is forbidden to do either of two things after severing his relationship with a former client. He may not do anything which will injuriously affect his former client in any manner in which he formerly represented him, nor may he at any time use against his former client knowledge or information acquired by virtue of the previous relationship.”).

the duty of confidentiality preventing lawyers from misusing knowledge of a client's secrets, confidences, or confidential information. *See, e.g., U.S. v. Avandade Inc.*, 2015 WL 13886329, *8 (W.D. Wash. 2015) ("RPC 1.9(a) and 1.9(c) are written in the disjunctive."); *San Francisco v. Cobra Sols., Inc.*, 38 Cal. 4th 839, 846-47 (2006) ("The interplay of the duties of confidentiality and loyalty affects the conflict of interest rules.... When a substantial relationship between the two representations is established, the attorney is automatically disqualified from representing the second client."). Here, both of these rules compel Quinn's disqualification.

IV. THE DUTY OF LOYALTY PRECLUDES QUINN FROM SWITCHING SIDES.

"An attorney's duty of loyalty to a client is not one that is capable of being divided." *See Flatt v. Superior Ct.*, 9 Cal. 4th 275, 282 (1994). Here, Quinn's Engagement Letter promises Bright Data that it will be "always mindful of our central obligation to preserve the *precious trust* which our clients repose in us."³ Ex. 2 at 3. Quinn has violated that trust and breached its duty of loyalty in assisting X to prosecute its claims against Bright Data. *Talon*, 2012 WL 601811, at *7 ("The sad fact is that a former client in numerous cases finds itself being sued by its former lawyer on a substantially related matter. The former client has every right to expect that professional standards will be honored.").

In 2018, California revamped its code of professional responsibility, adopting in large part the ABA's Model Rules of Professional Conduct. As relevant here, the revised rules broadened the limitations on a lawyer's ability to take on conflicting successive representations. Whereas the prior rule focused largely on the canon of confidences, the new rule contained a separate provision trained upon the duty of loyalty, preventing side-switching even absent any receipt, use, or disclosure of client confidences. *See* ABA Formal Opinion 497 (2021) (recounting history); Hazard, *The Law of Lawyering*, § 14.12 (4th ed. 2023) (Under Rule 19(a), "there is no need to assess the risk to former client confidences.").⁴

³ Bright Data reserves its right to assert claims, including breach of contract and violation of the ethics rules, against Quinn. To the extent Quinn informed X of its prior engagement, Bright Data also reserves the right to assert tortious interference claims against X.

⁴ *See also Touchcom, Inc. v. Bereskin*, 299 F. App'x 953, 955 (Fed. Cir. 2008) ("Rule 1.9(a) of the Model Rules safeguards not only confidentiality, but also the client's expectation of the attorney's

Under Rule 1.9(a), a lawyer may not take on a new representation materially adverse to a former client if the two matters are the “same or ... substantially related.” RPC § 1.9(a); *see also O’Hagins, Inc. v. LGI LLP*, 2017 WL 11665634, *2 (C.D. Cal. 2017) (a “former client can establish a ... violat[ion] ... by showing (1) the attorney is acting adversely to the former client[;] and (2) a ‘substantial relationship’ exists between the subjects of the [successive] engagements.”) (citing *Flatt v. Sup. Ct.*, 9 Cal. 4th 275, 283 (1994)); *Openwave Sys. Inc. v. Myriad France S.A.S.*, 2011 WL 1225978, *1 (N.D. Cal. 2011) (Alsup, J.) (same). Quinn recognized **and agreed** to this, as its Bright Data Engagement Letter includes an advance waiver *except* in matters “substantially related to [Quinn’s] representation of Bright Data.” Ex. 2 at 4.

The duty of loyalty thus prevents a lawyer from switching sides. *See FMC Techs., Inc. v. Edwards*, 420 F. Supp. 2d 1153, 1160 (W.D. Wash. 2006) (“Parties are allowed to switch sides; lawyers are not”).⁵ As the Ninth Circuit explained, “the interest to be preserved by preventing attorneys from accepting representation adverse to a former client is the protection and enhancement of the professional relationship *in all its dimensions*.” *Trone v. Smith*, 621 F.2d 994, 998 (9th Cir. 1980). The policy behind this is clear. If firms can simply switch sides after an engagement ends, clients will be less trusting of their counsel and less willing to share confidences and litigation strategies and priorities. As a leading treatise explains,

loyalty and public confidence in the integrity of the bar”); *Don Westerman, Inc. v. Vill. of Forsyth*, 2020 WL 12811853 (C.D. Ill. 2020) (similar); *Flake v. Arpaio*, 2015 WL 13743445 (D. Ariz. 2015) (similar); *Avra Surgical, Inc. v. Dualis MedTech GmbH*, 2014 WL 2198598 (S.D.N.Y. 2014) (similar); *Pallon v. Roggio*, 2006 WL 2466854 (D.N.J. 2006) (similar); *Koch v. Koch Indus.*, 798 F. Supp. 1525, 1534 (D. Kan. 1992) (similar).

⁵ The duty of loyalty operates differently in cases involving former clients (or “successive” litigation) than it does in cases involving current clients (or “concurrent” litigation). Lawyers are not permitted to act adversely to a current client on any matter (without consent), but can act adversely to former clients on matters that are not “substantially related.” But a lawyer can *never* act adversely to a current or former client on a substantially related matter. *Rosenfeld Constr. Co., Inc. v. Superior Ct.*, 235 Cal.App.3d 566, 575 (Ct. App. 1991) (“If a substantial relationship is established, the discussion should ordinarily end.”); *Decaview Distribution Co. v. Decaview Asia Corp.*, 2000 WL 1175583, *13 (N.D. Cal. 2000) (successive representation on substantially related matters “**forbidden**”).

1 “Fearing these kinds of *later* betrayals, a client in an existing relationship might
 2 hesitate to confide fully in a lawyer, thereby damaging the quality of the
 3 relationship and hence the quality of the representation that the lawyer will provide.
 4 Thus, the chief office of rules like Model Rule 1.9 is to provide clients with
 assurance *during the representation* that they have no need to fear suffering adverse
 consequences *later* because of having retained a lawyer currently.”

5 *See Hazard, et al., The Law of Lawyering* §14.03. The duty of loyalty thus protects the integrity
 6 of the judicial system by ensuring that clients can have frank and open conversations with their
 7 lawyers, free of the concern that they will later be betrayed on matters for which their advice was
 8 sought. It is about trust, perhaps the single most important currency in our judicial system.⁶

9 Here, there is no question that Quinn is acting adversely to Bright Data by representing X
 10 on the other side of the “v” in this litigation. *See* ABA Formal Opinion 497 (2021) (“Suing a
 11 former client ... (*i.e.*, being on the opposite side of the “v” from a former client) on the same or on
 12 a substantially related matter is a ***classic example*** of representing interests that are ... ‘materially
 13 adverse’ to the interests of a former client”); *Avocent Redmond Corp. v. Rose Elecs.*,
 14 491 F.Supp.2d 1000, 1007 (W.D. Wash. 2007) (The material adversity element is “met because
 15 Heller Eherman’s former client is the plaintiff in this case” and its current clients are the
 16 “defendants.”). As such, the only question is whether Quinn’s prior representation of Bright Data
 17 is “substantially related” to its current representation of X.⁷ It is.

18 The fact that the *Meta* and *X* cases were filed separately on behalf of different plaintiffs is
 19 of no moment. Because the Rules apply equally to successive representations in the “same ***or*** a
 20 substantially related matter,” a complete identity of parties and claims is not required. The
 21 “substantial relationship test is broad and not limited to strict facts, claims, and issues involved in
 22 a particular action.” *Knight v. Ferguson*, 149 Cal.App.4th 1207, 1213 (Cal. App. 2d Dist. 2007);
 23 *Diva Limousine, Ltd. v. Uber Techs., Inc.*, 2019 WL 144589, *10 (N.D. Cal. 2019) (same). Rather,

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 25 ⁶ *See Dep’t of Corps. v. Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1146–47 (1999) (“The
 26 effective functioning of the fiduciary relationship between attorney and client depends on the
 27 client’s trust and confidence in counsel. The courts will protect clients’ legitimate expectations of
 28 loyalty to preserve this essential basis for trust and security in the attorney-client relationship.”),

⁷ *Trone*, 621 F.2d at 998 (“[t]he relevant test for disqualification is whether the former
 representation is ‘substantially related’ to the current representation.”).

a “‘substantial relationship’ exists whenever the ‘subjects’ of the prior and current representations are linked in some rational manner.” *Jessen v. Hartford Cas. Ins. Co.*, 111 Cal.App.4th 698, 711 (2003) (citing *Flatt*, 9 Cal. 4th at 283); *Advanced Messaging Techs., Inc. v. EasyLink Servs. Int’l Corp.*, 913 F. Supp. 2d 900, 908 (C.D. Cal. 2012) (“a rational link between the subject matter of the two cases will suffice.”); *ViChip Corp. v. Lee*, 2004 WL 2780170, *3 (N.D. Cal. 2004) (same); *ESC-Toy Ltd. v. Sony Interactive Ent. LLC*, 2024 WL 1335079, *7 (N.D. Cal. 2024) (same).

“In evaluating whether there is a substantial relationship between successive representations courts look to the similarities between the two factual situations, the legal questions posed, and the nature and extent of the attorney’s involvement with the cases ... as well as the attorney’s possible exposure to formulation of policy or strategy.” *Diva*, 2019 WL 144589, at *6. Here, the factual and legal similarities, plus Quinn’s direct involvement with senior Bright Data executives in formulating litigation strategy, compel a finding that the *Meta* and *X* cases are substantially related.

The Meta and X Cases are Factually Similar. As X has admitted, the “Meta case involves similar allegations of data scraping from social media platforms as the present case.”⁸ ECF 51¶ 10. The factual allegations in both cases are virtually identical. Both matters involve the same Bright Data services. Bright Data’s actions – including opening accounts for purposes of advertising, terminating those accounts and sending rejection letters – are the same in both cases. Moreover, both Meta and X have taken similar steps to make their users’ information public, and

⁸ X’s draft Case Management Statement represented that the *Meta* case was a “related case” because it alleged “similar” claims “based on Bright Data’s scraping activities,” and involved some “common legal issues.” Ex. 3. Because that is not the test under the Local Rules, the parties agreed in the final Joint Case Management Statement that the cases were not related for purposes of judicial assignment and coordination. ECF 51. But this has no bearing on whether the two matters are related for disqualification purposes. *See SC Innovations, Inc. v. Uber Techs., Inc.*, 2019 WL 1959493, *6 (N.D. Cal. 2019) (“the Court rejects Sidecar’s argument that the present motion is informed in any way by Judge White’s decision that this case is not related to another case ... [u]nder this Court’s local rules” because “[n]either element of [the Local Rule’s] test is the same as the test for whether cases are ‘substantially related’ for the purpose of disqualification.”); *MD Helicopters, Inc. v. Aerometals, Inc.*, 2021 WL 1212718, *8 (E.D. Cal. Mar. 31, 2021) (rejecting argument that “there is no substantial relationship between the [successive] matters ... because Defendant never filed a Notice of Related Case.”).

1 yet, attempt to restrict the public from scraping that information through “automated” means. Even
2 the jurisdictional allegations – a hotly contested issue in this case – are the same in both cases.

3 There are only a few minor differences between the *X* and *Meta* matters, none of which are
4 material. *X* devoted an entire section of its opposition to Bright Data’s motion for Summary
5 Judgment to explaining why Judge Chen’s Summary Judgment decision in the *Meta* case should
6 not apply here. ECF 69 at 9-10. *X* did not identify any factual difference in Bright Data’s conduct
7 or services. Instead, it focused largely on minor wording differences between *Meta*’s and *X*’s
8 Terms (though both platforms *interpret* their Terms identically), and the different procedural
9 posture of the cases (that some discovery had already been completed in the *Meta* case). Neither
10 difference renders the cases factually dissimilar. *Monster Energy Co. v. Vital Pharms., Inc.*, 2018
11 WL 6431870, *3 (C.D. Cal. 2018) (matters “substantially related” even though they involved
12 different products; noting that plaintiff “paints with too fine a brush in distinguishing the basis of
13 the legal claims in these lawsuits” because “a substantial relationship ... does not require an exact
14 match between facts and issues in the two cases.”).

15 ***The Meta and X Cases Involve Common Legal Issues.*** Courts also look to whether the
16 successive matters involve similar legal issues. If there are common legal issues, it is likely “the
17 lawyer will be called upon in the new matter to challenge or set aside his own work product in the
18 previous matter.” *See The Law of Lawyering* §14.07. The concern about “attacking one’s own
19 work” or “fouling the nest” directly implicates the duty of loyalty. *Id.*

20 Here, virtually every legal issue that arose in the *Meta* case has, or will, arise in this case.
21 *X*’s initial complaint asserted the same two claims as *Meta* – breach of contract and tortious
22 interference – and *X* seeks to maintain them today. Even the new tort claims arise out of the same
23 nucleus of operative fact, and involve the same subject matter. *Jessen*, 111 Cal.App.4th at 711
24 (“The words ‘subject’ and ‘subject matter’ mean more than the strict facts, claims, and issues
25 involved in a particular action”).

26 Bright Data will not, here, reveal the specific advice Quinn provided. But Quinn has a long
27 history of representing scrapers. In the *HiQ* case, for example, Quinn publicly took the position
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1 that Terms of Service prohibiting scraping were unconscionable and violated public policy. Quinn
 2 will now be forced to disavow that position and any advice it provided to Bright Data based on
 3 that prior view. Indeed, even if Quinn tries to reconcile its positions in the two cases, it would not
 4 solve the problem. No matter how “consistent or confident [it] may have been in its [prior]
 5 position, it still had to anticipate challenges to that position..., which likely engendered frank
 6 discussion of legal and factual issues” and “any weaknesses or vulnerabilities” in Quinn’s advice
 7 and arguments. *Diva*, 2019 WL 144589, at * 11.

8 Nor does it matter that Quinn did not appear in the *Meta* matter. A client is entitled to its
 9 lawyer’s honest and best advice, not advice that shifts in the winds based on the client’s identity
 10 or interests. When a lawyer disavows its own work, it casts doubt of the *reliability* of the earlier
 11 advice. Indeed, if a lawyer, upon taking a conflicting matter, could just say “ignore everything I
 12 said previously, I didn’t mean it,” clients will not only be deprived of the advice they paid for but
 13 they will also be hesitant to rely upon it from inception. Preventing lawyers from switching sides,
 14 therefore, protects the integrity of a lawyer’s candid *advice*, as well as its *public* work product.

15 ***Quinn Engaged Directly with Bright Data’s Senior Leadership on Matters Central to***
 16 ***Both Litigations.*** Nor can Quinn escape disqualification on the ground that its involvement was
 17 “limited.” It was not. The engagement was substantial and substantive, and it triggered Quinn’s
 18 full duties of loyalty and confidentiality.

19 Quinn dedicated a *team* of lawyers – not just a single individual – to the Bright Data
 20 Engagement, and it canvassed the firm for their insights. Avisar Decl. ¶ 13. Indeed, at least three
 21 Quinn lawyers had direct, personal contact with Bright Data’s executive team and were
 22 “personally involved in providing legal advice and services” to Bright Data. *MMCA Grp., Ltd. v.*
 23 *Hewlett-Packard Co.*, 2007 WL 607659, *4 (N.D. Cal. 2007). Quinn also ***billed*** over 30 hours to
 24 the engagement. Avisar Decl. ¶ 16. And even this understates the amount of work Quinn
 25 performed, as its billing records omit at least three client calls and does not include any partner
 26 time (despite the fact that a partner led the discussion for Quinn at the Board meeting).⁹ *Id.* ¶ 17.

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 28 ⁹ Avisar Decl., Ex. 1 ¶ 17 (explaining that Quinn’s invoice did not include all the time it spent on
 the matter, and did not include all the attorneys who worked on or, even, engaged directly with the

1 *See Farhang v. Indian Inst. of Tech.*, 2009 WL 3459455, *2 (N.D. Cal. 2009) (matter substantially
 2 related where lawyer billed 19 hours to the former client); *ViChip*, 2004 WL 2780170, at *3 (a
 3 mere 2 ½ hours sufficient to support disqualification where actual legal advice was provided); *Elan*
 4 *Transdermal Ltd. v. Cygnus Therapeutic Sys.*, 809 F. Supp. 1383, 1388 (N.D. Cal. 1992) (“The
 5 fact that Cost and Rothman billed only a short period of time does not preclude their work from
 6 being substantially related to the present litigation”).

7 More importantly, Quinn had access to, and participated in discussions with, the highest
 8 levels of the company. And it was privy to attorney-client confidences and work product in the
 9 *Meta* litigation. *Vaxmonsky v. Costco Wholesale Corp.*, 2022 WL 20955638, *2 (C.D. Cal. 2022)
 10 (Inquiry into the “nature and extent” of the representation involves consideration of “the type of
 11 work performed, and the attorney’s possible exposure to formulation of policy and strategy”).

12 **V. THE DUTY OF CONFIDENTIALITY PRECLUDES QUINN FROM** 13 **SWITCHING SIDES.**

14 In addition to the duty of loyalty, the duty of confidentiality also precludes Quinn from
 15 switching sides. When Bright Data engaged Quinn to provide strategic assessment of the *Meta*
 16 litigation, Bright Data was forthcoming about its business, its objectives, and analyses of its claims,
 17 potential defenses, and potential counterclaims. Quinn probed Bright Data for information to help
 18 it provide a fulsome assessment of Bright Data’s legal exposure, and it received access to Bright
 19 Data’s sensitive attorney-client communications and work product relating to that matter.

20 Under Rule 1.9(c), “a lawyer who has formerly represented a client in a matter or whose
 21 present or former firm has formerly represented a client in a matter shall not thereafter ... use [or]
 22 reveal” that information. This rule, however, is not just a proscription on the actual use or
 23 disclosure of the information, it operates as a direct limitation on a lawyer’s ability to take on an
 24 adverse successive representation. As the California Supreme Court declared, “where an attorney
 25 successively represents clients with adverse interests, and where the subjects of the two

26 client). Whether the billing omission was in error or recognition that Quinn was fast approaching
 27 the agreed-upon cap is irrelevant. What is relevant is that Quinn’s involvement was not peripheral,
 28 but went to the core of Bright Data’s litigation strategy in dealing with dominant social media
 platforms bent upon eradicating scrapers.

1 representations are substantially related, the need to protect the first client’s confidential
2 information requires that the attorney be disqualified from the second representation.” *SpeedDee*,
3 20 Cal. 4th at 1146.

4 The prohibition against successive representations does not require a showing that the
5 lawyer *actually* possesses or used confidential information, since that would require delving into
6 – and disclosing – attorney-client communications relating to both the former and current
7 engagements. As the California courts have explained:

8 “The trial court asked at the hearing ‘what knowledge is [Wilkins] really going to
9 have that's going to give him any undue or unfair advantage in this present litigation
10 against Fireman's Fund?’ The trial court was in essence asking FFIC to reveal the
11 specific confidential information that Wilkins had in his possession that could be
used to FFIC's disadvantage in this case. As we articulated in *Jessen*, **this type of
inquiry is outlawed.**”

12 *Farris v. Fireman's Fund Ins. Co.*, 119 Cal.App.4th 671, 683 & n.10 (2004) (citing *Jessen*, 111
13 Cal.App.4th at 709) (“Whether he actually possesses confidential information that would work to
14 his advantage in his current representation is not the test. Rather, the test is whether a substantial
15 relationship exists between the subjects of the two compared representations.”).

16 Accordingly, a lawyer will be disqualified upon a showing **either** that the lawyer possessed
17 relevant confidential information, or that the two successive matters are “substantially related.”
18 *Id.* In the latter case, the courts will “**conclusively presume**” that the lawyer obtained access to
19 client confidences. *Flatt*, 9 Cal. 4th at 283 (“Where the requisite substantial relationship can be
20 demonstrated, access to confidential information in the first representation (relevant, by definition,
21 to the second representation) is presumed and disqualification is mandatory”); *Jessen*, 111
22 Cal.App.4th at 709 (“If the relationship between the attorney and the former client is shown to
23 have been direct—that is, where the lawyer was personally involved in providing legal advice and
24 services to the former client—then it ... will be *conclusively presumed* that the attorney acquired
25 confidential information.”).

26 As noted, Quinn, through at least three of its lawyers, was directly and personally involved
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1 in providing legal advice to Bright Data on a substantially related matter.¹⁰ As such, Quinn must
2 be conclusively presumed to have acquired confidential information.

3 Moreover, the circumstances surrounding the Quinn’s engagement show it obtained
4 confidential information and had access to client confidences concerning Bright Data’s business,
5 operations, and legal strategies. As the Quinn Engagement notes, Bright Data committed to
6 provide “complete and accurate information regarding the subject matter of the Engagement,” and
7 the engagement involved “a review of any key background documents, including correspondence
8 between Bright Data and Meta, an analysis of the Litigation and defenses to pending claims, and
9 a recommendation regarding next steps in the Litigation,” as well as discussions with
10 “individual(s) from Bright Data to answer questions relevant to [Quinn’s] analysis.” Ex. 2 at 4-5.

11 Given the nature and scope of the Engagement, it is inconceivable that Quinn would not
12 be privy to client confidences and confidential information. But we do not need to rest on
13 presumptions or circumstantial evidence. We have the Declaration of Bright Data’s General
14 Counsel, who attests that Bright Data actually shared sensitive confidential documents, attorney-
15 client communications, and Litigation Counsel’s work product—essentially, Bright Data’s
16 playbook. Avisar Decl. ¶¶ 4, 9, 11, 14.

17 While *some* – but not all – of the information Quinn considered in providing its strategic
18 assessment included information in the public record, that does not solve the problem. Quinn had
19 already received large volumes of Bright Data’s confidential information in connection with
20 discovery in the *hiQ* litigation pursuant to a Protective Order that restricted its use. Avisar Decl.,
21 Ex. 1 ¶ 2. Indeed, one reason Bright Data retained Quinn was its knowledge of Bright Data’s
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23 ¹⁰ This is not a case, for example, where a junior lawyer with no direct client contact working on
24 a discrete and peripheral legal issue transferred to a new firm, which later took on an adverse
25 engagement. In such cases, a further showing of likely access to confidential information is
26 required. *Jessen*, 111 Cal.App.4th at 711 (“if ... the former attorney was not placed in a direct,
27 personal relationship with the former client, the court must assess whether the attorney was
28 positioned during the first representation so as to make it likely the attorney acquired confidential
information relevant to the current representation.”). Here, because Quinn lawyers were directly
involved in providing litigation advice to Bright Data, no further showing – beyond substantial
relatedness – is required.

1 technology and operations through this non-public information. *Id.* In any event, after retaining
2 Quinn, Bright Data supplemented this record with additional non-public information, through
3 conversations and documents. *Id.* ¶ 9.

4 But even if Quinn only had access to public information, the California Rules make clear
5 that client confidences are not limited to “competitively sensitive” information or even non-public
6 business information. *See* RPC Rule 1.9, Comment 5 (“the fact that information can be discovered
7 in a public record does not, by itself, render that information generally known under paragraph
8 (c).”). Protected client confidences also include litigation strategies and assessments, other
9 attorney-client privileged information, and work product. *See* RPC 1.6 (“The principle of lawyer-
10 client confidentiality ... encompasses matters ... protected by the lawyer-client privilege, matters
11 protected by the work product doctrine.”); *Hewlett-Packard Co. v. EMC Corp.*, 330 F. Supp. 2d
12 1087, 1094 (N.D. Cal. 2004) (Confidential information is information that “can be readily
13 identified as either attorney work product or within the scope of the attorney-client privilege.”).

14 As a leading treatise explains, disqualification is warranted under the “‘playbook’ approach
15 ... where the lawyer learns such subtleties as the former client’s strategic decision-making
16 processes or levels of risk aversion, rather than confidential information as such.” *The Law of*
17 *Lawyering* §14.07. California follows this approach. *See Jessen*, 111 Cal.App.4th at 710
18 (disqualification warranted where the lawyer “outlined the legal posture of the client and described
19 four legal options available to the client,” even though the “record ... did not reveal whether the
20 attorney acquired any knowledge or information from his clients, ... because the attorney had
21 given the client legal advice.”); *Bell N. Rsch., LLC v. ZTE Corp.*, 2019 WL 1590472, *5 (S.D. Cal.
22 2019) (“Confidential information may also involve communications related to litigation strategy
23 and the strengths and weaknesses of each side of the case.”). Indeed, Quinn has been disqualified
24 in other cases for similarly participating in client strategy sessions. *Blake v. S. California Edison*
25 *Co.*, 2020 WL 3262832, *7 (Cal. Ct. App. 2020) (“QE attorneys participated in the December
26 2017 joint IOU meeting at which in-house attorneys discussed joint efforts and **strategies**...”).
27 Nor can there be any meaningful dispute that the information received in connection with the *Meta*
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engagement would be relevant to the *X* matter, given the factual and legal similarities.

VI. DISQUALIFICATION IS REQUIRED TO PRESERVE THE INTEGRITY OF THE CLIENT RELATIONSHIP.

Quinn’s breach of the duties of loyalty and confidentiality require disqualification. As the California Professional Rules make clear, “[w]hile lawyers are associated in a firm, *none* of them shall knowingly represent a client when any *one* of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9.” RPC Rule 1.10(a). This rule of imputed disqualification is inviolate, where, as here, the lawyers involved in the prior representation were at the firm when that engagement occurred, and remain at the firm when the firm takes on the new conflicting matter. There is no exception to disqualification in this scenario.

Nor can the conflict be solved through an ethical screen. *Rosenfeld Constr. Co. v. Superior Ct.*, 235 Cal.App.3d 566, 577 (1991) (If “the current representation is substantially related to the former ..., a screening procedure cannot suffice to safeguard against the conflicting representations.”). Screens work when lawyers switch firms, but not when firms switch sides. Indeed, firms would be rife with conflicting matters if the “problem” could be solved simply by having different teams work on the two matters, even over the client’s objections.

The Rules do not permit this. Under Rule 1.10(a)(2), a screen is effective in preventing imputed disqualification *only* where the “prohibition is based upon Rule 1.9(a) and *arises out of the prohibited lawyer’s association with a prior firm.*” RPC 1.10(a)(2); *Elan Transdermal*, 809 F. Supp. at 1393 (disqualifying plaintiff’s firm because firm’s former attorneys had defended client in substantially similar case); *Meza v. H. Muehlstein & Co., Inc.*, 176 Cal.App.4th 969, 978-79 (2009) (“where an attorney is disqualified from representation, the entire law firm is vicariously disqualified as well.... Accordingly, an ‘ethical wall’ between an attorney with confidential information and his or her firm will generally not preclude the disqualification of the firm.”); *Largo Concrete, Inc. v. Liberty Mut. Fire Ins. Co.*, 2008 WL 53128, *5 (N.D. Cal. 2008) (disqualifying firm when member attorney representing opposing party, *despite* the creation of an ethical wall); *Klein v. Superior Ct.*, 198 Cal.App.3d 894, 912 (Ct. App. 1988) (“California precedent has not rushed to accept the concept of disqualifying the attorney but not the firm, nor has it

1 enthusiastically embarked upon erecting [ethical] walls.”); *cf. Openwave Sys. Inc. v. Myriad*
2 *France S.A.S.*, 2011 WL 1225978, *4 (N.D. Cal. 2011) (screen sufficient where lawyer switched
3 firms); *Kirk v. First Am. Ins. Co.*, 183 Cal.App.4th 776, 108 (2010) (same).¹¹

4 Here, the prohibition on conflicting engagements arises, not out of any lawyer’s association
5 with a prior firm, but with Quinn’s own representation of Bright Data. Because there is no
6 exception to imputed disqualification in this scenario, there is no need to engage in any balancing
7 of the equities. But even if the Court did so, the equities compel disqualification.

8 X will not face significant prejudice if Quinn, which recently stepped in as replacement
9 counsel, is disqualified. It has only been a month since the Court dismissed X’s complaint, so
10 Quinn has likely been working on the matter for just a couple of weeks. Nor do the Quinn attorneys
11 in this case mention any prior representation of Twitter or X on their bios, so disqualification
12 would not deprive X of long-time counsel.¹² Indeed, because Quinn historically represented
13 scrapers, it is unlikely that Quinn obtained any confidential information from X relating to its anti-
14 scraping efforts prior to this engagement.

15 Nor has X shown any reason why its prior counsel (or any other non-conflicted lawyers of
16 its choosing) cannot handle this matter. Indeed, it appears that the only reason X switched horses
17 is that its prior counsel lost the initial motion to dismiss. But that does not mean they cannot
18 represent X, at least until X can find new replacement counsel. Indeed, having worked on the case
19 for almost a year, its prior counsel – who remain counsel of record in this case – have full

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21 ¹¹ Quinn clearly worked on this case prior to entry of its appearance last week, and has either failed
22 to erect an ethical screen and/or failed to disclose the screen to Bright Data, as required by Rule
23 1.10(a)(2)(iii). Because it is inconceivable that Quinn’s new matter intake and conflict procedures
24 would not have identified Bright Data as a recent, former client in a substantially related matter,
25 this Court should order Quinn to Show Cause why it did not engage in bad faith in undertaking the
26 representation without notice or disclosure to Bright Data.

27 ¹² Bright Data specifically asked Quinn to disclose its representation of other “Big Tech
28 platforms.” Avisar Decl., Ex. 1 ¶ 18. In response, *Quinn* did not identify X in its list of
representative matters. *Id.* To show its experience, it also pointed to its Internet Litigation landing
page on its website, which identifies representations of other Internet companies, such as Google
(both as a platform and a scraper). *Id.* The only reference to X (or Twitter) is an amicus brief,
which Twitter joined along with Google in a second Circuit case over a decade ago.
www.quinnemanuel.com/practice-areas/internet-litigation/#representations.

1 knowledge of the facts and issues. *See Diva Limousine, Ltd. v. Uber Techs., Inc.*, 2019 WL
2 144589, at *13 (N.D. Cal. 2019) (“Diva has not shown that Uber unduly delayed in bringing this
3 motion, that Uber’s motion constitutes tactical abuse, or that disqualification will result in undue
4 hardship or impose an undue financial burden in Diva’s prosecution of this litigation.”); *Bold Ltd.*
5 *v. Rocket Resume, Inc.*, 2024 WL 589116, *12 (N.D. Cal. 2024) (“Gibson Dunn would remain as
6 lead counsel, so Defendants will not face the financial burden or delay of replacing disqualified
7 counsel.”); *Klein v. Facebook, Inc.*, 2021 WL 3053150, *8 (N.D. Cal. 2021) (“Finally, the Court
8 notes that Plaintiffs are unlikely to be significantly prejudiced because Keller Lenkner is one of
9 four law firms representing consumers in the instant case.”).

10 Moreover, this is not a case where Bright Data has sought to use disqualification as a
11 tactical tool to disadvantage X. It did not lie in wait while X invested resources in Quinn. Rather,
12 X chose not to disclose Quinn’s involvement until late last week, a mere two days before it filed
13 its Motion to Amend. Bright Data filed this motion less than a week after Quinn’s appearance.
14 *See Bold Ltd.*, 2024 WL 589116, at *12 (“The Court also does not find that Bold engaged in
15 tactical abuse because ... Bold did not delay in seeking disqualification once it became aware of
16 the conflict.”); *Antelope Valley Groundwater Cases*, 30 Cal.App.5th 602, 623 (2018) (“This case
17 was not one where a party tried to increase an opponent’s litigation burdens by seeking
18 disqualification only after the challenged counsel performed a substantial amount of work.”);
19 *SpeedDee*, 20 Cal. 4th at 1145 (same).

20 In the end, “the need to maintain ethical standards of professional responsibility;” and “the
21 preservation of public trust in the scrupulous administration of justice and the integrity of the bar”
22 favor disqualification. X *chose* to use Quinn, either knowing that Quinn had represented Bright
23 Data in the *Meta* matter, or because Quinn failed to disclose the conflict to X. Either way, Bright
24 Data should not be punished for Quinn’s betrayal.

25 **VII. CONCLUSION.**

26 For the foregoing reasons, the Court should disqualify Quinn from this case.
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1 Dated: June 10, 2024

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

X. Corp.,

Plaintiff,

Case No. 3:23-CV-03698-WHA

v.

BRIGHT DATA LTD.

Defendant.

DECLARATION OF DAVID A. MUNKITTRICK

I, David A. Munkittrick, declare as follows:

1. I am an attorney at Proskauer Rose LLP in New York. I submit this declaration in support of Bright Data's Motion to Disqualify Quinn Emanuel.

2. Attached are true and correct copies of the following:

Exhibit 1. Declaration of Mor Avisar, dated June 10, 2024.

Exhibit 2. Engagement Letter between Quinn and Bright Data, dated February 16, 2023.¹

Exhibit 3. X's November 3, 2023 draft Joint Case Management Statement.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

¹ Quinn's Engagement Letter contains a privilege header, but it does not contain any confidential information of the type that would not be included in a typical privilege log. Accordingly, by filing the Engagement Letter, Bright Data does not waive any privilege or confidentiality over any other information.

1 Dated: June 10, 2024

Respectfully submitted,

2 /s/ David A. Munkittrick

3 David A. Munkittrick

4 PROSKAUER ROSE LLP

Eleven Times Square

5 New York, New York 10036

(212) 969-3000

6 dmunkittrick@proskauer.com

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

X. Corp.,

Plaintiff,

Case No. 3:23-CV-03698-WHA

v.

Bright Data Ltd.

Defendant

DECLARATION OF MOR AVISAR

I, Mor Avisar, declare as follows:

1. I am the General Counsel at Bright Data Ltd. I submit this declaration in support of Bright Data’s Motion to Disqualify Quinn Emanuel Urquhart & Sullivan (“Quinn”).

2. In early February 2023, Bright Data decided to obtain legal advice from Quinn concerning litigation against Meta Platforms, Inc. and Instagram LLC. Bright Data sought Quinn’s advice because of its extensive experience in handling matters on behalf of scraping or data collection clients, including on behalf of hiQ in *hiQ v. LinkedIn*, 17-cv-03301 (N.D. Cal.). I also knew that Quinn had extensive knowledge of, and familiarity with, Bright Data’s business based on non-public, confidential information that Quinn received in discovery in the *hiQ* matter. I believed such knowledge would be helpful in providing legal advice to Bright Data, enable Quinn to provide such advice to Bright Data more quickly and efficiently, and reduce the need for substantial re-production of additional information.

3. On February 15, 2023, I emailed Hope Skibitsky, an associate at Quinn, who had been Bright Data’s primary contact in connection with *hiQ* discovery, to discuss the engagement. Ms. Skibitsky responded later that day, informing me that Quinn was “free of conflicts.” She also indicated that she had canvassed her colleagues for information that may be relevant to the matter, and proposed a call to share those insights and discuss the matter.

1 4. That call took place the following day, February 16, 2023. During that call, we
2 discussed the scope of the Engagement, and I provided additional information about our litigation
3 with Meta and Bright Data's business.

4 5. Shortly after the call, Ms. Skibitsky proposed a fee cap of \$40,000, and sent a draft
5 Engagement Letter, which would, upon execution, "confirm [Bright Data's] engagement of
6 Quinn Emanuel Urquhart & Sullivan, LLP ("QEU&S") as counsel to represent Bright Data Ltd.
7 and Bright Data, Inc. (collectively, "Bright Data") in connection with an analysis of the litigation
8 currently pending between Bright Data and Meta Platforms, Inc. and Instagram, LLC
9 (collectively, "Meta") in the Northern District of California and the Superior Court of the State
10 of Delaware."

11 6. According to Quinn's billing records, Quinn began work immediately, and no later
12 than February 18th.

13 7. On February 22, 2023, I informed Quinn that Bright Data was prepared to proceed
14 in accordance with the terms of the proposed Engagement Letter and fee cap, but asked that the
15 engagement be expanded to include additional discussions with Bright Data management. The
16 revised Engagement Letter was dated February 16, 2023 and executed on February 23, 2023, by
17 Renita Sharma (a Partner who worked on the *hiQ* litigation), with an "effective date" of either
18 February 16th or February 18th, depending on which was the actual "date on which [Quinn] first
19 performed services."

20 8. The Engagement Letter contained several relevant provisions:

- 21 • *First*, Quinn agreed to "provid[e] an analysis of the Litigation, including an analysis
22 of the arguments that may be raised and defended against in the Litigation and an
23 overview of what [Quinn] sees as potential next steps in the Litigation, and
24 participating in calls with Bright Data's senior management to answer any
25 questions arising following review of our analysis by Bright Data's senior
26 management."
- 27 • *Second*, in providing advice, Quinn agreed that its work would "include a review
28 of any key background documents, including correspondence between Bright Data
and Meta;" "an analysis of the Litigation and defenses to pending claims;" a
"recommendation regarding next steps in the Litigation;" and "interview[s] of
individual(s) from Bright Data to answer questions relevant to Quinn's analysis."

- *Third*, the Engagement Letter made clear that Quinn would staff the matter with a multi-lawyer team, and noted that (at the time), it “anticipate[d] assigning to this Engagement” Renita Sharma, Hope Skibitsky, and Zane Muller. It is unclear what, if any, work Ms. Sharma performed on this Engagement. But as noted below, as the Engagement proceeded, Quinn added Adam Wolfson, a partner who was actively involved and provided advice directly to Bright Data.
- *Fourth*, Quinn requested an advance waiver, but committed not to represent any future client adverse to Bright Data on a substantially related matter absent consent. Specifically, the Engagement Letter provides that Quinn “may represent other clients ... ***provided that the other matter is not substantially related to our representation of Bright Data.***”

9. About a week after Quinn began substantive work on the Bright Data Engagement, Ms. Skibitsky explained that, in the course of preparing Quinn’s litigation assessment, she needed additional information, and was preparing a list of questions for Bright Data. On Sunday, February 26, 2023, I provided Ms. Skibitsky with non-public Bright Data documents, and had a video conference with Ms. Skibitsky, during which I answered her questions.

10. On March 2, 2023, Quinn provided me with a detailed, 24-page, single-spaced litigation assessment (the “Quinn Report.”). The Quinn Report analyzed Bright Data’s litigation strategy, and addressed forum selection and jurisdictional issues, Meta’s claims, substantive litigation strategies, business considerations, affirmative defenses, counterclaims, and discovery. Without revealing the substance of the Quinn Report, I can also say that the Report “approached the analysis” from the perspective that the *Meta* litigation could have implications “beyond [the] particular dispute” with Meta, including Bright Data’s legal rights with respect to “***others like Meta***” who may try to enforce their Terms of Service.

11. After receipt, I provided the Quinn Report to Bright Data senior management, including Bright Data’s CEO and Board. I also asked Bright Data’s Litigation Counsel, Proskauer Rose, LLP, to review the Quinn Report. At my request, Proskauer provided a detailed, written response to Quinn’s assessment and its proposed recommendations and strategies. I provided portions of this response to Quinn and asked Quinn to provide additional information.

12. In advance of the management call(s) specified in the Engagement Letter, Quinn informed me that it was adding a partner, Adam Wolfson, to the matter. I understand that Mr. Wolfson worked on the *hiQ* litigation. Ms. Skibitsky also explained that Mr. Wolfson had

1 “experience in ToS litigation” and was an “anti-trust expert.” On March 8, 2023, I had another
2 call with Ms. Skibitsky and Mr. Wolfson to discuss the Quinn Report, Quinn’s analysis, and its
3 advice and recommendations.

4 13. Following this call, I scheduled a virtual all-hands meeting for Sunday, March 12,
5 2023, to discuss Quinn’s legal advice. The meeting participants included: (i) Bright Data’s CEO,
6 the Bright Data Board, and me; (ii) Mr. Wolfson, Ms. Skibitsky, and Mr. Muller from Quinn; and
7 (iii) Colin Kass and David Munkittrick from Proskauer.

8 14. The Board Meeting lasted over two hours. Significant client confidences and
9 attorney-client privileged information were shared during that meeting, as well as confidential
10 information about Bright Data’s policies, practices, and priorities. Again, without revealing the
11 substance of the communications, I can say that we discussed Meta’s and other potential website
12 operators’ claims, the likely defenses to such claims, and the procedural and substantive strategies
13 to best advance Bright Data’s principal contention that it had an unqualified right to freely search
14 the public web. As with the Quinn Report, the discussion was not limited to Meta’s claims, but
15 included the implications of Bright Data’s overall litigation strategy on Bright Data’s business
16 model and its legal rights vis-à-vis other social media platforms and website operators.

17 15. Bright Data did not request that Quinn provide any further work after this meeting,
18 and Quinn’s substantive work on the Engagement, and the Engagement itself, ended thereafter.

19 16. Following the Engagement, Quinn invoiced Bright Data \$36,191.50, which Bright
20 Data paid in full. Quinn’s billing records (as reflected in its invoice) show that Ms. Skibitsky and
21 Mr. Muller billed over 30 hours to the Engagement.

22 17. The billing records, however, appear to omit significant time that Quinn likely spent
23 on the matter. For example, Quinn’s billing records do not reflect the three conversations I had
24 with Ms. Skibitsky on February 16th, February 26th, and March 8th. The records also omit any
25 time spent on the matter by Mr. Wolfson, though he also participated in the March 8th call with
26 Ms. Skibitsky, and he participated in and led the discussion from the Quinn side during the March
27 12th Board meeting. Though I believe Mr. Muller also participated in that Board Meeting,
28

Quinn's billing records also do not reflect any such time for that meeting. Quinn's billing records also do not reflect any internal discussions between or among Ms. Skibitsky, Mr. Wolfson, Mr. Muller, Ms. Sharma, or other Quinn lawyers or personnel. In fact, the billing records do not reflect any instance where two or more Quinn lawyers worked on or discussed the matter on the same day, despite the fact that this must have occurred. Quinn also appears to have written off some time reflected in the billing records. Specifically, it appears that, on two separate dates, Ms. Skibitsky worked on the matter for 8.1 and 3.0 hours respectively, but Quinn only billed 7.1 and 2.0 hours for that time. All these potential time discrepancies or omissions were to Bright Data's benefit (and may have been necessitated by the fee cap), but they suggest that more work was performed on the matter than reflected in the Quinn Invoice or billing records.

18. I understand that Quinn entered appearances in the X matter on June 4, 2024. Prior to this date, Quinn did not inform me of any client relationship it had with X. Indeed, on March 7, 2023, I had asked Quinn to disclose its representation of the Big Tech platforms. Quinn provided a list of representative matters, which did not include any reference to X or Twitter. Quinn also provided a link to its Internet Litigation landing page, where the only reference to X is a reference to a 2011 amicus brief that Twitter joined along with Google, Quinn's long-time client. Nor did Quinn inform me or anyone else at Bright Data that it was undertaking representation of X. In fact, it still has not done so, other than through its filing of its notices of appearances last week. It has never sought consent from Bright Data to represent X in this litigation. Nor has it ever stated that it took any steps to address the conflict.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate to the best of my knowledge and belief.

Dated: June 10, 2024

/s/ Mor Avisar
Mor Avisar

EXHIBIT 2

quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

WRITER'S DIRECT DIAL NO.
(212) 849-7413WRITER'S EMAIL ADDRESS
renitasharma@quinnemanuel.com

February 16, 2023

STRICTLY CONFIDENTIAL – ATTORNEY CLIENT
PRIVILEGED MATERIAL
PRIVILEGED & CONFIDENTIAL
VIA E-MAIL

Mor Avisar, Esq.
Legal Counsel
Bright Data
mora@brighdata.com

Re: Dispute with Meta Platforms, Inc.

Dear Mor:

We are pleased to confirm your engagement of Quinn Emanuel Urquhart & Sullivan, LLP (“QEU&S”) as counsel to represent Bright Data Ltd. and Bright Data, Inc. (collectively, “Bright Data”) in connection with an analysis of the litigation currently pending between Bright Data and Meta Platforms, Inc. and Instagram, LLC (collectively, “Meta”) in the Northern District of California and the Superior Court of the State of Delaware (collectively, the “Litigation”) (the “Engagement”). The purpose of this letter is to confirm the terms and conditions upon which QEU&S will provide legal services to Bright Data in connection with the Engagement. We believe that a mutual understanding of these terms and conditions at the outset is fundamental to establishing a good working relationship. In this engagement letter, we sometimes refer to Bright Data as “you” or “your” and to QEU&S as “we,” “our” or “us.”

Client

Our engagement is on behalf of Bright Data only. In representing Bright Data, we will not be representing any officer, director, employee, owner, founder, member, shareholder or partner of, or any other person affiliated with Bright Data; or any subsidiary, parent or other affiliate of Bright Data. If any of these persons or entities think that they may require counsel, we would be happy to discuss with them whether we might be able to represent them as well, but any such representation would need to be covered by a separate engagement letter, and would depend on a

quinn emanuel urquhart & sullivan, llpATLANTA | AUSTIN | BOSTON | BRUSSELS | CHICAGO | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON | LOS ANGELES | MANNHEIM |
MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY | SAN FRANCISCO | SEATTLE | SHANGHAI |
SILICON VALLEY | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | ZURICH

review by us and disclosure to all concerned of the conflicts of interest that would arise in connection with any such concurrent representation, and on appropriate consents being obtained from Bright Data and from those seeking such additional representation.

Scope of Engagement

You have engaged QEU&S to advise you in connection with the Engagement. QEU&S's services will be limited to providing an analysis of the Litigation, including an analysis of the arguments that may be raised and defended against in the Litigation and an overview of what QEU&S sees as potential next steps in the Litigation, and participating in calls with Bright Data's senior management to answer any questions arising following review of our analysis by Bright Data's senior management. Our services will not extend to other business, personal or legal affairs of Bright Data, or to any other aspect of Bright Data's activities. This Engagement is not intended to encompass any matter in which the professional services of QEU&S will be involved in entering an appearance or filing any documents or pleadings in any litigation, including in the Litigation, or in entering any appearance before any tribunal, and any such matter shall be the subject of an additional separate and specific engagement letter. QEU&S's receipt or use of confidential or other information from Bright Data or others in the course of this representation does not mean that QEU&S will render any other advice or services either to Bright Data or any other person or entity. Similarly, Bright Data will not look to or rely upon QEU&S for any investment, accounting, financial or other non-legal advice, including without limitation any advice regarding the character or credit of any person with whom Bright Data may be dealing.

Insurance Coverage and Claims

Bright Data understands and agrees that QEU&S is not being engaged to advise regarding the existence of any insurance coverage in connection with the circumstances of the Engagement or to advise or assist in the formulation or submission of any insurance claim in connection with the Engagement. If Bright Data has not done so already, Bright Data should consider tendering this matter to its insurer(s) in order to determine whether there is insurance coverage for any of the claims asserted.

Responsible Persons – Communications Between QEU&S and Gem

We will keep you regularly and currently informed of the status of the Engagement and will consult with you whenever appropriate. Within QEU&S, Hope Skibitsky will be primarily responsible for the Engagement. Her telephone number is 908-868-9240 and e-mail address is hopeskibitsky@quinnemanuel.com. I will be another point of contact and am available at (212) 849-7413 and at renitasharma@quinnemanuel.com. In the event that you need to reach us and we are unavailable, please leave a voicemail message. It is our policy that all calls will be returned promptly and, in any event, no later than within one business day of receipt of the call; if you have not received a return call within that time, please call again. I will of course seek to staff this Engagement in a manner that I think will be the most effective and efficient. I will be happy to discuss with you any staffing issues or concerns you may have at any time.

Protection of Client Confidences – High Tech Communication Devices

We are always mindful of our central obligation to preserve the precious trust which our clients repose in us--their secrets and confidences. We take this duty very seriously and, except to the extent permitted by the applicable rules of professional conduct, we will not disclose any confidential information of yours to any other client or person. Similarly, we cannot disclose to you the confidences of any other client, even when such information relates to matters that might affect you.

In order to meet our obligation to preserve your confidences, it is important that we agree from the outset what kinds of communications technology we will employ in the course of this Engagement. Unless you specifically direct us to the contrary, for purposes of this Engagement, we agree that it is appropriate for us to use fax machines and e-mail in the course of the Engagement without any encryption or other special protections. Please notify me if you have any other requests or requirements in connection with the methods of telecommunication relating to the Engagement.

Bright Data's Designee to Receive Communications

We understand that Bright Data has designated you, Mor Avisar, as the person who is primarily responsible for managing the Engagement within Bright Data and that you are authorized to direct our activities and deal with us on any issues relating to the Engagement, including billing. Unless otherwise directed by Bright Data, we shall fulfill our obligation to Bright Data to keep Bright Data informed as to the progress of the Engagement by communicating with you and by keeping you so informed, and it shall be the obligation of you to communicate with all others within Bright Data regarding the progress of the Engagement.

Self-Representation

QEU&S has designated one of the firm's partners to act as the firm's General Counsel (the "General Counsel"). The General Counsel acts as a lawyer to the firm, representing QEU&S in a variety of professional and legal matters and helping attorneys at the firm to comply with their professional and ethical responsibilities to clients. Among other things, the General Counsel provides QEU&S and its attorneys with legal advice concerning professional responsibilities, potential or actual professional liabilities, and other matters. QEU&S also retains outside counsel from time to time to provide similar legal advice to the firm. It is possible that attorneys or staff working on matters for Bright Data may, from time to time, consult with the General Counsel or QEU&S's outside counsel on matters related to our representation of Bright Data. In the course of such consultation, QEU&S's attorneys and/or staff may disclose to the General Counsel or QEU&S's outside counsel privileged information concerning Bright Data's representation, and may receive legal advice related to QEU&S's work on Bright Data's matter, which legal advice QEU&S may or may not disclose to you. QEU&S views such consultations as privileged and not discoverable by anyone, not even the clients about whom such a consultation may take place. By retaining QEU&S Bright Data acknowledges and consents to QEU&S's attorneys and staff consulting with the General Counsel or QEU&S's outside counsel as they deem necessary, both during QEU&S's representation of Bright Data and after such

representation ends, and Bright Data confirms that such communications are privileged and protected against disclosure to you.

Responsibilities of Client

In order to represent you effectively, it is important that you provide us with complete and accurate information regarding the subject matter of the Engagement, and that you keep us informed on a timely basis of all relevant developments. In addition, it is important that Bright Data and its officers and employees provide us with timely assistance and cooperation in connection with the Engagement.

Preservation of Electronically Stored Information (“ESI”)

Recent changes in the Federal Rules of Civil Procedure, Federal Rules of Evidence, and case law addressing electronic discovery have profoundly altered the obligations of the parties involved in litigation and their counsel. An understanding of these changes, which relate to the duties of preservation and discovery of electronically stored information (“ESI”), is an essential prerequisite to the development of a successful litigation strategy for every client. The duty to preserve potentially relevant information is triggered when litigation is reasonably anticipated or commenced, and the failure to comply with these rules can have dire consequences (including sanctions such as monetary penalties). In the event Bright Data has not already issued a litigation hold in this matter, we request that you immediately do so. We would be pleased to assist you with preparing the litigation hold and otherwise providing guidance on the duties related to preservation of ESI.

No Guarantee of Result

In providing legal advice to you, I or others at QEU&S may from time to time express opinions or beliefs regarding the likely effectiveness of various courses of action or about results that may be anticipated. You understand that any such statements are opinions and beliefs only and are not promises or guaranties. We cannot and do not guarantee any particular course or outcome of the Engagement.

Future Conflicts of Interest

Our firm has many lawyers and several offices. We may currently or in the future represent one or more other clients in matters involving Bright Data and we may represent the parties that are adverse to you in this matter in other unrelated matters. We are undertaking this Engagement on condition that Bright Data gives its express consent and agreement that we may represent other clients, including the parties adverse to you in this matter, in the future in other matters in which we do not represent Bright Data even if the interests of the other clients are adverse to Bright Data (including the appearance on behalf of another client adverse to Bright Data in an unrelated negotiation, litigation or arbitration), provided that the other matter is not substantially related to our representation of Bright Data.

To the extent insurance is at issue in relation to the Engagement, we disclose that QEU&S has previously represented or is currently representing, various insurance companies, such as American International Group, Allstate Insurance Company, Liberty Mutual Insurance,

Prudential Insurance Company of America, State Farm Insurance Company, The Travelers Companies, and others.

Billing

Our fees are based on the amount of time we spend on this Engagement, subject to a cap for this Engagement of \$40,000. The Engagement shall include a review of any key background documents, including correspondence between Bright Data and Meta, an analysis of the Litigation and defenses to pending claims, and a recommendation regarding next steps in the Litigation. The Engagement may also include an interview of individual(s) from Bright Data to answer questions relevant to our analysis.

Bright Data agrees that the Engagement shall not cover any fees incurred in discussions, negotiations, or litigation with any third party, including Meta; any fees incurred for providing a review of Bright Data's business practices; or any fees incurred to prepare for and commence any litigation. Bright Data agrees that additional work beyond the Engagement will be subject to a separate engagement agreement.

Each QEU&S attorney, legal assistant and other timekeeper assigned to this Engagement will have an hourly billing rate. These billing rates, which are set based upon seniority and expertise, are subject to adjustment annually and we will notify you of these changes thirty days in advance of their going into effect. In addition, our associate rates are based on years out of law school, so annually on September 1, each associate's rate moves up to the next higher class rate on our rate schedule; for example, on September 1, 2022, a class of 2021 graduate's rate will move up from a first-year associate rate to a second-year associate rate, and so on. These "class graduation" adjustments are not rate increases, and Bright Data acknowledges and agrees to these associate class adjustments by signing this letter. The billing rates of the attorneys whom we anticipate assigning to this Engagement currently range from \$1,505.00 (for Renita Sharma) and \$1,390.00 (for Hope Skibitsky) to \$1,095.00 (for Zane Muller). If one of our professionals performs multiple tasks for Bright Data during the course of a day, our statement will describe those tasks in a single time entry with the time spent on each task or set of tasks separately itemized (rounded to the nearest tenth of an hour increment).

Ancillary Costs

We will charge separately for certain ancillary services we provide, such as facsimile charges, secretarial and paralegal overtime and word processing. We pass along out-of-pocket costs and charges that we incur on our clients' behalf. These typically include messenger charges, deposition videography and transcript charges and administrative charges. Other charges are based on market, not cost, including service of process, document reproduction, color document reproduction, binders, tabs, tab creation, manila folders, redwelds, binding, punching, black and white scanning, color scanning, black and white oversized scanning, color oversized scanning, black and white blowbacks, color blowbacks, slipsheets, native file printing, TIFF generation, OCR, ECA filtering, data processing, image endorsement, media creation and duplication, document coding, hosting, and litigation support consulting at hourly rates, depending on the work performed. Additionally, we charge for computerized legal research (Westlaw or Lexis fees, without any applicable discount), travel costs, meal charges and parking charges (when we

are working exclusively on your matter), filing fees, telephone toll charges, fees for experts and other consultants retained on Bright Data's behalf, and similar charges. Our charges may also include cellular or air telephone charges that are not related to the representation, but are necessarily incurred while we are traveling on a client's case. These charges will be at cost. The costs listed are the current rates but may be subject to future adjustment. Bright Data agrees that the ancillary costs described in this paragraph are costs to be paid in addition to our hourly billings, are not "overhead," and are payable separate and apart from our hourly billings in the event of any dispute.

In some cases, particularly if the amount is large, we may forward an invoice from an outside vendor or service directly to Bright Data for payment, which will also be due and payable upon receipt. Failure to pay such invoice upon request will be grounds for us to withdraw from our representation.

In the event Bright Data has supplied us with billing guidelines that are inconsistent with the terms of this Engagement Letter, Bright Data agrees that the terms of this Engagement Letter shall apply unless a copy of Bright Data's billing guidelines are attached to this Engagement Letter countersigned on behalf of QEU&S, in which event Bright Data's billing guidelines shall control.

We will submit bills on a monthly basis. All bills shall be paid within sixty (60) days of receipt by you. The obligation to pay our bills is solely yours and is not contingent upon any judgment or settlement; any right you may have for reimbursement, indemnification, insurance or the like; or your receipt of any other form of payment you may expect to receive from some other party. If Bright Data has any question regarding, or wish to challenge any bill, Bright Data shall notify us promptly of any such question or challenge, and shall in any event pay any portion of such bill that is not subject to question or challenge.

Award of Costs and Fees

A court may sometimes order a payment of costs or attorneys' fees by one party to the other. If any fees or costs are paid to us, they will be credited against any amounts Bright Data owes us, but Bright Data will be obligated for any unpaid portion of our statements as they become due. Payment of our statements may not be deferred pending a ruling on an application for attorneys' fees, costs or sanctions or pending the receipt of such an award. Any fee or cost award received from another party will be credited to Bright Data's account, unless it results in a credit balance. If it does, we will refund the balance to Bright Data. If a court awards fees or costs against Bright Data and in favor of an opposing party, Bright Data will be responsible for payment of that amount separately from any amounts due to us.

Termination

Above all, our relationship with you must be based on trust, confidence and clear understanding. If you have any questions at any time about this letter or the work that the firm, or any attorney, is performing, please call me or, if you prefer, John Quinn in our Los Angeles office at (213) 443-3000, to discuss it. You may terminate this representation at any time, with or without cause. Subject to the application of the applicable rules of professional responsibility, we also

reserve the right to withdraw if, among other things, you fail to make timely payment of any invoice, you fail to cooperate or follow QEU&S's advice on a material matter, or any fact or circumstance arises that, in QEU&S's view, renders our continuing representation unlawful or unethical. Any termination of our representation of you would be subject to such approval as may be required from any court(s) in which we are appearing on your behalf. In the event of termination by either of us, fees and costs for work performed prior to termination will still be payable to the extent permitted by law.

Date of Commencement and Termination of the Engagement

The effective date of our agreement to provide services is the date on which we first performed services. The date at the beginning of this letter is for reference only. If this letter is not signed and returned for any reason, Bright Data will be obligated to pay us the reasonable value of any services we have performed as well as the costs we have incurred on Bright Data's behalf.

QEU&S's representation of Bright Data will be considered terminated at the earliest of (i) Bright Data's termination of the representation, (ii) QEU&S's withdrawal from the representation, (iii) the completion of QEU&S's substantive work for the Client, or (iv) following 60 days of inactivity by QEU&S on the matter.

File Retention and Disposition

After the Engagement has concluded, and subject to payment of all outstanding fees and disbursements, you may request the return of files pertaining to the Engagement. Bright Data's files will be released only following delivery to QEU&S of a signed release letter containing appropriate directions and acknowledgment of the obligation to pay outstanding fees. QEU&S may charge you for the reasonable costs of retrieval, assembly, copying and transfer of all files or materials in any format. It is our practice to retain the permanent records of the matter, in accordance with our records retention policy, for a period of not less than 7 years after the Engagement has ended. If you do not request the files in writing before the end of our retention period, upon the expiration of that period we will have no further obligation to retain the files and may, at our discretion, destroy the files without further notice to you.

Other Litigation or Proceedings

If, as a result of this Engagement, and even if the Engagement has ended, we are required to produce documents or appear as witnesses in any governmental or regulatory examination, audit, investigation or other proceeding or any litigation, arbitration, mediation or dispute involving Bright Data or related persons or entities, Bright Data shall be responsible for the costs and expenses we reasonably incur (including professional and staff time at our then-standard hourly rates). Similarly, if we are sued or subjected to legal or administrative proceedings as a result of our representation of Bright Data in this matter (including unmeritorious disqualification proceedings), Bright Data agrees to indemnify us for any attorney's fees and expenses (including our own professional and staff time at our then-standard hourly rates) we incur as a result. This paragraph is not intended to apply to any claim brought by or on behalf of Bright Data alleging wrongdoing by QEU&S.

Arbitration

Although we think it is unlikely, it is possible that a dispute may arise between us regarding some aspect of the Engagement and our representation of you. If the dispute cannot be resolved amicably through informal discussions, we believe that most, if not all, disputes can be resolved more expeditiously and with less expense by binding arbitration than in court. This provision will explain under what circumstances such disputes shall be subject to binding arbitration.

(a) **AGREEMENT TO ARBITRATE:**

Any dispute between QEU&S and You as to attorneys' fees and/or costs in connection with the Engagement shall be resolved as follows:

1. If any such fee and/or cost dispute arises, QEU&S shall provide You with written notice of Your right to arbitrate under the California State Bar Act (Bus. & Prof. Code § 6200, *et seq.*). Those procedures permit a trial after arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award.

2. If Bright Data exercises its rights under the California State Bar Act, Bright Data and QEU&S may thereafter agree that the arbitration will be binding.

3. If Bright Data exercises its rights under the California State Bar Act, and Bright Data and QEU&S do not agree that the arbitration is binding, then upon the rejection by either party of the decision resulting from the arbitration procedures under the Act, Bright Data and QEU&S agree that the dispute will then be subject to mandatory arbitration as described in ¶ (b) below.

4. If, after receiving notice of its right to arbitrate, Bright Data does not exercise its rights under the California State Bar Act by filing a request for fee arbitration within 30 days, Bright Data and QEU&S agree that the dispute will be subject to mandatory arbitration as described in ¶ (b) below.

Any other dispute arising under the Engagement or in connection with the provision of legal services by QEU&S including, without limitation, any claim for breach of contract, professional negligence or breach of a fiduciary duty, shall be resolved by confidential, binding arbitration as described in ¶ (b) below.

By signing this Engagement Letter, Bright Data and QEU&S confirm that they have read and understand these paragraphs concerning arbitration and voluntarily agree to binding arbitration. In doing so, Bright Data and QEU&S voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal; depending on the rules of the arbitration program, both also may be giving up their rights to discovery. If Bright Data later refuses to submit to arbitration after agreeing to do so, Bright Data may be ordered to arbitrate pursuant to the provisions of California law. Bright Data is advised that it has the right to have an independent lawyer of Bright Data's choice review these arbitration provisions, and this entire agreement, prior to signing this Engagement Letter.

(b) ARBITRATION PROCEDURES:

In the event of any dispute that is subject to arbitration pursuant to ¶ (a) above, the initiating party will provide a written demand for arbitration to the other party setting forth the basis of the initiating party's claim and the dollar amount of damages sought.

The parties further agree that, if arbitration is necessary, each arbitration will:

1. Be heard and determined by a panel of three arbitrators with one selected by each party to the arbitration, and the third selected by the first two from the panel of arbitrators of JAMS (or its successor). Once a party selects an arbitrator and notifies the other party (the "non-selecting party") of its selection, the non-selecting party shall select an arbitrator within thirty (30) calendar days. If the non-selecting party fails to select an arbitrator within thirty (30) calendar days, JAMS (or its successor) shall select an arbitrator on the non-selecting party's behalf. Once two arbitrators are selected, those two arbitrators shall select the third arbitrator (from the panel of arbitrators of JAMS, or its successor) within twenty (20) calendar days. If the first two arbitrators fail to select a third arbitrator within twenty (20) calendar days, JAMS (or its successor) shall select an arbitrator (from the panel of arbitrators of JAMS, or its successor) on their behalf.

2. All selected arbitrators shall be retired state or federal judges;

3. Take place in the city in the United States where the QEU&S attorneys who spent the most time on the Engagement are located (the "applicable city");

4. Be conducted in accordance with JAMS Streamlined Arbitration Rules and Procedures (or any successor rules and procedures), in effect at the time the initiating party delivers to the other party the demand for arbitration required hereunder;

5. Require the arbitrators to enforce the terms of this agreement, and they will lack authority to do otherwise;

6. Apply the laws of the jurisdiction in the United States where the applicable city is located. The arbitration proceedings and the decision of the arbitrator will be confidential. Notwithstanding anything to the contrary contained in this agreement, the prevailing party in any arbitration, action or proceeding to enforce any provision of this agreement (for avoidance of doubt, a party that obtains a net monetary recovery shall be the prevailing party) will be awarded attorneys' fees and costs incurred in that arbitration, action or proceeding even if the law provides otherwise, including, without limitation, the value of the time spent by QEU&S attorneys to prosecute or defend such arbitration, action or proceeding (calculated at the hourly rate(s) then normally charged by QEU&S to clients which it represents on an hourly basis), except that the foregoing shall not apply to any mediation, as described above, and the parties will split the fees of the arbitrator; and

7. Be final and binding on both parties, will not be subject to de novo review, and that no appeal may be taken. The ruling of the arbitrator(s) may be entered and enforced as a judgment by a court of competent jurisdiction. The arbitration provisions of this Agreement may

be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses.

Binding Agreement

By signing below, Bright Data agrees that it has had enough time to review this letter, that we have advised you that Bright Data has the right to consult another, independent lawyer about the provisions relating to the waiver of conflicts of interest and any other aspect of this letter as to which Bright Data may wish to avail itself of such advice, and that Bright Data is satisfied that it understands this letter. Bright Data also agrees that it has the freedom to select and engage the counsel of its own choice and accordingly that this is an arm's length agreement between parties of equal bargaining strength and that Bright Data has freely determined, without any duress, to sign and agree to these terms.

Severability

Should any part of this Agreement, or language within any provision of this Agreement, be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Agreement, or any language within a provision of this Agreement, should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

Amendments and Additional Engagements

The provisions of this letter may only be amended in writing, signed by both parties.

If Bright Data later asks us to take on additional assignments, we will send you a supplementary engagement letter reflecting each additional assignment.

I am enclosing two executed copies of this letter. If the foregoing accurately reflects our agreement, please confirm that by signing and returning one of the enclosed copies to me. Please do not hesitate to call me to discuss any questions you may have regarding this agreement. In conformance with QEU&S's policies, we cannot commence work on this Engagement until we have received a copy of this letter countersigned by you.

Thank you again for this opportunity to be of service. We look forward to working with you on this Engagement.

Very truly yours,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

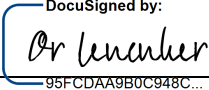


Renita Sharma

[STATEMENT TO BE SIGNED BY CLIENT:]

I have read the above Engagement Letter and understand and agree to its contents. The parties to this Engagement hereby agree that a faxed, pdf or electronic signature shall count as the original.

Bright Data

By:  _____
Name: Or Lencnher
Title: CEO
Date: 2/23/2023

2.22

09384-00001/13897319.1

EXHIBIT 3

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*Attorneys for Plaintiff
X Corp.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

X CORP., a Nevada corporation,

Plaintiff,

vs.

BRIGHT DATA LTD., an Israeli
corporation,

Defendant.

Case No. 3:23-cv-03698-WHA

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

The parties to the above-entitled action jointly submit this Joint Case Management Statement and (Proposed) Order pursuant to Fed. R. Civ. P. 26(f), the Standing Order for All Judges of the Northern District of California, and Civil Local Rule 16-9. On November 8, 2023, the parties held a conference, pursuant to Fed. R. Civ. P. 26(f).

1. Jurisdiction and Service

On September 25, 2023, Bright Data Ltd. (“Bright Data”) filed an executed Waiver of Service of Summons. Dkt. 17. This Court has jurisdiction under 28 U.S.C. § 1332 over the causes of action alleged in the Complaint because complete diversity exists, and the amount in controversy exceeds \$75,000. Compl. ¶ 7. Bright Data has challenged personal jurisdiction for X Corp.’s tortious interference claim (Count II). *See* Dkt. 22.

2. Facts

X Corp.’s Statement of Facts

X Corp. owns and operates the social media platform X (formerly known as Twitter), accessible through twitter.com, X.com, and various mobile and online applications. The X platform has hundreds of millions of active users worldwide. X Corp. allows its users to post and share content, including written comments, images and videos, and to share, like, and comment on other users’ posts. To post content on X or to re-post, like or otherwise interact with posts by others, users must register for an account and log in to that account. To register, users must provide their name, phone number or email address, and date of birth. X Corp. then verifies registrants through email or phone confirmation. X Corp. utilizes a variety of technological measures to detect and prevent automated systems from registering for accounts, including by requiring potential account holders to complete a “CAPTCHA” fraud-detection process to determine whether the user is human.

X Corp. recently discovered that Bright Data has engaged in widespread scraping¹ of X Corp.’s data, circumventing X Corp.’s technical barriers and violating the Terms to which Bright

¹ Scraping is the process of using automated means to collect content or data from a website. The process involves making a request to a website’s server, downloading the results and parsing them to extract the desired data. Data scrapers typically send large volumes of these requests, taxing the capacity of servers and diminishing the experience for legitimate users.

1 Data agreed. Bright Data also facilitated the scraping of data from X and induced X users to violate
2 X Corp.'s Terms. In fact, Bright Data's website makes clear that the company engages in
3 prohibited scraping on an industrial scale and brazenly advertises that Bright Data sells tools and
4 services that encourage and enable others to engage in prohibited scraping.

5 X Corp.'s Terms expressly prohibit such activities. Specifically, all users who register for
6 a X account, and/or view the X website or application, agree to a binding contract with X Corp. as
7 outlined in X Corp.'s User Agreement, which is comprised of the Terms of Service, Privacy Policy,
8 and the Twitter Rules and Policies (collectively the "Terms"). X Corp.'s Terms state that a user
9 may not "access, tamper with, or use non-public areas of the Services, our computer systems, or
10 the technical delivery systems of our providers" or "breach or circumvent any security or
11 authorization measures." They also state a user may not "access or search or attempt to access or
12 search the Services by any means (automated or otherwise) other than through our currently
13 available, published interfaces that are provided by us (and only pursuant to the applicable terms
14 and conditions), unless you have been specifically allowed to do so in a separate agreement with
15 us." In addition, X Corp.'s Terms specifically state that "scraping the Services without our prior
16 consent is expressly prohibited." Under the Terms, users may not "forge any TCP/IP packet header
17 or any part of the header information in any email or posting, or in any way use the Services to
18 send altered, deceptive or false source-identifying information." Users are also prohibited from
19 any conduct that would "interfere with, or disrupt, (or attempt to do so), the access of any user,
20 host or network, including ... overloading, flooding, spamming ... or by scripting the creation of
21 Content in such a manner as to interfere with or create an undue burden on the Services." The
22 Terms also incorporate by reference X Corp.'s Platform Manipulation and Spam Policy (the
23 "Policy"), which specifically prohibits "coordinated harmful activity that encourages or promotes
24 behavior which violates the Twitter Rules." The Policy also prohibits "leveraging Twitter's open
25 source code to circumvent remediations or platform defenses." The Terms prohibit selling any
26 content collected from the platform. Users may not "reproduce, modify, create derivative works,
27 distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Services
28 or Content on the Services" unless otherwise authorized by the Terms or a developer agreement.

Advertisers on the X platform are also subject to X Corp.'s Ads Policies, which expressly state that advertisers must follow the Terms and all X Corp. Rules. For developers who wish to retrieve or analyze X Corp.'s data, X Corp. offers specialized access to its Application Programming Interfaces ("APIs") through a tiered subscription service. X Corp.'s Developer Agreement also limits the access of developers to X Corp.'s content. The Agreement instructs developers that they "may not exceed or circumvent rate limits, or any other limitations or restrictions described in this Policy or your agreement with Twitter, listed on the Developer Site, or communicated to you by Twitter." In addition, X Corp. utilizes a variety of technological measures to detect and prevent automated systems from scraping data from its platform, including industry standard automation prevention techniques, such as CAPTCHAs, user identification and IP rate limits and anomaly detection tools.

Bright Data agreed to all of those Terms when it and its agents and employees created and maintained X Corp. accounts. Moreover, X Corp. has never granted Bright Data permission to scrape data from the X platform. Bright Data has not publicly disclosed how it evades X Corp.'s technical safeguards against scraping. But its website makes clear that Bright Data offers X Corp.'s data (which could have only been obtained by engaging in prohibited scraping of X's platform) for sale on its website; and sells tools and services that encourage and enable others to engage in prohibited scraping.

Bright Data's Statement of Facts

[Bright Data to insert]

3. Legal Issues

The principal legal issues in this dispute are:

- Whether Bright Data's conduct constitutes a breach of contract for violating X Corp.'s Terms;
- Whether Bright Data's conduct tortiously interfered with X Corp.'s contractual relations with its users;
- Whether Bright Data was unjustly enriched as a result of its actions, and at the detriment of X Corp.;

- X Corp.’s entitlement to the relief sought in the Complaint, including injunctive relief; compensatory, statutory, and punitive damages in an amount to be proven at trial; reasonable costs, including reasonable attorneys’ fees; pre-and post-judgment interest as allowed by law, an accounting of Bright Data’s profits resulting from its scraping activity, disgorgement of those profits; and all other equitable and legal relief the Court deems just and proper.

Bright Data filed a motion to dismiss, arguing that the Court does not have personal jurisdiction over it for X Corp.’s tortious interference claim, that X Corp.’s tortious interference and unjust enrichment claims should be dismissed pursuant to Rule 12(b)(6), and that X Corp.’s breach of contract claim should be dismissed, in part, pursuant to Rule 12(b)(6).

4. Motions

Pending Motions

On October 25, 2023, Bright Data moved to dismiss X Corp.’s tortious interference and unjust enrichment claims and breach of contract claim, in part, under Rule 12(b)(6) for failure to state a claim, and the tortious interference claim under Rule 12(b)(2) for lack of personal jurisdiction. Dkt. 22. The hearing is scheduled for November 30, 2023.

X Corp.’s Anticipated Motions

X Corp. intends to file an early summary judgment motion on the affirmative elements of X Corp.’s breach of contract claim—namely that Bright Data is liable for breaching the Terms by scraping X Corp. user data, selling X Corp. user data, and enabling and encouraging others to do so. This early summary judgment motion will not impact X Corp.’s ability to file additional summary judgment motions as appropriate.

Bright Data’s Anticipated Motions

[Bright Data to insert]

5. Amendment of Pleadings

In response to Bright Data’s pending motion to dismiss, X Corp. intends to amend its Complaint by November 15, 2023. In addition, as outlined in the proposed schedule below, the parties requests that the Court set a February 16, 2023 deadline to amend pleadings.

1 **6. Evidence Preservation**

2 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
3 Stored Information, have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding
4 preservation of discoverable information, and each party has taken steps it believes are reasonable
5 and proportionate to preserve evidence relevant to the issues reasonably evident in this action.

6 **7. Disclosures**

7 The parties will exchange Initial Disclosures on November 22, 2023.

8 **8. Discovery**

9 Discovery has only recently begun, and no discovery issues have been identified. The
10 parties expect that discovery will be guided by the Federal Rules of Civil Procedure and Local
11 Rules of this Court. The parties have had preliminary discussions relating to a Confidentiality
12 Order, ESI Protocol, and Privilege Protocol. The parties expect to present any stipulations or
13 disputes to the Court as soon as reasonably practicable.

14 [Bright Data to insert]

15 **9. Class Actions**

16 This case is not a prospective class action.

17 **10. Related Cases**

18 Meta Platforms, Inc., which operates Facebook, has filed a similar case against Bright Data
19 in this district, alleging breach of contract and tortious interference based on Bright Data's scraping
20 activities. *See Meta Platforms, Inc. v. Bright Data Ltd.*, 3:23-cv-00077-EMC. Although the cases
21 involve different plaintiffs and contracts, they involve some common legal issues.

22 **11. Relief**

23 As set forth in the Complaint, X Corp. seeks damages for Bright Data's alleged breach of
24 the Terms and to enjoin Bright Data from continuing its scraping activities going forward, as well
25 as other equitable relief including an accounting and disgorgement, reasonable costs and fees.
26

27 **12. Settlement and ADR**

28 The parties have conferred regarding ADR options, and anticipate that they will elect

private mediation at the appropriate time.

13. Other References

The parties do not believe a reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation is necessary.

14. Narrowing of Issues

The parties met and conferred on this issue but were unable to reach agreement on a way of narrowing the issues at this time. The parties will discuss issues that could be narrowed at trial or resolved through stipulation at the appropriate time, if necessary.

15. Expedited Trial Procedure

The parties do not believe that this case is appropriate for Expedited Trial Procedure of General Order No. 64 Attachment A.

16. Scheduling

The parties propose the following joint schedule:

Action	Proposed Deadline
November 22, 2023	Initial Disclosures
February 16, 2024	Deadline to amend pleadings
August 30, 2024	Non-expert discovery cutoff
September 20, 2024	Initial expert disclosures (on issues where each party bears burden)
October 18, 2024	Rebuttal expert disclosures
December 6, 2024	Expert discovery cutoff
December 20, 2024 (filing) January 24, 2025 (opposition) February 7, 2025 (reply) February 27, 2025 (hearing)	Dispositive motion cutoff
February 28, 2025	Motions in limine (served not filed)
March 7, 2025	Joint pre-trial statement
March 14, 2025	Oppositions to Motions in limine (served not

	filed)
March 19, 2025	Collated Motions in limine filed
March 26, 2025 2:00 p.m.	Pre-Trial Conference
April 14, 2025 7:30 a.m.	Trial (5-7 days)

17. Trial

X Corp. has demanded a trial by jury, and expects the trial to last five to seven days.

[Bright Data to insert]

18. Disclosure of Non-Party Interested Entities or Persons

The parties have filed certifications required by Civil Local Rule 3-15 and the Federal Rules of Civil Procedure. Dkt. 2, 21. The parties certifies that as of the date of this filing, other than the named parties, there is no such interest to report.

19. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

20. Opportunities for Junior Lawyers

The parties are mindful of the Court's encouragement to involve junior lawyers in the action. Counsel for X Corp., Haynes and Boone, LLP, has two lawyers six years or fewer out of law school who are already actively involved in this case—Andrea Levenson and Reid Pillifant (*pro hac vice* to be filed). X Corp. anticipates opportunities for each of them, as well as other junior lawyers who may later appear in the case, to argue discovery and evidentiary motions, depose fact and expert witnesses or defend such depositions, and/or to examine witnesses at any trial. At this stage of the litigation, X Corp. believes it is premature to attempt to identify such motions, depositions, or witnesses with greater specificity.

Dated: June 10, 2024

Respectfully submitted,

HAYNES & BOONE LLP

By: /s/ Jason T. Lao
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Attorneys for Plaintiff X Corp.

CASE MANAGEMENT ORDER

The above Joint Case Management Statement and (Proposed) Order is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____

William Alsup
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, a true and correct copy of the foregoing document was served by filing the same via the Court's CM/ECF system, which will provide notice of the filing of same to all counsel of record.

Date: June 10, 2024

/s/ Jason T. Lao

Jason T. Lao

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

X. Corp.,

Plaintiff,

v.

BRIGHT DATA LTD.

Defendant

Case No. 3:23-CV-03698-WHA

Hon. William H. Alsup

**PROPOSED ORDER GRANTING
BRIGHT DATA’S MOTION TO DISQUALIFY QUINN EMANUEL**

The Court, having considered Defendant Bright Data, Ltd.’s Motion to Disqualify Quinn, Emanuel, Urquhart & Sullivan, LLP (“Quinn”), the papers filed in support, and in opposition thereto, and any oral argument with respect thereto,

IT IS HEREBY ORDERED that:

1. Bright Data’s Motion to Disqualify is GRANTED.
2. Quinn is DISQUALIFIED from representing X in this case;
3. All Counsel of Record for Quinn shall file Notices of Withdrawal within 3 days after entry of this Order; and
4. Quinn shall immediately institute procedures to ensure that it does not use or disclose any information relating to its engagement with Bright Data to X; any Quinn attorney or personnel who has worked for X; or any Quinn attorney or personnel who performs any work for X in the future.

SO ORDERED.

DATED: _____

The Hon. William Alsup
United States District Judge