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United States District Court
For the Northern District of California

NOT FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

No. CR 11-00573-1 JSW
No. CR 11-00573-2 JSW
No. CR 11-00573-3 JSW
No. CR 11-00573-3 JSW

v.

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

**ORDER AFFIRMING
MAGISTRATE JUDGE’S ORDER
OF DISCLOSURE UNDER RULE
16(a)(1)(E)(ii)**

This matter comes before the Court upon consideration of the Government’s Appeal of Magistrate Judge Cousins’ Order Setting Deadline for Disclosure Under Rule 16(a)(1)(E)(ii), dated February 27, 2013 (the “Disclosure Order”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and the Court finds the appeal suitable for disposition without oral argument.

Under Federal Rule of Criminal Procedure 59(a), the Court may modify or set aside the Disclosure Order if it is contrary to law or clearly erroneous. *See also United States v. Abonce-Barrera*, 257 F.3d 959, 967-68 (9th Cir. 2001). The Court concludes that Magistrate Judge Cousins’ Disclosure Order is neither contrary to law nor clearly erroneous.¹ First, the parties agreed to refer this matter to Judge Cousins to address and resolve “any disputes that arise regarding Fed. R. Crim. P. 16 discovery, including whether particular documents are required to be produced ... and any other discovery matters arising under Rule 16.” (Docket No. 105,

¹ Although Defendants Christina Liew and Robert Maegerle did not formally join in the opposition filed by Walter Liew and USA Performance Technology, Inc., the Court’s ruling applies to Mrs. Liew and Mr. Maegerle.

1 Referral Order, ¶ 2 (emphasis added).) The Court construes this language broadly, and it cannot
2 say that Judge Cousins exceeded the scope of the referral order.

3 Second, Federal Rule of Criminal Procedure 12(b)(4)(B) provides that a “defendant
4 may, in order to have an opportunity to move to suppress evidence ... request notice of the
5 government’s intent to use (in its evidence-in-chief at trial) any evidence that the defendant may
6 be entitled to discover under Rule 16.” Although the parties did not raise this issue, the
7 Disclosure Order certainly complies with the letter, as well as the spirit, of that Rule
8 12(b)(4)(B). *See also* Fed. R. Crim. P. 2 (“These rules are to be interpreted to provide for the
9 just determination of every criminal proceeding, to secure simplicity in procedure and fairness
10 in administration, and to eliminate unjustifiable expense and delay.”).

11 Third, the Ninth Circuit has made clear that it is a “well-established principle that
12 district courts have inherent power to control their dockets,” although that inherent power does
13 not permit a court to “develop rules that circumvent or conflict with the Federal Rules of
14 Criminal Procedure.” *United States v. W.R. Grace*, 526 F.3d 499, 509 (9th Cir. 2008) (internal
15 quotations and brackets omitted) (quoting, *Atchison, Topeka & Santa Fe Ry. Co. v. Hercules,*
16 *Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1988) and *Carlisle v. United States*, 517 U.S. 416, 426
17 (1996)). In light of Criminal Rule 12(b)(4)(B) and Criminal Rule 2, the Court concludes that
18 the Disclosure Order does not circumvent or conflict with the Criminal Rules. Moreover, the
19 Court intends to set a schedule for pretrial motions, including any motions to suppress, *as well*
20 as a trial date at the next scheduled appearance. Further, in light of Mr. Liew’s custodial status,
21 it is the Court’s strong preference to try this case in 2013. Because of the complexity of this
22 case, the Court also intends to deviate from the deadlines set forth in its Guidelines for Criminal
23 Jury trials, and it will require the parties to exchange and file their pretrial submissions
24 substantially in advance of the pretrial conference, rather than the two weeks the Court
25 normally requires. Thus, if this matter had been presented to this Court in the first instance, it
26 also would have required the Government to identify the documents it intends to use in its case
27 in chief substantially in advance of the trial date. The Court will not automatically preclude the
28 Government from using, in its case in chief, any documents identified after the deadline set

1 forth in this Order. However, the Government must be prepared to show that, in the exercise of
2 due diligence, it could not have identified those documents sooner, there is good cause for the
3 belated identification, and the Defendants would not be unduly prejudiced by the belated
4 identification.

5 In light of the appeal, the Court will modify the deadline imposed by Judge Cousins, and
6 it will require that the Government comply with the Disclosure Order by no later than May 30,
7 2013. The Court intends to use that date as the baseline from which a date for a motions
8 hearing, pretrial conference, and trial shall be set. The parties are **HEREBY ORDERED** to
9 meet and confer in advance of the hearing set for April 18, 2013, to attempt to reach an agreed
10 upon briefing schedule for motions, pretrial and trial.

11 **IT IS SO ORDERED.**

12 Dated: April 10, 2013

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15 JEFFREY S. WHITE
16 UNITED STATES DISTRICT JUDGE
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