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MAXXAM INC. and CHARLES E. HURWITZ
10 and third-party HUMBOLDT REDWOOD CO.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14
15 UNITED STATES OF AMERICA ex rel.
RICHARD WILSON and CHRIS MARANTO,

16 Plaintiff,

17 v.

18 MAXXAM INC., a Delaware corporation; THE
19 PACIFIC LUMBER COMPANY, a Delaware
corporation; SCOTIA PACIFIC COMPANY
20 LLC, a Delaware limited liability company;
SALMON CREEK LLC, a Delaware limited
21 liability company; CHARLES E. HURWITZ, an
individual,

22 Defendants.
23

Case No. C-06-7497 CW (JCS)

**STIPULATION AND ORDER
REGARDING NON-WAIVER OF
PRIVILEGE IN CONNECTION
WITH PRODUCTION OF
DOCUMENTS**

Judge: Honorable Claudia Wilken
Place: Courtroom 2, 4th Floor

Complaint Filed: December 7, 2006
Trial Date: April 20, 2009

1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 IT IS HEREBY STIPULATED by and between the parties to this litigation, the Humboldt
3 Redwood Company, and their respective counsel, Sean E. Ponist, attorney for the United States
4 *ex rel.* Relators Richard Wilson and Chris Maranto (“Plaintiff”), and Andrew D. Muhlbach,
5 attorney for MAXXAM Inc., Charles E. Hurwitz, and the Humboldt Redwood Company, that:

6 WHEREAS, Morrison & Foerster will be producing electronic documents in response to
7 the requests for production of documents propounded on The Pacific Lumber Company, Scotia
8 Pacific Company LLC, and Salmon Creek LLC (collectively, the “Debtor Defendants”), and the
9 subpoenas for the production of documents served on the Humboldt Redwood Company;

10 WHEREAS, pursuant to the Court’s November 14, 2008 Order, Defendants are allowed a
11 “reasonable” amount of time to review for privilege the documents that are subject to Plaintiff’s
12 discovery requests;

13 WHEREAS, given the volume of electronically stored data (“ESI”) to be reviewed, the
14 facts of this case, the stage of the litigation, and the need for rapid production of documents,
15 Defendants have proposed to forego the individual review of all documents and instead use
16 electronic searches to locate potentially responsive and potentially privileged or work-product
17 protected documents;

18 THEREFORE, pursuant to Federal Rule of Evidence 502(d), the parties to this litigation
19 and the Humboldt Redwood Company (hereinafter the “Stipulating Parties”) hereby stipulate and
20 agree by and through counsel to the entry of an order as follows:

21 1. The Stipulating Parties agree that the inadvertent disclosure or production of
22 purportedly privileged or work-product protected documents to Plaintiff or its counsel through
23 Morrison & Foerster’s production of electronic documents, commencing on or after January 7,
24 2009, shall not be deemed to waive the attorney-client privilege, the work product protection, or
25 any other applicable privileges. All applicable privileges are specifically reserved.

26 2. Morrison & Foerster may make a written demand for the return of any material
27 asserted to be privileged or protected by the work-product doctrine at any time by listing said
28 material on its privilege log.

1 3. In addition to the foregoing, upon Plaintiff's discovery of the disclosure of
2 purportedly inadvertently produced privileged or work-product protected materials, Plaintiff shall
3 immediately segregate such materials and inform Morrison & Foerster of the inadvertent
4 disclosure.

5 4. Immediately upon the written assertion of privilege by Morrison & Foerster
6 pursuant to paragraph 2, above, all such privileged or work-product protected materials, together
7 with any copies or notes thereof, including any electronically reproducible copies, will be
8 returned to Morrison & Foerster or destroyed. Plaintiff shall document its compliance with this
9 return or destruction requirement in a writing-sent to Morrison & Foerster.

10 5. In the event of a dispute over the assertion of privilege or work-product protection
11 in material whose return was demanded by Morrison & Foerster pursuant to paragraph 2, above,
12 the Stipulating Party opposing the assertion of privilege or work-product protection shall have the
13 burden of moving to compel the production of the disputed materials. On such a motion, the
14 proponent of the privilege shall bear the burden of proving the existence or applicability of the
15 asserted privilege.

16 6. This stipulation does not constitute an admission or agreement that any particular
17 privilege does actually apply to the information and documents produced by Morrison & Foerster.
18 By executing this stipulation, Plaintiff and its counsel do not waive any argument that any
19 asserted privilege does not apply to the produced documents. Further, by executing this
20 stipulation, Plaintiff and its counsel do not waive any right to seek redress from the Court
21 regarding the delay in the production of documents.

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Dated: January 6, 2009

COTCHETT, PITRE & McCARTHY

By: /s/ Sean E. Ponist
Sean E. Ponist

Attorneys for Plaintiffs THE UNITED STATES
OF AMERICA ex rel. RICHARD WILSON and
CHRIS MARANTO

Dated: January 6, 2009

MORRISON & FOERSTER LLP

By: /s/ Andrew D. Muhlbach
Andrew D. Muhlbach

Attorneys for Defendants MAXXAM INC. and
CHARLES E. HURWITZ

*I, Brian J. Martinez, am the ECF User whose ID and password are being used to file this
Stipulation and [Proposed] Order. Pursuant to General Order 45, I hereby attest that Sean E.
Ponist and Andrew D. Muhlbach have concurred in this filing.*

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ORDER

Pursuant to the stipulation of the parties, IT IS SO ORDERED.

1/7/09

Dated: _____



HONORABLE CLAUDIA WILKEN
United States District Judge
Northern District of California