

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. 7**

Re: Dkt. Nos. 117, 120

In Discovery Dispute Joint Report #7, the plaintiff challenges the defendant’s designation of certain of its discovery responses as “Attorneys’ Eyes Only” (“AEO”). Defendant argues that the AEO designation is correct.

The Stipulated Protective Order (“Order”) in this case defines AEO as information of a type that could be used by a business competitor. (Dkt. 59 at 4:5-7). Plaintiff Barker works for Beacon Hill Staffing, which is a competitor of defendant Insight Global (Insight). The burden of proof is on Insight, as the party who made the AEO designation, to “persuade the Court that the designation is necessary and appropriate.” (Id. at 12:2-6).

This is a putative class action. If certified, the class would comprise present or former employees of Insight who executed an employment agreement which placed restrictions on their actions if they left Insight’s employ. The complaint alleges the contractual restrictions are anti-

1 competitive and unlawful under California law.

2 The discovery responses in question are listings of the names of putative class members,  
3 their home addresses, cell phone numbers, job titles, identification of which employment  
4 agreement each signed (there were apparently different versions), and---if applicable---why they  
5 departed from Insight’s employ.

6 The court has received and considered a declaration from Insight’s human resources officer  
7 stating that it considers information in employee personnel files to be highly confidential, not to be  
8 disclosed to third parties, and for sure not to be disclosed to competitors for fear a competitor  
9 would use the information to lure away its employees. The declaration is a bit vague on exactly  
10 what information in the personnel files is to be considered as AEO as opposed to Confidential.<sup>1</sup>

11 Insight urges the court to take seriously the risk of misuse of the AEO information, if  
12 disclosed to Barker. Insight’s counterclaim alleges that Barker, following his termination,  
13 successfully solicited several Insight employees to quit and go to his new employer, Beacon Hill.  
14 Insight says it has declarations from some of its employees stating that Barker solicited them.  
15 There is, however, evidence from other former Insight employees to the contrary. Put aside for  
16 the moment the question of whether or not anti-solicitation language in an employment contract is  
17 unlawful and unenforceable. It is speculative for Insight to argue that Barker is bound to do more  
18 harmful solicitation if he gets access to the AEO data. Indeed, since Barker worked in three of  
19 Insight’s California offices, he surely knows or knows of some, perhaps many, of the putative  
20 class members right now.

21 Plaintiff points out that he is not asking for contact information (addresses and cell phone  
22 numbers) for the putative class members. That information may remain AEO. What he does want  
23 are names, job titles, which employment agreement each signed, and the circumstances of their  
24 departure from Insight (if applicable). He proposes that the information he wants should be  
25 reduced from AEO to Confidential so that he can engage with his counsel in providing input  
26 relevant to obtaining class certification. The Order defines “Confidential” as “non-public,  
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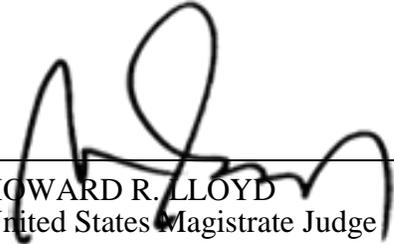
28 <sup>1</sup> The court grants Insight’s administrative motion for leave to submit this declaration. (Dkt. 117).

1 commercially sensitive, or proprietary information that is treated by its owner as confidential.”  
2 (Dkt 59 at 4:8-10). To have access to Confidential information Barker would have to sign an  
3 agreement (Exhibit A to the Order) promising to be bound by the Order and not to use any  
4 Confidential information for any purpose other than the litigation. Obviously, he would be barred  
5 from using Confidential information in order to solicit current Insight employees to quit and come  
6 to Beacon Hill, and he would be foolhardy to risk it.

7 Various cases cited by the parties are fact specific, and none are either binding or directly  
8 on point. Only one, Bryant v. Mattel, Inc., No. CV 04 09049, 2007 WL 5416684 (C.D. Cal., Feb.  
9 6, 2007), deals with whether particular information should be AEO or something else where the  
10 parties cannot agree. Bryant reached a result that plaintiff likes, but the facts and the context were  
11 very different than this case. Here, the court must balance Insight’s concern about possible misuse  
12 of certain information against Barker’s interest in having access to that information for litigation  
13 purposes. The burden of proof is on Insight to convince the court the challenged information  
14 should remain AEO in its entirety, and the court concludes Insight has not met that burden. The  
15 putative class members’ addresses and phone numbers may remain AEO. The other categories of  
16 information shall be re-designated as Confidential, and Barker may have access when he has  
17 executed the agreement the Order requires.

18 SO ORDERED.

19 Dated: November 9, 2017

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HOWARD R. LLOYD  
United States Magistrate Judge