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12 Attorneys for Defendants WALTER LIEW and
 13 USA PERFORMANCE TECHNOLOGY, INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 WALTER LIEW, CHRISTINA LIEW, USA
 21 PERFORMANCE TECHNOLOGY, INC.,
 22 and ROBERT MAEGERLE,

23 Defendants.

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

25 **STIPULATION AND ~~PROPOSED~~**
 26 **ORDER RE FED. RULE CRIM. P. 17(C)**
 27 **SUBPOENA AS MODIFIED HEREIN**

28 Place: Courtroom 11, 19th Floor
 Dept.: Hon. Jeffrey S. White

1 The undersigned, by and through their undersigned counsel, stipulate and agree as
2 follows:

3 1. On August 8, 2013, this Court granted Defendants' *Ex Parte* Application for a
4 Rule 17(c) Subpoena. Dkt. 410.

5 2. On August 12, 2013, Defendants served the Rule 17(c) subpoena issued by the
6 Court on E.I. du Pont de Nemours and Company ("DuPont"), with a return date of September 2,
7 2013, twenty-one days from the date of service.

8 3. On August 27, 2013, counsel for DuPont and defense counsel met and conferred
9 about DuPont's efforts to locate documents responsive to the subpoena, and counsel for DuPont
10 indicated that DuPont would be unable to fully respond to the subpoena by the return date.
11 However, DuPont's counsel indicated that DuPont would be willing to produce documents on a
12 rolling basis in order to expedite the Court's, the Government's, and defense counsel's review of
13 documents responsive to the subpoena.

14 4. Defense counsel and counsel for DuPont have therefore agreed that DuPont should
15 be granted a three-week extension for its response to the subpoena until September 23, 2013, to
16 allow DuPont to further determine the expense and burden associated with producing the
17 categories of documents enumerated in the subpoena, including whether certain categories can be
18 modified to allow for expedited production. By September 23, defendants and DuPont will
19 update the Court regarding the status of DuPont's efforts and determine whether further
20 extensions of time are required.

21 5. Defendants and DuPont further stipulate DuPont may produce documents to the
22 Court that are responsive to the subpoena on a rolling basis in order to expedite the resolution of
23 the subpoena given the impending trial date in this case. DuPont agrees to produce to the Court
24 its initial set of documents responsive to the subpoena by September 13, 2013, subject to the entry
25 of a protective order providing for confidential treatment of documents produced by DuPont.

26 6. By entering into this stipulation, DuPont in no way waives, but rather expressly
27 reserves, its right to move to quash those categories of documents that it determines are overly
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1 broad, would require an undue burden to locate and produce, or otherwise fail to satisfy the
2 standards set forth in *United States v. Nixon*.

3 7. Likewise, by entering into this stipulation, defendants in no way waive, but rather
4 expressly reserve, their right to move to compel DuPont’s compliance with the Rule 17(c)
5 subpoena.

6 8. Additionally, defense counsel and counsel for DuPont anticipate that the
7 production in response to the subpoena may be voluminous and therefore inquire as to the Court’s
8 preference for the method of receiving the documents. In lieu of an expressed preference by the
9 Court, DuPont intends to produce bates numbered copies of the documents to the Court in both
10 hard copy and electronic format.

11 **IT IS SO STIPULATED.**

12 Dated: September 10, 2013

KEKER & VAN NEST LLP

14 By: /s/ Stuart L. Gasner

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

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

18 Dated: September 10, 2013

GLYNN & FINLEY

20 By: /s/ Clement S. Glynn

21 CLEMENT GLYNN
22 MORGAN LOPEZ
Attorneys for E. I. DU PONT DE NEMOURS
23 AND COMPANY

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~~PROPOSED~~ ORDER

Based on the foregoing stipulation, IT IS HEREBY ORDERED that the September 2, 2013 deadline for DuPont's response to the Rule 17(c) subpoena is continued to September 23, 2013. Defendants and DuPont shall update the Court by no later than that date regarding the status of DuPont's response. ~~DuPont may produce documents for the Court's review on a rolling basis in both hard copy and electronic format.~~

Unless DuPont files a motion to quash, the Court's intends to follow the following procedure with respect to any documents produced to the Court. The Court shall produce those documents to the Defendants on an ex parte basis initially, and shall issue an Order to Show Cause directing the Defendants to show cause why the documents should not also be produced to the

IT IS SO ORDERED.

Dated:

Government

JEFFREY S. WHITE
United States District Judge

In light of this intent, DuPont shall produce the documents to the Court in electronic format. September 23, 2013

