UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

JOHN SOLAK, On Behalf of Himself and All Others Similarly Situated, Plaintiff, v. CABELA'S INCORPORATED, JAMES W. CABELA, THOMAS L. MILLNER, MICHAEL R. MCCARTHY, DENNIS HIGHBY, THEODORE M. ARMSTRONG, JOHN H. EDMONSON, BETH M. PRITCHARD, DONNA M. MILROD, JAMES F. WRIGHT, and PETER SWINBURN, Defendants.	Case No. **CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff John Solak ("Plaintiff"), through his undersigned counsel, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is a stockholder class action brought by Plaintiff on behalf of himself and the other public stockholders of Cabela's Incorporated ("Cabela's" or the "Company") (other than Defendants outlined below) against the Company and its Board of Directors (the "Board" or "Director Defendants") in connection with the April 17, 2017 entry by Cabela's into a definitive merger agreement (the "Merger Agreement") with Bass Pro Group, LLC ("Bass Pro"), and Prairie Merger Sub, Inc. ("Merger Sub"). Pursuant to the Merger Agreement, Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation (the "Proposed Transaction").

2. Under the terms of the Merger Agreement, each share of Cabela's common stock will be converted into the right to receive $61.50 in cash (the "Merger Consideration"). In order to convince Cabela's' stockholders to vote in favor of the Proposed Transaction, the Director Defendants authorized the filing of a misleading Definitive Schedule 14A (the "Proxy") with the Securities and Exchange Commission on or about June 5, 2017 in violation of Sections 14(a) and 20(a) of the Exchange Act. The Proxy contains incomplete and materially misleading information regarding: (i) the process that resulted in the Proposed Transaction and the conflicts of interest infecting it, (ii) the financial analysis conducted by the Company's financial advisor, Guggenheim Securities, LLC ("Guggenheim"), and (iii) the projections used by Guggenheim in that analysis.

3. Plaintiff asserts claims against Cabela's and the Director Defendants for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S,C. §§78n(a), 78t(a), and United States Securities and Exchange Commission ("SEC") Rule 14a-9). Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Cabela's stockholders before the vote on the Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder and Section 20(a) of the Exchange Act.

5. Personal jurisdiction exists over each Defendant either because the Defendant is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this

Court permissible under traditional notions of fair play and substantial justice. More specifically, Cabela's is a corporation organized and existing under the laws of the State of Delaware and the Director Defendants are directors of a corporation organized or existing under the laws of the State of Delaware.

6. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; and (ii) Cabela's is incorporated in this district.

PARTIES

A. Plaintiff

7. Plaintiff is, and at all relevant times was, a continuous shareholder of Cabela's.

B. Defendants

8. Defendant Cabela's Incorporated (previously defined as "Cabela's") is a corporation organized and existing under the laws of the State of Delaware with its principal executive offices located at One Cabela Drive, Sidney, Nebraska 69160.

9. Defendant James W. Cabela ("Cabela") is the Company's co-founder and has served as a director of the Company since its incorporation in 1965, and as President until July 2003. Defendant Cabela has served as the Company's Chairman of the Board since June 2013.

10. Defendant Thomas L. Millner ("Millner") has served as the Company's Chief Executive Officer ("CEO") and as a member of the Board since April 2009.

11. Defendant Michael R. McCarthy ("McCarthy") has served as a director of the Company since 1996 and currently serves as Lead Independent Director.

12. Defendant Dennis Highby ("Highby") has served as a director of the Company since July 2003.

13. Defendant Theodore M. Armstrong ("Armstrong") has served as a director of the Company since December 2004.

14. Defendant John H. Edmonson ("Edmonson") has served as a director of the Company since October 2007.

15. Defendant Beth M. Pritchard ("Pritchard") has served as a director of the Company since March 2011.

16. Defendant Donna M. Milrod ("Milrod") has served as a director of the Company since February 2014.

17. Defendant James F. Wright ("Wright") has served as a director of the Company since April 2015.

18. Defendant Peter S. Swinburn ("Swinburn") has served as a director of the Company since August 2015.

19. Defendants Cabela, Millner, McCarthy, Highby, Armstrong, Edmonson, Pritchard, Milrod, Wright, and Swinburn, form the Board of Directors of Cabela's and are collectively referred to herein as the "Board" or the "Director Defendants." Each of the Director Defendants at all relevant times had the power to control and direct Cabela's to engage in the misconduct alleged herein.

20. Defendants Cabela's and the Director Defendants are collectively referred to as the "Defendants."

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this Action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of herself and the other public stockholders of Cabela's (the "Class"). Excluded from the Class

are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

22. This action is properly maintainable as a class action.

23. The Class is so numerous that joinder of all members is impracticable. As of May 17, 2017, there were approximately 71,161,759 outstanding shares of Cabela's common stock. The actual number of public shareholders of Cabela's will be ascertained through discovery.

24. Questions of law and fact are common to the Class, including, among others:

a. Whether Defendants have misrepresented or omitted material information concerning the Proposed Transaction from the Proxy in violation of Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder;

b. Whether the Director Defendants have violated Section 20(a) of the Exchange Act; and

c. Whether Plaintiff and other members of the Class will suffer irreparable harm if the Proposed Transaction is consummated as presently anticipated.

25. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

26. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

27. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

A. Corporate Background

28. Cabela's, headquartered in Sidney, Nebraska, is a leading specialty retailer of hunting, fishing, camping, shooting sports, and related outdoor merchandise. The Company offers its customers a selection of national and regional brand products, including its Cabela's brand. The Company's Merchandising segment sells products and services through the Company's retail stores, its e-commerce Websites (Cabelas.com and Cabelas.ca), and its catalogs. The Company's Financial Services segment issues co-branded credit cards. Its Cabela's CLUB cardholders also earn points from its loyalty rewards programs that can be redeemed through all of its customer shopping channels. As of December 31, 2016, the Company operated 85 retail stores, ranging in size from 40,000 to 246,000 square feet, with 74 stores in 36 states and 11 stores in six provinces of Canada.

B. The Process Leading to the Proposed Transaction

29. The Proposed Transaction is the result of the Board's reactionary response to pressure from Elliott Management Corporation ("Elliott"), a notorious activist investor that held approximately 11% of Cabela's stock, to sell the Company. After ceding to Elliott's demands and entering into the Merger Agreement, the Board and certain members of management then allowed the parties to a related agreement to sell the Company's Financial Services segment hold the Proposed Transaction hostage, ultimately resulting in a sale of the Company's prized credit card business at a substantial discount – in a side agreement not subject to shareholder approval – and for far less than originally contemplated by the Merger Agreement. Finally, in order to justify these

repeated concessions, the Board and management continuously revised Cabela's financial forecasts and projections *downward* throughout the sale "process" and thereafter.

30. During the fall of 2014, the Company requested that Guggenheim, the Company's financial advisor, review and report to the Board with respect to a number of potential strategic alternatives, including a sale-leaseback transaction, an acquisition of one or more other industry participants, and a transaction in which the Company's Retail Segment would be separated from its Financial Services segment (a "CLUB" transaction).

31. In the interim, during the winter and spring of 2015, the Company conducted a review of its cost structure and developed a number of cost saving initiatives designed to enhance the financial performance of the Company, which it referred to as "Project Apex." In June of 2015, the Company began implementing a number of the recommended initiatives. Also during the spring of 2015, the Company began development of a new five-year strategic growth plan, which it referred to as "Vision 20/20".

32. On June 4, 2015, representatives of Guggenheim discussed with the Board a letter the Company received from Hirzel Capital Management, a stockholder of the Company, recommending that the Company monetize its real estate and CLUB assets and reviewed with the Board a variety of potential strategic alternatives. During discussions, it was noted that, because the Company's subsidiary, World's Foremost Bank ("WFB"), was a regulated bank which held deposits, any sale of the Company would require bank regulatory approval, that the bank regulators may not approve such a transaction, and therefore if the Company wished to be acquired by a third party, it may have to first engage in a CLUB transaction with a regulated bank partner pursuant to which the assets and deposits of WFB would be sold to such regulated bank partner and the charter of WFB would be surrendered (a "CLUB sale transaction"). After considering these alternatives in light of projections of management reviewed with the Board in February 2015, the Board

authorized management to further analyze potential strategic alternatives and to formally engage Guggenheim to act as its financial advisor in furtherance of the same.

33. During the months of July and August 2015, the Company worked with its advisors to review the merits of various potential strategic alternatives discussed with the Board in June and Guggenheim contacted five private equity firms to see if they would be interested in engaging in a potential transaction with the Company and five financial institutions to see whether they would be interested in engaging in a potential transaction involving WFB and the Company's credit card program. Only one of the financial institutions entered into a confidentiality agreement with the Company.

34. On August 28, 2015, after almost a year of strategic review, **Cabela's management recommended to the Board that, based on the review of potential strategic alternatives, management believed that the Board should authorize a share repurchase and continue to implement Project Apex and Vision 20/20**. Based on this recommendation, **the Board concluded that it would authorize a share repurchase program and would <u>cease the exploration of potential strategic alternatives</u>**.

35. Two months later, on October 26, 2015, a representative of Elliott informed representatives of Guggenheim that Elliott had acquired an approximately 10% economic interest in Cabela's and would be filing a Schedule 13D in which Elliott would express its view that the Company's stock was undervalued. On October 27, 2015, representatives of Elliott had a call with members of the Company's management and provided a similar message. And, on October 28, 2015, Elliott publicly filed a Schedule 13D indicating that it and its affiliates beneficially owned approximately 6% of Cabela's outstanding common stock and had derivative arrangements in place which gave it economic exposure to another 5.1% of Cabela's outstanding common stock. The 13D stated that Elliott believed Cabela's was undervalued and that Elliott was seeking an

opportunity to engage in discussions with the Company regarding potential strategic alternatives, **including a sale of the Company**, asset monetization, capital allocation and capital structure optimizations and operational and management initiatives.

36. On the following day, October 29, 2015, the Board held a special meeting to discuss how to deal with Elliott. The Board authorized management and its advisors to "develop plans to respond to [Elliott]." On November 5, 2015, members of management and the Board's advisors again met to discuss potential responses to Elliott. And, on November 13, 2015, the Board held a special meeting to discuss potentially attempting to enter into a settlement agreement with Elliott.

37. Following the filing of the Schedule 13D, the Company received pressure from other stockholders suggesting that it consider a sale. Then, capitalizing on the pressure created by Elliott's public demand for a sale, on November 5, 2015, Bass Pro communicated to Defendant McCarthy that it was interested in exploring a potential acquisition of Cabela's and, on November 9, 2015, another industry participant ("Strategic Party A") sent a letter to the Company expressing its interest in exploring a potential acquisition as well. Later, Guggenheim would report to the Board that it too had received inquiries from several private equity firms regarding exploring an acquisition of the Company and several financial institutions regarding exploring a CLUB sale transaction following the public announcement by Elliott. Media reports also swirled about the Company's future and Bass Pro's designs for the Company – so much so that management was required to develop plans to retain key employees in light of the Company's uncertain future.

38. In mid-November, as these events were unfolding, Defendant McCarthy and several members of Company management had a meeting with Elliott in which **<u>Elliott representatives stated that they believed Cabela's should be sold through a public auction process</u>** and that, **if the Company did not engage in a sales process, Elliott was "prepared to**

take further steps with respect to the Company" – a not so thinly veiled threat that Elliott would launch a proxy contest against the Board.

39. On November 20, 2015, the Board held a special meeting to discuss this threat, which was specifically recounted to the Board, and potential responses to Elliott. It ultimately concluded that the Company and its advisors should "continue to review its options." Also on November 20, 2015, the Compensation Committee held a special meeting to discuss "double trigger" change of control severance agreements for key employees of the Company. Following discussion, the Committee approved the entry into "double trigger" change of control severance arrangements for certain key employees.

40. On November 24, 2015, the Board held another special meeting to discuss potential responses to Elliott. Also during this meeting, the Board discussed with management the Company's financial plans and projections. Following discussion, Defendant Millner stated that **it was now management's recommendation that the Board authorize the Company to explore potential strategic alternatives and that the Company publicly announce it was doing so**. In response, Defendant McCarthy informed the Board that he had been informed by Defendant Cabela that, if the Board determined to enter into a transaction with Bass Pro or certain other strategic potentially purchasers of the Company, Defendant Cabela was not certain he would be willing to, in his capacity as stockholder of the Company, support a transaction with any of them.

41. On December 1, 2015, the Board held yet another special meeting to further consider potential responses to Elliott. **During this meeting, and despite the fact that it had decided just a few months earlier (and after a year-long strategic review) that a sale was not in the best interests of stockholders, the Board decided to authorize the sale process that Elliott had demanded.**

42. On December 2, 2015, the Company issued a press release stating that the Company was undertaking a review of various potential strategic alternatives.

43. Over the next several months, eight strategic parties, including Bass Pro and Strategic Party A, and twenty-one private equity firms, including those previously contacted by Guggenheim during the summer of 2015, were either contacted by Guggenheim or contacted Guggenheim regarding exploring a potential retail transaction.

44. On December 14, 2015, the Board held a regularly scheduled meeting at which strategic alternatives were further considered. Following discussion, Defendant Millner noted for the Board the challenges facing the Company's business and that management was finalizing the Company's five year projections.

45. On February 8, 2016, the Board held a regularly scheduled meeting at which members of management reviewed the Company's Vision 20/20 plan and the five-year projections they had prepared for the Company – **during the pendency of the sales process that began as a result of pressure from Elliott to force a sale**. <u>**Following this discussion, the Board approved the strategic plan, including the five year projections.**</u>

46. On February 19, 2016, the Board held a special meeting at which management updated the board on recent discussions with certain Cabela's stockholders, **including Elliott**, in which these stockholders noted their continued belief that Cabela's should be sold.

47. In mid-March 2016, seven potential bidders for a CLUB sale transaction submitted responses to the Company's request for proposals for a CLUB sale transaction. Of note, Capital One, National Association ("CONA") discussed during its regulatory due diligence call an anti-money laundering order it had entered into with the Office of the Comptroller of the Currency (the "OCC ") on July 10, 2015 (the "AML Consent Order "), **but CONA specifically indicated that**

it did not believe that the AML Consent Order would prevent it from obtaining OCC approval on a timely basis.

48. In early May 2016, the Company received nine indications of interest from interested retail bidders for an all-cash acquisition of the Company: Private Equity Firm A indicated a potential price per share range of between $65.00 and $70.00; Private Equity Firm B indicated a potential price per share range between $60.00 and $65.00; Strategic Party A indicated a potential price per share range between $60.00 and $63.00; Bass Pro indicated a potential price per share range between $60.00 and $63.00; Private Equity Firm C indicated a potential price per share between $59.00 and $63.00; Private Equity Firm D indicated a potential price per share of $61.00; Private Equity Firms E and F indicated a potential price per share of $60.00; and Strategic Party B, which was partnering with Private Equity Firm G, indicated a potential price per share between $55.00 and $60.00.

49. On June 6, 2016, the Board held a regularly scheduled meeting. At the outset of the meeting, Defendant McCarthy noted for the Board that Defendant Cabela (who had recused himself from this portion of the meeting) had confirmed to Defendant McCarthy that, if the potential strategic alternatives review process resulted in the Board determining to sell the Company to Bass Pro, or to any other potential bidder if the potential bidder intended to move the Company's headquarters out of Sidney, Nebraska, Defendant Cabela was not likely to vote his shares of the Company in support of such a proposed transaction. Defendant Highby indicated he also would not be inclined to vote his shares for such a transaction. The remaining directors indicated they did not have similar predispositions. The Board discussed procedures designed to mitigate the impact that Messrs. Cabela's and Highby's predispositions would have on the strategic review process and determined that as long as Bass Pro and any other bidders that were likely to move the Company's headquarters were involved in the process, Messrs. Cabela and Highby

would not participate in portions of Board meetings during which decisions regarding eliminating bidders were to be taken.

50. On June 27, 2016, Bass Pro and Private Equity Firm F each submitted their revised proposals and, on June 28, 2016, Private Equity Firm E submitted its revised proposal. Each revised proposal contemplated an all cash transaction. Bass Pro's proposal indicated a potential purchase price per share of $63.00, Private Equity Firm E indicated a potential price per share of $60.00, and Private Equity Firm F indicated a potential price per share range of $63.00 to $64.00.

51. On July 5, 2016, the Board held a special meeting at which, after Defendants Cabela and Highby recused themselves, Guggenheim reviewed with the Board the revised financial terms of the proposals for a retail transaction. In executive session, the independent directors then authorized the Company to proceed with the strategic review process.

52. On July 8, 2016, each of the remaining five CLUB bidders submitted a revised proposal for a CLUB sale transaction.

53. On July 11, 2016, the Board held a special meeting to discuss the revised CLUB proposals. The Board, together with management and the Company's advisors, then discussed the process for beginning negotiations between the retail bidders and the CLUB bidders to allow them to develop a comprehensive proposal that included a CLUB sale transaction and a retail transaction. The Board authorized Guggenheim to permit each retail bidder to review all of the CLUB proposals and select two of the four CLUB bidders with which to negotiate.

54. On August 9, 2016, the Board held a special meeting at which it was noted for the Board that Guggenheim had disclosed to the Company its relationships with each of the remaining bidders. The Proxy fails to disclose the nature of these relationships and when this information was first disclosed to the Company.

55. On August 12, 2016, Defendant McCarthy updated the Board via memorandum of two developments. First, he informed the Board that the Company had received a letter from Elliott addressed to the Board indicating that **Elliott believed a near-term sale of the entire Company was the best outcome**. Defendant McCarthy noted he intended to contact Elliott to discuss entering into a confidentiality agreement with Elliott to provide it some insight into the process – in other words, to appease it so that it would not launch a proxy contest. Second, Defendant McCarthy informed the Board that Private Equity Firm F had informed the Company that it was concerned about the amount of expenses it was incurring in evaluating a potential retail transaction and that it understood from various sources that Bass Pro was likely to outbid any proposal Private Equity Firm F would make and, accordingly, if Private Equity Firm F were to continue to remain in the process, it wanted the Company to agree to reimburse its expenses. In response, Defendant McCarthy noted that the Company planned to enter into an agreement to reimburse Private Equity Firm F up to $5 million of expenses incurred under certain circumstances. The Proxy fails to disclose the identity of "various sources" that communicated Bass Pro's favorable bidding posture or how such sources could have been privy to such information. The Proxy also fails to disclose who authorized the reimbursement agreement with Private Equity Firm F.

56. Throughout the remainder of August and through September 2016, the Company provided each of the bidders an updated fourth quarter and full year 2016 financial forecast for the Company based on year-to-date results.

57. In mid-September 2016, the Board's advisors had a number of discussions with counsel for Defendants Cabela and Highby regarding whether there were circumstances under which Defendants Cabela and Highby would be willing to vote for a transaction with Bass Pro or Private Equity Firm F. Their counsel indicated that if a bidder were to make certain commitments

regarding maintaining a presence in Sidney, Nebraska, following any potential transaction, then Defendants Cabela and Highby would be willing to vote their shares of Company stock in favor of such a transaction.

58. On September 19, 2016, at the request of Private Equity Firm F, Defendants Cabela, McCarthy, and Millner met with representatives of Private Equity Firm F in New York. Private Equity Firm F indicated that if it were the winning bidder it would want Defendant Cabela to sign a voting agreement in support of the transaction and it asked whether Defendant Cabela would be willing to become a part of the investor group for the transaction and "roll-over" up to $100 million of his equity in the Company into equity of the acquiring entity. In addition, Private Equity Firm F requested that the Company increase the expense reimbursement cap by $2 million. Following the meeting, Defendant McCarthy updated the Board on these developments, including that Defendant Cabela had not taken a position on either of the requests made of him and that the Company had approved the request for the increase of the expense reimbursement cap.

59. On September 28 and 29, 2016, Bass Pro submitted its complete proposal for its acquisition of the Company for a purchase price per share of $65.00. After a meeting to discuss this proposal, the Board determined that Guggenheim should request that Bass Pro increase its proposal from $65.00 to $67.00 per share. Following the meeting, Guggenheim contacted the financial advisor for Bass Pro, relayed this request, and informed it that Defendants Cabela and Highby had informed the Company they would not agree to voting agreements unless Bass Pro agreed to certain maintenance covenants with respect to post-closing Company operations in Sidney, Nebraska. Bass Pro responded that it was willing to increase its price per share to $65.50, but was not willing to agree to the post-closing maintenance covenants proposed by Defendants Cabela and Highby. Later, on October 2, 2016, Defendants Cabela and Highby agreed to enter into voting agreements with Bass Pro on identical terms as the other directors, except that their voting

agreements would also include language regarding a statement that Bass Pro would make in its press release announcing the transaction with respect to post-closing operations in Sidney, Nebraska.

60. Later on October 2, 2016, Guggenheim "reviewed its financial analysis of the merger consideration contemplated by the original merger agreement with the Board and rendered an oral opinion, confirmed by delivery of a written opinion dated October 2, 2016, to the Board as to the fairness, from a financial point of view and as of the date of such opinion, of the merger consideration contemplated by the original [M]erger [A]greement to be received in the merger by holders of Company common stock, which opinion was based on and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken as described in such opinion." Thereafter, the Board adopted and approved the Merger Agreement.

61. On October 3, 2017, the Company and Bass Pro entered into a definitive merger agreement. In connection with the merger agreement, CONA agreed to pay approximately $200 million to originate and service Cabela's co-branded credit card for 10 years while acquiring the credit card operations.

62. On October 25, 2016, the Company and Bass Pro filed their respective notification and report forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), with the Department of Justice and the Federal Trade Commission, thereby triggering the start of the HSR Act waiting period – which was then set to expire on November 25, 2016.

63. On November 3, 2016, legal counsel to CONA informed representatives of the Company that CONA now believed that, while it sill expected to obtain approval under the Bank Merger Act of the transactions contemplated by the CLUB sale and purchase agreement, such approval would be later than the timeframe initially announced by the parties and CONA could

not provide any assurances as to the timing of such approval. CONA's counsel indicated that the delay related to the AML Consent Order and the acceptability to the OCC of CONA's progress regarding the remediation efforts required by the AML Consent Order. CONA's counsel further indicated that CONA believed it would be advisable to delay filing the BMA application for the CLUB sale transaction, which, pursuant to the terms of the CLUB sale and purchase agreement, was required to be filed no later than November 17, 2016. CONA now believed that if the BMA application were filed on November 17, the OCC would deny the application in early January.

64. On November 15, 2016, CONA's counsel formally requested, on behalf of CONA, that Cabela's provide CONA a waiver under the CLUB sale and purchase agreement to permit CONA to delay filing the BMA application with the OCC beyond the November 17 date contemplated by the agreement. CONA believed delaying the filing of the application was the best path ultimately to obtaining the necessary BMA approval.

65. On November 17, 2016, the Company determined that, while it was unclear based on the information it had at the time that delaying filing would in fact increase the likelihood that the BMA application would be approved or would be approved on a faster timeframe, it would be willing to permit CONA to delay filing the application, but only subject to certain terms, which included a term that would allow Cabela's and Bass Pro to solicit alternative CLUB transactions and that CONA would make Cabela's and Bass Pro "whole" for costs they incurred pursuing and negotiating alternative transactions and any loss in economics if the terms of the alternative transaction were not as favorable as the CONA transaction. CONA refused to agree to these terms and instead threatened to file the BMA application in accordance with the terms of the CLUB sale and purchase agreement, which would likely result in its being denied and the larger Proposed Transaction being derailed.

66. On November 21, 2016, Bass Pro, with the consent of Cabela's and at the request of the FTC, Bass Pro notified the FTC that Bass Pro was withdrawing its HSR application. According to the Proxy, the purpose of the withdrawal was to allow the FTC a thirty day extension to continue to review the proposed merger before the expiration of the HSR waiting period with the hope that the FTC would clear the proposed merger during the 30 day extension and the parties would thereby avoid a lengthy second request process. On November 29, 2016, Bass Pro re-filed its HSR Act notification with the FTC and DOJ, which triggered a new waiting period under the HSR Act that would expire on December 29, 2016.

67. ON December 5, 2016, at the request of Capital One Financial Corporation ("Capital One Financial"), an affiliate of CONA, representatives of Cabela's held a meeting with Mr. Murray Abrams, Executive Vice President of Corporate Development of CONA, and Mr. Stephen Crawford, Head of Finance and Corporate Development of Capital One Financial, and Mr. R. Scott Blackley, Chief Financial Officer of Capital One Financial. During the meeting, Mr. Crawford indicated that he believed it was not likely that CONA would obtain BMA approval under the current structure prior to the outside date of the Merger Agreement. Mr. Crawford further stated that he believed if CONA did not withdraw the BMA application the OCC would deny the application in early January. In turn, Defendant McCarthy reminded Mr. Crawford that the Company would not extend the CLUB sale and purchase agreement outside date without a corresponding extension of the outside date in the merger agreement with Bass Pro and he did not believe that Bass Pro would be willing to extend the outside date.

68. On December 11, 2016, Mr. Crawford indicated that CONA still wanted to close the CLUB transaction and that while they were willing to consider an extension of the outside date or alternative transaction structures and terms, the "make whole" concept was not acceptable to

CONA and that any release from the exclusivity obligations would also require a release by the Company of any potential claims against CONA.

69. On December 29, 2016, Cabela's and Bass Pro received a second request from the FTC. The following day, the Company filed a Current Report on Form 8-K with the SEC disclosing the receipt of the second request and that CONA had informed the Company that it believed it was not currently likely that it would receive BMA approval prior to the outside date.

70. On January 5, 2017, Mr. Crawford called Defendant McCarthy to update him on CONA's meeting with the OCC on the previous day. Mr. Crawford indicated that based on that meeting he believed that if the BMA application was not withdrawn it would be denied on January 31, 2017. Mr. Crawford also indicated that he believed that a withdrawal was the best path to ultimately receiving a BMA approval and that if the application was not withdrawn and the OCC denied the application, he believed the OCC would be less receptive to discussing alternative structures. Mr. Crawford indicated that CONA continued to believe that it could ultimately obtain BMA approval but that due to the AML Consent Order he did not believe that CONA would obtain BMA approval prior to the outside date.

71. On January 6, 2017, the Company informed CONA that it was willing to grant CONA consent under the CLUB sale and purchase agreement to withdraw the BMA application under certain conditions, including that CONA agree that the Company and Bass Pro could solicit alternative CLUB transaction proposals and be able to terminate the CLUB sale and purchase agreement if the Company and CONA had not entered into agreements for an alternative transaction structure by February 15, 2017. CONA rejected this offer on January 8, 2017, noting that it was simply unwilling to permit Cabela's and Bass Pro solicit other CLUB buyers at that time.

72. On January 20, 2017, CONA requested permission to engage in more detailed discussions with Synovus, which had previously been involved in the transaction auction process in 2016 as a potential partner with Financial Institution C.

73. On or about January 20, 2017, the Company again informed CONA, through a draft letter agreement, that it was willing to grant CONA consent to withdraw the BMA application under certain conditions, including that CONA agree that the Company and Bass Pro could solicit alternative CLUB transaction proposals and be able to terminate the CLUB sale and purchase agreement if the Company and CONA had not entered into agreements for an alternative transaction structure by February 21, 2017. On January 22, 2017, CONA again rejected this offer and indicated that the only withdrawal consent that CONA would accept was one without any conditions attached to it.

74. On January 24, 2017, Capital One Financial stated publicly in its earnings call that (i) it did not expect to obtain regulatory approval prior to the outside date, (2) within the next week or so it expected to either withdraw the BMA application or the application would be denied by the OCC, and (3) in either case CONA would not be in a position to re-file the application until after it had completed its remediation work under the AML Consent Order.

75. On January 27, 2017, Defendant McCarthy contacted Mr. Crawford to see whether CONA would ask the OCC to delay making a decision by two or three weeks to allow the parties additional time to finalize a transaction with Synovus. Mr. Crawford said **he would not make such a request** of the OCC, indicated that he believed the discussions with Synovus would result in an agreement, but reiterated his view that if the BMA application was not withdrawn it would adversely impact the ability of the parties to ultimately obtain BMA approval as well as the receptivity of the OCC to discussing alternative structures. Mr. Crawford again reiterated that CONA wanted an unconditional consent to withdraw the BMA application.

76. Rather than take steps to force CONA to comply with its obligations, on the same day, the Board instead kowtowed to CONA's threats and decided to provide CONA with a consent to withdraw the BMA application, which it provided on January 28, 2017.

77. Also on January 28, 2017, CONA and Synovus reached a non-binding letter of intent to effectuate an alternative transaction.

78. On February 2, 2017, the relevant parties met to discuss this alternative transaction. During this meeting, Mr. Crawford stated that CONA had a preliminary agreement with Synovus that he was confident could be finalized and provided the parties the best opportunity to close the Proposed Transaction prior to the outside date. However, Mr. Crawford stated that the Company and Bass Pro "needed to address two issues before CONA was willing to proceed." First, he said that the Synovus letter of intent contemplated that Synovus would receive $75 million in consideration in connection with the alternative structure. Mr. Crawford indicated that **CONA was unwilling to make that payment and Cabela's and Bass Pro would need to bear the costs**. Second, he indicated that CONA wanted to amend the credit card program agreement that Cabela's and CONA had entered into on October 3, 2016 and which would govern the credit card program of the Company after closing of the Proposed Transaction. Mr. Crawford stated that the amendment would change the provision that governed the amount of revenue from the credit card program that CONA would share with Bass Pro, as the executed program agreement currently contained terms that he believed would have a significant adverse impact on the amount of revenue that CONA would receive under the program relative to what CONA had included in its financial models. Mr. Crawford concluded that CONA would continue to use efforts to attempt to consummate the transactions contemplated by the original CLUB sale and purchase agreement but that, **unless these two matters were addressed, CONA would not proceed with the Synovus transaction and would not release Cabela's or Bass Pro from their no-solicitation obligations,**

with the likely result being that the parties would not be able to consummate any transaction (with CONA or another party) prior to the outside date of the Merger Agreement, thereby derailing the entire Proposed Transaction.

79. Despite this stunning display of bravado by the only party who failed to fulfill it obligations under the agreements giving rise to the Proposed Transaction, the Board nonetheless kowtowed to these demands as well to complete the sale that Elliott demanded. After Bass Pro made clear that it was not willing to agree to any such amendments to the credit card program as it believed doing so would reduce the value of the go-forward credit card program to Bass Pro, Cabela's proposed that (1) it would provide the funds necessary to pay $70 million of the $75 million Synovus payment by lowering the purchase price payable for the bank assets, **with a corresponding $1.00 per share reduction in the per share Merger Consideration**, and (2) CONA and Bass Pro would agree upon a revised rate for purposes of revenue sharing under the program agreement, **and the per share Merger Consideration would be further reduced to $61.50** per share to compensate Bass Pro for the projected economic impact of the revised rate. **In other words, despite not being at fault, the Board volunteered the stockholders to take the brunt of CONA's failures – all to appease Elliott.**

80. On February 22, 2017, the Board held a special meeting at which the Board discussed this latest proposal. In response, the Board instructed management to **create updated five-year projections** – presumably so that any future fairness opinion that would be required from Guggenheim would still make the updated Merger Consideration appear fair.

81. On March 2, 2017, the Board held a special meeting at which it considered the updated five-year projections that Company's management had prepared in light of the recent proposal. Following discussion, **the Board approved this new set of 2017 five-year projections**. Critically, although management compared for the Board the assumptions and inputs used in

preparing these new projections to those used in earlier sets of projections, the Proxy fails to disclose to stockholders how these projections and their underlying assumptions had been updated. This information is especially significant in light of the fact that the projections were updated with an eye toward evaluating a proposal that ultimately would result in the **reduction of the Merger Consideration by $4.00 per share – or more than $280 million in the aggregate**.

82. On March 16, 2017, Guggenheim discussed with the Board preliminary financial perspectives regarding the updated potential transaction. During this discussion, representatives of Company management and Guggenheim again noted for the Board that certain of the forecasted line items and assumptions used in the preliminary financial perspectives had been updated or changed from those used in the financial presentation provided by Guggenheim Securities to the Board in connection with the October 2, 2016 Board meeting. The Guggenheim representatives discussed with the Board the effect of such updates. Again, though, the Proxy fails to disclose these changes.

83. Then, on April 17, 2017, Guggenheim reviewed its financial analysis of the updated $61.50 per share updated Merger Consideration with the Board and rendered a second fairness opinion to the Board "to the effect that, as of that date and based on and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken, the $61.50 per share merger consideration to be received in the merger by holders of Company common stock was fair, from a financial point of view, to such holders." The Board thereafter unanimously approved the revised CLUB transaction agreements and the amendment to the Merger Agreement.

84. Later that day, Capital One, its applicable affiliates, Synovus, the Company, and WFB entered into the revised CLUB transaction agreements, the Company and an affiliate of

Capital One entered into the amendment to the program agreement and the Company, Bass Pro, and Merger Sub entered into the amendment to the Merger Agreement.

C. The Proposed Transaction

85. On April 17, 2017, Cabela's issued a press release announcing the Proposed Transaction, which provides in pertinent part:

CABELA'S ENTERS INTO REVISED TRANSACTION AGREEMENTS IN CONNECTION WITH BASS PRO SHOPS MERGER

Synovus Bank to Acquire Assets and Deposits of World's Foremost Bank; Capital One to Acquire Credit Card Assets and Related Liabilities and Become Long-term Cabela's Credit Card Issuing Partner

Cabela's Shareholders to Receive $61.50 Per Share Under Amended Bass Pro Shops Merger Agreement

Transaction Expected to Close in Third Quarter of 2017 Subject to Cabela's Shareholder Approval, Regulatory Approvals and Customary Closing Conditions

Sidney, Neb. – April, 17, 2017 – Cabela's Incorporated (NYSE:CAB) today announced that it has entered into agreements with subsidiaries of Synovus Financial Corp. (NYSE: SNV) and Capital One Financial Corporation (NYSE: COF) ("Capital One") (the "Bank Transaction Agreements") in connection with the sale of the assets and liabilities of Cabela's wholly owned bank subsidiary, World's Foremost Bank (the "Bank").

Under the terms of the Bank Transaction Agreements, Synovus Bank ("Synovus"), a bank subsidiary of Synovus Financial Corp., a financial services company based in Columbus, Georgia, with approximately $30 billion in assets, will acquire certain assets and assume certain liabilities of the Bank, including deposits totaling approximately $1.2 billion. Following the completion of the sale of the Bank's assets and liabilities, Synovus will sell the Bank's credit card assets and related liabilities to Capital One. Synovus will retain the Bank's deposits.

As originally announced, Capital One will be the exclusive issuing partner of Cabela's branded CLUB Visa program pursuant to a 10-yearprogram agreement. Capital One intends to continue to operate the Cabela's CLUB servicing center in Lincoln, Nebraska.

Cabela's also announced that it has amended the terms of the definitive merger agreement signed on October 3, 2016, under which Bass Pro Shops will acquire Cabela's (the "Amended Merger Agreement"). Under the Amended Merger Agreement, Bass Pro Shops will acquire Cabela's for $61.50 per share in cash, representing an aggregate transaction value of approximately $5.0 billion. Cabela's Board of Directors unanimously approved the transaction, which is expected to close in the third quarter of 2017, subject to Cabela's shareholder approval, regulatory approvals and other customary closing conditions. Additional detail

> about the Amended Merger Agreement can be found in the Form 8-K that Cabela's will file with the Securities and Exchange Commission.
>
> "We're excited to announce this agreement, which allows us to look ahead with greater certainty toward the completion of our merger with Bass Pro Shops and offers a positive step forward for all parties," said Tommy Millner, Cabela's Chief Executive Officer. "We look forward to completing these transactions for the benefit of our shareholders, Outfitters and outdoor enthusiasts."
>
> Johnny Morris, founder and CEO of Bass Pro Shops said, "We remain excited about the exceptional opportunity we have to continue to serve sportsmen and sportswomen by bringing together Cabela's, Bass Pro Shops and White River Marine Group. Today's announcement is an important step forward and we are excited about the opportunity to continue celebrating the great Cabela's brand with ours as one unified outdoor family for our customers and for conservation."
>
> The Bass Pro Shops merger remains subject to approval by Cabela's shareholders, as well as antitrust clearance and other customary closing conditions. The Bank transaction is subject to regulatory approvals by Synovus's primary bank regulators and other customary closing conditions. The Bank transaction will close immediately prior to the closing of the Bass Pro Shops merger.
>
> Guggenheim Securities served as exclusive financial advisor to Cabela's and Sidley Austin LLP and Koley Jessen P.C., L.L.O. served as Cabela's legal counsel with expert advice from Sullivan & Cromwell LLP.
>
> The Kessler Group and Credit Suisse acted as financial advisers to Capital One and Wachtell, Lipton, Rosen & Katz and Chapman and Cutler acted as legal advisers.

86. In connection with the Proposed Transaction, each of the Director Defendants, who collectively beneficially owned 18.52% of the shares of Company common stock as of October 3, 2016, entered into voting agreements pursuant to which they agreed to vote their respective shares in favor of the Proposed Transaction.

D. <u>The Defendants Are Withholding Material Information from Shareholders.</u>

87. Finally, on June 5, 2017, the Director Defendants authorized the filing of the Proxy with the SEC in connection with the Proposed Transaction in order to convince Cabela's stockholders to vote in favor of the Merger. As discussed below and elsewhere herein, the Proxy omits and/or misrepresents material information that must be disclosed to Cabela's stockholders to enable them to render an informed decision with respect to the Proposed Transaction.

88. First, the Proxy fails to fully and fairly disclose certain material information concerning the background of the Proposed Transaction. Specifically, the Proxy fails to adequately disclose:

a. Which "key employees" were provided with "double trigger" change of control severance arrangements on November 20, 2015;

b. The identity of "various sources" that communicated Bass Pro's favorable bidding posture to Private Equity Firm F or how such sources could have been privy to such information;

c. Who authorized the reimbursement agreement with Private Equity Firm F and the increase in the cap for that agreement;

d. The nature of Guggenheim's conflicts, as disclosed to the Board in August 2016; and

e. The nature of any post-close opportunities offered to or otherwise made available to members of the Board or Company management, including the amount of equity in the combined company that may be made available to them, and the circumstances surrounding the negotiation of the same, including the timing thereof.

89. Second, the Proxy fails to disclose material key inputs and assumptions underlying the analyses conducted by Guggenheim. Specifically, in connection with Guggenheim's *Discounted Cash Flow Analysis*, the Proxy fails to disclose the effective date of the Discounted Cash Flow valuation. This is particularly material given that if the effective date is March 31, 2017 or June 30, 2017, the projections would fail to include the interim financial results reflecting the remaining period of time in 2017 (the "Stub Period").

90. In connection with Guggenheim's *Selected Public Companies Analysis*, the Proxy

fails to disclose

a. The company specific EBITDA multiples used in the analysis.

b. The effective date of the analysis.

c. How stock-based compensation was treated in the calculation of Comparable Companies' EBITDA and earnings per share figures.

91. In connection with Guggenheim's *Selected Precedent Transactions Analysis*, the Proxy fails to disclose:

a. The transaction specific EBITDA multiples used in the analysis.

b. The effective date of the analysis.

c. How stock-based compensation was treated in the calculation of comparable transactions' EBITDA figures.

92. The Proxy also fails to adequately disclose information concerning the projections prepared by management that were relied upon by Guggenheim in rendering its fairness opinion. Specifically, the Proxy fails to disclose:

a. A reconciliation of GAAP net income to non-GAAP EBITDA and non-GAAP unlevered free cash flows. This information is especially material in light of the fact that unlevered free cash flows fell significantly more than net income from the earlier projections to the later projections relied upon by Guggenheim. This information is further required to be disclosed because Company used these non-GAAP metrics. This decision makes it almost impossible for shareholders to assess the figures used or the analyses based on them, as companies can treat non-cash items differently in calculating non-GAAP financial measures like this. By failing to disclose a reconciliation, the Proxy Statement is materially misleading and in violation of Rule 14a-9 and SEC Regulation G, 17 C.F.R. 244.100.[1]

b. Information pertaining to the synergy potential resulting from the Merger. This information is particularly significant given that the Board authorized a reduction in Merger Consideration after Bass Pro indicated that it would be unwilling to agree to certain revenue sharing amendments to the program agreements because it believed doing so would reduce the value of the go-forward credit card program to Bass Pro.

c. How stock-based compensation was treated in the calculation of the unlevered free

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[1] SEC Regulation G has two requirements: (1) a general disclosure requirement and (2) a reconciliation requirement. The general disclosure requirement prohibits "mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure...not misleading." 17 C.F.R. § 244.100(b). The reconciliation requirement requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation of the "most directly comparable" GAAP measure, and a reconciliation "by schedule or other clearly understandable method" of the non-GAAP measure to the "most directly comparable" GAAP measure. 17 C.F.R. § 244.100(a).

Indeed, in recent months, the SEC has specifically begun to crack down on the widespread use of such non-GAAP financial measures in shareholder communications because such measures lack consistent definitions and are often inherently misleading. Mary Jo White, Chair of the SEC, specifically raised the issue in a June 27, 2016 keynote address, during which she stated:

> [O]ur rules governing these communications make clear that **the presentation of non-GAAP measures cannot be misleading and require that they be reconciled to the appropriate GAAP measure** so that investors and analysts can compare them to the one that is consistently defined under the GAAP requirements . . . . In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation . . . . [L]ast month, the staff issued guidance addressing a number of troublesome practices which can make non-GAAP disclosures misleading: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data.

Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability (June 27, 2016), https://www.sec.gov/news/speech/chair-white-icgn-speech.html.

cash flows.

93. Finally, the Proxy also fails to disclose all sets of relevant projections used. Specifically, as noted above, the Board continually authorized the reduction of projections throughout the sales process. What is more, Guggenheim rendered a prior fairness opinion to the Board based on another, earlier set of projections than those disclosed in the Proxy, but which the Board had specifically adopted. Notably, Guggenheim was specifically ordered not to use these earlier projections in its second fairness opinion. In light of the fact that the Board accepted $4.00 less in consideration based, in part, on Guggenheim's revised fairness opinion, which used lowered projections, all sets of relevant projections must be disclosed. The undisclosed projections that must be disclosed include:

a. The November 24, 2015 projections; and

b. The updated fourth quarter and full year 2016 financial forecast provided to bidders throughout August and September 2016.

94. The Proxy is materially incomplete and misleading because it omits the information identified above. Defendants, separately and together, in connection with the Proposed Transaction are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty and due care owed to Plaintiff and other public stockholders of Cabela's.

COUNT I

On Behalf of Plaintiff and the Class Against Cabela's and the Director Defendants for Violations of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 Promulgated Thereunder

95. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

96. Defendants have issued the Proxy with the intention of soliciting stockholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the

dissemination of the Proxy, which fails to provide critical information regarding, among other things, the process that led to the Proposed Transaction and the key inputs and assumptions of the financial analysis performed by Guggenheim in support of its fairness opinion.

97. In so doing, defendants made untrue statements of fact and omitted state material facts necessary to make the statements made not misleading. Each of the Director Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a).

98. SEC Rule 14a-9, 17 C.F.R. § 240.14a-9, promulgated pursuant to Section 14(a) of the Exchange Act, provides:

> No solicitation subject to this regulation shall be made by means of any 14D9 statement, form of 14D9, notice of meeting or other communication, written or oral, containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a 14D9 for the same meeting or subject matter which has become false or misleading.

99. During the relevant period, Defendants disseminated the false and misleading Proxy specified above, which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder.

100. Specifically, and as detailed above, the Proxy violates Section 14(a) and Rule 14a-9 because it omits material facts concerning certain material information regarding the process leading up to the consummation of the Merger Agreement, key inputs and assumptions underlying Guggenheim financial analysis, and the projections used by Guggenheim in that analysis.

101. Moreover, in the exercise of reasonable care, the Director Defendants knew or should have known that the Proxy is materially misleading and omits material facts that are

necessary to render it not misleading. The Director Defendants undoubtedly reviewed and relied upon most if not all of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the Proxy states that Guggenheim reviewed its financial analysis with the Board and that the Board considered the financial analysis provided by Guggenheim in its fairness opinion. The Director Defendants knew or should have known that the material information identified above has been omitted from the Proxy, rendering the sections of the Proxy identified above to be materially incomplete and misleading.

102. The omissions and false and misleading statements in the Proxy are material in that a reasonable stockholder would consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor would view a full and accurate disclosure as significantly altering the "total mix" of information made available in the Proxy and in other information reasonably available to stockholders.

103. By reason of the foregoing, Defendants have violated Section 14(a) of the Exchange Act and Rule 14a-9(a) promulgated thereunder.

104. Unless Defendants are enjoined by the Court, they will continue to breach their duties owed to Plaintiff and the members of the Class, to the irreparable harm of the members of the Class.

105. Because of the false and misleading statements in the Proxy, Plaintiff and the Class are threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure the Director Defendants' misconduct is corrected.

COUNT II

On Behalf of Plaintiff and the Class Against the Director Defendants for Violations of Section 20(a) of the Securities Exchange Act of 1934

106. Plaintiff incorporates each and every allegation set forth above as if fully set forth

herein.

107. The Director Defendants acted as controlling persons of Cabela's within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Cabela's, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading.

108. Each of the Director Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

109. In particular, each of the Director Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The Proxy at issue contains the unanimous recommendation of each of the Director Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

110. In addition, as the Proxy sets forth at length, and as described herein, the Director Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy purports to describe the various issues and information that the Director Defendants reviewed and considered. The Director Defendants participated in drafting and/or gave their input on the content of those descriptions.

111. By virtue of the foregoing, the Director Defendants have violated Section 20(a) of

the Exchange Act.

112. As set forth above, the Director Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Director Defendants' conduct, Plaintiff will be irreparably harmed.

113. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict. Because of the false and misleading statements in the Proxy, Plaintiff and the Class are threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure the Director Defendants' misconduct is corrected.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Ordering that this action may be maintained as a class action and certifying Plaintiff as the Class representatives and Plaintiff's counsel as Class counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the Proxy;

C. In the event Defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the Class;

D. Directing Defendants to account to Plaintiff and the Class for damages sustained because of the wrongs complained of herein;

E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 14, 2017

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