

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:16-cv-21199-CMA

ANDREA ROSSI and LEONARDO  
CORPORATION,

Plaintiffs,

v.

THOMAS DARDEN; John T. Vaughn;  
INDUSTRIAL HEAT, LLC; IPH  
INTERNATIONAL B.V.; and CHEROKEE  
INVESTMENT PARTNERS, LLC,

Defendants.

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**PLAINTIFF/COUNTER-DEFENDANT'S RESPONSES AND OBJECTIONS TO  
DEFENDANTS' FIRST REQUEST FOR PRODUCTION TO PLAINTIFFS**

Plaintiffs/Counter-Defendants, ANDREA ROSSI (“Rossi”) and LEONARDO CORPORATION (“Leonardo”) (collectively “Plaintiffs”), pursuant to Federal Rules of Civil Procedure (“Federal Rules”) 26 and 33, hereby respond to Defendants THOMAS DARDEN, JOHN T. VAUGHN, INDUSTRIAL HEAT, LLC., IPH INTERNATIONAL, B.V. and CHEROKEE INVESTMENT PARTNERS, LLC. (collectively “Defendants”) First Request for Production to Plaintiffs (“First RFP”).

**Preliminary Statement**

Plaintiffs provide this response without waiving any objections as to the admissibility in evidence of the information and/or documents produced, or referenced as part of this response. The Plaintiffs make no representation whatsoever as to the admissibility and/or authenticity of the information and/or documents produced, or agreed to be produced, in response to Defendants’ requests. Any statement contained herein in which Plaintiffs agree to produce information and/or

documents responsive to this request is made without reference to the expense of copying and/or production. Any Statement made by Plaintiffs that some or all of the documents will be made available for inspection and copying shall mean that the documents may be inspected at the office of the undersigned counsel. If any party wishes to send the information and/or documents to be copied, such copying must be completed by an uninterested third-party, licensed and bonded professional service.

**Objections to Definitions and Instructions:**

1. Defendants' Instruction No. 1: Defendants' definition of the term "you" and "your" purports to be inclusive of "predecessor companies" which is an undefined term. The meaning of the term "predecessor companies" is both ambiguous and its meaning cannot be determined in the contest of the remainder of the definition. Accordingly, Plaintiff objects to the ambiguous term. Notwithstanding such objection, and without waiving the same, Plaintiff hereby responds to the request as if the term "predecessor companies" had not been included in the definition of the terms "you" and "your".

2. Defendants' Instruction No. 8: Plaintiffs object to Defendants unsupported declaration that "[a]ny ground not stated in the objection or request for relief shall be deemed waived." The Federal Rules of Civil Procedure do not provide for such waiver, and in fact, any objections and/or request for relief is explicitly and unequivocally preserved, particularly with respect to documents which are protected by privilege and/or confidentiality. Although Plaintiff will strive to set forth each and every ground for objection, to the extent any privileged and/or confidential documents are inadvertently produced, there shall be no waiver of such privilege and/or confidentiality. This instruction exceeds those permissible under the Federal Rules of Civil Procedure and imposes a burden upon the Plaintiffs which is not permitted by the rules.

3. Defendants' Instruction No. 9: Plaintiffs object to the time period set forth in Instruction No. 9 on the grounds that any video, photographs, or other responsive documents and/or information which was "created, recorded or fixed in a tangible medium of expression" after the conclusion of the Guaranteed Performance Test is not likely to lead to the discovery of admissible evidence. All of the matters and issues raised by the parties take place before and/or at the conclusion of the Guaranteed Performance Test in February 2016. Accordingly, any photographs and/or recordings taken after that time would be completely irrelevant and impertinent to the instant case, nor could it lead to the discovery of relevant or admissible evidence as the matters complained of had already concluded.

### **Responses and Objections to Request for Production**

**Request No. 1:** All videos, photographs or other recordings of visual images (regardless of the medium on which the recording is stored) created, recorded or fixed in a tangible medium of expression on or after January 2, 1015, of (a) the Doral Location (either of the inside or outside of the Doral Location), (b) some or all of the contents of the Doral Location, (c) any individuals inside the Doral Location, or (d) events or activities occurring at the Doral Location. This Request includes, but is not limited to, all of the "movies" and "photos" referenced by Andrea Rossi in his blog posting of May 1, 2016, a copy of which is attached as Exhibit A.

**Answer:** Subject to Plaintiffs objections to the instructions above, Plaintiffs shall make the responsive, non-privileged, documents and/or information available for inspection and copying at the office of the undersigned counsel within fifteen (15) days of the date of this Response. In the alternative, the undersigned counsel will confer with counsel for Defendants and will coordinate to have copies of such responsive documents/information made for Defendants at Defendants' expense.

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Respectfully submitted,

/s/ John W. Annesser

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**Certificate of Service**

**I HEREBY CERTIFY** that on October 15, 2016 a true and correct copy of the foregoing was served by e-mail on counsel of record on the services list below.

/s/ John W. Annesser

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