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

13 UNITED STATES OF AMERICA,)	CASE NO. CR 11-0573 JSW
14)	
15 Plaintiff,)	ADMINSTRATIVE MOTION FOR RELIEF FROM
16)	ORDER RE MOTION TO SEAL
17 v.)	
18)	Date: TBD
19 WALTER LIEW; CHRISTINA LIEW; USA)	Time: TBD
PERFORMANCE TECHNOLOGY, INC.;)	
AND ROBERT MAEGERLE ,)	
20)	
21 Defendants.)	
22)	

21 In response to the Court’s Order Re Motion to Seal (Docket 317), the United States files this
22 motion to ask the Court to set a hearing to address procedures for filings involving sealable documents
23 in this case and/or to refer that matter to Judge Cousins for resolution. The United States also asks the
24 Court to grant its motion to maintain Exhibits P, Q, R, S, U, V, W, X, and Y under seal pending
25 resolution of that matter or, alternatively, to provide the United States with relief from the Protective
26 Order and additional time to consult with the victim in this case, E.I. duPont de Nemours & Company
27 (DuPont), regarding these specific exhibits so that the United States can make the appropriate showings
28 under Civil Local Rule (LR) 79-5.

BACKGROUND

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2 On May 2, 2013, defendants Walter Liew, Christina Liew, USAPTI, and Robert Maegerle filed
3 an administrative motion to seal exhibits P, Q, R, S, U, V, W, X, and Y to the declaration of Simon
4 Agnolucci in support of their motion for a bill of particulars. Docket 311. In their administrative
5 motion, defendants noted the United States had designated those exhibits as confidential pursuant to the
6 terms of the protective order in this case. *Id.* In her declaration, defense counsel noted that Exhibit P
7 contained drawings that are identified as Trade Secrets 2 and 4 in the Second Superseding Indictment
8 and Exhibit W was excerpts from the Basic Data Document, which was identified as Trade Secret 5 in
9 the Second Superseding Indictment. *See* Agnolucci Declaration at ¶¶ 20, 27 (received on May 2, 2013);
10 Second Superseding Indictment (Docket 269) at ¶ 14(b), (d), and (e).

11 On May 7, 2013, the Court issued an order referencing Criminal LR 55-1(b) and Civil LR 79-5
12 with respect to the procedures for filing documents under seal. Docket 317. In its order, the Court
13 advised the United States that if it did not file a declaration pursuant to Civil LR 79-5(d) by May 9,
14 2013, the aforementioned exhibits "will be made part of the public record." *Id.*

ARGUMENT

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16
17 The United States asks the Court for relief from its Order Re: Motion to Seal and Civil LR 79-5
18 for a number of reasons.

19 First, by the terms of the Protective Order entered in this case, the United States cannot comply
20 with the deadline imposed by Civil LR 79-5(d), which provides the original designating party 7 days to
21 file a declaration to support the sealing of specific documents. In order to provide the Court with the
22 declaration required by Civil LR 79-5, the United States needs to consult with DuPont. However, under
23 the Protective Order issued by Judge Cousins on June 21, 2012 (Docket 168), the United States cannot
24 show the exhibits to DuPont without providing the defense with notice of its intent to show those
25 materials (which here include DuPont's *own* documents), giving the defense 7 days to object, and
26 providing the magistrate judge with time to resolve any objections to the disclosure. *See* Protective
27 Order (Docket 168) at ¶¶ 6(c) and 7. In other words, compliance with the Protective Order would make
28

1 non-compliance with Civil LR 79-5 inevitable.

2 Second, in order to meet Civil LR 79-5's objectives of limiting the scope of sealed material, the
3 United States must be able to confer with DuPont about the breadth of the trade secret and other
4 confidential information and whether appropriate redactions can address those concerns. That type of
5 consultation is also consistent with the confidentiality orders authorized by 18 U.S.C. § 1835, which was
6 a basis for the Protective Order in this case, and 18 U.S.C. § 3771, the Crime Victims' Rights Act.

7 Third, there is a grave risk that the contemplated application of Civil LR 79-5 will cause the
8 public disclosure of protected trade secrets, which would be a wholly preventable outcome for the crime
9 victim in this case. As set forth above, the sealed documents include specific documents identified as
10 Trade Secrets 2, 4, and 5 in the Second Superseding Indictment. Trade Secret 2 is a proprietary DuPont
11 drawing, marked with the DuPont logo, and a statement that the "information and know-how may not be
12 used nor the drawing reproduced without the written permission of DuPont." Second Superseding
13 Indictment, at ¶ 14(b). Trade Secret 4 is a proprietary DuPont drawing, marked with the DuPont logo
14 and the statement "DuPont Confidential – Special Control." *Id.* at ¶ 14(d). Trade Secret 5, the Basic
15 Data Document for the DuPont Kuan Yin Plant, was marked "Confidential – Special Control," issued in
16 numbered copies, and included a statement that it was "highly confidential" and "[m]uch of the report
17 data are considered in the 'trade secret' category and should not be released to vendor representatives
18 and non-Company personnel." *Id.* at ¶ 14(e).

19 For these reasons, the United States urges the Court to schedule a hearing to address the filing of
20 confidential materials in this case. Civil LR 1-2(b) provides that the Local Rules "shall be construed . . .
21 to promote the just, efficient, speedy and economical determination of every action and proceeding."
22 Criminal LR 2-1 provides that "[t]he provisions of the Civil Local Rules of the Court shall apply to
23 criminal actions and proceedings, except where they may be inconsistent with these criminal local rules,
24 the Federal Rules of Criminal Procedure or provisions of law specifically applicable to criminal cases."
25 While the United States appreciates the framework articulated in Civil LR 79-5, it does not believe that
26 framework contemplated a case like this one involving a complex industrial technology, voluminous
27 highly technical drawings, extensive foreign language documentation, and discovery at this scale.

