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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 NATURAL THOUGHTS, INC.,
12 Plaintiff,
13 v.
14 PERFORMANCE TOUCH, LLC; THE
15 HYGENIC CORPORATION;
16 PERFORMANCE HEALTH HOLDINGS
17 CORPORATION; and DOES 2-10,
18 Defendants.

Case No.: 17cv2148-BEN-LL

**ORDER DENYING MOTION TO
COMPEL CONTINUED
DEPOSITIONS WITHOUT
PREJUDICE**

[ECF No. 65]

19 On April 19, 2019, Plaintiff Natural Thoughts, Inc. filed a “Motion to Compel
20 Continued Depositions” [ECF No. 65 (“Mot.”)]. Plaintiff seeks to re-open and continue the
21 March 14 and March 15, 2019 depositions of Defendants’ former employees and third
22 party witnesses, Amy Money Penny and Timothy Dunphy. See Mot. Specifically, Plaintiff
23 requests that the Court issue an Order requiring that the depositions of Ms. Money Penny
24 and Mr. Dunphy be “completed.” Id. at 2.

25 Rule 45(d)(2)(B)(i) requires motions to compel compliance with Rule 45 subpoenas
26 be brought in the court where compliance is required. Here, Ms. Money Penny was
27 subpoenaed on February 27, 2019. Mot., Ex. 3. Mr. Dunphy was subpoenaed on December
28 21, 2018. Id., Ex. 1. Both subpoenas identify the location of compliance to be Cleveland,

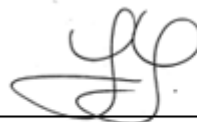
1 Ohio located in the Northern District of Ohio. Id., Exs. 1 and 2. Under Rule 45(d)(3), “the
2 proper motion in objecting to a non-party deposition is a motion to quash, filed by the non-
3 party, in “the court for the district where compliance is required[.]” See Int'l Game Tech.
4 v. Ill. Nat'l Ins. Co., 2017 U.S. Dist. LEXIS 189753, at *21 (D. Nev. Nov. 16, 2017)
5 (quoting Fed. R. Civ. P. 45(d)(3)). The court where compliance is required may then
6 transfer a motion to quash to the issuing court if the person(s) subject to the subpoena
7 consent or if the court finds exceptional circumstances. Fed. R. Civ. P. 45(f).

8 Here, it is not immediately clear how the Court has jurisdiction to compel Ms.
9 Moneypenney and Mr. Dunphy’s attendance at a second deposition in Ohio. Separately,
10 Defendant has not stated why it has standing to object to Ms. Moneypenney and Mr.
11 Dunphy’s continued depositions—given that both these witnesses are non-parties. There is
12 no indication Ms. Moneypenney and Mr. Dunphy have consented to the Court’s jurisdiction.
13 There is also no indication a judge in the Northern District of Ohio would transfer this
14 dispute to this Court under Rule 45(f). When considering transfer, a court’s “prime concern
15 should be avoiding burdens on local nonparties subject to subpoenas, and it should not be
16 assumed that the issuing court is in a superior position to resolve subpoena-related
17 motions.” Fed. R. Civ. P. 45 (Advisory Committee Notes – 2013 Amendment).

18 For the above reasons, Plaintiff’s Motion to Compel is **DENIED WITHOUT**
19 **PREJUDICE.**

20 **IT IS SO ORDERED.**

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22 Dated: May 8, 2019



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25 Honorable Linda Lopez
26 United States Magistrate Judge
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