

1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 CABELA'S WHOLESALE INC,

10 Plaintiff,

11 v.

12 HAWKS PRAIRIE INVESTMENT LLC,

13 Defendant.

CASE NO. C11-5973 RBL

ORDER GRANTING IN PART AND
DENYING IN PART CABELA'S
MOTION TO QUASH/MOTION FOR
PROTECTIVE ORDER
[DKT. 184]

14 THIS MATTER is before the Court on Cabela's motion for a protective order and motion
15 to quash subpoenas and notices of depositions for six of its current and former employees (Dkt.
16 184).¹ Hawks Prairie served Cabela's with subpoenas and notices of depositions for nine
17 individuals. Hawks Prairie gave notice that the depositions were to take place in its attorneys'
18 law offices and were set to begin on October 21 and end on October 25. Hawks Prairie also gave
19 Cabela's notice of a Fed. R. Civ. P. 30(b)(6) deposition on "any matter at issue or of
20 consequence" that was to be held in Seattle on October 25.

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23 ¹ Hawks Prairie served Cabela's with subpoenas and notices of depositions for three other
24 employees, but Cabela's does not object to those depositions, so they will not be addressed in
this Order.

1 Cabela's has objected to six of Hawks Prairie's deposition notices. Cabela's argues that
2 three of the people that Hawks Prairie wants to depose no longer work for Cabela's. Those
3 individuals are Dennis Highby, Cabela's former President and CEO; Tim Holland, Cabela's
4 former Director of New Store Development; and Kevin Rhodes, Cabela's former Director of
5 Real Estate. With respect to Kevin Weeks and Jason Hammeren, the store managers for the
6 Lacey and Tulalip stores when the Tulalip store opened, Cabela's argues that although they are
7 still employees, they are no longer employed in Washington, so it should not have to bring them
8 to Seattle to be deposed. Lastly, Cabela's argues that its current President and CEO, Thomas
9 Millner, was not hired until after the contract was executed and therefore does not have any
10 relevant first-hand information that cannot be obtained from other sources.

11 Cabela's also seeks protective orders requiring that no deposition go forward unless the
12 date, time, and location of the depositions is mutually convenient for the parties and the
13 deponent, and prohibiting Hawks Prairie from conducting a Rule 30(b)(6) deposition on the
14 over-broad topic of "any matter at issue or of consequence" to this case.

15 **I. Motions To Quash**

16 **A. Highby, Holland, and Rhodes Subpoenas**

17 Former corporate officers, directors, and managing agents that no longer work for a
18 corporation cannot speak on the corporation's behalf. Therefore, a former officer, director, or
19 managing agent cannot be deposed as a party under Rule 30(b)(1). A former employee may be
20 deposed as a non-party, but the examining party must subpoena the individual to compel
21 attendance and comply with the requirements in Fed. R. Civ. P. 45(c)(1)(A). Because Highby,
22 Holland, and Rhodes are no longer Cabela's employees, they must be deposed as non-parties.
23 Cabela's motion to quash the Highby, Holland, and Rhodes subpoenas is **GRANTED**.

1 **B. Weeks and Nienhueser Subpoenas**

2 Weeks and Nienhueser were the store managers at the Tulalip and Lacey stores when the
3 Tulalip store opened.² It is evident without extensive analysis that, in most cases, a store
4 manager is a managing agent. Store managers almost certainly have the authority to bind the
5 corporation, exercise their discretion and judgment when dealing with corporate matters, and
6 identify with the interests of the corporation rather than those of the other parties. Absent any
7 evidence that Weeks and Nienhueser are not vested with this authority, they are considered
8 managing agents and may be deposed under Rule 30(b)(1). Cabela’s motion to quash the Weeks
9 and Nienhueser subpoenas is **DENIED**.

10 **C. Millner Subpoena**

11 Cabela’s argues that Hawks Prairie should not be allowed to take Millner’s deposition
12 because he was not hired until after the contract was executed and because he does not have any
13 relevant first-hand knowledge that cannot be obtained through other discovery. Hawks Prairie
14 argues that Millner was Cabela’s President and CEO when it opened the competing store in
15 Tulalip, so it is likely that he has first-hand knowledge of the decision to do so. The Court
16 agrees. Cabela’s motion to quash the Millner subpoena is **DENIED**.

17 **II. Motions For Protective Orders**

18 **A. Location and Time of Depositions**

19 Cabela’s seeks a protective order requiring that no deposition go forward unless the date,
20 time, and location of the depositions is mutually convenient for the parties and the deponent.
21 Specifically, Cabela’s argues that any depositions of corporate officers should be conducted at its

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23 ² Cabela’s asserts that neither Weeks nor Neinhueser works in Washington anymore. It
24 has not, however, indicated what either of their current positions is or suggested that either
Weeks or Neinhueser has been demoted.

1 corporate headquarters in Nebraska, not in Seattle. Cabela's has failed to show that it would
2 suffer any undue hardship if the depositions are conducted in Seattle. Further, Cabela's filed this
3 lawsuit in Washington and the parties' attorneys are all located in Seattle. Accordingly, the
4 depositions may be conducted in Seattle. Cabela's motion for a protective order regarding the
5 time and place of the depositions is **DENIED**.

6 **B. Fed. R. Civ. P. 30(b)(6) Deposition Scope**

7 Cabela's seeks a protective order that prohibits Hawks Prairie from conducting a Rule
8 30(b)(6) deposition on the topic of "any matter at issue or of consequence" to this case.
9 Throughout the course of this protracted litigation, the parties have briefed the issues ad
10 nauseam. The issues have been significantly narrowed, and both parties know what issues
11 remain. The Court encourages the parties to discuss the relevant topics for the Rule 30(b)(6)
12 motion to ensure that the deposition is productive and efficient, but the Court will not needlessly
13 issue a protective order. Cabela's motion for a protective order regarding the Rule 30(b)(6)
14 deposition scope is **DENIED**.

15 **III. Conclusion**

16 Cabela's motion to quash and for protective orders is **GRANTED IN PART AND**
17 **DENIED IN PART** as follows:

18 (1) Cabela's motion to quash the subpoenas that require Cabela's to produce Highby,
19 Holland, and Rhodes for a deposition is **GRANTED**.

20 (2) Cabela's motion to quash the subpoenas that require Cabela's to produce Weeks,
21 Nienhueser, and Millner for a deposition is **DENIED**. Hawks Prairie may
22 conduct those depositions at its attorneys' office in Seattle.

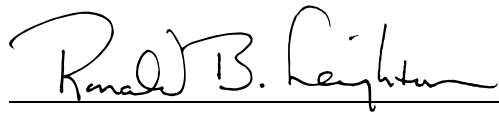
23 (3) Cabela's motion for a protective order requiring that no deposition go forward
24 unless the date, time, and location of the depositions is mutually convenient for

1 the parties and the deponent is **DENIED**. It is the Court's belief that the parties
2 should be able to work out a time that is mutually agreeable. If it is necessary to
3 extend the discovery deadline, the Court would entertain such a motion.

4 **(4)** Cabela's motion for a protective order that prohibits Hawks Prairie from
5 conducting a Rule 30(b)(6) deposition on the topic of "any matter at issue or of
6 consequence" to this case is **DENIED**.

7 **(5)** Cabela's motion for attorneys' fees and costs is **DENIED**.

8 Dated this 22ND day of October, 2013.

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11 RONALD B. LEIGHTON
12 UNITED STATES DISTRICT JUDGE
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