

1 IT IS FURTHER ORDERED that no later than August 17, 2009, counsel for Plaintiffs and
2 Defendant F.W. Spencer shall meet and confer *in person* regarding procedures for F.W. Spencer to
3 produce the responsive documents. If possible, the meet and confer should take place where the
4 documents are currently stored (other than any electronic documents), so that Plaintiffs' counsel can
5 see what is entailed to review and copy the documents. If that is not reasonably possible, then
6 counsel for Defendant F.W. Spencer shall bring to the meet and confer three boxes of the responsive
7 documents that fairly represent how the documents are currently stored. The court notes that with
8 regard to documents, what Rule 34 allows is a request for the producing party to produce original
9 documents and permit the requesting party or its representative to inspect and copy the documents.
10 *See* Fed.R.Civ.Pro. 34(a)(1). While the parties are free to agree to production of copies in lieu of
11 inspection and copying of originals, absent such an agreement (or order of the court) the producing
12 party is only required to let the requesting party inspect the originals and make any copies they wish
13 to make.

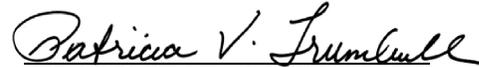
14 The court is not inclined to require Plaintiff to make arrangements for a bonded warehouse
15 for the production. Defendant has not explained why the documents cannot be made available where
16 they are currently located, or else brought to its counsel's office in batches (given that it is unlikely
17 that Plaintiffs' counsel will be able to review 400 boxes of documents in one day).

18 Nor is the court inclined to require Defendant F.W. Spencer to re-organize and label the
19 documents. Rule 34 allows a responding party to either "produce documents as they are kept in the
20 usual course of business" *or* "organize and label them to correspond to the categories in the request."
21 So long as Defendant makes the documents available as they are or were maintained in the usual
22 course of business, it need not organize and label them. However, if Plaintiffs discover the
23 documents are not kept in a reasonably business-like manner, they may bring that fact to the court's
24 attention (in a supplemental declaration), and the court will consider requiring Defendant to organize
25 and label the responsive documents.

26 IT IS FURTHER ORDERED that within two weeks of this order Defendant F.W. Spencer
27 shall produce all responsive electronic documents, or else as many responsive electronic documents
28 as it can reasonably locate within that time, along with a declaration explaining why it could not

1 complete production of electronic documents by that date and an estimate of when it can complete
2 the production of responsive electronic documents.

3 Dated: 8/4/09

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5 PATRICIA V. TRUMBULL
6 United States Magistrate Judge
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