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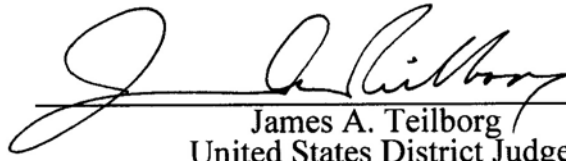
## ORDER

IT IS FURTHER ORDERED that the Court previously ordered that Plaintiff could subpoena certain records (Doc. #89); however, the U.S. Marshals elected to not serve the subpoena (Doc. #95). The Clerk of the Court shall resend the Original subpoena and U.S. Marshal form 285 (Doc. #95) to the U.S. Marshals, along with a copy of this Order, and the Marshals shall immediately serve the subpoena. The Marshals shall also serve a copy of this Order with the subpoena; the “return date” on the subpoena is extended from July 4, 2009 to 20 days after service.

1 IT IS FURTHER ORDERED that, while the Court will not reach the merits of the  
2 motion to compel because it is untimely, the Court notes that Defendants frequently object  
3 to production because the documents sought are not in their “custody and control.” Based  
4 on this objection, Defendants have waived the right to use these documents in support of any  
5 summary judgment motion, or at trial;<sup>1</sup> and Plaintiff is encouraged to move to strike any  
6 documents he sought through discovery which Defendants stated that they did not have.

7 IT IS FURTHER ORDERED that the dispositive motion deadline of August 27, 2009  
8 is confirmed.

9 DATED this 21<sup>st</sup> day of August, 2009.

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12 James A. Teilborg  
United States District Judge  
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21 <sup>1</sup> Generally, Rule 26(a) requires a party, “without awaiting a  
22 discovery request,” to provide other parties with: names,  
23 addresses, and telephone numbers of individuals likely to have  
24 discoverable information that the disclosing party may use to  
25 support her claim; copies or descriptions of documents,  
26 electronic information, or tangible objects that are in the  
27 disclosing party’s possession or control which that party may  
use to support her claims; and a computation of damages while  
making available for inspection the documents upon which such  
computation is based. Fed.R.Civ.P. 26(a)(1)(A)-(D).

28 *Doctor v. Nicholson*, 2008 WL 700169, \*4 n.3 (D. Ariz. 2008).