

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 Defendants WALTER LIEW and  
USA PERFORMANCE TECHNOLOGY, INC.

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

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

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

16 Defendants.  
17

Case No. CR 11-0573-JSW (NC)

**DEFENDANTS' STATUS REPORT RE  
MOTION TO SEAL EXHIBITS**

Place: Courtroom 11, 19th Floor  
18 Dept.: Hon. Jeffrey S. White  
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1 On August 12, 2013, the Court ordered the parties in this case to submit a joint status  
2 report to the Court by August 16, 2013 concerning modifications to the Protective Order in this  
3 case to address the procedures for filing documents under seal. Dkt. 418. Defense counsel  
4 contacted Messrs. Hemann and Axelrod via email on August 13, 2013 in an attempt to meet and  
5 confer concerning the joint status report, but did not receive any response. Defense counsel again  
6 emailed Messrs. Hemann and Axelrod in an attempt to meet and confer on August 16, 2013, but  
7 received automated replies indicating that both attorneys were out of the office and unavailable  
8 by telephone or email. Accordingly, Defendants file this report to reflect the status of  
9 modifications to the procedures for filing documents under seal, from Defendants' perspective.

10 Defendants believe that the Government has overdesignated a great deal of their  
11 production as C-1 or C-2 material, because much of the Government's so-called trade secret  
12 information is in the public domain already or the designated material is not truly technical or  
13 otherwise deserving of under-seal treatment. This has caused a great deal of unnecessary work  
14 for both the defense and Court personnel, as the defense has to prepare the requisite sealing  
15 papers only to have the Government not insist on their remaining sealed. At the same time,  
16 however, the Government has also produced *some* material (much of it from DuPont or Tze Chao  
17 or other third parties) that is appropriately designated confidential. Consequently, whether to seal  
18 a document must remain a document-by-document determination.

19 Defendants therefore propose that the parties continue to follow Civil Local Rule 79-5(d).  
20 Pursuant to that rule, if Defendants have an independent reason for filing a document under seal,  
21 Defendants will request that it be sealed using the procedures laid out in Rule 79-5. If Defendants  
22 do not have an independent reason to file a document under seal, but the Government has  
23 designated the document C-1 or C-2, Defendants will so state and the Government will bear the  
24 burden of requesting that the document be sealed.

25 Whenever possible, Defendants will meet and confer with the Government in advance of a  
26 filing to inform the Government of a specific document Defendants intend to file under seal and  
27 attempt to ascertain the Government's position on sealing. A helpful modification to the  
28 procedure would be to require the Government to respond within a relatively short period of time,

1 in the hopes that the number of under-seal filings can be minimized.

2 Defendants will continue to make efforts to meet and confer with the Government to  
3 ascertain the Government's position as to modifications to the protective order. In the event of a  
4 disagreement, Defendants will present the dispute to Magistrate Judge Cousins, as ordered by this  
5 Court. Dkt. 418.

6 Dated: August 16, 2013

KEKER & VAN NEST LLP

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8 By: /s/ Stuart L. Gasner

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

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10 Attorneys for Defendants WALTER LIEW and  
11 USA PERFORMANCE TECHNOLOGY, INC.

12 Dated: August 16, 2013

By: /s/ Doron Weinberg

DORON WEINBERG

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14 Attorney for Defendant CHRISTINA LIEW

15  
16 Dated: August 16, 2013

By: /s/ Jerome F. Froelich, Jr.

JEROME J. FROELICH, JR.

17  
18 Attorney for Defendant ROBERT J.  
MAEGERLE