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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANTON EWING,  Plaintiff,  v. INTEGRITY CAPITAL SOLUTIONS, INC., HARVEY SCHOLL, AND MICHELLE SHARPE,  Defendants.
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Case No.: 16-cv-1469-JLS-MDD

**ORDER ON PLAINTIFF'S  
MOTION TO COMPEL THE  
DEPOSITION OF DEFENDANT  
MICHELLE SHARPE**

**[ECF NO. 47]**

**BACKGROUND**

Before the Court is Plaintiff's motion to compel the deposition of Defendant Michelle Sharpe in San Diego rather than in Florida, where she lives and conducts business. (ECF No. 47). The motion was filed on July 2, 2018. Defendant responded in opposition on July 19, 2018. (ECF No. 51). Plaintiff replied on August 5, 2018. (ECF No. 52).

According to Plaintiff, who is representing himself, after being unable to make contact with counsel for Defendant Sharpe to discuss a deposition date, Plaintiff noticed Sharpe's deposition for June 1, 2018, in San Diego. (ECF

1 No. 47 at 3-4).<sup>1</sup> The notice of deposition was served on April 25, 2018. (ECF  
2 No. 47 at 3; ECF No. 47-1). Defendant did not appear and did not move the  
3 Court for a protective order. (ECF No. 47 at 4). The parties met and  
4 conferred telephonically on June 4, 2018. (*Id.* at 6, ECF No. 51 at 5). The  
5 parties agree that at that time, counsel for Defendant informed Plaintiff that  
6 the law is well-settled that ordinarily, an individual defendant is to be  
7 deposed where she works and lives, citing *Grey v. Continental Marketing*  
8 *Associates, Inc.*, 315 F. Supp. 826, 832 (N.D. Ga. 1970). At that, the parties  
9 reached impasse.

### 10 LEGAL STANDARD

11 Rule 30(a)(1), Fed. R. Civ. P., provides that a party may depose any  
12 person, including a party. Reasonable written notice of the deposition must  
13 be provided to all other parties. Rule 30(b)(1). If a party wishes to obtain  
14 documents from the party-deponent at the deposition, the notice may be  
15 accompanied by a request under Rule 34. Attendance at a deposition may be  
16 compelled by subpoena under Rule 45.

17 Rule 45 provides limitations regarding the place that a deposition  
18 pursuant to a subpoena may proceed. Specifically, deposition by subpoena of  
19 a person may command the person's appearance "within 100 miles of where  
20 the person resides, is employed, or regularly transacts business in person."  
21 Rule 45(c)(1)(A).

22 Deposition of a party, however, may proceed by notice; a subpoena is  
23 not required. *Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146,  
24 1158-59 (9th Cir. 2010); *Nationstar Mortgage, LLC v. Flamingo Trails No. 7*

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27 <sup>1</sup> The Court will use page numbers as assigned by CM/ECF rather than original  
pagination throughout.

1 *Landscape Maintenance Assoc.*, 316 F.R.D. 327, 332-33 (D. Nev. 2016). A  
2 deposition of a party proceeding by notice is not governed by Rule 45.

3 Rule 26(c), Fed. R. Civ. P., provides that a person or party from whom  
4 discovery is sought may move for a protective order in the court where the  
5 action is pending or, if related to a deposition, in the court in the district  
6 where the deposition will be taken.

### 7 DISCUSSION

8 The Federal Rules do not address the question at issue here: Is a  
9 plaintiff limited regarding where he or she may choose to depose another  
10 party? Having not addressed the issue, the Federal Rules do not prevent the  
11 situation we have here where Plaintiff has noticed the deposition of  
12 Defendant in San Diego, where the case is pending, rather than in her home  
13 state. *See Grey v. Continental Marketing Associates*, 315 F. Supp. at 832.

14 *Grey* exemplifies the manner in which courts have addressed the issue  
15 of the location of a deposition for a party-defendant. In response to a motion  
16 for a protective order under Rule 26(c), absent unusual circumstances, courts  
17 generally order the deposition to occur at the place where the defendant  
18 resides or does business to avoid undue burden and expense. The opinion in  
19 *Grey* came about by means of an appropriate motion from the aggrieved  
20 defendants. *Id.*

21 Defendant has the law right. Had Defendant brought a motion for  
22 protective order, the Court would have granted it unless Plaintiff could  
23 demonstrate unusual circumstances. But, Defendant did not do so and  
24 instead forced Plaintiff to bring this motion to compel. Having done nothing  
25 when the rules required action, Defendant has waived her right to challenge  
26 the place designated for deposition.

27 Defendant must appear for deposition in San Diego at a time, date and

1 place as agreed by the parties within two weeks of this Order, or at another  
2 agreed-upon date. Normally, the Court would impose sanctions requiring  
3 Defendant to pay Plaintiff's reasonable costs and fees for having to bring this  
4 motion. But, as Plaintiff is acting pro se, sanctions will not issue.

5 Although the Court typically, and for good reason, does not rule on  
6 discovery disputes that have not yet occurred, Plaintiff provided an  
7 exhaustive document request with his notice of deposition, some, but not all,  
8 of which appear facially overbroad and irrelevant. (ECF No. 47-1 at 5-6). In  
9 the usual case, a plaintiff serves requests for production of documents upon a  
10 defendant and waits to receive them before taking the defendant's deposition.  
11 There is no prohibition on Plaintiff acting as he has but the Court is unlikely  
12 to order Ms. Sharpe to be re-deposed following document production. This  
13 also was a matter that the parties should have met and conferred about after  
14 the notice of deposition was served, well before June 4, 2018. Defendant has  
15 been on notice that Plaintiff wants these documents since April 25, 2018.  
16 Defendant is advised to produce promptly documents as to which there is no  
17 objection. Plaintiff may wish to work with Defendant and delay the  
18 deposition until he receives sufficient documents. Any dispute regarding the  
19 production of documents must be brought to the Court, by Joint Motion  
20 pursuant to the Court's Civil Chambers Rules, no later than 30 days from the  
21 date of this Order.

### 22 CONCLUSION

23 Plaintiff's motion to compel is **GRANTED**. Defendant Sharpe must  
24 appear for deposition at a date, time and place to be agreed upon by the  
25 parties no later than two weeks from the date of this Order, absent a contrary

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1 agreement of the parties. Any dispute regarding the document production  
2 requested with the deposition notice, must be filed within 30 days in  
3 accordance with this Court's Civil Chambers Rules.

4 **SO ORDERED:**

5 Dated: August 6, 2018



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7 Hon. Mitchell D. Dembin  
United States Magistrate Judge

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