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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

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8 DISCOVERORG DATA, LLC,

Plaintiff,

9 v.

10 QUANTUM MARKET RESEARCH  
INC.,

11 Defendant.  
12

CASE NO. C19-5656 BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS

13 This matter comes before the Court on Defendant Quantum Market Research,  
14 Inc's ("Quantum") motion to dismiss for lack of personal jurisdiction. Dkt. 8. The Court  
15 has considered the pleadings filed in support of and in opposition to the motion and the  
16 remainder of the file and hereby denies the motion for the reasons stated herein.

17 **I. PROCEDURAL AND FACTUAL HISTORY**

18 Plaintiff DiscoverOrg Data, LLC ("DiscoverOrg") provides sales and marketing  
19 information for business to business sales. Dkt. 1. DiscoverOrg's claims stem from its  
20 allegation that Quantum "stole access to DiscoverOrg information (about 9,300 records)  
21 and used them for its own sales and marketing, without paying DiscoverOrg any  
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1 licensing fees.” *Id.* DiscoverOrg is a limited liability company with its principal place of  
2 business in Vancouver, Washington, and Quantum is a Delaware corporation with its  
3 principal place of business in Nebraska. *Id.* ¶¶ 1–2.

4 Relevant to the instant motion, DiscoverOrg’s Corporate Counsel James Henry  
5 (“Henry”) declares that starting in July 2017, “Quantum personnel were engaged in sales  
6 discussions with DiscoverOrg personnel.” Dkt. 11 at 4 (citing Dkt. 12, ¶ 4.). These  
7 conversations occurred by phone and email and continued through at least November  
8 2017. *Id.* (citing Dkt. 12, ¶ 4–5). Henry further declares that DiscoverOrg sales personnel  
9 frequently disclose DiscoverOrg’s Vancouver, Washington location on sales calls, and  
10 that DiscoverOrg emails sent to Quantum included phone numbers with Washington area  
11 codes. *Id.* (citing Dkt. 12, ¶¶ 6–7). From October 27, 2017 to November 4, 2017,  
12 Quantum used DiscoverOrg’s database with permission through “a one-week trial with  
13 access of two user seats.” *Id.* at 4–5 (citing Dkt. 12, ¶ 8). Quantum did not purchase a  
14 license to access DiscoverOrg’s database after the trial license expired. *Id.* at 5 (citing  
15 Dkt. 12, ¶ 9).

16 Next, DiscoverOrg Compliance Analyst Jie Smith (“Smith”) declares that three IP  
17 addresses linked to Quantum accessed DiscoverOrg’s database without authorization in  
18 November 2017. *Id.* (citing Dkt. 13, ¶¶ 5–6). Smith declares that Quantum ran searches,  
19 viewed proprietary information, downloaded over 9,300 records, and used these records  
20 to sell its products. *Id.* (citing Dkt. 13, ¶¶ 6–7). Whenever Quantum accessed  
21 DiscoverOrg’s login page, it “was presented with a link to DiscoverOrg’s End User  
22 License Agreement.” *Id.* (citing Dkt. 13, ¶ 8). DiscoverOrg’s Director of Customer

1 Support Will Hinrichs declares that the only way Quantum could have accessed the  
2 allegedly stolen records was by using the login credentials of a DiscoverOrg licensee, and  
3 that “DiscoverOrg’s website also contains multiple notifications that DiscoverOrg is  
4 based in Washington.” *Id.* (citing Dkt. 15, ¶¶ 9–10).

5 On July 18, 2019, DiscoverOrg filed a complaint asserting claims for theft of trade  
6 secrets, misappropriation of trade secrets, misappropriation, copyright infringement,  
7 violation of the federal Computer Fraud and Abuse Act, trespass to chattels, unjust  
8 enrichment, intentional interference with contract, and negligence. Dkt. 1. On August 22,  
9 2019, Quantum filed the instant motion to dismiss for lack of personal jurisdiction. Dkt.  
10 8. On September 9, 2019, DiscoverOrg responded. Dkt. 11. On September 13, 2019,  
11 Quantum replied. Dkt. 16. On September 16, 2019, DiscoverOrg filed notice of intent to  
12 surreply. Dkt. 17. On September 18, 2019 DiscoverOrg surreplied. Dkt. 18.

## 13 II. DISCUSSION

### 14 A. Standard on a Motion to Dismiss Under Fed. R. Civ. P. 12(b)(2)

15 To determine whether it has jurisdiction over a defendant, a federal court applies  
16 the law of the state in which it sits, as long as that law is consistent with federal due  
17 process. *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014). Washington allows the  
18 maximum jurisdictional reach permitted by due process. *Easter v. Am. W. Fin.*, 381 F.3d  
19 948, 960 (9th Cir. 2004). Due process is satisfied when subjecting the entity to the court’s  
20 power does not “offend ‘traditional notions of fair play and substantial justice.’”  
21 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (quoting  
22 *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “[T]raditional notions of fair

1 play and substantial justice” require that a defendant have minimum contacts with the  
2 forum state before it may be haled into a court in that forum. *Int’l Shoe*, 326 U.S. at 316  
3 (1945). The extent of those contacts can result in either general or specific personal  
4 jurisdiction over the defendant. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564  
5 U.S. 915, 919 (2011).

6 “Although the plaintiff cannot simply rest on the bare allegations of its complaint,  
7 uncontroverted allegations in the complaint must be taken as true.” *Schwarzenegger v.*  
8 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal quotation marks and  
9 citations omitted). “Additionally, any evidentiary materials submitted on the motion are  
10 construed in the light most favorable to the plaintiffs and all doubts are resolved in their  
11 favor.” *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir.  
12 2002).

13 Specific jurisdiction permits a district court to exercise jurisdiction over a  
14 nonresident defendant for conduct that “create[s] a substantial connection with the forum  
15 State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014). A defendant creates a substantial  
16 connection in a tort-based action when it purposefully directs its activities at the forum  
17 state, the lawsuit arises out of or relates to the defendant’s forum-related activities, and  
18 the exercise of jurisdiction is reasonable. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir.  
19 2015) (“*Picot*”). Purposeful direction constitutes (1) an intentional action, (2) expressly  
20 aimed at the forum state, which (3) cause harm “the brunt of which is suffered—and  
21 which the defendant knows is likely to be suffered—in the forum state.” *Core-Vent Corp.*  
22 *v. Nobel Industries AB*, 11 F.3d 1482, 1485–86 (9th Cir. 1993) (citing *Calder v. Jones*,

1 465 U.S. 783, 788–89 (1984)). In applying this test, the Court must “look[] to the  
2 defendant’s contacts with the forum State itself, not the defendant’s contacts with persons  
3 who reside there.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014). “[A]n injury is  
4 jurisdictionally relevant only insofar as it shows that the defendant has formed a contact  
5 with the forum state.” *Id.* at 290. However, the Supreme Court also explained in a  
6 footnote that *Walden* “does not present the very different questions whether and how a  
7 defendant’s virtual ‘presence’ and conduct translates into ‘contacts’ with a particular  
8 State.” *Id.* at 290 n.9. In applying *Walden*, the Ninth Circuit found in *Picot* that contact  
9 between non-forum residents outside the forum which interfered with the plaintiff’s  
10 contract and ability to access out-of-forum funds was not meaningfully tethered to the  
11 forum and created an injury that would “follow [the plaintiff] wherever he might choose  
12 to live or travel.” *Picot*, 780 F.3d at 1215.

13         If the plaintiff establishes the first two factors, the defendant “must present a  
14 compelling case that the presence of some other considerations would render jurisdiction  
15 unreasonable’ in order to defeat personal jurisdiction.” *Harris Rutsky & Co. Ins. Servs.*  
16 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003) (quoting *Burger King*  
17 *v. Rudzewicz*, 471 U.S. 462, 477 (1985)). These considerations include the extent of the  
18 defendant’s purposeful interjection into the forum, the burden on the defendant, conflict  
19 of sovereignty with the defendant’s state, the forum state’s interest, judicial efficiency,  
20 the importance of the forum to the plaintiff’s interest in convenient and effective relief,  
21 and the possibility of alternate forums. *Id.* (citing *Core-Vent*, 11 F.3d at 1487–88).

1 The parties agree that DiscoverOrg seeks to establish specific personal jurisdiction  
2 over Quantum and alleges tort-based claims. Dkt. 8 at 6–7; Dkt. 11 at 6.

### 3 **B. Merits of Specific Jurisdiction**

4 Regarding purposeful direction and whether the lawsuit arises out of the  
5 defendant’s forum-related activities, in its motion Quantum generally denies that it has  
6 “engaged in any conduct that connects it to the state of Washington in any meaningful  
7 way.” Dkt. 8 at 6 (citing Dkt. 9, Declaration of Quantum CEO Greg Harris (“Harris”), ¶¶  
8 5–14). Quantum argues that DiscoverOrg fails to identify specific actions which took  
9 place in Washington, meaning that like *Walden*, the alleged wrongdoing is not sufficient  
10 to support jurisdiction because it only affected “plaintiffs with connections to the forum  
11 state” instead of showing the defendant formed a connection with the forum. *Id.* (citing  
12 *Walden*, 571 U.S. at 291). While DiscoverOrg argues that Quantum failed to contest the  
13 first two elements of the jurisdictional test in its motion, Dkt. 11 at 6, the Court finds that  
14 Quantum’s argument, albeit brief, is that no harm can be found to arise out of its forum-  
15 related activity because it directed no conduct at Washington.

#### 16 **1. Purposeful Direction**

17 The parties do not appear to dispute whether the alleged improper login and  
18 removal of files would constitute an intentional act. Regarding express aiming,  
19 DiscoverOrg argues that theft from its website or servers is aimed at Washington in the  
20 same way it would be if that theft was from its physical office. Dkt. 11 at 7. In four post-  
21 *Walden* cases cited by DiscoverOrg, district courts considered the location of the  
22 plaintiff, the plaintiff’s business if applicable, the defendant’s knowledge of the

1 plaintiff's location and relationship with that location, and the plaintiff's servers when  
2 assessing specific personal jurisdiction. *Christie v. Nat'l Inst. for Newman Studies*, 258 F.  
3 Supp. 3d 494, 500 (D.N.J. 2017) (sufficient for personal jurisdiction that defendant  
4 knowingly reached out to plaintiff and his computer in the forum to tortuously delete  
5 plaintiff's emails even though email provider housed its servers in a third state); *Motio,*  
6 *Inc. v. BSP Software LLC*, No. 3:16-CV-00331-O, 2016 WL 9559916, at \*5 (N.D. Tex.  
7 May 27, 2016) (sufficient for personal jurisdiction that defendant used false online  
8 identity to steal plaintiff's intellectual property from plaintiff's company known to be in  
9 the forum even though the parties disputed whether the server housing the data was in the  
10 forum); *Microsoft Corp. v. Aventis Sys., Inc.*, No. C16-1234RSM, 2016 WL 6650996,  
11 \*1–2 (W.D. Wash. Nov. 10, 2016) (“*Aventis*”) (contacts sufficient for personal  
12 jurisdiction when defendant had small portion of sales in forum, sold one computer with  
13 plaintiff's unlicensed software to consumer in forum, knew plaintiff was located in  
14 forum, and repeatedly contacted plaintiff's servers in forum to activate unlicensed  
15 software); *Microsoft Corp. v. Mountain W. Computers, Inc.*, 2015 WL 447490, at \*1  
16 (W.D. Wash. July 22, 2015) (“*Mountain West*”) (contacts sufficient for personal  
17 jurisdiction when defendants ordered plaintiff's software from third-party vendor located  
18 in forum and contacted plaintiff by telephone and through plaintiff's servers in forum to  
19 activate the software).

20 In reply, Quantum argues that *Aventis* and *Mountain West* show two critical  
21 factors not present here are required to support jurisdiction in internet torts: (1) the  
22 presence of the plaintiff's servers in the forum, and (2) additional contacts between the

1 defendant and the forum. Dkt. 16 at 4. Quantum argues the facts at bar are more similar  
2 to *Microsoft Corp. v. Comms & Data Sys. Consultants, Inc.*, 127 F. Supp. 3d 1107, 1115  
3 (W.D. Wash. 2015), where the defendant’s only contact with the forum was internet  
4 contact with the plaintiff’s servers to activate unlicensed software which the defendant  
5 had purchased elsewhere. *Id.* at 5. Quantum also contests DiscoverOrg’s characterization  
6 of *DEX Sys., Inc. v. Deutsche Post AG*, 727 Fed. App’x 276 (9th Cir. 2018), *cert. denied*  
7 *sub nom. DHL Supply Chain v. DEX Sys., Inc.*, 139 S. Ct. 592 (2018) (“*DEX*”). *Id.* at 4.  
8 While DiscoverOrg argues that *DEX* shows jurisdiction is proper when a defendant  
9 software licensee’s contacts with the forum occur in the form of contacts with the  
10 plaintiff’s servers in the forum after the license expires, Dkt. 11 at 8, Quantum argues that  
11 *DEX* shows that establishing plaintiff’s servers were located in the forum and defendant  
12 knew where the servers were located is critical to the jurisdictional analysis. *Id.* at 4–5.

13 In surreply, DiscoverOrg asks the Court to strike Quantum’s argument that a  
14 server located in the forum is critical, arguing that Quantum did not raise this point in its  
15 motion. Dkt. 18 at 1–2 (citing, inter alia, *Quinstreet, Inc. v. Ferguson*, 2008 WL  
16 5102378, at \*4 (W.D. Wash. Nov. 25, 2008)). While the Court agrees that the server  
17 argument was not raised in Quantum’s motion, the Court agrees with DiscoverOrg that  
18 server location is only one factor courts consider and is not dispositive. Therefore, the  
19 Court denies the motion to strike as moot.

20 The Court concludes that Quantum’s discussions with DiscoverOrg sales  
21 personnel and trial use of DiscoverOrg’s service leading up to the alleged unauthorized  
22 login and theft of records were not random or attenuated and meet the threshold for



1 contacts sufficient to support DiscoverOrg’s burden on express aiming and harm suffered  
2 in the forum state. Specifically, Quantum’s contact with Washington was not limited to  
3 the discrete incident of online theft—leading up to the alleged theft, Quantum personnel  
4 conducted conversations with DiscoverOrg personnel by phone and email for nearly two  
5 months and accessed DiscoverOrg’s extensive website services with permission for a full  
6 week. On this basis, Quantum knew or should have known DiscoverOrg was located in  
7 Washington and specifically directed its conduct at DiscoverOrg as an entity established  
8 in Washington, doing business in Washington, and suffering the resulting harm in  
9 Washington. Wherever DiscoverOrg’s servers are located, the Washington location of  
10 DiscoverOrg’s physical offices and personnel outweigh the server location on these facts.  
11 Moreover, the Court finds that unlike *Picot* where harm directed at a forum resident and  
12 experienced through his lack of access to out-of-state funds would be felt “wherever he  
13 might choose to live or travel,” 780 F.3d at 1215, DiscoverOrg and its operations are  
14 embedded in Washington, Quantum developed a relationship with DiscoverOrg, and then  
15 allegedly directed harm at DiscoverOrg which would be felt in those embedded  
16 operations in Washington and not elsewhere.

## 17 **2. Fair and Reasonable Exercise of Jurisdiction**

18 Quantum emphasizes that the exercise of personal jurisdiction over it is not  
19 reasonable. Dkt. 8 at 6. Quantum cites *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d  
20 201, 210 (1st Cir. 1994) for the proposition that if a plaintiff has a weak case for the first  
21 two elements of personal jurisdiction, the defendant’s burden on the third element is  
22 correspondingly lower. *Id.* at 6–7. The Court does not find the plaintiff’s case sufficiently

1 weak that Quantum is relieved of its burden to make a compelling case that the exercise  
2 of jurisdiction would not be reasonable. *Harris Rutsky*, 328 F.3d at 1132.

3       Regarding the first reasonableness factor, Quantum argues it has no locations,  
4 property, employees, or business license in Washington and has not purposefully  
5 interjected itself into Washington’s affairs. Dkt. 8 at 7. Regarding the second factor,  
6 Quantum argues it would be highly burdensome for it to defend this matter in  
7 Washington. *Id.* Regarding the fourth factor, Quantum argues that because no action took  
8 place in Washington, Washington has no interest in adjudicating the dispute. *Id.* Quantum  
9 argues the fifth factor, efficient judicial resolution, is neutral due to the advantage to  
10 DiscoverOrg and the disadvantage to Quantum. *Id.* Regarding the seventh factor, an  
11 alternate forum, Quantum argues “DiscoverOrg can bring its claims in a forum that is  
12 consistent with Quantum’s due process rights.” *Id.* at 8. DiscoverOrg counters that the  
13 events and the harm did occur in Washington, the burden on Quantum to defend in  
14 Washington is not excessive, the majority of the evidence is based either in  
15 DiscoverOrg’s facilities or personnel in Washington, and an alternate forum would be  
16 unreasonable given Quantum’s tortious conduct. Dkt. 11 at 11–12.

17       The Court finds that after weighing these factors, the outcome is neutral or close to  
18 it, and does not present a compelling case that jurisdiction is unreasonable. While there is  
19 a burden on Quantum to defend in a forum where it is not at home, it does appear that at  
20 least slightly more evidence would be found with DiscoverOrg’s facilities and personnel  
21 having sustained the alleged intrusion, Washington has an interest in adjudicating alleged  
22

1 torts against Washington-created intellectual property, and there is no apparent conflict of  
2 sovereignty between states.

3 The Court therefore concludes that DiscoverOrg has satisfied its burden to show  
4 specific jurisdiction should lie and Quantum has not presented a sufficiently compelling  
5 case that it should not.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that Quantum's motion to dismiss for lack of  
8 personal jurisdiction, Dkt. 8, is **DENIED**.

9 Dated this 31st day of October, 2019.

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BENJAMIN H. SETTLE  
United States District Judge