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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 WALTER LIEW, CHRISTINA LIEW, USA  
16 PERFORMANCE TECHNOLOGY, INC.,  
and ROBERT MAEGERLE,

17 Defendants.  
18

Case No. CR 11-00573-JSW (NC)

**DEFENDANTS' STATUS REPORT RE:  
DISCOVERY**

Hearing Date: June 20, 2012

Hearing Time: 11:00 a.m.

Judge: The Honorable Nathanael Cousins

Location: Courtroom A, 15<sup>th</sup> Floor

1 Defendants Walter Liew, USA Performance Technology, Inc. (USAPTI), Christina Liew,  
2 and Robert J. Maegerle (collectively “Defendants”) hereby file this discovery status report.  
3 Defendants hoped to submit this as a joint report with the Government, but the Government chose  
4 instead to file its own separate report. Defendants provided the Government with their positions  
5 below this morning so that the Government could address them in its portion of any report to be  
6 filed if it wished, and asked the Government to do the same. As of the time of this filing,  
7 however, the Government has not advised Defendants of what, if any, issues it wishes to raise  
8 with the Court at the conference or what it plans to include in its separate pre-conference report.  
9 Defendants, therefore, reserve the right to submit a brief supplemental report if necessary after  
10 they have received the Government’s submission.

### 11 **I. Background**

12 Since the parties’ initial discovery status conference before Magistrate Judge Nathanael  
13 Cousins on April 18, 2012, the parties met and conferred in person (counsel for Mr. Maegerle  
14 participated telephonically) on May 1, 2012, and addressed many of the issues raised by the  
15 Recommendations for ESI Discovery Production, as directed by the Court. At the May 1, 2012,  
16 meeting, counsel for the Government and Defendants were assisted by personnel with relevant  
17 ESI technical expertise. On May 14, 2012, at the Government’s request, Defendants delivered 15  
18 computer hard drives to the Government for it to use to produce an initial tranche of ESI. The  
19 parties appeared before this Court on May 16, 2012 for a further discovery conference. On May  
20 24, 2012, the Government provided Defendants with one cd-rom of material that had been  
21 previously produced in November 2011 and one cd-rom containing 10 documents produced for  
22 the first time. There have been no further productions to date.

### 23 **II. Defendants’ Present Discovery Concerns**

24 Nearly a year ago, on July 19, 2011, government agents conducted a number of searches  
25 in relation to this case, including at the homes of Walter Liew, Christina Liew, and Robert  
26 Maegerle. This case was initiated some time later, with a criminal complaint dated July 27, 2011.  
27 Walter Liew and Christina Liew were also arrested and detained. Christina Liew has been  
28 released on bail, but Walter Liew remains incarcerated.

1           Since July 2011, the Government has secured an indictment against the Liew, a  
2 superseding indictment that added eight defendants and ten charges, and litigated numerous  
3 motions. It reports that it is working on another superseding indictment. Despite all that time,  
4 activity, and effort, the Government has provided only a sliver of the discovery that exists in this  
5 case and has not even delivered the modicum of material it pledged to get to the defense in short  
6 order during the parties' discovery meet and confer on May 1, 2012.

7           The Government continues to withhold basic disclosures that have nothing to do with  
8 DuPont's alleged confidential material and no bearing on the protective order dispute currently  
9 before this Court. The Defendants have not even received full discovery of material that was  
10 seized from own their own residences. The Government has given no reason why it has not yet  
11 provided core discovery information, such as documents seized from the July 2011 searches of  
12 the Defendants' homes. These documents include, for example financial and tax records, emails,  
13 cell phone data, and pictures. Maegerle, for example, has specifically and repeatedly asked the  
14 Government to provide him with documents seized from his residence since this case began.

15           At the May 1, 2012 meet and confer, the Government promised to promptly produce the  
16 following material: (1) all readily-available paper documents; (2) all documents containing  
17 purported statements of Walter Liew, Christina Liew, or Robert Maegerle; (3) an initial tranche of  
18 ESI from 55 devices<sup>1</sup>; and (4) an overall proposed discovery production schedule. It has not  
19 fulfilled that promise. No schedule has been given and only a smattering of discovery—10  
20 documents in total—has been disclosed since May 1.

21           At the May 1 meet and confer, Defendants also asked the Government to provide the  
22 computer filenames for documents containing the alleged trade secrets that exist in electronic  
23 form, so they can search electronic productions—which will contain terabytes of data—to locate  
24 the documents that are at the heart of the Government's allegations. Defendants have followed  
25 up multiple times on this request, but the Government still will not say whether or when it will  
26 make that simple disclosure.

27 \_\_\_\_\_  
28 <sup>1</sup> To be provided on the electronic media that Defendants provided to the government weeks ago,  
at their own expense of approximately \$1,500.00.

1           The Government may be in no hurry to comply with its discovery obligations or move this  
 2 case forward, but Defendants are eager to confront the evidence against them and prove their  
 3 innocence. Without meaningful and complete discovery, however, they cannot do so. Especially  
 4 given that Mr. Liew remains in custody, time is of the essence. Defendants ask the Court to order  
 5 the Government to disclose *all* of the material that it previously promised to produce (as detailed  
 6 above), to produce all documents seized from the Defendants' homes in July 2011, and to  
 7 disclose the filenames of the alleged trade secret material that exists in electronic form by June  
 8 27, 2012—within one week of the June 20, 2012 conference. Defendants further ask the Court to  
 9 order the Government to provide a schedule by or before June 27, 2012 for the full and complete  
 10 production of discoverable material currently within its possession, custody, or control.

11  
 12 Dated: June 13, 2012

KEKER & VAN NEST LLP

13  
 14 By: /s/ Steven P. Ragland  
 STEVEN P. RAGLAND

15 Attorneys for Defendant  
 16 WALTER LIEW and  
 17 USA PERFORMANCE TECHNOLOGY, INC.

18 Dated: June 13, 2012

LAW OFFICES OF DORAN WEINBERG

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 20 By: /s/ Doron Weinberg  
 DORON WEINBERG

21 Attorneys for Defendant  
 22 CHRISTINA LIEW

23 Dated: June 13, 2012

MCKENNEY & FROELICH

24  
 25 By: /s/ Jerome J. Froelich, Jr.  
 JEROME J. FROELICH, JR.

26 Attorneys for Defendant  
 27 ROBERT MAEGARLE