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7 Attorneys for Defendant
WALTER LIEW

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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
PERFORMANCE TECHNOLOGY, INC.,
16 and ROBERT MAEGERLE,

17 Defendants.
18

Case No. CR 11-0573-JSW

**AGNOLUCCI DECLARATION IN
SUPPORT OF DEFENDANT'S
PROPOSED BRIEFING SCHEDULE FOR
APPEAL FROM ORDER GRANTING
PRETRIAL RELEASE**

1 I, Simona A. Agnolucci, declare and state that:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate with the law firm of Kecker & Van Nest LLP, located at 633 Battery Street, San
4 Francisco, California 94111, counsel for defendants Walter Liew and USA Performance
5 Technology, Inc. in the above-captioned action. I am duly admitted to practice law before this
6 Court. Except where expressly stated, I have knowledge of the facts set forth herein, and if called
7 to testify as a witness thereto, could do so competently under oath.

8 2. Following the Order of Magistrate Judge Cousins granting Defendant Walter
9 Liew's pretrial release dated February 26, 2013, my colleague Stuart Gasner and I met and
10 conferred extensively with Assistant United States Attorneys John Hemann and Peter Axelrod
11 regarding a proposed briefing and hearing schedule for the Government's appeal of the
12 Magistrate Judge's Order.

13 3. Over the course of those discussions, Mr. Gasner and I expressed a preference for
14 one of three dates for the hearing on the Government's appeal—March 5, March 12 and March
15 18—with the ability to appear on March 6, 7, or 8 if necessary.

16 a. We indicated that we preferred March 5, which was within the 7-day
17 period of the stay in the Judge Cousins' release order, and was consistent with the schedule that
18 this Court initially set for any appeal of a bail order.

19 b. We indicated that March 12 was our second choice, because Mr. Gasner
20 and I both will be out of town from March 6-8 attending the ABA White Collar Conference;
21 however, we offered to forego attending the conference in order to have the appeal heard during
22 one of those days.

23 c. We further offered March 18 as an outer limit of what we could agree to
24 voluntarily. This is the first date after March 12 available on the Court's calendar.

25 4. Messrs. Hemann and Axelrod declined to accept all of our proposed dates, stating
26 that they needed until at least March 12 to file their opening brief due to the complexity of the
27

1 issues, because they had a brief due in this case, and because they have an out-of-town meeting
2 the week of March 5 related to the forthcoming Superseding Indictment in this case.

3 5. The Government's suggested hearing dates are impractical or unduly burdensome:

4 a. The earliest hearing dates offered by the Government were March 21 and
5 22, but these dates are in the middle of a trip Mr. Gasner has committed to attend with his wife,
6 mother, and in-laws. His flight departs the evening of March 18, and he returns on March 23.
7 Although Mr. Gasner explored the possibility of returning early so as to be available for a hearing
8 on March 21 or 22, the trip is to a remote part of Baja Mexico, and there is no practical means of
9 transportation available to allow an early return apart from the group.

10 b. Messrs. Hemann and Axelrod advise that the matter cannot be heard the
11 week of March 25 because Mr. Axelrod will be out of town for a family vacation.

12 c. The Government has suggested having the hearing during the week of
13 April 1 or thereafter, which is at least 33 days after Judge Cousins' release order.

14 6. It appears that the only dates in March on which this appeal can be heard
15 consistent with the Court's calendar and the parties' pre-existing commitments are March 12 and
16 the morning of March 18.

17 7. In an effort to compromise on the March 18 date, I proposed to Messrs. Hemann
18 and Axelrod that the briefing schedule be tightened so that their opening brief be due two days
19 earlier than their preferred date, that is, by noon on March 10; that our opposition be due by 5
20 p.m. on March 13; and that their reply be due by noon on March 15. Messrs. Hemann and
21 Axelrod have declined to agree to that schedule, insisting that the earliest their brief can be filed
22 is March 12.

23 8. Part of the Government's expected response is that delay in filing and hearing its
24 appeal is not unfair to Mr. Liew given delays on the defense side is submitting certain bail-related
25 materials. On January 14, Magistrate Judge Cousins ordered Mr. Liew to file an *in camera*, under
26 seal declaration regarding the source of the funds he proposes as collateral for bail. Dkt. 232. My
27 colleagues and I worked diligently to obtain the required information, which included records

1 from overseas. We submitted Mr. Liew's under seal, *in camera* declaration as soon as we could,
2 on February 15, 2013. The month that it took to submit the declaration was due to matters out of
3 our control and not due to delay attributable to us or Mr. Liew.

4 9. I am informed that the process for posting Mr. Liew's bond of \$2 million has been
5 underway since before Magistrate Judge Cousins' Order granting Mr. Liew's release. I am
6 informed that the bond is expected to be available by March 18 or, at the very latest, a few days
7 thereafter.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct and that this declaration was executed on March 1, 2013, at San
10 Francisco, California.

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12 /s/ Simona A. Agnolucci
13 SIMONA A. AGNOLUCCI
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