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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCO RAMIREZ,

No. C 10-02889 WHA

Plaintiff,

v.

**ORDER PARTIALLY  
GRANTING MOTION TO  
COMPEL COMPLIANCE  
WITH SUBPOENA AND  
VACATING HEARING**

COUNTY OF MARIN, WILLIAM  
BURKE, MICHAEL DALY, and  
DOES 1 through 50, inclusive,

Defendants.

**INTRODUCTION**

In this employment-discrimination and retaliation action, plaintiff seeks to enforce a subpoena against a third-party witness and to recover the costs of bringing the instant motion. Dennis Finnegan, the third-party witness in question, responds that he has produced all documents responsive to the subpoena, and asks to recover the costs of opposing the instant motion. Both sides also seek sanctions. This order sets a deadline for Finnegan to certify completion of his document production and declines to award any fees, costs, or sanctions. Counsel, however, are warned that they must make concerted efforts to comply with their professional obligations and to avoid further communication failures.

**STATEMENT**

The parties agree to the following facts. Plaintiff Marco Ramirez filed this action in June 2010, alleging that his employment as a deputy probation officer was wrongfully terminated.

1 Dennis Finnegan is a private investigator who was hired by Ramirez’s employer to investigate  
2 Ramirez’s conduct before the termination. On December 8, 2010, Finnegan accepted service of a  
3 subpoena for documents. The compliance due date was January 7, 2011. In December, Finnegan  
4 turned over his records to Attorney Stephen Raab, who represents defendants in this action. No  
5 documents were timely produced and no objections were timely made in response to the  
6 subpoena. Neither Finnegan nor Attorney Raab has provided an explanation for their failure to  
7 timely respond to the subpoena. Ramirez filed the instant motion to compel on March 31, and  
8 documents responsive to the subpoena were produced one week later. Finnegan states that all  
9 documents responsive to the subpoena have been produced (Opp. 3), but Ramirez finds the  
10 document production inadequate as to both volume and scope (Reply Br. 4).

11 During the three months before Ramirez filed the instant motion, his counsel made  
12 multiple attempts to elicit a response to the subpoena. On February 9, after the subpoena  
13 compliance date had passed, Ramirez’s counsel contacted Finnegan, who stated that Attorney  
14 Raab was representing him for purposes of the subpoena and that he had turned his documents  
15 over to Attorney Raab. On February 9, February 10, and February 24, Ramirez’s counsel sent  
16 follow-up letters to Finnegan, with copies to Attorney Raab. Ramirez’s counsel never contacted  
17 Attorney Raab directly regarding the subpoena, and they did not mention the subpoena in their  
18 other correspondence with Attorney Raab regarding this action. Ramirez’s counsel emphasize  
19 that they never received any representation letter or notice of representation from Attorney Raab  
20 stating that he represented Finnegan. Neither Finnegan nor his counsel has met and conferred  
21 with Ramirez or his counsel regarding the subpoena.

22 Ramirez seeks an order compelling Finnegan to produce the subpoenaed documents,  
23 without objections. He also requests \$2,160.00 in costs and attorney’s fees incurred bringing the  
24 instant motion, plus another \$1,402.50 “for attorney’s fees of the ethics attorney that Plaintiff was  
25 compelled to retain to respond to” the ethical allegations in Finnegan’s opposition brief  
26 (Reply Br. 4). Ramirez also suggests that the failure of Finnegan and his counsel to timely  
27 comply with the subpoena is grounds to hold them in contempt of court.  
28

1 Finnegan opposes the motion as moot regarding document production and as improper  
2 regarding costs and fees. Additionally, Finnegan seeks to recover the attorney's fees and costs *he*  
3 incurred in *opposing* the motion. Finnegan also takes the position that Ramirez's counsel should  
4 be sanctioned for the ethical breach of continuing to contact Finnegan personally after Finnegan  
5 informed them he was represented by counsel.

6 **ANALYSIS**

7 The briefs submitted on this motion raise three core issues. *First*, Ramirez seeks an order  
8 compelling Finnegan to produce the documents that were requested by the December 8 subpoena.  
9 Finnegan claims that he has produced all responsive documents, but Ramirez is skeptical. On the  
10 current record, this order will not decide whether to bless Finnegan's document production as  
11 adequate. Instead, Finnegan shall be required to certify under oath without equivocation that his  
12 document production in response to the subpoena is complete by **APRIL 29, 2011**. If necessary,  
13 Finnegan may supplement his document production before so certifying.

14 *Second*, both sides seek to recover the fees and costs they incurred engaging in the instant  
15 motion practice. This order finds that these expenditures could have been avoided by better  
16 communication and that both sides are at fault for the communication failure. Accordingly, each  
17 side shall bear its own costs and fees related to the instant motion.

18 *Third*, both sides invite sanctions to be visited upon their opponents. This order declines  
19 the invitation. Harassing a represented party and wilfully ignoring a subpoena both are serious  
20 lapses. The current record, however, does not support a finding that the conduct on either side  
21 rose to a level that would warrant sanctions. Instead, a mutual communication failure and  
22 perhaps sloppiness seem to have been at play. Counsel are warned that going forward they must  
23 make concerted efforts to communicate properly and to comply with all professional obligations.

24 **CONCLUSION**

25 Plaintiff's motion to compel Dennis Finnegan to comply with the December 8 subpoena is  
26 **GRANTED IN PART AND DENIED IN PART** as follows. By **APRIL 29, 2011**, Dennis Finnegan shall  
27 certify under oath without equivocation that his document production in response to the subpoena  
28 is complete. If necessary, Finnegan may supplement his document production before so

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certifying. Both sides' requests to recover attorney's fees and costs related to the instant motion are **DENIED**. No sanctions will be imposed at this time, but counsel are warned to be mindful of their professional obligations and to be sensible about communicating with one another in the future. The hearing set for April 28, 2011, is **VACATED**.

**IT IS SO ORDERED.**

Dated: April 20, 2011.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE