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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NEWMARK REALTY CAPITAL, INC.,
Plaintiff,
v.
BGC PARTNERS, INC., et al.,
Defendants.

Case No. 16-cv-01702-BLF

**ORDER DENYING WITHOUT
PREJUDICE NON-PARTY CHRIS
CARAS' MOTION FOR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER
OF MAGISTRATE JUDGE**

[Re: ECF 373]

Non-party Chris Caras filed a motion for relief from nondispositive pretrial order of Magistrate Judge Susan van Keulen (“Order,” ECF 350). Mot., ECF 373. The Order requires Mr. Caras to “produce all documents, including emails from any account, reflecting communications between Mr. Caras and [Plaintiff Newmark Realty Capital, Inc.] or its counsel regarding Defendants or the subject litigation from the period January 1, 2017-present.” Order 1–2. Mr. Caras seeks to set aside the portion of the Order that requires him to produce his CBRE¹ work emails on the grounds that it is impossible for him to comply. Mot. 1–3. Mr. Caras submitted a declaration that states the following. After the Order issued on May 9, 2018, Mr. Caras conducted a search of his CBRE email account and found that most of his CBRE emails from the year 2017 have been archived. Caras Decl. ¶ 2, ECF 373-1. CBRE informed Mr. Caras that he was not allowed to produce his work emails because the emails are CBRE’s property. *Id.* CBRE did not restore the archived emails. *Id.*

Here, Mr. Caras testifies that after the Order issued on May 9, 2018, his employer CBRE affirmatively stated that Mr. Caras is not allowed to produce his emails because those are CBRE’s

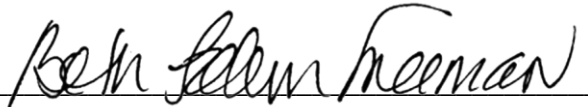
¹ CBRE is Mr. Caras’ employer.

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property and CBRE did not restore the archived emails. CBRE also informed Mr. Caras that CBRE will produce the emails only if it is served directly with a subpoena. Caras Decl. ¶ 2. These facts constitute a change of circumstances which Judge van Keulen did not have an opportunity to consider when she issued the Order. Accordingly, Mr. Caras should first request Judge van Keulen to determine whether Mr. Caras' production of emails should be limited in light of the change of circumstances. For these reasons, Mr. Caras' motion for relief from nondispositive pretrial order of Judge van Keulen is DENIED without prejudice.

IT IS SO ORDERED.

Dated: May 23, 2018


BETH LABSON FREEMAN
United States District Judge