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17 UNITED STATES DISTRICT COURT
 18 EASTERN DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,
 20 Plaintiff,
 21 v.
 22 JOHN DONNELLY SWEENEY and
 POINT BUCKLER CLUB, LLC
 23 Defendants.

2:17-cv-00112-KJM-KJN
**STIPULATION RE: DISCOVERY OF
 ELECTRONICALLY STORED
 INFORMATION AND DISCOVERY
 PROCEDURE;**
ORDER

1 Pursuant to the Parties' Joint Status Report and Discovery Plan, ECF No. 12, and Fed. R.
2 Civ. P. 24(b)(2)(E), and the Court's direction at the June 8, 2017 status conference, ECF No. 14,
3 the Parties submit the following stipulation and proposed Order regarding discovery of
4 electronically stored information and discovery procedure.

5 A. DISCOVERY OF ELECTRONICALLY STORED INFORMATION

6 1. Preservation Not Required for ESI That Is Not Reasonably Accessible.

7 a. Except as provided in subparagraph b. below, the Parties need not
8 preserve the following categories of electronically stored information for this litigation:

9 i. Data stored in a backup system for the purpose of system recovery
10 or information restoration, including but not limited to, disaster recovery backup tapes,
11 continuity of operations systems, and data or system mirrors or shadows, if such data are
12 routinely deleted or written over in accordance with an established routine system maintenance
13 practice;

14 ii. Instant messages, such as messages sent on AOL Instant
15 Messenger or Microsoft Communicator;

16 iii. Electronic mail sent to or from a personal digital assistant
17 ("PDA"), smartphone (e.g., BlackBerry, iPhone), or tablet (e.g., iPad) provided that a copy of
18 such email is routinely saved elsewhere;

19 iv. Other electronic data stored on a PDA, smartphone, or tablet such
20 as calendar or contract data or notes, provided that a copy of such information is routinely saved
21 elsewhere;

22 v. Logs of calls made from cellular phones;

23 vi. Deleted computer files, whether fragmented or whole;

24 vii. Data stored in random access memory ("RAM"), cache memory,
25 or in temporary or cache files, including internet history, web browser cache and cookie files,
26 wherever located;

27 viii. Data stored on photocopiers, scanners, and fax machines;

28 ix. Server, system, or network logs;

1 x. Electronic data temporarily stored by scientific equipment or
2 attached devices, provided that the data that is ordinarily preserved as part of a laboratory report
3 is, in fact, preserved in its ordinary location and form; and

4 b. Notwithstanding subparagraph a. above, if on the date of this Joint Status
5 Report and Discovery Plan any Party has a policy that results in the routine preservation of any
6 of the categories of information identified in subparagraph a., such Party shall continue to
7 preserve such information in accordance with its policy.

8 c. Nothing in this Stipulation and Order prevents any Party from asserting, in
9 accordance with the Federal Rules of Civil Procedure, that other categories of ESI are not
10 reasonably accessible within the meaning of Rule 26(b)(2)(B).

11 2. No Discovery.

12 Except as provided in paragraph A.3 above and Part B below, the Parties shall not
13 seek discovery of items that need not be preserved pursuant to paragraphs A.1. above or meta-
14 data.

15 3. No Offering into Evidence without Disclosure.

16 The Parties shall not offer into evidence for any purpose in this litigation any item
17 that need not be preserved pursuant to paragraphs A.1. above or meta-data, unless the Party has
18 disclosed the item pursuant to Rule 26 with adequate time to allow other Parties to conduct
19 discovery on the item.

20 B. DISCOVERY PROCEDURE

21 The following procedures apply to producing documents or ESI and controls over any
22 prior instructions provided in requests for the production of documents served prior to the date of
23 this Joint Status Report and Discovery Plan. Compliance with these procedures shall constitute
24 compliance with Federal Rule of Civil Procedure 34(b)(2)(e).

25 1. The Parties shall serve all discovery requests and responses on all counsel of
26 record at their email addresses as registered with ECF, with a courtesy copy to be served
27 concurrently via U.S. Mail. Further, the Parties propose that all discovery requests be
28 accompanied by a Word version.

1 2. Documents printed on paper that is 11 x 17 inches or smaller shall be scanned and
2 the files produced on CD-ROM, DVD-ROM, or external hard drive. Documents printed on
3 larger paper may, at the Producing Party’s discretion, be produced on paper. Documents
4 produced on paper must be produced as they are kept in the ordinary course of business or must
5 be organized and labeled to correspond to the categories in the request; alternatively, Documents
6 produced on paper must be organized by custodian and maintained in the order in which they
7 appear in the files of the custodian.

8 3. Paper documents that are produced on disc shall be scanned as 300 dpi PDF files,
9 in color if the original is in color.

10 4. Word, WordPerfect, and other word processing files will be converted to
11 searchable PDF files. If the document contains comments or tracked changes that are not part of
12 the ordinary text, the producing Party shall either generate a searchable PDF based on how the
13 document appears when first opened using view settings contained in the file or the producing
14 Party shall produce the native file. If a PDF is produced, the receiving Party shall have the
15 option, after reviewing the produced PDF, to request the native file.

16 5. Microsoft PowerPoint files will be produced in searchable PDFs. The receiving
17 Party may, after reviewing the produced PDFs, request the native files.

18 6. E-mail and attachments should be converted to searchable PDFs. E-mail
19 attachments shall be processed as though they were separate documents.

20 7. If the production includes Microsoft Excel files and other spreadsheets, the
21 producing Party shall either generate searchable PDFs or the native files. If a PDF is produced,
22 the receiving Party may, after reviewing the spreadsheets, request the native files.

23 8. Digital photographs will be produced as full color image files at their original
24 resolution or as PDFs. The receiving Party may, after reviewing the photographs, request the
25 native files along with any associated locational information (such as Global Positioning System
26 (“GPS”) data).

1 9. Before any Party produces any other kinds of electronic data, including data from
2 databases, CAD drawings, GIS data, videos, etc., the Parties will meet and confer to determine a
3 reasonably useable form for the production.

4 10. Except as stated above, a Party need not produce the same ESI in more than one
5 form.

6 11. "Duplicate," when used to describe either an electronic or hard copy document,
7 means that the document does not show at least one facial change, such as the inclusion of
8 highlights, underlining, marginalia, total pages, attachments, markings, revisions, or the
9 inclusion of tracked changes.

10 a. Deduplication of e-mail. The Parties may use a widely accepted method of
11 deduplication, including comparing the to, from, date, and time fields of e-mails and may only
12 produce one copy from each set of duplicates.

13 b. Deduplication of ESI other than e-mail. With respect to ESI other than e-
14 mail, the Parties may use a widely accepted method of deduplication, such as using MD5 or
15 SHA-1 hash values calculated before the files are collected for discovery and need only produce
16 one copy.

17 C. STIPULATION TREATED AS BINDING

18 The Parties agree to treat the foregoing stipulation as controlling pending the Court's
19 consideration of it.

20 Respectfully submitted,

21 JEFFREY H. WOOD
22 Acting Assistant Attorney General
23 Environment and Natural Resources Division

24 Dated: June 15, 2017

25 /s/ Rochelle L. Russell
26 ROCHELLE L. RUSSELL, Trial Attorney
27 U.S. Department of Justice
28 *Attorneys for Plaintiff*

29 Dated: June 15, 2017

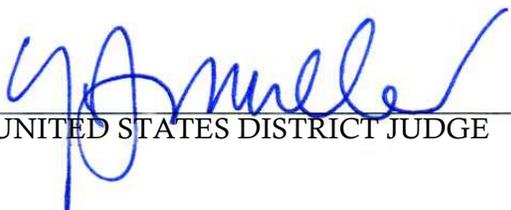
30 /s/ Lawrence S. Bazel
31 LAWRENCE S. BAZEL
32 *Attorney for Defendants*

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ORDER

In accordance with the foregoing stipulation and good cause appearing,
IT IS SO ORDERED.

DATED: June 21, 2017.


UNITED STATES DISTRICT JUDGE