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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff(s),)	No. C08-5023 MMC (BZ)
)	
v.)	
)	ORDER DENYING CLAIMANT'S
)	MOTION FOR PROTECTIVE ORDER
APPROXIMATELY \$57,378 IN)	AND GRANTING GOVERNMENT'S
UNITED STATES CURRENCY,)	MOTION TO COMPEL
)	
Defendant(s).)	
)	

Claimant Kap Suk Sims' son was arrested in the Northern District of California with \$57,378. In a plea agreement with the Government, he admitted that he intended to use the \$57,378 to purchase marijuana and agreed to forfeit the money. Sims, who resides and works in the Northern District of Georgia, filed a claim of ownership in this Court to her son's forfeited money.¹ As part of this civil proceeding, the Government noticed Sims' deposition to take place in San Francisco, California. Sims seeks a protective order so that

¹ In a third-party claim of ownership proceeding, the burden is on Sims to establish by a preponderance of the evidence that she has a legitimate ownership interest in the \$57,378. 21 U.S.C. § 853(n)(6).

1 she could either be deposed by telephone, by video conference,
2 or in Atlanta, Georgia. Docket No. 34. The Government
3 opposes these requests and has moved to compel Sims'
4 appearance in San Francisco. Docket No. 38. For the reasons
5 explained below, I order Sims to travel to San Francisco for
6 her deposition.

7 Subject to a protective order, party depositions may be
8 noticed wherever the deposing party designates. U.S. v.
9 \$160,066.98, 202 F.R.D. 624, 627 (S.D. Cal. 2001). Usually, a
10 party's deposition is taken in the district the deponent works
11 or resides. Id. at 626 (citations omitted). I may grant a
12 protective order if there is good cause to limit discovery and
13 protect a deponent from "annoyance, embarrassment, oppression,
14 or undue burden or expense." Fed. R. Civ. P. 26(c)(1). The
15 issue is therefore whether it is unduly burdensome or
16 expensive for her to travel to San Francisco. See U.S. v.
17 \$160,066.98, 202 F.R.D. at 626. In evaluating this, I am free
18 to consider the convenience and relative hardships of both
19 parties. Id. See also Hyde & Drath v. Baker, 24 F.3d 1162,
20 1166 (9th Cir. 1994) (courts have "wide discretion to
21 establish" the deposition's location).

22 Initially, I asked the Government to explain in its
23 opposition why it could not depose Sims (1) by telephone or
24 video conference, or (2) in Atlanta with the assistance of a
25 Government attorney from the Northern District of Georgia.
26 The Government asserts that each of the above options are not
27 suitable for this deposition. Because of the circumstances in
28 this case, I agree and find that Sims must be deposed in

1 person.

2 A deposition by telephone or video conference would be
3 prejudicial to the Government's case. This is primarily
4 because the Government will use Sims' deposition to examine
5 her credibility.² To do this, the Government needs an in-
6 person opportunity to observe Sims' demeanor, ask follow-up
7 questions, and confront Sims with prior inconsistent
8 statements she has made. See U.S. v. \$160,066.98, 202 F.R.D.
9 at 630 (counsel would be "disadvantaged without the
10 opportunity to see the witness and to evaluate the witness'
11 demeanor, facial reactions and expressions") (internal
12 citations and quotations omitted). The Government also
13 requires Sims to examine multiple exhibits, including tax
14 returns and bank statements, during the deposition. Managing
15 this process is a particular concern because Sims is
16 representing herself and her English is limited. Due to these
17 reasons, an in-person deposition is necessary because a
18 deposition by telephone would be meaningless and a deposition
19 by video conference would be impracticable.

20 It would also not be efficient to have a Government
21 attorney from the Northern District of Georgia participate in
22 the deposition of Sims in Atlanta. This attorney would have

23
24 ² Sims' credibility is an issue in this case. In her
25 son's criminal proceedings, he admitted under oath that the
26 \$57,378 was to be used for purchasing drugs. But in this
27 ancillary forfeiture proceeding, Sims' son has recanted his
28 admission and testified at his deposition that the money was
his mother's. Both Sims and her son now claim that he
traveled to California only to buy restaurant equipment on
Craigslis for Sim's business. In September 2010, Sims' son
was arrested in another matter. Similar to this case, he
claimed that the \$15,000 he had in his possession was given to
him by his mother so he could purchase a car.

1 to invest too much time to learn about the factual details of
2 this case in order to conduct a meaningful deposition of Sims
3 or assist in a video conference deposition. Rather than do
4 this, it would be more efficient for the Government's attorney
5 from the Northern District of California to travel to Atlanta
6 and conduct the deposition. The issue therefore becomes
7 whether it is appropriate to require Sims to travel to San
8 Francisco or to have a Government attorney travel to Atlanta.

9 In evaluating the factors for both sides, I find that it
10 is more just to have Sims travel to San Francisco for the
11 deposition. This is not the usual proceeding where it is
12 customary for individuals to be deposed in the district of
13 their residence or work. Rather, Sims has purposefully
14 submitted to this Court's jurisdiction by filing her third-
15 party ownership claim to money that has already been
16 forfeited. In similar third-party forfeiture challenges,
17 other courts have required claimants to travel outside their
18 home forum for depositions due to the nature of the claim.
19 See U.S. v. \$160,066.98, 202 F.R.D. at 627-29 (holding that
20 the claimants inconvenience and expense associated with the
21 prosecution of their claim in the Southern District of
22 California were foreseeable and are not undue in comparison
23 with the Government's burdens); U.S. v. Real Property Located
24 at Layton, 2010 WL 3271959 (D. Utah 2010). Sims does not
25 provide any case authority that requires the Government to
26 incur expenses in traveling to depose out-of-state claimants
27 in civil forfeiture actions like this. Instead, she argues
28 the above cases are not analogous because unlike those

1 claimants she did not earn money or conduct any business in
2 the Northern District of California. I am not persuaded by
3 this. Sims claims that she gave \$57,378 to her son for him to
4 travel to San Francisco and purchase restaurant equipment.
5 Assuming this is true, Sims intended to conduct business in
6 the Northern District of California. Moreover, it is Sims'
7 decision to continue the prosecution of her claim of ownership
8 in this proceeding.

9 It is also not unduly burdensome for Sims to travel to
10 San Francisco and pay for her expenses. Sims traveled to San
11 Francisco on March 19, 2010 for a status conference in this
12 matter. She did not indicate that she had any travel
13 anxieties at this time.³ Sims also does not declare that she
14 is need of financial assistance or is unable to afford the
15 expenses associated with this deposition. Since she claims
16 she had \$57,378 available to invest in her business, she
17 appears to have disposable income. See U.S. v. Real Property
18 Located at Layton, 2010 WL 3271959 at *3 (finding that the
19 Government in a civil forfeiture proceeding should not pay
20 claimant's deposition travel costs because he has failed to
21 demonstrate undue burden or expense). Moreover, as explained
22 in the previous paragraph, I find that the Government should
23 not be forced to incur significant expenses to depose a third-
24 party claimant that has not persuaded me she has a meritorious
25 claim in a civil forfeiture proceeding.

26 For the foregoing reasons, **IT IS ORDERED** that Sims'

27 ³ Besides a self-serving declaration, Sims has not
28 provided any evidence corroborating her anxieties about
traveling to California.

1 motion for a protective order is **DENIED**, and the Government's
2 motion to compel is **GRANTED**. Sims must travel to San
3 Francisco for her deposition at her own expense. **IT IS**
4 **FURTHER ORDERED** that the parties shall meet and confer by
5 **November 2, 2010** to determine a suitable date for Sims'
6 deposition.

7 Dated: October 27, 2010



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Bernard Zimmerman
United States Magistrate Judge

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