

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Kiva United Energy v. Flashpoint Energy Partners, LLC; Branon Morse

No. 2:24-cv-250 (D. Utah Nov. 21, 2025) · No. 2:24-cv-250 · Decided November 21, 2025

SUMMARY

The United States District Court for the District of Utah addressed several discovery motions in litigation involving alleged breaches of confidentiality and non-compete obligations and alleged misappropriation of trade secrets. The court partially granted and partially denied Kiva United Energy’s motion to compel discovery from Flashpoint, denied Kiva’s motion to compel discovery from Brannon Morse, and denied Flashpoint’s motions to quash depositions and obtain protective orders. The court also denied requests for attorney fees and costs.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	Dustin B. Pead
JURISDICTION	United States District Court for the District of Utah
DECIDED	November 21, 2025
DOCKET	2:24-cv-250
DISPOSITION	other
PROCEDURAL POSTURE	The court decided several discovery motions in a pending trade-secret and contract action, including motions to compel discovery, motions to quash deposition notices, and requests for protective orders.
STANDARD OF REVIEW	Discovery rulings are reviewed for abuse of discretion and will not be disturbed absent a clear error of judgment or a decision beyond the bounds of permissible choice.
PRECEDENTIAL VALUE	Unknown
PARTIES	Kiva United Energy v. Flashpoint Energy Partners, LLC, Branon Morse

TOPICS

- discovery dispute
- civil procedure
- trade secrets
- misappropriation of trade secrets
- breach of contract

PRACTICE AREAS

civil procedure

commercial litigation

trade secrets

contracts

QUESTIONS PRESENTED

1. Whether Flashpoint had to produce discovery concerning the recruitment, solicitation, or hiring of Morse and communications between Jackson and Morse.
2. Whether Flashpoint had to produce net revenues and transaction dates for sales to Kiva customers.
3. Whether Kiva was entitled to discovery concerning Morse's salary, commissions, signing bonus, and incentive compensation from Flashpoint.
4. Whether the deposition of nonparty Cody Jackson should be quashed or subject to a protective order.
5. Whether the depositions of Christopher Cox and Flashpoint's corporate representative should be delayed until after resolution of Morse's summary-judgment motion or barred by a protective order.
6. Whether either party was entitled to attorney fees or costs incurred in connection with the discovery motions.

HOLDINGS

1. Discovery concerning Jackson's or Flashpoint's recruitment, solicitation, or hiring of Morse, including communications between Jackson and Morse during the relevant period, was relevant and proportional and had to be produced. Discovery directed solely to Jackson as a nonparty, including his general roles, communications, confidentiality agreement, and unrelated communications with customers, was not relevant on the record presented.
2. Flashpoint was required to provide the net revenues and transaction dates requested in Interrogatory 8 concerning sales to Kiva customers.
3. Kiva was not entitled to discovery of Morse's salary, commission rate, signing bonus, or incentive bonus from Flashpoint.
4. Flashpoint's motion to quash the deposition notice of Cody Jackson and for a protective order was denied. The deposition could proceed regarding Jackson's recruitment of Morse, but discovery directed solely to Jackson and unrelated matters remained outside the permissible scope.
5. Flashpoint was not entitled to delay or bar the depositions of Christopher Cox and its corporate representative pending resolution of Morse's summary-judgment motion, and no protective order was warranted.
6. Neither party was entitled to attorney fees or costs incurred in bringing or responding to the discovery motions.

KEY QUOTATIONS

"As a general rule, discovery rulings are within the broad discretion of the trial court." (Legal Standard)

"Yet, even under this broad standard, parties may not engage in a "fishing expedition" attempting to obtain evidence in support of their claims or defenses." (Discussion § I)

“Although there may be potential cost savings by delaying the depositions, any such savings has to be balanced against the just and speedy principles also found in the Rule.” (Discussion § II)

FACTUAL BACKGROUND

Kiva operates in the wholesale propane supplier industry and maintains proprietary information and alleged trade secrets, including customer lists, contacts, and pricing strategies. Morse formerly worked for Kiva and later joined Flashpoint; Kiva alleges that Morse violated confidentiality and non-compete agreements and misappropriated trade secrets. Kiva sought discovery concerning Flashpoint's recruitment of Morse, communications involving former Kiva employee Cody Jackson, sales to Kiva customers, and Morse's compensation. Flashpoint sought to limit or delay depositions of Jackson, Christopher Cox, and its corporate representative.

PROCEDURAL HISTORY

Kiva sued Flashpoint Energy Partners, LLC and Branon Morse for claims arising from Morse's alleged violation of confidentiality and non-compete obligations and alleged misappropriation of trade secrets. Kiva moved to compel discovery from Flashpoint and Morse. Flashpoint moved to quash depositions of Cody Jackson and Christopher Cox, including Flashpoint's corporate representative, and sought protective orders. The court granted Kiva's motion to compel Flashpoint in part, denied it in part, denied Kiva's motion to compel Morse, denied Flashpoint's motions to quash and for protective orders, and denied requests for attorney fees and costs.

DISPOSITION

other

CASES CITED

- Cole v. Ruidoso Mun. Schools, 43 F.3d 1373, 1386 (10th Cir. 1994)
- White Knuckle, IP, LLC v. Electronic Arts Inc., No. 1:15-cv-00036, 2015 WL 5022579, at *1 (D. Utah Aug. 24, 2015)
- Munoz v. St. Mary-Corwin Hosp., 221 F.3d 1160, 1169 (10th Cir. 2000)

OPINION

THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH KIVA UNITED ENERGY, MEMORANDUM DECISION AND ORDER Plaintiff, v. Case No. 2:24-cv-250 TC DBP FLASHPOINT ENERGY PARTNERS, LLC; District Judge Tena Campbell and BRANON MORSE, Chief Magistrate Judge Dustin B. Pead Defendants.

Before the court are several discovery motions filed by the parties. Plaintiff Kiva United Energy seeks to compel Defendants' Flashpoint Energy Partners responses to its interrogatories and requests for production.¹ Kiva also moves the court to compel discovery from Defendant Brannon Morse requiring responses to interrogatories and requests for production.² Flashpoint seeks an order from the court quashing the notice of deposition of Cody Jackson and requesting a protective

order.³ Flashpoint also makes the same request—quashing the notice of deposition and obtaining a protective order—for the noticed deposition of Christopher Cox.⁴ The court addresses the motions herein.⁵ 1 ECF No. 83.

2 ECF No. 84. 3 ECF No. 90. 4 ECF No. 107. 5 Defendant Brannon Morse also moves the court for a stay of discovery. ECF No. 89. That motion is addressed in a separate order. BACKGROUND The backdrop for this case lies in the wholesale propane supplier industry, which according to the parties is extremely competitive and sensitive to price volatility. Kiva maintains certain proprietary information and trade secrets to help it compete in this industry.

These include among other things, customer lists, contacts, and pricing strategies. Defendant Brannon Morse worked for Kiva in a variety of positions. Kiva claims Morse signed confidentiality and non-compete agreements that he has allegedly violated after leaving Kiva and going to work for Flashpoint. Kiva further claims Morse violated the Defend Trade Secrets Act of 2016,⁶ and Utah Uniform Trade Secret Act.⁷ Plaintiff's Second Amended Complaint clarifies that the breach of contract claim against Morse arises out of a confidentiality agreement he signed in July 2009.⁸ To date, the parties have been vehemently engaged in litigation and disagreements over many matters.

Defendant Morse has also filed a motion for summary judgment. LEGAL STANDARD “As a general rule, discovery rulings are within the broad discretion of the trial court.”⁹ Broad discretion allows a trial court to effectively manage its docket.¹⁰ As long as a court does not make “a clear error of judgment or exceed[] the bounds of permissible choice in the circumstances,” a court's “decision on discovery matters will not be disturbed” on review.¹¹ 6 18 U.S.C. § 1836 et seq.

7 Utah Code Ann. § 13-24 et seq. 8 Second Amended Complaint ¶¶ 27-35, 57-61. 9 *Cole v. Ruidoso Mun. Schools*, 43 F.3d 1373, 1386 (10th Cir. 1994). 10 See *White Knuckle, IP, LLC v. Electronic Arts Inc.*, No. 1:15-cv-00036, 2015 WL 5022579, at *1 (D. Utah Aug. 24, 2015). 11 *Id.* (citation modified). Federal Rule 26 governs discovery.

The rule states: Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the 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 expense of the proposed discovery outweighs its likely benefit.

Information within this scope of discovery need not be admissible in evidence to be discoverable.¹² DISCUSSION I. The Related Discovery Motions Three of the discovery motions filed by the parties are closely related.

First, Kiva seeks to have Flashpoint produce “(1) certain communications involving Cody Jackson, Flashpoint’s Supply Director who was previously Kiva’s Supply VP...; (2) data from Flashpoint’s sales to Kiva’s customers; and (3) Defendant Morse’s compensation from Flashpoint.”¹³ Separately, Kiva filed a short form discovery motion to compel Brannon Morse’s responses to Kiva’s interrogatories and requests for production.¹⁴ And Defendant Flashpoint, moves the court to quash the deposition notice of Cody Jackson and seeks a protective order pertaining to discovery concerning Mr. Jackson.¹⁵ Mr. Jackson is not a party to the current litigation.

However, Kiva alleges he was involved in the recruitment of Defendant Brannon Morse, and this recruitment may have led to Mr. Morse breaching his obligations to Kiva. Fundamentally at the core of each of these disputes, is a disagreement over the scope of discovery. A party may “obtain discovery regarding any nonprivileged matter that is relevant to 12 Fed.

R. Civ. P. 26(b)(1) Scope in General. ¹³ Kiva’s Short Form Discovery Motion to Compel Flashpoint’s Responses at 2, ECF No. 83. ¹⁴ Kiva’s Short Form Discovery Motion to Compel Brannon Morse’s Responses, ECF No. 84. ¹⁵ Flashpoint Motion to Quash Deposition of Cody Jackson, ECF No. 90. any party’s claim or defense and proportional to the needs of the case”¹⁶ Yet, even under this broad standard, parties may not engage in a “fishing expedition” attempting to obtain evidence in support of their claims or defenses.¹⁷ Kiva first seeks discovery regarding Mr. Jackson, specifically as to Request for Production (RFP) 1-2, 4, 6, 9, 19, and Interrogatory 6.

Kiva argues this is “relevant to Flashpoint’s involvement in Morse’s breach of his obligations to Kiva.”¹⁸ In response Flashpoint provides that it has already responded to the requests in compliance with the Federal Rules, the Jackson information is not relevant to Brannon Morse, and the requests “clearly focus on the non-party Jackson and not on any claim or issue in this case.”¹⁹ The court agrees with Flashpoint that much of the discovery sought concerning Mr. Jackson fits within the objectionable fishing expedition category.

For example, Interrogatory 6 seeks “all of the roles and responsibilities Flashpoint intended to be performed by Jackson when he was initially recruited by Flashpoint”²⁰ This request is neither relevant nor proportional to the issues in this case. Other examples include RFP 4 that requests all documents “evidencing, reflecting, or relating to Communications between Flashpoint and Jackson in the period from November 1, 2022 until the date Jackson commenced employment with, or providing service to, Flashpoint.”²¹ RFP 6 that seeks all documents relating to the Jackson confidentiality agreement.

RFP 9, which requests, all documents “evidencing, reflecting, or relating to communications ¹⁶ Fed. R. Civ. P. 26(b)(1). ¹⁷ *Munoz v. St. Mary-Corwin Hosp.*, 221 F.3d 1160, 1169 (10th Cir. 2020) (finding that “defendants’ compliance was sufficient and the likely benefit of any further

attempted fishing expedition would be negligible”). 18 Kiva’s Short Form Discovery Motion to Compel Flashpoint’s Responses at 3.

19 Flashpoint’s Opposition to Kiva’s Short Form Discovery Motion to Compel Flashpoint’s Responses at 3, ECF No. 87. 20 ECF 87-1 at 2. 21 ECF 87-1 at 4. between Jackson and any Customer listed on Exhibit A from November 1, 2022 to the present.”²² And RFP 19 that seeks all documents “evidencing, reflecting, or referencing Communications involving Jackson, occurring since January 1, 2022, that relate to Kiva.”²³ Mr. Jackson is a non-party and the court is not persuaded that these requests are relevant to Mr. Morse’s alleged breaches of his obligations.

The connection is too attenuated especially when it seeks Mr. Jackson’s confidentiality agreement or his communications with Kiva. RFP 1 requests all “documents evidencing, reflecting, relating to Flashpoint’s recruitment, solicitation, and/or hiring of, Morse, Jackson, or any Kiva employee to work for or perform service for You.”²⁴ To the extent it seeks all documents relating only to Jackson, the court is not persuaded that it is relevant to this case.

However, discovery relating to Jackson’s or Flashpoint’s recruitment, solicitation, and or hiring of Morse are relevant and are to be provided. Flashpoint has provided “Bates No. 000241 to 00350.”²⁵ Flashpoint is to update their production to include discovery pertaining to Jackson’s or Flashpoint’s contacts to Morse. RFP 2 seeks all documents “evidencing, reflecting, or relating to Communications between Jackson and Morse in the period from November 1, 2022 until the date Morse commenced employment with, or began providing services to, Flashpoint.”²⁶ In response, Flashpoint provides that it “has agreed to search for documents responsive to this request.”²⁷ The court finds this RFP is relevant to Plaintiff’s claims and Flashpoint is ordered to produce the requested discovery within thirty days from the date of this order.

22 ECF No. 87-2 at 5. 23 ECF No. 87-2 at 7. 24 ECF No. 87-2 at 3. 25 Id 26 ECF No. 87-2 at 3. 27 Id. Next, Kiva asserts Flashpoint refuses to produce its net revenues and transaction dates from sales to Kiva customers because liability has not been established. Flashpoint has provided the net gallons sold to specific buyers.

Here the court agrees with Kiva. Discovery has not been bifurcated, and Flashpoint is ordered to provide the information requested in Interrogatory 8 including net revenues and transaction dates from sales to Kiva customers.

The information is protected by the protective order in this case. The next dispute between the parties revolves around Morse’s compensation. Kiva seeks Morse’s compensation via RFP 7 and has filed a separate short form discovery motion seeking to compel Morse to produce documents “reflecting his salary, commission rate, signing bonus, and incentive bonus received from Flashpoint.”²⁸ Kiva argues the information is relevant to “Flashpoint’s expectations and valuation of Morse’s knowledge gained at Kiva and Morse’s anticipated sales to Kiva customers.”²⁹ For

example, according to Kiva, a low compensation primarily based on sales would indicate that time was needed for Morse to establish a customer base.

In contrast, a high starting salary package would presumably place value on the knowledge Morse had about Kiva's customers and business plans. The asserted relevance of Morse's compensation structure to his alleged use of Kiva's trade secrets is too speculative. Kiva offers no authority supporting this request and the court is not persuaded that it should be produced.

This discovery request appears designed to embarrass or harass Morse and is an attempt to learn a competitor's pay structure. The court denies Kiva's Motion for this discovery. 28 Kiva's Short Form Discovery Motion to Compel Brannon Morse's Responses, at 2. 29 *Id.* at 3.

Finally, Flashpoint seeks to quash the deposition notice for Cody Jackson and for a protective order.³⁰ Flashpoint raises similar arguments it did in opposition to the discovery requested from Cody Jackson. That the requested information is neither relevant nor calculated to lead to the discovery of admissible evidence and is not proportional to the needs of this case.

Kiva argues the information is relevant and central to its case. This includes Flashpoint's recruitment of Morse from Kiva, and Flashpoint's strategies in the Western United States that Kiva asserts Flashpoint did not use prior to hiring Jackson and that Jackson learned at Kiva. There is a distinction between discovery specifically aimed at Jackson and discovery aimed at Jackson's recruitment of Morse.

As noted above, the RFPs that seek discovery related to the alleged recruitment are relevant while discovery solely aimed at Jackson, a non-party, are not relevant on their face. Kiva seeks discovery in Jackson's deposition related to the recruitment of Morse from Kiva. That discovery is relevant. And this type of discovery is not designed to embarrass, annoy, oppress, or provide an undue burden making a protective order unnecessary.

However, there is a line between the relevance of that type of discovery and seeking to obtain all communications between Jackson and Flashpoint or all documents relating to Jackson's confidentiality agreement. In short, the court will permit the deposition of Jackson to move forward based on the possible relevance of certain discovery.

However, the court expects counsel to toe the line between what is relevant and what is not relevant. The court therefore will deny Flashpoint's Motion to Quash the Deposition Notice and Protective Order for Cody Jackson. 30 Flashpoint Motion to Quash Deposition Notice and Protective Order for Cody Jackson, ECF No. 90 II. Flashpoint's Motion to Quash Deposition Notice of Christopher Cox and its Corporate Representative and for a Protective Order Flashpoint opposes Kiva's efforts to depose Christopher Cox and Flashpoint's corporate representative.

Flashpoint requests the depositions be held after the court rules on the Morse Summary Judgment Motion. Kiva responds that it needs these depositions to help it oppose the Motion for Summary Judgment. Specifically, Kiva claims the deposition of Flashpoint's 30(b)(6) witness and Cox "will provide evidence that Flashpoint and Morse unlawfully used Kiva's trade secrets, including Kiva's customer contact information" and other trade secrets.³¹ Although it is true that a court controls the sequence, timing, and methods of discovery,³² Flashpoint fails to persuade the court that the depositions should not move forward.

As noted by Flashpoint, the underlying purpose of the Federal Rules is to construe and administer them to "secure the just, speedy, and inexpensive determination of every action and proceeding."³³ Although there may be potential cost savings by delaying the depositions, any such savings has to be balanced against the just and speedy principles also found in the Rule.

And here, the court finds the depositions should proceed and there is no good cause to enter a protective order. ORDER For the foregoing reasons the court orders as follows: Kiva's Short Form Discovery Motion to Compel Flashpoint's Responses is DENIED in PART and GRANTED in PART as set forth above.³⁴ 31 Kiva's Opposition to Flashpoint's Motion to Quash and for Protective Order at 3, ECF No. 3.

32 Fed. R. Civ. P. 26(d)(3) 33 Fed. R. Civ. P. 1. 34 ECF No. 83. Kiva's Short Form Discovery Motion to Compel Brannon Morse's Responses is DENIED.[°] Flashpoint's Motion to Quash Deposition Notice to Cody Jackson and for Protective Order is DENIED as set forth above.*® Flashpoint's Motion to Quash Deposition Notice of Christopher Cox and Flashpoint's corporate representative and for a protective order is denied.*' Finally, the court finds no basis to award either party attorney fees or costs in bringing or responding to motions.

It is a lack of coordination and cooperation by all parties that has given rise to the current disputes. Thus, all requests for attorney fees or costs are DENIED. IT IS SO ORDERED. DATED this 21 November 2025. Dusii-B7 Pyad ° United Stages Mapistrate Judge 35 ECF No. 84. 36 ECF No. 90. 37 ECF No. 107.