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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 BRUCE CORKER, d/b/a RANCHO  
ALOHA, *et al.*,

9 Plaintiffs,

10 v.

11 COSTCO WHOLESALE CORPORATION,  
12 *et al.*,

13 Defendants.

Cause No. C19-0290RSL

ORDER GRANTING IN PART THE  
RETAILER DEFENDANTS'  
MOTION FOR PROTECTIVE  
ORDER (DKT. # 294)

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15 This matter comes before the Court on the “Retailer Defendants’ Motion for Protective  
16 Order for Relief from Noticed 30(b)(6) Depositions.” Dkt. # 294. The named plaintiffs grow  
17 Kona coffee in the Kona District of the Big Island of Hawaii and allege that various distributors,  
18 wholesalers, and retailers of coffee products sell ordinary commodity coffee labeled as “Kona”  
19 coffee, to the detriment of those who grow actual Kona coffee. After reviewing defendants’  
20 written discovery responses, plaintiffs issued deposition notices under Rule 30(b)(6). Defendants  
21 The Kroger Co., Amazon.com, Inc., Walmart Inc., Albertsons Companies Inc., Safeway Inc.,  
22 The TJZ Companies, Marshalls of MA, Inc., and Bed, Bath, & Beyond Inc., all of whom are  
23 retailers, seek a protective order limiting the topics for which their witnesses must be prepared to  
24 testify.  
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27 ORDER GRANTING IN PART THE RETAILER  
28 DEFENDANTS’ MOTION FOR PROTECTIVE  
ORDER (DKT. # 294) - 1

1 Rule 26 of the Federal Rules of Civil Procedure governs the permissible scope of  
2 discovery in federal civil litigation. Rule 26(b) sets forth the threshold requirement that  
3 information sought to be discovered must appear “relevant to any party’s claim or defense and  
4 proportional to the needs of the case . . . .” In determining proportionality, courts consider  
5 factors such as “the importance of the issues at stake in the action, the amount in controversy, the  
6 parties’ relative access to relevant information, the parties’ resources, the importance of the  
7 discovery in resolving the issues, and whether the burden or expense of the proposed discovery  
8 outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Even if a discovery request seeks relevant  
9 and proportional information, discovery may nevertheless be prohibited under Rule 26(c) upon a  
10 showing of “annoyance, embarrassment, oppression, or undue burden or expense” in connection  
11 with a particular request. The Court is authorized to “forbid[] inquiry into certain matters, or  
12 limit[] the scope of disclosure or discovery to certain matters...” Fed. R. Civ. P. 26(c)(1)(D). To  
13 establish good cause for a protective order under Rule 26(c), the movant must show ““that  
14 specific prejudice or harm will result’ if the protective order is not granted.” *In re Roman*  
15 *Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir. 2011) (quoting *Foltz v.*  
16 *State Farm Mut. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003)). “Rule 26(c) confers broad  
17 discretion on the trial court to decide when a protective order is appropriate and what degree of  
18 protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

### 22 **A. Overbreadth Objections**

23 The moving defendants object to all of the proposed deposition topics to the extent they  
24 do not contain a temporal limitation and seek information regarding products manufactured and  
25 distributed by entities who are not defendants in this case. The parties previously agreed - and  
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1 plaintiffs again confirm - that discovery is limited to the period after February 27, 2015, and to  
2 products produced by defendants. Defendants may limit their witness preparation accordingly.

3 Defendants argue that deposition topics 1-3 are not specific enough to inform their efforts  
4 to prepare a witness because they contain examples of the type of information sought and are  
5 therefore not definitive in scope. The three topics at issue request testimony regarding:  
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7 1. [Defendant's] supply chain for coffee that it markets, sells, or distributes with a  
8 Kona Label. For example, this includes the volumes of coffee that [defendant]  
9 purchases each month, the cost of such coffee, the country and region from which  
10 [defendant] purchased such coffee, the Identity of the persons or entities from  
11 whom coffee is purchased, and the percentage of coffee from any particular  
12 country and region that is used in coffee marketed, sold, or distributed with a Kona  
13 Label.

14 2. [Defendant's] sale and distribution of coffee with a Kona Label. For example,  
15 this includes processes employed for sales and distribution, the volumes of coffee,  
16 the volumes of coffee with a Kona Label that [defendant] sells or distributes each  
17 month, the revenue that [defendant] makes from such sales and distribution, the  
18 profit that [defendant] makes from such sales and distribution, the Identity of the  
19 persons or entities to whom coffee is sold, and the percentage of coffee originating  
20 in any particular country and region in coffee that is sold or distributed with a  
21 Kona Label.

22 3. [Defendant's] advertising and marketing of coffee with a Kona Label. For  
23 example, this includes [defendant's] expenditures on advertising and marketing,  
24 the content of such advertising and marketing, the geographic locations in which  
25 [defendant's] advertising and marketing uses the word "Kona," the marketing and  
26 advertising channels in which [defendant] used the word "Kona."

27 Dkt. # 295 at 184-85. The use of non-exclusive indicators such as "for example" or "includes"  
28 does not adequately inform defendants regarding the topics for which their witnesses need to be  
prepared: defendants are left to guess what other information plaintiffs' counsel might inquire  
about under the general topics of supply, sale/distribution, and advertising/marketing.

Questioning as to topics 1-3 will be limited to the examples provided.

1 Defendants also object to having to prepare their 30(b)(6) witnesses to testify regarding  
2 their respective responses to plaintiff's interrogatories and requests for production (topic 5) on  
3 the ground that the request seeks "testimony about the dozens of discovery responses each  
4 Retailer has provided." Dkt. # 309 at 3. It is a regular and common practice to follow up on  
5 written discovery responses at deposition. Defendants do not argue that the information is  
6 irrelevant or disproportional to the needs of the case. Nor do they make an effort to show that the  
7 number of written discovery requests makes any attempt to prepare a witness unduly  
8 burdensome, oppressive, or expensive. A general objection to having to discuss discovery  
9 responses at a deposition does not satisfy Rule 26(c). This objection is overruled.  
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#### 11 **B. Work Product Doctrine**

12 Deposition topic 5 seeks testimony regarding defendants' "responses to Plaintiff's  
13 Interrogatories and Requests for Production." Dkt. # 295 at 185. Defendants fear that plaintiffs  
14 will use this topic to delve into areas protected by the work product doctrine. Defendants'  
15 responses to written discovery have already been produced, however, and there is no reason to  
16 believe that a discussion regarding the documents and answers would delve into privileged or  
17 protected matters. If a specific question seeks privileged information, defendants can object on  
18 the record and instruct the witness not to answer. *Naini v. King Cty. Pub. Hosp. Dist. No. 2*, 2019  
19 WL 6877927, at \*4 (W.D. Wash. Dec. 17, 2019) ("Accordingly, the Court need not strike the  
20 entire question as violative of the attorney-client privilege. Independent objections can be made  
21 on this basis at the deposition.") (internal quotation marks and citation omitted). This objection  
22 is overruled.  
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1 **C. Less Burdensome Source**

2 Defendants argue that the information sought in topics 1, 2, and 4 could be obtained with  
3 less burden and expense from the supplier defendants. A number of the items listed in topics 1,  
4 2, and 4 are primarily, if not solely, within the retailer defendants' possession, such as the  
5 revenue and profits generated from their sale of Kona products and the processes they use to  
6 ensure that products they sell with the Kona label are what they say they are. To the extent that  
7 both the supplier and retailer defendants have the requested information - such as how much  
8 Kona coffee a particular supplier sold to a particular retailer - the moving defendants have not  
9 articulated any reason to suspect that producing the information would be burdensome or that it  
10 would be more convenient or less expensive to obtain the information from the supplier  
11 defendants. Finally, defendants vaguely suggest that they do not have some of the requested  
12 information: if that is the case, the 30(b)(6) witness can make that assertion on the record. This  
13 objection is overruled.

14 **D. Relevance Objection**

15 Defendants object to topics 6 and 7 on the ground that the information sought is not  
16 relevant. Topic 6 seeks each defendant's "document retention policies and efforts to preserve,  
17 search for, and produce documents requested in discovery in this litigation." Defendants argue  
18 that responsive information is irrelevant absent some indication that their production has been  
19 insufficient or deficient in some way. Plaintiffs contend, however, that the paucity of records  
20 produced in this case justifies further investigation. Plaintiffs provided a chart, which defendants  
21 do not contest, showing that Albertsons and Safeway have each produced a single document in  
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1 response to all of plaintiffs' discovery requests, that Amazon.com has produced 28 documents,  
2 and that Bed Bath & Beyond, The Kroger Co., Marshalls of MA, and The TJX Companies have  
3 each produced fewer than 310 documents. Plaintiffs, on the other hand, have produced over  
4 7,000 documents. Dkt. # 298 at 12; Dkt. # 299 at 21-24. Given the type of information sought in  
5 this litigation (including purchase, sale, revenue, and profit information associated with various  
6 products and product lines), plaintiffs could reasonably have expected that there would be more  
7 records produced in response to its discovery requests. Following up on a disappointing  
8 production with questions regarding how documents are kept and produced is appropriate. This  
9 objection is largely overruled. The one exception is that Walmart, which has produced almost  
10 5,000 documents, will not be required to prepare a witness to testify regarding topic 6.  
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13       Topic No. 7 seeks from two retailer defendants, Amazon and Bed, Bath, & Beyond, the  
14 "fraud detection policies and procedures which it uses to prevent the selling of counterfeit  
15 products through" their stores. Dkt. # 295 at 192 and 197. Amazon and Bed, Bath, & Beyond  
16 argue that their anti-counterfeiting policies and procedures are aimed at preventing "the sale of  
17 products falsely using another's trademark" and, because plaintiffs do not claim "Kona" as their  
18 mark, the policies are irrelevant to this case. Dkt. # 294 at 10. Plaintiffs allege that the supplier  
19 defendants have flooded the market with counterfeit "Kona" products, however, trading on a  
20 label that connotes distinctive characteristics drawn from a distinctive geographic region to sell  
21 ordinary commodity coffee. *See* Dkt. # 81 at 5. In short, plaintiffs allege that the retailer  
22 defendants are selling products which are not what they say they are. To the extent the retailers  
23 have policies and procedures designed to catch such counterfeits and prevent their sale in their  
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1 stores, the materials are relevant. If Amazon and Bed, Bath, & Beyond have no such policies or  
2 procedures, their designee may say so on the record.

### 3 **E. Duplicative Requests**

4 Defendants argue that they should not have to prepare a witness to testify regarding topics  
5 that were already covered in written discovery, specifically objecting to topics 1, 2, 3, 4, 8, and  
6 9. Defendants do not argue that the information is irrelevant or not proportional to the needs of  
7 the case. Nor do they suggest that their written productions covered complex or highly technical  
8 data which a corporate representative could not reasonably be expected to master in preparation  
9 for a deposition. *See Darbee Vision v. C&A Marketing*, 2019 WL 290267, at \*7 (C.D. Cal. Jan.  
10 28, 2019) (written discovery is the “preferred device” for “complex and highly technical”  
11 topics). Rather, the objection is based on the fact that defendants have produced or promised to  
12 produce responses to written discovery regarding the same topics about which plaintiffs now  
13 seek corporate testimony.  
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16 The objection is overruled. Investigating a topic by requesting the production of relevant  
17 documents or posing a series of written questions does not make follow-up questioning at a Rule  
18 30(b)(6) deposition unreasonably cumulative. Plaintiffs are entitled to know the position of each  
19 retailer defendant on the subjects at issue in this litigation, and a Rule 30(b)(6) deposition is the  
20 mechanism through which binding corporate statements are recorded. In addition, there is a  
21 difference between reviewing corporate documents and/or carefully crafted interrogatory  
22 responses and asking a corporate representative to explain the documents and answers at  
23 deposition. *Naini*, 2019 WL 6877927, at \*3. A party does not waive the opportunity to depose a  
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1 corporate representative simply by serving preparatory written discovery on the party.

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3 For all of the foregoing reasons, the retailer defendants' motion for protective order from  
4 the noticed Rule 30(b)(6) depositions (Dkt. # 294) is GRANTED in part.

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6 ● Discovery in this case is limited to the period after February 27, 2015, and to products  
7 produced by defendants named in this litigation: the Rule 30(b)(6) deponents may  
8 limit their preparations accordingly.
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10 ● Defendants shall prepare their witnesses to address the topics specifically identified in  
11 topics 1-3, without having to guess what else might be of interest to plaintiffs'  
12 counsel under the general headings of supply, sales/distribution, and  
13 advertising/marketing.
- 14 ● Defendant Walmart need not prepare its witness to respond to topic 6.

15 In all other respects, the motion for a protective order is denied.

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17 Dated this 23rd day of November, 2020.

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19 Robert S. Lasnik  
20 United States District Judge