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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 GEORGE DEMETRIUS KARALIS, M.D.,)

9 Plaintiff,)

10 vs.)

11 THE GUN VAULT, INC. and KELLY D. CARN,)

12 Defendants.)
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Case No. 2:12-cv-00694-APG-GWF

ORDER

14 This matter is before the Court on Defendants' Renewed Motion to Compel Compliance
15 with Subpoena (#80), filed on May 29, 2014. Third party Las Vegas Metropolitan Police
16 Department (LVMPD) filed an Opposition to Defendants' Renewed Motion (#81) on June 11,
17 2014. The Court conducted a hearing in this matter on July 2, 2014. Plaintiff and counsel for the
18 Defendants appeared telephonically. Counsel for LVMPD did not appear. Following the July 2nd
19 hearing, the Court determined that LVMPD's counsel was not notified of the hearing date. The
20 Court therefore scheduled a further telephonic hearing on July 7, 2014 at which Plaintiff,
21 Defendants' counsel and LVMPD's counsel appeared telephonically.

22 **BACKGROUND AND DISCUSSION**

23 Plaintiff George Karalis, M.D. alleges that he entered into contracts with Defendants The
24 Gun Vault, Inc. and Kelly D. Carn in 2005 and 2009 to purchase various firearms. Plaintiff alleges
25 that he paid Defendants \$99,180.00, but did not receive the firearms he purchased. Plaintiff also
26 alleges that he placed four firearms with Defendant for safekeeping and has not received either the
27 return of the firearms or an accounting as to what became of them. Plaintiff subsequently served
28 requests for production of documents on Defendants for documents relating to the firearms

1 transactions alleged in his complaint. Defendants responded that they were unable to produce
2 responsive documents because their business records were seized by the Las Vegas Metropolitan
3 Police Department (LVMPD) in regard to a criminal investigation.

4 Defendant Kelly Carn has, in fact, been indicted in the United States District Court for the
5 District of Nevada for the unlawful receipt or possession of firearms, including machine guns, a
6 short-barrel rifle, a machine gun trigger pack, and a suppressor in violation of 26 U.S.C. §§ 5812,
7 5861(b) and 5871. Defendant is also charged with making a false entry with respect to certain
8 firearms in violation of 26 U.S.C. §§ 5848(b), 5861(c) and 5871. *See United States v. Kelly Carn*,
9 Case No. 2:13-cr-00346-APG-GWF, *Indictment (#1)*, filed September 4, 2013. An indictment was
10 also filed against Defendant Kelly Carn in the District Court, Clark County, Nevada on October 5,
11 2012 for the crime of theft arising out of his alleged sales of firearms and other devices which he
12 did not have the legal authority to sell. *See State of Nevada v. Kelly Carn*, Case. No. C-12-284671-
13 1, *Indictment*. Counts 9-16 of the state court indictment involve Defendant Carn's purported sales
14 of firearms to the plaintiff in this action, George Karalis. Both criminal cases are currently pending
15 against Defendant Carn. Trial in the state court case is set for September 22, 2014. Trial in the
16 federal case is scheduled for October 20, 2014.

17 Defendants assert in their renewed motion to compel that at some unspecified date
18 Defendant Kelly Carn entrusted possession of his business and personal records to his son Kelly
19 Carn, Jr. ("Carn, Jr."). Carn, Jr., in turn, stored Defendant Carn's records at 24/7 Private Vaults
20 located 3110 E. Sunset Road, Suite H, Las Vegas, Nevada. Defendants assert that on another
21 unspecified date a burglary occurred at 24/7 Private Vaults. Las Vegas Metropolitan Police
22 department officers went to 24/7 Private Vaults to investigate the burglary and while there observed
23 items related to Defendants Carn and The Gun Vault which the police then seized. The seized
24 items allegedly include numerous computer hard drives and flash drives that contain the business
25 records of Defendants Carn and The Gun Vault. The LVMPD acknowledges that during the course
26 of its investigation, it seized pertinent evidence relating to Defendant Carn's alleged criminal
27 activity.

28 . . .

1 On April 3, 2013, Defendants served a subpoena duces tecum issued in this action on the
2 LVMPD for the production of the hard drives and flash drives belonging to Defendants The Gun
3 Vault, Inc. and Kelly Carn. *See Defendants' Renewed Motion to Compel Compliance with*
4 *Subpoena (#80), Exhibit A.* The subpoena also requested production of all documents and
5 electronically stored information relating to or referring to search warrants served by LVMPD and
6 the Bureau of Alcohol Tobacco, Firearms and Explosives (BATFE). LVMPD objected to the
7 subpoena on the grounds that the requested records are evidence in the pending criminal
8 investigations against Defendants and that the subpoena also seek confidential and privileged
9 criminal investigative materials. On June 6, 2013, Defendants filed their first motion to compel
10 LVMPD's compliance with the subpoena. At that time, only the state criminal case was pending.
11 The Court inferred that the Nevada state court has a procedure in place similar to that under Rule
12 41(g) of the Federal Rules of Criminal Procedure whereby a person whose property is seized by law
13 enforcement officers during a criminal investigation may seek the return of the property. The Court
14 therefore denied Defendants' motion to compel compliance with the subpoena, without prejudice,
15 and recommended that they pursue return of their property in the Nevada district court where the
16 criminal prosecution was pending. Defendants represent that they did as directed, but that the
17 Nevada District Court declined to entertain their motion and directed them to seek relief in federal
18 court.

19 For purposes of this action, the Court is reasonably satisfied that Defendants cannot produce
20 electronically stored documents responsive to Plaintiff Karalis' requests for production of
21 documents because LVMPD seized the Defendants' computer hard drives and flash drives on
22 which the responsive documents are stored. At this point, LVMPD, and/or the state and federal
23 prosecutors with whom it is working, have been in possession of Defendants' computer hard drives
24 and flash drives for over a year and a half. While this Court is not familiar with the searches that
25 law enforcement agents have conducted of Defendants' computer records, both criminal cases are
26 scheduled for trial within the next few months. That suggests that the State of Nevada and the
27 United States have obtained the evidence needed to prosecute Defendant Carn in the criminal cases.
28 To the extent that LVMPD or the prosecutors need to retain Defendants' computer hard drives or

1 flash drives for evidentiary purposes, they can image the hard drives and flash drives, and either
2 return the original hard drives and flash drives to Defendants, or they can retain the originals and
3 provide the images thereof to Defendants.

4 The subpoena also requested all documents and electronically stored information relating to
5 or referring to search warrants obtained by the LVMPD and BATFE. The LVMPD objected to this
6 portion of the subpoena on privilege grounds. It is not necessary for the Court to reach the issue of
7 privilege, however, because Defendants have not made any showing that law enforcement
8 investigative materials are relevant in this civil action. There is also no basis for the Court in this
9 case to order the LVMPD to return other items to Defendants that are unrelated to the claims or
10 defenses in this action. Accordingly,

11 **IT IS HEREBY ORDERED** that Defendants' Renewed Motion to Compel Compliance
12 with Subpoena (#80) is **granted** as follows:

13 1. Nonparty Las Vegas Metropolitan Police Department (LVMPD) shall produce to
14 Defendants their original computer hard drives and flash drives seized from the 24/7 Private
15 Storage Vaults, or alternatively, shall produce identical images thereof to Defendants' counsel on or
16 before **July 25, 2014**.

17 2. The Clerk of Court shall serve a copy of this Order on counsel for the Las Vegas
18 Metropolitan Police Department, Nick D. Crosby, Esq., Marquis Aurbach Coffing, 10001 Park Run
19 Drive, Las Vegas, Nevada 89145.

20 3. Defendants' counsel shall also serve a copy of this Order upon the deputy or
21 assistant Clark County District Attorneys and United States Attorneys, handling the respective
22 criminal and federal prosecutions pending against Defendant Kelly Carn. Defendants' counsel
23 shall also file proof of service on the Clark County District Attorney and the United States
24 Attorney.

25 DATED this 7th day of July, 2014.

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28 GEORGE FOLEY, JR.
United States Magistrate Judge