

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 H-E-B, LP,

12 Plaintiff,

13 v.

14 OLYMPIA TOOLS INTERNATIONAL,  
15 INC.,

16 Defendant.

Case No.: 21-CV-832-GPC(WVG)

**ORDER DENYING MOTION TO  
COMPEL COMPLIANCE WITH  
THIRD PARTY SUBPOENA**

**[Doc. No. 2.]**

17  
18 Pending before the Court is H-E-B, LP's motion to compel compliance with a third-  
19 party subpoena issued to Olympia Tools International, Inc. The Court finds the subpoena  
20 is facially invalid because the designated place for production of documents is beyond the  
21 100-mile limit set forth in Federal Rule of Civil Procedure 45(c)(2)(A). Accordingly, the  
22 motion to compel is DENIED.

23 Rule 45 was substantially amended in 2013, and subdivision (c) now specifies the  
24 place of compliance for a subpoena commanding production of documents must be within  
25 100 miles of where the person resides, is employed, or regularly transacts business in  
26 person. Fed. R. Civ. P. 45(c)(2)(A). This requirement "makes clear that the place of  
27 compliance is tethered to the location of the subpoenaed person." *Agincourt Gaming, LLC*  
28

1 v. *Zynga, Inc.*, No. 14-CV-708-RFB-NJK, 2014 U.S. Dist. LEXIS 114348, at \*9 (D. Nev.  
2 Aug. 15, 2014).

3 Here, although H-E-B's chosen place of compliance—Perkins Coie's San Diego  
4 office—is within this District, this location is outside the 100-mile limit Rule 45 specifies.  
5 Olympia's official corporate address is located at 929 N. Grand Avenue, Covina, CA  
6 91724. See <https://olympiatools.com/pages/contact> (last visited May 18, 2021). Perkins  
7 Coie's San Diego office is located at 11452 El Camino Real, Suite 300, San Diego, CA  
8 92130. See <https://www.perkinscoie.com/en/offices/san-diego.html> (last visited May 18,  
9 2021). As demonstrated by Appendix A of this Order, three commonly-used online map  
10 services—Google Maps, Microsoft Bing Maps, and MapQuest—confirm that these two  
11 locations are at best 102 miles apart. However, Rule 45's plain language does not permit a  
12 subpoena for production of documents beyond 100 miles of Olympia's headquarters.  
13 Accordingly, the subpoena is facially invalid. *Accord Europlay Capital Advisors, LLC v.*  
14 *Does*, 323 F.R.D. 628, 629 (C.D. Cal. 2018); *AngioScore, Inc. v. TriReme Med., Inc.*, No.  
15 12CV3393, 2014 U.S. Dist. LEXIS 165227, at \*4 n.1 (N.D. Cal. Nov. 25, 2014) (holding  
16 that a Rule 45 subpoena specifying the place of compliance as more than 100 miles from  
17 nonparty's headquarters was “invalid on its face”); *Dhillon v. Doe*, No. C-13-1465-SI, 2013  
18 U.S. Dist. LEXIS 102270, at \*1-3 (N.D. Cal. July 21, 2013); see also *Nieman v. LinkedIn*  
19 *Corp.*, No. CV-12-80258-PSG, 2013 U.S. Dist. LEXIS 25645, at \*6 (N.D. Cal. Feb. 25,  
20 2013).<sup>1</sup>

21 The Court is aware that other district courts in the Ninth Circuit have chosen to  
22 entertain motions despite Rule 45's 100-mile limit for production of documents. See  
23 generally *Cartessa Aesthetics LLC v. Aesthetics Biomedical Inc.*, No. CV-19-5827-PHX-

---

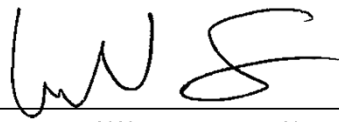
24  
25  
26 <sup>1</sup> H-E-B easily could have avoided this result by simply designating its counsel's Los  
27 Angeles office—which accordingly to Google Maps is 50 or 52 miles from Olympia's  
28 headquarters—as the place of compliance rather than its counsel's San Diego office.

1 DWL, 2020 U.S. Dist. LEXIS 182418, at \*3 (D. Ariz. Oct. 1, 2020) (citing cases).<sup>2</sup>  
2 However, this Court respectfully disagrees. Given that the plain language of Rule  
3 45(c)(2)(A) provides that a subpoena “may” require production of documents “within 100  
4 miles” of Olympia’s headquarters,<sup>3</sup> this necessarily means that a subpoena *may not* require  
5 production at a place outside the 100-mile mark. The language of the Rule speaks for itself,  
6 it is not ambiguous, and the only way to “harmonize” Rule 45(c)(2)(A)’s 100-mile limit  
7 with Rule 45(d)(2)(A)’s lack of geographical limit as *Cartessa* attempted is to completely  
8 disregard Rule 45(c)(2)(A). Had the rule’s drafters intended to allow production outside of  
9 the 100-mile limit if the third party did not have to appear in person at the place of  
10 production, they would have carved out such an exception. Thus, absent controlling Ninth  
11 Circuit Court of Appeals authority holding otherwise on this matter, the Court concurs with  
12 districts courts that have enforced the 100-mile limitation. *See, e.g., Europlay Capital*  
13 *Advisors, LLC v. Does*, 323 F.R.D. 628, 629 (C.D. Cal. 2018); *Dhillon v. Doe*, No. C-13-  
14 1465-SI, 2013 U.S. Dist. LEXIS 102270, at \*1-3 (N.D. Cal. July 21, 2013); *Nieman v.*  
15 *LinkedIn Corp.*, No. CV-12-80258-PSG, 2013 U.S. Dist. LEXIS 25645, at \*6 (N.D. Cal.  
16 Feb. 25, 2013).

17 Based on the foregoing, the motion to compel is DENIED, and the Clerk of Court is  
18 directed to terminate the case.

19 **IT IS SO ORDERED.**

20 DATED: May 28, 2021

21   
22 \_\_\_\_\_  
23 Hon. William V. Gallo  
United States Magistrate Judge

24 <sup>2</sup> The Court notes that the *Walker* case cited in *Cartessa* was decided well before the 2013  
25 amendment to Rule 45, which now “clearly requires” compliance with the 100-mile limit.  
26 *Europlay Capital Advisors, LLC v. Does*, 323 F.R.D. 628, 630 (C.D. Cal. 2018).

27 <sup>3</sup> For a business, the relevant location is its headquarters. *See Europlay Capital Advisors,*  
28 *LLC v. Does*, 323 F.R.D. 628, 629 (C.D. Cal. 2018). Both parties agree that Olympia’s  
headquarters is the proper starting point here.


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


# Appendix A


# Google Maps

The image shows the Google Maps navigation interface. At the top, there is a blue bar with navigation mode icons: a menu icon, a diamond with a right arrow (selected), a car, a bus, a person, a bicycle, and an airplane. Below this bar, the starting point is "452 El Camino Real #300, San Diego, CA" and the destination is "929 N Grand Ave, Covina, CA 91724". There is an "Add destination" button with a plus sign. At the bottom of the blue bar, it says "Leave now" with a dropdown arrow and "OPTIONS".

 Send directions to your phone

 **via I-5 N** **1 hr 38 min**  
Fastest route, the usual traffic 102 miles  
[DETAILS](#)

 **via I-5 N and CA-71 N** **1 hr 42 min**  
107 miles

 **via I-5 N and I-605 N** **1 hr 48 min**  
111 miles

# Microsoft Bing Maps

Microsoft Bing 2 929 N Grand Ave, Covina, CA

929 N Grand Ave, Covina, CA 91724 ...

Options

A 929 N Grand Ave, Covina, CA 91724  
B 11452 El Camino Real, San Diego, CA 92130

Add destination

Leave now

Go

Search along the route

Food Coffee Hotels Attractions More

Print selected route

102 miles  
Light traffic  
Via CA-57 S, I-5 S  
1:30  
hr min

More Details

114 miles  
Light traffic  
Via CA-71 S, I-15 S  
1:39  
hr min

More Details

# MapQuest

## MapQuest

Sign up | Log in



 929 N Grand Ave, Covina, C ... 

 11452 El Camino Real, SUIT ... 



 Add Stop  Route Settings

### Choose Your Route

Route #1

Route #2

Route #3

via I-5 S

2hr 2min 102mi 

Est. fuel cost: **\$10.80** 

Add your vehicle for more accurate fuel cost

Current Traffic: **Heavy**

[View Route Directions >](#)