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 Point Buckler Club, LLC*

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.  
 24

2:17-cv-00112-KJM-KJN  
**STIPULATION RE: FEDERAL RULE OF  
 EVIDENCE 502;**  
**ORDER**

1 Pursuant to Federal Rule of Civil Procedure 26(c), Federal Rule of Evidence 502, and the  
2 Parties' Joint Status Report and Discovery Plan, ECF No. 12, and the Court's direction at the  
3 June 8, 2017 status conference, ECF No. 14, the Parties submit the following stipulation and  
4 proposed Order regarding inadvertent disclosure of privileged information.

5 A. REQUEST FOR ORDER REGARDING PROTECTION OF PRIVILEGES

6 1. This stipulation and Order invokes the protections afforded by Rule 502(d) of the  
7 Federal Rules of Evidence. Accordingly, the provisions in Rule 502(b) will not apply to the  
8 disclosure of communications or information in discovery in this matter.

9 2. The various claims and defenses in this action may require each Party to review  
10 and to disclose potentially voluminous information and documents, including ESI, through the  
11 discovery process. Page-by-page preproduction privilege review may impose an undue burden  
12 on the Parties' resources.

13 3. Each Party is entitled to decide the appropriate degree of care to exercise in  
14 reviewing materials for privilege, taking into account the volume and sensitivity of the materials,  
15 the demands of the litigation, and the resources that the Party can make available. Irrespective of  
16 the care that is actually exercised in reviewing materials for privilege, the Court hereby orders  
17 pursuant to Rule 502(d) of the Federal Rules of Evidence that disclosure of privileged or  
18 protected information or documents in discovery conducted in this litigation will not constitute  
19 or be deemed a waiver or forfeiture—in this or any other federal or state proceeding—of any  
20 claims of attorney-client privilege or work product protection that the disclosing Party would  
21 otherwise be entitled to assert with respect to the information or documents and their subject  
22 matter.

23 4. The Court further orders that because expedited or truncated privilege review may  
24 be necessary for the just, speedy, and inexpensive resolution of this matter, and because Rule  
25 502(d) does not preserve privileges other than the attorney-client privilege and work-product  
26 protection, the Parties shall not review each and every page of the materials produced in  
27 discovery for all applicable privileges. Accordingly, the disclosure of privileged or protected  
28 information or documents in discovery conducted in this litigation will be deemed unintentional,

1 inadvertent, and' compelled by order of this Court. Such disclosure will not constitute a waiver  
2 of the disclosing Party's right to claim any privilege or protection that would have applied to the  
3 information or documents or their subject matter but for the disclosure, provided only that the  
4 Party disclaiming waiver employed procedures reasonably designed to screen out privileged  
5 materials. However, the Parties shall not argue, in this forum or any other, that any privileges  
6 were waived as a result of disclosures in this litigation irrespective of the procedures used to  
7 screen out privileged materials.

8         5.       If a Party determines that it has produced a document upon which it wishes to  
9 make a claim of privilege, the producing Party shall, within 14 days of making such  
10 determination, give all counsel of record notice of the claim of privilege. The notice shall  
11 identify each such document and the date it was produced. If the producing Party claims that  
12 only a portion of a document is privileged, the producing Party shall provide, along with the  
13 notice of the claim of privilege, a new copy of the document with the allegedly privileged  
14 portions redacted. Any Party that complies with this paragraph will be deemed to have taken  
15 reasonable steps to rectify disclosures of privileged or protected information or materials.

16         6.       If a Party identifies a document that appears on its face or in light of facts known  
17 to the Party to be subject to another Party's claim of privilege, the Party identifying the potential  
18 claim of privilege is under a good-faith obligation to notify the Party holding the potential claim  
19 of privilege. Such notification shall not waive the identifying Party's ability to subsequently  
20 challenge any assertion of privilege with respect to the identified document. If the Party holding  
21 the potential claim of privilege wishes to assert a claim of privilege, it shall provide notice in  
22 accordance with paragraph 5 above within five business days of receiving notice from the  
23 identifying Party.

24         7.       Upon receiving notice of a claim of privilege on a produced document, the  
25 receiving Party must, in accordance with Fed. R. Civ. P. 26(b)(5)(B), promptly sequester the  
26 specified information and any copies it has and may not use or disclose the information, except  
27 as provided by Fed. R. Civ. P. 26(b)(5)(B), until the claim is resolved. Copies of privileged  
28 documents or information that have been stored on electronic media that is not reasonably

1 accessible, such as disaster recovery backup media, are adequately sequestered as long as they  
2 are not restored; if such data is restored, the receiving Party must take steps to re-sequester the  
3 restored information. If the receiving Party disclosed the information before being notified, it  
4 must take reasonable steps to prevent further use of such information until the claim is resolved.

5 8. If a Party wishes to dispute a claim of privilege asserted under this Order, such  
6 Party shall, within 14 days, move the Court for an order compelling disclosure of the  
7 information. The Party shall follow the procedures described in Fed. R. Civ. P. 26(b)(5)(B).  
8 Pending resolution of the motion, the Parties shall not use the challenged information for any  
9 other purpose and shall not disclose it to any person other than those required by law to be served  
10 with a copy of the sealed motion.

11 9. The Parties may stipulate to extend the time periods specified in paragraphs 5, 6,  
12 and 8 above.

13 10. Nothing in this Order overrides any attorney's ethical responsibilities to refrain  
14 from examining or disclosing materials that the attorney knows or reasonably should know to be  
15 privileged and to inform the disclosing Party that such materials have been produced.

16 11. The Party wishing to assert a claim of privilege retains the burden, upon challenge  
17 pursuant to paragraph 8, of establishing the applicability of the claimed privilege. This Order  
18 does not preclude a Party from voluntarily waiving any claims of privilege. The provisions of  
19 Rule 502(a) of the Federal Rules of Evidence apply when a Party uses privileged information to  
20 support a claim or defense. No assertions of privilege pursuant to this Stipulation may be made  
21 more than 14 days after the filing of final witness and exhibit lists (and other filings required in  
22 support of the final pretrial conference).

23 12. Unless this Court orders otherwise for good cause shown, each Party shall bear  
24 the costs of producing its own documents.

25 **B. STIPULATION TREATED AS BINDING**

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

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Respectfully submitted,  
JEFFREY H. WOOD  
Acting Assistant Attorney General  
Environment and Natural Resources Division

Dated: June 15, 2017

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

Dated: June 15, 2017


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

ORDER

In accordance with the foregoing stipulation and good cause appearing,

IT IS SO ORDERED.

DATED: June 21, 2017.

  
UNITED STATES DISTRICT JUDGE