

1 under Rule 26(c)(1)(B) designating a different place. This is because a subpoena compelling the
2 deponent's attendance at the deposition is not required when the deponent is a party.

3 If the deponent is not a party and does not consent to attend the deposition, the examining
4 party may not set the place of the deposition "more than 100 miles from where that person
5 resides, is employed, or regularly transacts business in person." FED. R. CIV. P. 45(c)(3)(A)(ii).
6 This is because a nonparty deponent's attendance at a deposition must be compelled by subpoena
7 under Rule 45, and any subpoena that requires a person subject to it to travel more than 100 miles
8 from the place of his residence or employment, or the place where he normally conducts business,
9 must be quashed or modified. *Id.*

10 Here, the question presented is whether Weingand may depose Holmes in San Francisco
11 even though Holmes resides in Ohio. The resolution turns on whether or not Holmes is a party to
12 this action. The definition of "party" includes a party's officers, directors, and managing agents.
13 *See* 8A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §
14 2107 (3d ed. Supp. 2012) ("Though Rule 30 does not say so expressly, a subpoena is not
15 necessary if the person to be examined is a party or an officer, director, or managing agent of a
16 party."). Weingand states conclusorily that Holmes has the authority to set attendance, discipline,
17 and other policies for Harland employees and therefore is a managing agent of Harland. Harland
18 argues that Holmes is not a managing agent because he has "limited managerial responsibilities"
19 over six Harland employees and does not set company policies or speak for Harland as a
20 corporation.

21 The court finds that because Weingand has not shown that Holmes has authority to act on
22 behalf of Harland or to answer for Harland, Holmes is not a party to this action within the
23 meaning of Rule 30. Accordingly, Holmes must be subpoenaed for deposition under Federal
24 Rule of Civil Procedure 45 at a location within 100 miles of his residence. Alternatively, his
25 deposition may be conducted via telephone or videoconference.

26 IT IS SO ORDERED.

27 Date: July 27, 2012



Nathanael M. Cousins
United States Magistrate Judge