

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. 3**

Re: Dkt. No. 82

Former employee John Barker sues Insight Global, LLC (“Insight”), a staffing company, both for allegedly unpaid compensation as well as for a declaration that his employment agreement’s restrictions on his mobility and activities after termination are unlawful and void. With respect to the latter claim, he seeks class action relief on behalf of other Insight employees who were subject to the same or similar agreements. Discovery has been proceeding apace even though the pleadings are not settled. In fact, Insight’s motion to dismiss Barker’s current complaint is set for hearing in September. However, in view of the presiding judge’s admonition to promptly tee up class certification, plaintiff filed his class certification motion on June 20, 2017 and set it for hearing in November, less than 4 months from now.

Discovery Dispute Joint Report (DDJR) #3 is about plaintiff’s efforts to obtain class

1 discovery.¹ Barker propounded interrogatories and requests for production of documents to
2 defendant back in March 2017. He seeks typical discovery on the size and scope of the putative
3 class and documentation on common legal and factual issues. He also wants contact information
4 on the putative class members. Insight’s response was: “No.” No class discovery at all. Despite
5 meet and confer efforts, it would not budge.

6 Insight objected to producing any class discovery because, it argued, Barker is not an
7 adequate class representative, thus lacking standing. And, even if he had standing, the alleged
8 class claims fail to measure up to what Fed. R. Civ. P. 23 requires.

9 In other words, Insight believes that this court should take defendant’s word for it and rule
10 that Barker is so clearly not a proper class representative, and that the class claims are so patently
11 infirm, that any class discovery should be denied. Perhaps defendant does not appreciate that such
12 a ruling would almost be tantamount to a dispositive order, which this court may not issue. Even
13 if it could, it would not do so. The proper way to challenge the class claims and Barker’s
14 suitability as a class representative is in the motion for class certification. At this time, plaintiff is
15 entitled to discovery on the class claims.

16 As a fall back, in the event that this court does conclude that contact information on the
17 putative class members should be disclosed, Insight urges the court to order implementation of a
18 preliminary “opt-out” process. That is, the class members would be contacted and told that, unless
19 they opted out, their contact information would be disclosed to plaintiff. Then, plaintiff would
20 only get the information for those who did not say they wanted “out.” This, argues defendant,
21 would protect the privacy of the class members who did not want to get involved.

22 Given the relative complexity in implementing such a procedure, as well as the substantial
23 time it probably would consume, this court will not require it. At worst, skipping the opt-out
24 “prelude” to plaintiff receiving contact information for class members would work a modest
25 incursion on the members’ privacy. Under the circumstances, this seems acceptable.

26 Insight shall provide substantive responses to Interrogatories Nos. 1-5 and produce the
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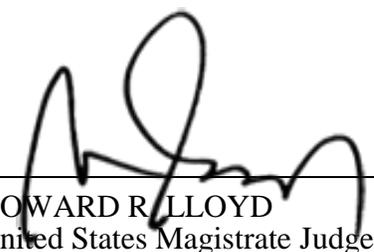
28 ¹ Defendant’s motion for leave to submit additional exhibits (Dkt. 83) in connection with DDJR
#3 is denied.

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information sought in Request for Production No. 71. Insight's objections are overruled.
(Objections, if any, based on attorney-client privilege or the work product doctrine are not
overruled, subject to defendant producing an informative privilege log.) Responses and
production shall be made within 10 days from the date this order is filed.

SO ORDERED.

Dated: July 18, 2017



HOWARD R. LLOYD
United States Magistrate Judge