

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOHN BARKER,  
Plaintiff,  
v.  
INSIGHT GLOBAL, LLC, et al.,  
Defendants.

Case No. [5:16-cv-07186-BLF](#) (HRL)

**ORDER RE DISCOVERY DISPUTE  
JOINT REPORT NO. 4**

Re: Dkt. No. 101

INTRODUCTION

Insight Global, LLC (“Insight”) is a staffing services company. John Barker (“Barker”) was a long time employee of Insight and head of its San Francisco/San Jose office. On October 26, 2016, Insight terminated Barker’s employment. Soon afterward, Barker obtained new employment with Beacon Hill Staffing Group, LLC (“Beacon Hill”), an Insight competitor.

Barker sued Insight for unpaid deferred compensation and also for a declaration that the non-compete and non-solicitation provisions of his employment contract were void under California Business and Professions Code § 16600.

Insight counterclaimed, accusing Barker of breaching his employment contract by (1) going to work for an Insight competitor without notifying Insight and (2) soliciting at least 8 Insight employees to quit (successfully with 3 of them). Insight also alleged claims for relief

1 based on interference with prospective economic advantage (the revenue that the 3 who left would  
2 have generated) as well as interference with contract (same idea). Insight said Barker  
3 “encourage[ed]” the 3 to “solicit and/or assist in soliciting certain clients of Insight Global to  
4 terminate, alter, and/or refrain from entering into continuing client relationships with Insight  
5 global.” (Dkt. 29 ¶ 47) (emphasis added).

6 In Discovery Dispute Joint Report (DDJR ) #2, Insight sought an order compelling its  
7 requested discovery on the issue of whether Barker induced John McArthur (“McArthur”), Connor  
8 Cronin (“Cronin”), and Bryan Verduzco (“Verduzco”) to quit Insight and come to work for  
9 Beacon Hill. (These are the 3 mentioned in the previous paragraph, and they are non-parties to  
10 this action.) The court in its ruling (Dkt. 87) did itself draft and permit some very focused  
11 discovery on that issue, but it is curious that now, in this DDJR #4, Insight seems to tout that order  
12 as a “win.” It now says that discovery such as it propounded last time is “undeniably relevant (as  
13 determined by this Court)” (DDJR #4, p.2, line 1) and asserts that its proposed compromise for  
14 solving the present dispute is “[b]ased on this Court’s own findings, a fair and adequate resolution  
15 of this dispute....” (*id.*, p 2, line 13). In fact, the court in its order on DDJR #2 said that the  
16 discovery Insight had attempted to enforce was a “fishing expedition” and “an extreme example of  
17 discovery overreach” that “smacks of harassment.”

#### 18 DISCUSSION

19 Now, back to the present. In DDJR #4, the issue is the proper scope of discovery on  
20 Insight’s claims that Barker “encouraged” McArthur, Cronin, and Verduzco to solicit “certain”  
21 customers of Insight to terminate or alter their relationship with Insight. Notably, the Amended  
22 Counterclaim does not allege that Barker himself solicited any Insight customers.

23 Insight says it served “written discovery” to Barker and subpoenas duces tecum on Beacon  
24 Hill, McArthur, Cronin, and Verduzco. It did not submit copies of this discovery to the court.  
25 Instead, it told the court it would “compromise” and accept a dialed-back version of what it had  
26 originally asked for. Here is the compromise:

- 27 1. Barker, McArthur, Cronin, and Verduzco will produce a “list” of any hiring managers  
28 or customers/accounts: (a) with whom they interacted during their Insight

- 1 employment; and (b) with whom they have interacted during their Beacon Hill  
2 employment (Insight calls these “Overlap Customers”);
- 3 2. Barker, McArthur, Cronin, and Verduzco will produce all electronic communications  
4 they had with the Overlap Customers since they have left the employ of Insight;
- 5 3. Barker, McArthur, Cronin, Verduzco, and Beacon Hill will produce  
6 documentation/information about revenue generated for Beacon Hill by the Overlap  
7 Customers since the date Barker’s employment with Insight ended; and
- 8 4. The court will reopen the depositions of Barker, McArthur, Cronin, and Verduzco for  
9 questions about discovery produced pursuant to 1, 2, and 3, above.

10 First, the compromise’s definition of Overlap Customers assumes facts that may or may  
11 not be true. It assumes that any customer of Insight did not become a customer of Beacon Hill  
12 until after Barker joined Beacon Hill. Is it not possible that both Insight and Beacon Hill had one  
13 or more mutual customers long before Barker left Insight?

14 Insight tells the court that it has a list of every customer/account that Barker, McArthur,  
15 Cronin, and Verduzco interacted with during their Insight employment, so why ask them to create  
16 a “list”?

17 Why should Barker produce communications with any customer/account, since he is not  
18 alleged to have wrongfully solicited any of Insight’s? Indeed, why should Beacon Hill do so?

19 Why ask for electronic communications with every so-called Overlap Customer? The  
20 Amended Counterclaim alleges that McArthur, Cronin, and Verduzco were encouraged by Barker  
21 to solicit “certain” customers. How about Insight naming the customers or accounts that have  
22 been solicited? In fact, how about identifying the customers who have succumbed to solicitation  
23 and moved their business or cut way back? Why not focus in on where Insight lost a customer or  
24 lost some volume of business that might be attributed to solicitation by McArthur, Cronin, and  
25 Verduzco? It seems that the only relevant customers would be those that were solicited on  
26 account of Barker’s encouragement, which would exclude customers, if any, that may have been  
27 solicited absent any such encouragement.

28 Here we get to the root of the problem the court has with the compromise discovery


1 requests. The attorney for Barker, et al. tells the court that Insight’s Fed. R. Civ. P. 30(b)(6)  
2 witness testified that Insight had not looked into whether or why it had lost business from any  
3 customer, was not aware whether Barker, Cronin, McArthur or Verduzco solicited any Insight  
4 customers, and did not know if Beacon Hill had earned any revenue from any Insight customers.  
5 The court has not seen the actual testimony, but it is notable that Insight does not dispute its  
6 characterization.

7 Indeed, the absence of a denial from Insight perhaps explains why it wants wholesale  
8 information on every customer that Barker, McArthur, Cronin, or Verduzco ever dealt with at both  
9 Insight and Beacon Hill. It looks as if Insight wants “all electronic communications” with every  
10 so-called Overlap Customer because it cannot identify any actual, affected customer. This smells  
11 like another fishing expedition, and the court will not countenance it.

12 The request for preparation of any “lists” and for production of documents according to the  
13 compromise is denied. The subpoenas are quashed. The question of reopening depositions is  
14 moot.<sup>1</sup>

15 SO ORDERED.

16 Dated: September 7, 2017

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20 HOWARD R. LLOYD  
21 United States Magistrate Judge  
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<sup>1</sup> The court is not foreclosing appropriately framed discovery on the issues here.