

1 KEKER & VAN NEST LLP
STUART L. GASNER - #164675
2 sgasner@kvn.com
SIMONA A. AGNOLUCCI - #246943
3 sagnolucci@kvn.com
KATHERINE M. LOVETT - #276256
4 klovett@kvn.com
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

7 Attorneys for Defendant
WALTER LIEW

8
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
PERFORMANCE TECHNOLOGY, INC.,
16 and ROBERT MAEGERLE,
17 Defendants.

Case No. CR 11-0573-JSW

**COMPETING PROPOSED BRIEFING
SCHEDULES BY GOVERNMENT AND
MR. LIEW FOR MOTION FOR
REVOCATION OF THE ORDER
GRANTING MR. LIEW'S PRETRIAL
RELEASE**

1 Defendant Walter Liew, on the one hand, and the Government, on the other hand, hereby
2 submit the below competing proposed briefing and hearing schedules for the Government's
3 motion to revoke the Order granting Mr. Liew's pretrial release entered by Magistrate Judge
4 Cousins on February 26, 2013. Dkt. 255.

5
6 **I. Defendant's Proposal.**

7 Mr. Liew proposes that the Government's appeal be heard on March 12 or 18, the only
8 dates in March available in light of the Court's calendar and the parties' scheduling conflicts.
9 Ordering a hearing on one of those dates—and not in April as the Government suggests—is the
10 only way to comply with 18 USC §3145(a), which provides that a motion to revoke a Magistrate
11 Judge's release order "shall be determined promptly." *See also United States v. Fernandez-*
12 *Alfonso*, 813 F.2d 1571 (9th Cir. 1987) (30-day delay between appeal of bail determination and
13 hearing too long to satisfy the "determined promptly" requirement).

14 Magistrate Judge Cousins stayed Mr. Liew's release for only seven days, or until March 6,
15 2013. Since then, the parties have met and conferred extensively regarding a proposed briefing
16 and hearing schedule. Declaration of Simona Agnolucci In Support of Request for Briefing
17 Schedule ("Agnolucci Decl.") ¶2. Defense counsel have been willing to agree to the
18 Government's request to extend Magistrate Judge Cousins' stay if the parties enter into an
19 expedited briefing and hearing schedule similar to the accelerated schedule ordered by this Court
20 in December.¹ Although defense counsel prefer a hearing date of March 12, they are willing to
21 agree to a March 18 hearing date. *Id.* ¶3, 6, 7. Counsel understand that both March 12 and
22 March 18 currently are available on the Court's calendar.² The process of obtaining Mr. Liew's
23

24 ¹ The hearing on Mr. Liew's bail motion was held before Magistrate Judge Cousins on December
25 21, 2012. This Court then ordered the Government's opening brief to be filed by December 27 at
26 3:00 p.m., ordered Mr. Liew's opposing brief to be filed by December 31 at 3:00 p.m., and
ordered the reply brief to be filed by noon on January 2, 2013. The hearing was scheduled for
January 3, 2013.

27 ² Defense counsel preferred, and initially proposed, March 5, 2013 (*id.* ¶3), but the setting of a
28 briefing schedule has now been delayed such that March 5 no longer would give the parties
sufficient time to submit briefs.

1 \$2 million bond is underway, and defense counsel are informed that the bond is expected to be
2 available for posting by March 18 or, at the latest, within a few days of March 18. *Id.* ¶9.

3 Defense counsel’s proposed hearing dates, 14 and 20 days from the Magistrate Judge’s
4 order granting release, are eminently reasonable in light of the respective burdens on the parties.
5 Magistrate Judge Cousins found that “the pace of this case is directly attributable to decisions of
6 the prosecution. With nineteen months elapsed, discovery not yet complete, and new charges
7 planned for the future, further detention points strongly to a denial of Mr. Liew’s due process
8 rights.” Dkt. 255 at 4. The burden of Mr. Liew’s continued and prolonged incarceration is
9 significant.

10 The Government argues that a hearing date of March 12 or 18 is unduly burdensome on
11 the Government, and that this matter should be heard at the beginning of April,³ because the
12 Government needs until March 12 to file its opening brief. *Id.* ¶4. It asserts that (1) the issues
13 presented are complex; (2) it has a brief in this case due in March (which defense counsel
14 believes is the brief regarding service of the Pangang defendants that was filed this morning (Dkt.
15 260)); and (3) it has a scheduled out-of-town meeting the week of March 4 associated with the
16 forthcoming Superseding Indictment against Mr. Liew. *Id.* The fact that the Government is
17 seeking additional charges against Mr. Liew and has sought to serve additional defendants in this
18 matter—both of which have been ongoing for many months now—cannot justify Mr. Liew’s
19 continued incarceration. Moreover, the Government could file its opening brief *two days* sooner
20 than it proposes, on March 10, and give the parties sufficient time to complete briefing before a
21 March 18 hearing date, as follows:

22 Sunday 3/10, noon:	Government’s opening brief due
23 Wednesday, 3/13, 5:00 p.m.:	Mr. Liew’s opposition due
24 Friday, 3/15, noon:	Government’s reply brief due
25 Monday, 3/18, 9:00 a.m.:	Hearing

26
27
28 ³ Due to travel dates that cannot be moved, Defense counsel is unavailable for a hearing March 19-22. *Id.* ¶5. Counsel for the Government is unavailable March 25-29. *Id.*

1 Requiring the Government to file its opening brief two days sooner than it would like, on
2 March 10, is a *de minimis* burden. The issue of Mr. Liew’s release already has been briefed
3 extensively; the appellate briefs need not cover new ground. Accordingly, giving the
4 Government 12 days to file its opening brief—twice the length of time previously granted by this
5 Court in December—is sufficient. On the other hand, requiring Mr. Liew to remain incarcerated
6 until early April—at least 33 days after the Order granting his release—heightens the due process
7 concerns expressed by Magistrate Judge Cousins and runs afoul of 18 U.S.C. §3145(a)’s
8 requirement that the Government’s appeal be determined “promptly.”⁴

9 Accordingly, defense counsel respectfully request that the Government’s appeal be heard
10 either (1) on March 12, with the Government’s opening brief due on March 4, Mr. Liew’s
11 opposition due March 8, and the Government’s reply due March 11; or (2) on the morning of
12 March 18, with the Government’s opening brief due March 10 at noon, Mr. Liew’s opposition
13 due March 13 at 5:00 p.m., and the Government’s reply brief due March 15 at noon.

14

15 **II. Government’s Proposal.**

16 The United States files this request for a briefing schedule and hearing date for a review of
17 the release order issued by Magistrate Judge Cousins on February 27, 2013 (Dkt. 255) pursuant to
18 18 U.S.C. § 3145(a)(1). While the parties agree that Judge Cousins’ release order should be
19 stayed pending this Court’s decision on the appeal, the parties disagree on a schedule for it.
20 Therefore, the United States asks the Court to set the following schedule: government’s opening
21 brief on March 12, 2013; defense opposition on March 19, 2013; government reply on March 22,
22 2013; and, a hearing on April 1, 2013.

23

24 ⁴ The Government likely will argue that delay in filing and hearing its appeal is not unfair to Mr.
25 Liew given delays by the defense in submitting certain bail-related materials. *Id.* ¶8. On January
26 14, Magistrate Judge Cousins ordered Mr. Liew to file an *in camera*, under seal declaration
27 regarding the source of the funds he proposes as collateral for bail. Dkt. 232. Defense counsel
28 worked diligently to obtain the required information, which included records from overseas.
Agnolucci Decl. ¶8. Counsel submitted Mr. Liew’s under seal, *in camera* declaration as soon as
possible, on February 15, 2013. *Id.* The month that it took to submit the declaration was due to
matters out of defense counsel’s control and not due to delay attributable to counsel or Mr. Liew.
Id.

1 The United States believes its proposed schedule is appropriate for the following reasons.

2 First, the factual record surrounding the three separate bail hearings is voluminous and
3 complex, and much of that is due to Walter Liew's change of positions and his refusal to answer
4 basic questions about his finances. (There are stacks of pleadings and supporting exhibits relating
5 to, among other things, millions of dollars of international financial transactions, shell companies
6 on Singapore controlled by the Liews and their family members, his extensive contacts in China,
7 and his bankruptcy proceedings.) When Liew initially sought his release in August 2011, he
8 proffered limited personal resources and sureties. In his second bail motion in January 2012, he
9 proffered sureties willing to post approximately \$200,000. Almost a year later in his third bail
10 motion, Liew finally offered to increase his posting ten-fold to \$2,000,000 from the sale of a
11 property owned by his wife in Singapore, a property she owned through the entirety of these bail
12 proceedings and which, the government believes, was purchased with the proceeds of their
13 jointly-undertaken criminal activity. There are significant questions about the propriety of the use
14 of the proceeds of such a sale for bail purposes, why Liew waited so long to offer it and, more
15 generally, about Walter Liew's financial disclosures to the Court.

16 Over the course of the bail hearings, the United States has identified for the Court
17 approximately \$28,000,000 in funds that Liew received in the United States from his Chinese
18 TiO2 customers and the subsequent movement of over \$22,000,000 of those funds to shell
19 companies in Singapore and thereafter the transfer of millions of dollars into accounts in China in
20 the names of the relatives of Christina Liew. Walter Liew has never explained the ultimate
21 disposition and control of any of those funds, and given his credibility problems, the United
22 States has concerns about what information Liew has provided to the Court *ex parte* and *under*
23 *seal* to justify his release. As part of this appeal, the United States will also ask this Court to
24 unseal the materials Liew submitted *ex parte* concerning his assets and the source of the
25 \$2,000,000 to be posted for his release.

26 Second, there are serious questions about Liew's credibility arising from a range of
27 discrete incidents that require explication and consideration. While some of Liew's dishonesty is
28 evident from the charges – threatening witnesses, lying to the FBI about a bank safe deposit box,

1 and causing a false answer to be filed in the DuPont civil case, there are other instances of *under*
2 *oath* misrepresentations to this Court and the bankruptcy court that merit particular consideration.
3 As part of his second bail motion in these proceedings, Liew filed a materially misleading
4 declaration with the Court. For example, in his declaration, Liew disavowed contact with his
5 father-in-law despite the fact that bank records and communications provided by the United
6 States demonstrated Liew's control over bank accounts in China in his father-in-law's name that
7 received hundreds of thousands of dollars. Likewise, despite an obligation to do so, Liew
8 concealed from the bankruptcy court – both in pleadings and in *under oath* testimony – his receipt
9 of over \$5,000,000 from his Chinese TiO2 customers. Evidence related to these matters is
10 summarized in the parties' bail submissions.

11 Third, while Liew is now in a hurry to resolve this appeal, his delays in pursuing his release
12 must be factored into the schedule. At the bail hearing on December 21, 2012, Magistrate Judge
13 Cousins ordered Liew to file a “declaration and documentation regarding (1) the total amount of
14 assets presently available to or controlled by Mr. and Mrs. Liew and (2) the source of the funds
15 (\$2 million) defendant proposes to submit in order to assure his reappearance” by December 31,
16 2012. Dkt. 223. Liew did not comply with that order. On January 14, 2013, Magistrate Judge
17 Cousins again ordered Liew to provide those materials to the Court, *ex parte* and *under seal*. Dkt.
18 232. Liew waited a month – to February 15, 2013 – before making that filing, and despite
19 repeated government requests to the defense about the date of their filing, the date of Liew's
20 submission was unknown to the government until Judge Cousins' order came out two days ago.
21 Release Order (Dkt. 255) at 2.

22 That delay is critical because in the absence of any known effort by the defense to make
23 its *ex parte* submission to the Court, the government's calendar has filled with other out-of-
24 district commitments in the next couple of weeks. Government counsel are out-of-district from
25 March 15, 2013 to March 8, 2013 for a commitment related to this investigation that cannot be
26 rescheduled. Government counsel are also unavailable and out-of-district on March 13, 2013
27 through March 15, 2013 (for a previously scheduled trip on another matter), March 22, 2013, and
28 March 25, 2013 through March 29, 2013 (for previously planned religious observance and

1 vacation).

2 Fourth, the defense is not in position to represent when the \$2,000,000 will be posted with
3 the Clerk of the Court, which is a condition precedent to his release. Moreover, the United States
4 has concerns about the arrangements by which Liew will post those funds. Presumably, Liew is
5 going to sell the property in Singapore and repatriate the proceeds. Yet, defense counsel
6 informed the government yesterday that he did not know if those funds would come from a sale
7 of the house or a loan against it. That ambiguity suggests the funds will not be arriving anytime
8 soon, and it raises additional questions about the posting.

9 Fifth, to the extent Magistrate Cousins cited the uncertainty surrounding the timing of a
10 superseding indictment as a basis for Liew’s release, the United States anticipates that will be
11 resolved by any likely date for a hearing on this appeal.

12 While the United States has worked to reach a mutually agreeable schedule with the
13 defense in accordance with this Court’s order (Dkt. 229), it cannot agree to a schedule that does
14 not permit it to address in an appropriate manner the significant and complex issues raised by
15 Liew’s bail motion.

16
17 Dated: March 1, 2013

KEKER & VAN NEST LLP

18
19 By: /s/ Simona A. Agnolucci

STUART L. GASNER
SIMONA A. AGNOLUCCI
KATHERINE M. LOVETT

Attorneys for Defendant WALTER LIEW

20
21
22
23 Dated: March 1, 2013

MELINDA HAAG
UNITED STATES ATTORNEY

24
25 By: /s/ Peter B. Axelrod

JOHN H. HEMANN
PETER B. AXELROD
Assistant United States Attorneys