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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
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8 KRYPT, INC.,
9 Plaintiff,

10 v.

11 ROPAAR LLC, et al.,
12 Defendants.

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

**ORDER RE DISCOVERY DISPUTE RE
KRYPT'S REQUESTS FOR
PRODUCTION OF DOCUMENTS NOS.
7 AND 8**

Re: Dkt. No. 71

United States District Court
Northern District of California

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14 Plaintiff Krypt, Inc. (“Krypt”) and defendant Ropaar, LLC (“Ropaar”) dispute whether
15 Ropaar should be required to produce all communications with Mr. Robinson and third parties that
16 refer to or concern Krypt. Dkt. No. 71. The Court has considered the parties’ joint discovery
17 dispute letter and two additional exhibits Ropaar asked for leave to submit.¹ The Court finds this
18 dispute suitable for resolution without oral argument. Civ. L.R. 7-1(b).

19 For the reasons set forth below, the Court orders Ropaar to produce responsive documents
20 dating from May 1, 2016 to the present.

21 **I. BACKGROUND**

22 Krypt and Ropaar provide SAP² implementation and consulting services. Dkt. No. 55
23 ¶¶ 2, 3. Clay Robinson worked at Krypt from May 1, 2016 to February 12, 2019 as a Professional
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25 ¹ On September 25, 2020, the Court permitted Ropaar to file Exhibits 3 and 4. Dkt. No. 72.
26 Exhibit 3 includes a description of the alleged trade secrets Krypt contends Mr. Robinson and
27 Ropaar misappropriated, and Exhibit 4 includes the documents Krypt says disclose the alleged
28 trade secrets described in Exhibit 3.

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

1 Services Consultant. Id. ¶ 35. In late January 2019, Mr. Robinson notified Krypt of his
2 resignation from the company and his intent to begin working for Smithfield Foods, a meat-
3 packing company. Id. ¶ 47. However, instead of joining Smithfield Foods as an employee, Mr.
4 Robinson began working for Ropaar shortly after leaving Krypt. Id. ¶ 53.

5 In this action, Krypt accuses Ropaar of conspiring with Mr. Robinson to misappropriate
6 Krypt’s trade secrets in violation of the federal Defend Trade Secrets Act, 18 U.S.C. §§ 1836 et
7 seq. and the California Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 et seq. Id. ¶¶ 76-96.
8 Krypt also asserts a separate breach of contract claim against Mr. Robinson only, asserting that he
9 used, disclosed, and otherwise mishandled Krypt’s confidential information and trade secrets,
10 contrary to the terms of his contracts with Krypt. Id. ¶¶ 97-108.

11 Krypt asks for the following document discovery from Ropaar³:

12 Request for Production No. 7: All communications between you
13 and Robinson that refer to or concern Krypt, from January 1, [2012]
14 to present.

15 Request for Production No. 8: All communications between you
16 and any third party(ies) that refer to or concern Krypt, from January
17 1, [2012] to present.

18 Dkt. No. 71-1 at 3.

19 **II. LEGAL STANDARD**

20 A party may obtain discovery of any matter that is relevant to a claim or defense and that is
21 “proportional to the needs of case, considering the importance of the issues at stake in the action,
22 the amount in controversy, the parties’ relative access to relevant information, the parties’
23 resources, the importance of the discovery in resolving the issues, and whether the burden or
24 expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

25 **III. DISCUSSION**

26 Krypt argues that the discovery it seeks is relevant to its trade secret misappropriation
27 claims against Ropaar. Dkt. No. 71 at 2. Krypt alleges that Ropaar and Mr. Robinson conspired

28 ³ Krypt states that is has limited these two document requests to the period “from January 1, 2012
to present,” instead of “from January 1, 2008 to present.” Dkt. No. 71 at 2.

1 to misappropriate Krypt’s alleged trade secrets, including during the time that Mr. Robinson was
2 employed by Krypt, and that Ropaar’s communications with others about Krypt are likely to
3 reflect Ropaar’s use of improper means to obtain Krypt’s alleged trade secrets, as well as its use or
4 disclosure of those alleged trade secrets. *Id.* In addition, Krypt argues Ropaar’s references to
5 Krypt in communications with others will reflect the nature of Krypt’s and Ropaar’s competition.
6 *Id.* at 3. Ropaar does not object to the production of responsive documents for the period from
7 January 1, 2018 to the present. However, Ropaar does object that documents dated earlier are not
8 relevant to Krypt’s trade secret misappropriation claims against Ropaar. *Id.* at 4-5; Dkt. No. 71-1
9 at 3.

10 The Court agrees that Ropaar’s communications with Mr. Robinson and others about
11 Krypt likely contain relevant evidence about whether Ropaar used improper means to obtain
12 Krypt’s alleged trade secrets by conspiring with Mr. Robinson and that they also are likely to
13 contain relevant evidence about the nature and extent of Ropaar’s competition with Krypt.⁴
14 Krypt’s forensic analysis of Mr. Robinson’s Krypt-issued computer reflects that while he was still
15 employed by Krypt, Mr. Robinson was already working on behalf of Ropaar. Dkt. No. 55 ¶ 57.
16 In addition, the forensic analysis shows that contemporaneous with his efforts on behalf of
17 Ropaar, Mr. Robinson accessed and copied a number of documents containing information Krypt
18 says includes its trade secrets and confidential information. *Id.*

19 The parties dispute whether Ropaar should be required to produce responsive documents
20 dated before January 1, 2018, and if so, whether it should be required to produce documents dated
21 back to January 1, 2012, the year Ropaar was formed. Krypt believes that Ropaar has been trying
22 to obtain Krypt’s alleged trade secrets and confidential information since Ropaar’s inception. But
23 this belief is supported only by allegations that Ropaar was formed to compete directly with Krypt
24 and that Ropaar has attempted to recruit Krypt’s employees. It is not improper for one company
25 to form a business to compete directly with another, nor is it improper for a company to recruit its
26 competitor’s employees. See Dkt. No. 77 at 3 (discussing authority). Krypt’s operative complaint

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28 ⁴ In a prior order, the Court noted that whether Ropaar and Krypt are direct competitors is relevant
to Krypt’s trade secret misappropriation claims. See Dkt. No. 77 at 4.


1 alleges only that since May 2015, Ropaar has hired away one “senior consultant” and three “other”
2 employees from Krypt in addition to Mr. Robinson. Dkt. No. 55 ¶¶ 32-33. It does not allege that
3 any of these former Krypt employees misused Krypt confidential information or trade secrets or
4 disclosed them to Ropaar. Rather, Krypt’s allegations describe only misconduct by Ropaar and
5 Mr. Robinson. In these circumstances, there is no justification for Krypt’s demand for responsive
6 documents that pre-date Mr. Robinson’s employment with Krypt, commencing on May 1, 2016.

7 **IV. CONCLUSION**

8 The Court orders Ropaar to produce documents responsive to Requests for Production
9 Nos. 7 and 8 limited to documents from May 1, 2016 to the present.

10 **IT IS SO ORDERED.**

11 Dated: October 15, 2020

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14 VIRGINIA K. DEMARCHI
15 United States Magistrate Judge
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