

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,  
15 USA PERFORMANCE TECHNOLOGY,  
INC., and ROBERT MAEGERLE,

16 Defendants.  
17

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

**STIPULATION AND [PROPOSED] ORDER  
RE FED. RULE CRIM. P. 17(C) SUBPOENA**

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. On September 10, 2013, counsel for defendants Walter Liew and USA  
15 Performance Technology, Inc. ("USAPTI") and counsel for DuPont filed a Stipulation and  
16 [Proposed] Order re Fed. Rule Crim P.17(c) Subpoena (Dkt. 439) advising the Court as to the  
17 status of DuPont's response to the subpoena. The parties to that stipulation also represented that  
18 they would update the Court further on September 23, 2013. The Court signed this Order, as  
19 modified, on September 23, 2013. Dkt. 451.

20 5. On September 13, 2013, counsel for Walter Liew and USAPTI met and conferred  
21 further with counsel for DuPont. Counsel for DuPont represented that DuPont would produce to  
22 the Court its first set of documents responsive to categories E.1 and E.2 of the subpoena upon the  
23 entry of a mutually agreeable protective order. They also updated defendants regarding  
24 procedures DuPont has implemented to collect and review documents potentially responsive to  
25 the remaining categories set forth in the subpoena.

26 6. On September 16, 2013, the parties filed a Stipulation and [Proposed] Order re  
27 Protection of Material Produced by E. I. Du Pont de Nemours and Company Pursuant to Rule  
28

1 17(c) Subpoena. Dkt. 445. The following day, Magistrate Judge Cousins signed the protective  
2 order and DuPont produced its first set of responsive documents. Dkt. 446.

3 7. On October 4, 2013, Defendants and DuPont stipulated to continue DuPont's  
4 response date to October 18, 2013. Dkt. 469. The Court granted the requested continuance on  
5 October 7, 2013. Dkt. 470.

6 8. On October 16, 2013, Defendants and DuPont stipulated to further continue  
7 DuPont's response date to October 25, 2013. Dkt. 489. The Court granted the requested  
8 continuance on October 21, 2013. Dkt. 495.

9 9. On October 18, 2013, DuPont produced a second set of documents responsive to  
10 the Rule 17(c) subpoena. Dkt. 501.

11 10. On October 25, 2013, Defendants and DuPont stipulated to further continue  
12 DuPont's response date to November 4, 2013. Dkt. 506. The Court granted the requested  
13 continuance on October 28, 2013. Dkt. 520.

14 11. DuPont anticipates producing a third set of documents responsive to the Rule 17(c)  
15 subpoena on or about November 5, 2013.

16 12. Defendants and DuPont continue to work in good faith to identify and produce  
17 documents in response to the subpoena. Pursuant to their most recent meet-and-confer  
18 discussion, defense counsel and counsel for DuPont have agreed that DuPont will update  
19 defendants again on or about November 12, 2013, regarding the status of DuPont's efforts.  
20 Accordingly, defendants and DuPont stipulate that DuPont should be granted an extension until  
21 November 12, 2013, to allow DuPont to further: 1) collect and review documents; 2) determine  
22 the expense and burden associated with producing the categories of documents enumerated in the  
23 subpoena; 3) meet and confer with defense counsel regarding whether certain requests can be  
24 modified to allow for expedited production. By November 12, defendants and DuPont will  
25 update the Court regarding the status of DuPont's efforts and determine whether further  
26 extensions of time are required.

27 13. By entering into this stipulation, DuPont in no way waives, but rather expressly  
28 reserves, its right to move to quash those categories of documents that it determines are overly

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

broad, would require an undue burden to locate and produce, or otherwise fail to satisfy the standards set forth in *United States v. Nixon*.

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

15. Consistent with the expressed preference of the Court (Dkt. 451), DuPont will produce bates numbered copies of the documents to the Court in electronic format.

**IT IS SO STIPULATED.**

KEKER & VAN NEST LLP

Dated: November 4, 2013

By: /s/ Stuart L. Gasner

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

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

GLYNN & FINLEY

Dated: November 4, 2013

By: /s/ Clement L. Glynn

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**[PROPOSED] ORDER**

Based on the foregoing stipulation, IT IS HEREBY ORDERED that the deadline for DuPont's response to the Rule 17(c) subpoena is continued to November 12, 2013. Defendants and DuPont shall update the Court by no later than that date regarding the status of DuPont's response.

**IT IS SO ORDERED.**

Dated:

\_\_\_\_\_  
JEFFREY S. WHITE  
United States District Judge