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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

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UNITED STATES OF AMERICA,

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Plaintiff,

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v.

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WALTER LIAN-HEEN LIEW,  
15 CHRISTINA HONG QIAO LIEW, USA  
PERFORMANCE TECHNOLOGY, INC.,  
16 and ROBERT MAEGERLE,

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Defendants.

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

**STIPULATION AND [PROPOSED]  
ORDER RE PROTECTION OF  
MATERIAL PRODUCED BY E. I. DU  
PONT DE NEMOURS AND COMPANY  
PURSUANT TO RULE 17(c)  
SUBPOENA**

**Place: Courtroom A – 15<sup>th</sup> Floor  
Before: Hon. Nathanael Cousins**

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Whereas on June 21, 2012, this Court entered a Protective Order governing the  
20 production of documents and information containing trade secrets and business information by  
21 the government and defendants (Dkt. 168);

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Whereas on August 12, 2013, Defendants served a Rule 17(c) subpoena issued by the  
23 Court on E. I. du Pont de Nemours and Company (“DuPont”) seeking production of documents  
24 that may contain DuPont trade secrets and confidential business information;

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Whereas DuPont desires to ensure that the documents it produces in response to the  
26 subpoena are afforded the same level of protection as those produced by the government and  
27 defendants; and

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1           Whereas pursuant to 18 U.S.C. § 1835 and Federal Rule of Criminal Procedure 16(d)(1)  
2 the Court may enter orders to preserve the confidentiality of trade secrets and confidential  
3 information produced by DuPont in response to the subpoena;

4           IT IS HEREBY STIPULATED AND AGREED by and between DuPont, Defendants  
5 Walter Liew, Christina Liew, USA Performance Technology, and Robert Maegerle, and the  
6 United States by and between their undersigned counsel, that:

7           1.       Confidential Materials. In response to the subpoena, DuPont may designate as  
8 “Confidential-1 Materials” materials that contain or DuPont believes to contain trade secrets or  
9 confidential and proprietary business information.

10          2.       Manner of Designation. In the case of written, tangible, or documentary discovery  
11 material, DuPont shall stamp each page of the document “Confidential-1 - Subject to Protective  
12 Order” in a manner that is readily distinguishable from any pre-existing confidential designation.

13       In the case of electronic discovery materials, including computer storage memory devices such  
14 as diskettes, hard drives, or other memory media, DuPont shall label the outside of the media  
15 with the appropriate designation. All information on any electronic storage media produced in  
16 discovery and labeled as "Confidential" shall be treated as Confidential Material in accordance  
17 with the terms of this Protective Order. If the Receiving Party objects to DuPont’s designation  
18 of particular information as Confidential Material, the Receiving Party shall notify DuPont in  
19 writing of its objection. If the Receiving Party and DuPont are unable to resolve such a dispute,  
20 the Receiving Party may seek relief from the Court by way of motion. The Receiving Party  
21 shall continue to treat such information as Confidential Material pending resolution of its  
22 objection.

23          3.       Effect of Designation or Failure to Designate; Change of Designation. A failure  
24 to challenge DuPont’s confidential designation does not constitute a waiver by any Receiving  
25 Party of the right to challenge that confidential designation at a later time nor does it constitute a  
26 waiver by any Receiving Party of the right to contest that all or any portion(s) of any documents  
27 designated as confidential constitutes “trade secret” information. Further, DuPont reserves the  
28 right to change the designation after production by notifying the Receiving Party in writing of the

1 change. DuPont may re-designate when it believes that materials are directly derivative of  
2 documents containing, or alleged to contain, trade secrets or confidential and proprietary business  
3 information. Any re-designated materials must be treated in accordance with the terms of this  
4 protective order.

5 4. Limitation on Use: The Receiving Party shall use all Confidential-1 Materials  
6 produced by DuPont exclusively in connection with this case (including pre-trial investigation,  
7 trial preparation, trial, and appeal), and not for the economic benefit of any individual, entity,  
8 or party, or any commercial, business, or other purpose, including but not limited to the related  
9 civil action, Case No. 3:11-cv-01665-JSW. Nothing herein shall prevent the Receiving Party  
10 from using Confidential Materials or from referring to, quoting, or reciting from any  
11 information contained in such Confidential Materials in connection with pleadings or motions  
12 filed in this case, provided that such materials be filed under seal or submitted to the court for  
13 *in camera* inspection, and further provided that the party using Confidential Materials produced  
14 by DuPont notifies DuPont of its use of the Confidential Material. Additionally, any pleading  
15 or motion containing information derived from Confidential Materials produced by DuPont  
16 will note expressly that the material at issue has been designated Confidential, The procedures  
17 for the use of Confidential Materials at trial or in pre- or post-trial hearings will be resolved at  
18 or before the time of trial or hearing.

19 5. Limitations on Disclosure:

20 a. Documents produced by DuPont in response to the subpoena will be produced  
21 to the Court initially. In the event the Court determines to allow the defense to review  
22 Confidential Materials produced by DuPont, such materials shall be disclosed only to defense  
23 counsel, defendants, and any staff employed by defense counsels' law firms that defense counsel  
24 deems reasonably necessary to review the materials in connection with the preparation of the  
25 defense of this case. Defendants may review Confidential-1 Materials only in the presence of  
26 defense counsel or a member of defense counsel's staff and are not allowed to retain any  
27 Confidential-1 Materials. Defendants may retain materials not designated Confidential-1  
28 consistent with the terms of the Protective Order.

1                   b. Confidential-1 Materials produced by DuPont may be disclosed to third  
2 parties, witnesses, and experts, in connection with pre-trial investigation or trial preparation only  
3 as provided in paragraphs 6 and 8 of this order.

4           6.        Procedure for Disclosure: At least seven business days before disclosing  
5 Confidential- 1 Material produced by DuPont to any party other than the defendants, the  
6 attorneys whose signatures appear below, and their staff , the Receiving Party shall notify  
7 DuPont in writing of the identity of the person or persons to whom they intend to make  
8 disclosure. Within the seven-business day period DuPont may object in writing to the  
9 disclosure for good cause shown. If the Receiving Party and DuPont are unable to resolve any  
10 such objection, the Receiving Party may seek relief from the Court by way of motion. No  
11 Confidential- 1 Materials produced by DuPont may be disclosed until any and all objections to  
12 the disclosure are resolved by the Court.

13           7.        Maintaining Confidential Materials:

14                   a.        The Receiving Party shall maintain any Confidential-1 Materials  
15 produced by DuPont pursuant to this Stipulated Protective Order in a manner reasonably  
16 intended to preserve and maintain the confidentiality of the materials. Specifically,  
17 Confidential-1 Materials produced by DuPont shall be maintained in a secure area along with  
18 a copy of the Protective Order. Confidential-1 Materials produced by DuPont shall not be  
19 copied by the Receiving Party except as necessary in connection with preparing and marking  
20 potential exhibits for trial.

21                   b.        To the extent that Confidential-1 Materials produced by DuPont must be  
22 downloaded to a computer for viewing, such computer shall not be connected to the Internet, to  
23 any computer network connected to the Internet, or to any computer network that would allow  
24 any person not authorized by this Protective Order to view Confidential-1 Materials produced  
25 by DuPont.

26                   c.        Under no circumstance shall Confidential-1 Materials produced by  
27 DuPont or copies thereof be transported or sent outside of the United States without prior  
28 Court approval.

1           d.       Notwithstanding efforts taken by DuPont to redact personal identifying  
2 information (such as date of birth, social security numbers, addresses, phone numbers, etc.) or  
3 other sensitive information (e.g., bank account numbers), should any such information be  
4 found during the Receiving Party's review of materials produced by DuPont, that party shall  
5 not provide that information in any form to any third party.

6           8.       Expert Witnesses. If a party desires to disclose to its expert or experts  
7 Confidential-1 Materials produced by DuPont, the expert(s) shall execute an  
8 Acknowledgment, signed under oath, stating that the affiant agrees to abide by the terms of  
9 this order, and that he or she is not: (1) a former or current employee, consultant, contractor,  
10 officer, proprietor, director, or agent of the owner of the Confidential Materials in question, or  
11 (2) a former or current employee, consultant, contractor, officer, proprietor, director, or agent  
12 to a competitor of DuPont. The Acknowledgement shall be submitted to the court in camera  
13 and filed under seal. The opposing parties will not be provided with a copy of the  
14 Acknowledgement signed by the expert(s), and the identity of the expert(s) shall not be  
15 disclosed to the opposing parties except to the extent that such disclosure is required by the  
16 Federal Rules of Criminal Procedure, the local rules of this district, or court order. However,  
17 should any party wish to retain an expert who is: (1) a former or current employee, consultant,  
18 contractor, officer, proprietor, director, or agent of DuPont, or (2) a former or current  
19 employee, consultant, contractor, officer, proprietor, director, or agent to a competitor of  
20 DuPont, the party seeking to retain the expert shall make an ex parte in camera submission to  
21 the court, setting forth the name of the proposed expert; the relationship of that expert to  
22 DuPont or to its competitors; and any other information that party would like the court to  
23 consider. After reviewing these materials, the court will determine whether: (1) the party is  
24 permitted to retain the proposed expert and disclose the Confidential-1 Materials produced by  
25 DuPont to the expert once the expert has executed an Acknowledgment and that  
26 Acknowledgment has been filed under seal with the court; or (2) the court requires the input of  
27 an opposing party or a third party before it can determine whether to permit disclosure of  
28 Confidential-1 Materials produced by DuPont to the proposed expert. In the latter case, the

1 court shall notify the party seeking to retain the expert that it has the option of either  
2 withdrawing the expert's name from consideration or notifying the opposing parties or third  
3 parties of the identity of the proposed expert. In no event shall the court disclose to any  
4 opposing party or third party the identity of the proposed expert, or the contents of the  
5 proposing party's ex parte submission, until the party seeking to retain the expert has had an  
6 opportunity to withdraw the expert's name from consideration. Nothing in this paragraph shall  
7 prevent the court from making further orders concerning proposed experts, as it deems  
8 appropriate.

9           9.       Unauthorized Disclosure of Confidential Material. If a Receiving Party learns  
10 that, by inadvertence or otherwise, it has disclosed Confidential-1 Materials produced by  
11 DuPont to any person or in any circumstance not authorized under this protective order, the  
12 Receiving Party must immediately (a) notify in writing DuPont of the unauthorized  
13 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Confidential-1  
14 Materials produced by DuPont, (c) inform the person or persons to whom unauthorized  
15 disclosures were made of all the terms of this order, and (d) request such person or persons to  
16 execute the "Acknowledgment and Agreement to Be Bound" that is attached to this order as  
17 Exhibit A.

18           10.      Disclosure to the Court. Any court filings containing Confidential-1 Materials  
19 produced by DuPont or a description thereof shall be made under seal. In addition, the  
20 Confidential-1 Materials produced by DuPont or descriptions thereof shall be clearly identified  
21 in such sealed filing.

22           11.      Return of Confidential Materials. At the conclusion of these proceedings, the  
23 Receiving Party and any potential expert witnesses to whom Confidential-1 Materials  
24 produced by DuPont were disclosed shall return such materials and any and all copies thereof  
25 to DuPont. In addition, the Receiving Party shall take adequate steps to ensure that any and all  
26 electronic copies of Confidential-1 Materials produced by DuPont are deleted and permanently  
27 erased from any computer or computer system on which such materials were stored.

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1 Dated: September 16, 2013

ASSISTANT U.S. ATTORNEY

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By: /s/ John H. Hemann

JOHN H. HEMANN

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Attorneys for Plaintiff

UNITED STATES OF AMERICA

4 Dated: September 16, 2013

ASSISTANT U.S. ATTORNEY

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By: /s/ Peter B. Axelrod

PETER B. AXELROD

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Attorneys for Plaintiff

UNITED STATES OF AMERICA

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**ORDER**

10 Pursuant to Stipulation, IT IS SO ORDERED.

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NATHANAEL COUSINS

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United States Magistrate Judge

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**EXHIBIT A**

**ACKNOWLEDGMENT OF STIPULATED PROTECTIVE ORDER**

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I hereby acknowledge that I have received a copy of the Stipulation and Order re Protection of Material Produced by E. I. du Pont de Nemours and Company Pursuant to Rule 17(c) Subpoena in *United States v. Liew, et al*, Case No. CR 11-cr-00573-JSW (NC), and that I have read it, I understand it, and I agree to all of its terms. If English is not my primary language, the Stipulated Protective Order and this Acknowledgment have been translated for me. I further understand that by signing this Acknowledgment, I subject myself to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of the Stipulated Protective Order and punishing any violations thereof.

\_\_\_\_\_  
Name (Printed)

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Signature

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Address (cont'd)

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Name of Translator (if applicable)

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Signature of Translator