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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KRYPT, INC.,  
Plaintiff,  
v.  
ROPAAR LLC, et al.,  
Defendants.

Case No. [19-cv-03226-BLF](#) (VKD)

**ORDER RE DISCOVERY DISPUTE  
RE KRYPT’S REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
NOS. 24-25 AND INTERROGATORIES  
NOS. 1-3**

Re: Dkt. No. 69

Plaintiff Krypt, Inc. (“Krypt”) seeks an order compelling defendant Ropaar, LLC (“Ropaar”) to identify each person Ropaar has employed or offered to employ from January 1, 2012 to the present. Dkt. No. 69. Ropaar argues that this information is not relevant to any claim or defense. Id. The Court has considered the parties’ joint discovery dispute letter and has received two additional exhibits Ropaar asked for leave to submit.<sup>1</sup> The Court finds this dispute suitable for resolution without oral argument. Civil L.R. 7-1(b).

For the reasons set forth below, the Court concludes that the discovery Krypt seeks is not relevant to any claim or defense.

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<sup>1</sup> On September 25, 2020, the Court permitted Ropaar to file Exhibits 3 and 4. Dkt. No. 72. Exhibit 3 includes a description of the alleged trade secrets Krypt contends Mr. Robinson and Ropaar misappropriated, and Exhibit 4 includes the documents Krypt says disclose the claimed trade secrets described in Exhibit 3. The Court does not rely on these exhibits to decide this dispute.

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**I. BACKGROUND**

Krypt and Ropaar provide SAP<sup>2</sup> implementation and consulting services. Dkt. No. 55 ¶¶ 2, 3. Defendant Clay Robinson worked at Krypt from May 1, 2016 to February 12, 2019 as a Professional Services Consultant. Id. ¶ 35. Shortly after leaving Krypt, he began working at Ropaar. Id. ¶ 53. In this action, Krypt accuses Ropaar of conspiring with Mr. Robinson to misappropriate Krypt’s trade secrets in violation of the federal Defend Trade Secrets Act, 18 U.S.C. §§ 1836 et seq. and the California Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 et seq. Id. ¶¶ 76-96. Krypt also asserts a breach of contract claim against Mr. Robinson, but that claim is not relevant to this dispute.

The parties dispute whether Ropaar should be required to provide discovery responsive to the following Krypt discovery requests:

Request for Production No. 24: Documents sufficient to identify each of your employees from January 1, 2012 to present.

Request for Production No. 25: Documents sufficient to identify the dates of employment for each of your employees from January 1, 2012 to present.

Interrogatory No. 1: Identify each individual you have employed from January 1, 2012 to present.

Interrogatory No. 2: For each individual you have employed from January 1, 2012 to present, list their dates of employment.

Interrogatory No. 3: Identify each individual to whom you have extended an offer of employment from January 1, 2012 to present.

Dkt. No. 69-1 at 7-8; Dkt. No. 69-2 at 1-2.

**II. LEGAL STANDARD**

A party may obtain discovery of any matter that is relevant to a claim or defense and that is “proportional to the needs of case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or

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<sup>2</sup> The Court understands “SAP” to refer to SAP SE, a German multinational company that provides software for managing business processes.

1 expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

2 **III. DISCUSSION**

3 Krypt asks Ropaar to produce information identifying all of Ropaar’s employees and  
4 prospective employees to whom it made offers of employment dating back to January 1, 2012.  
5 Krypt says this discovery is relevant to its trade secret misappropriation claims for two reasons.  
6 First, Krypt argues that if Ropaar has “excessively” or “exclusively” targeted high-level Krypt  
7 employees, rather than recruiting from other industry candidates, such evidence will “tend to make  
8 it more probable that Ropaar hired away Robinson with the intent of conspiring to misappropriate  
9 trade secrets.” Dkt. No. 69 at 2. Second, Krypt argues that this same evidence will support its  
10 contention that Krypt and Ropaar are direct competitors. *Id.*

11 Ropaar responds that whether it has historically targeted Krypt employees for recruitment  
12 is not relevant to any claim or defense. Ropaar argues that Krypt’s trade secrets misappropriation  
13 claim is based on allegations concerning Mr. Robinson’s conduct and Ropaar’s recruitment of him  
14 and does not include any references to misappropriation via other former Krypt employees. *Id.* at  
15 5. Ropaar does not address Krypt’s argument that Ropaar’s recruitment behavior is relevant to the  
16 question of whether the parties are direct competitors.

17 Krypt’s first argument depends on a questionable premise—i.e., that Ropaar’s  
18 disproportionate recruiting of Krypt’s high-level employees suggests an intent to misappropriate  
19 Krypt’s trade secrets generally, which in turn suggests Ropaar specifically intended to  
20 misappropriate the trade secrets at issue in this case by recruiting Mr. Robinson. At least in  
21 California, it is not improper for a company to recruit its competitor’s employees. *Hollingsworth*  
22 *Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1337 (9th Cir. 1980) (“Mere solicitation of an  
23 employee, under no contract of employment, to leave and associate with a competing firm is not  
24 illegal.”); see also *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 945-46 (2008) (describing  
25 California policy of open competition and employee mobility). So, even if Krypt obtained  
26 evidence that Ropaar recruited or attempted to recruit principally from Krypt, such evidence  
27 would not inherently suggest any misconduct by Ropaar, let alone intentional misconduct specific  
28 to Ropaar’s recruitment of Mr. Robinson.

1           Of course, it is improper for a company like Ropaar to mine its competitor’s employees for  
2 confidential information those employees are bound not to disclose. But Krypt’s operative  
3 complaint alleges only that since May 2015, Ropaar has hired away one “senior consultant” and  
4 three “other” employees from Krypt in addition to Mr. Robinson. Dkt. No. 55 ¶¶ 32-33. The  
5 complaint does not allege that any of these former Krypt employees (with the exception of Mr.  
6 Robinson) misused Krypt confidential information or trade secrets or disclosed them to Ropaar.  
7 Krypt points to its assertion that Ropaar “launched a campaign to poach Krypt’s employees” to  
8 obtain access to Krypt’s confidential information. See id. ¶ 31. But Krypt’s belief that Ropaar has  
9 engaged in such a campaign, whether quoted in the presiding judge’s order or not, need not be  
10 accepted as an assertion of fact. Krypt’s trade secret misappropriation claims are limited to  
11 Ropaar’s and Mr. Robinson’s conduct with respect to Mr. Robinson’s recruitment and  
12 employment. See id. ¶¶ 76-96. In these circumstances, there is no reasonable justification for the  
13 discovery Krypt seeks of Ropaar.

14           The Court also considers whether Krypt’s discovery requests are relevant to its assertion  
15 that Krypt and Ropaar are competitors. Krypt does not explain why it wishes to establish that the  
16 parties are competitors, but the Court assumes Krypt hopes to show that its trade secrets derive  
17 independent economic value from not being generally known, and not being readily ascertainable  
18 through proper means by, a competitor positioned to obtain economic value from the disclosure or  
19 use of such information. See 18 U.S.C. § 1839(3) (defining “trade secret”); Cal. Civ. Code  
20 § 3426.1(d)(1) (defining “trade secret”). The Court is skeptical of Krypt’s implicit suggestion that  
21 only direct competitors recruit from one another, such that Ropaar’s recruiting behavior is  
22 evidence of the nature of the parties’ competitive relationship. See Dkt. No. 69 at 2. The Court  
23 expects that there is far more compelling evidence on this point, such as whether Ropaar offers  
24 services similar to Krypt’s or whether the parties compete for business from the same customers or  
25 categories of customers. In any event, Krypt has failed to demonstrate that discovery of the  
26 identities of Krypt’s employees and prospective employees for the past eight years will yield any  
27 evidence relevant to this issue.

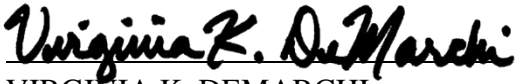
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1 **IV. CONCLUSION**

2 Krypt's request for an order compelling Ropaar's responses to Requests for Production  
3 Nos. 24 and 25 and Interrogatories Nos. 1-3 is denied.

4 **IT IS SO ORDERED.**

5 Dated: October 14, 2020

6   
7 VIRGINIA K. DEMARCHI  
8 United States Magistrate Judge

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