

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:16-cv-21199-CIV-ALTONAGA/O'Sullivan

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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INDUSTRIAL HEAT, LLC and  
IPH INTERNATIONAL B.V.,

Counter-Plaintiffs,

v.

ANDREA ROSSI and LEONARDO  
CORPORATION,

Counter-Defendants,

v.

J.M. PRODUCTS, INC.; HENRY  
JOHNSON; FABIO PENON;  
UNITED STATES QUANTUM LEAP, LLC;  
FULVIO FABIANI; and JAMES A. BASS,

Third-Party Defendants.

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**THIRD-PARTY DEFENDANTS J.M. PRODUCTS, INC., HENRY JOHNSON, AND  
JAMES A. BASS'S ANSWER AND AFFIRMATIVE DEFENSES TO COUNTER-  
PLAINTIFFS INDUSTRIAL HEAT, LLC AND IPH INTERNATIONAL, B.V.'S  
THIRD-PARTY CLAIMS**

For their Answer and Affirmative Defenses to Counter-Plaintiffs Industrial Heat, LLC (“IH”) and IPH International, B.V. (“IPH”) Fourth Amended Answer, Affirmative Defenses, Counterclaims and Third-Party Claims (“Third-Party Claims”), Third-Party Defendants J.M. Products, Inc. (“JMP”), Henry Johnson (“Johnson”), and James A. Bass (“Bass”) (collectively, “Third-Party Defendants”), state as follows:

### **INTRODUCTION**

1. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 1 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

2. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 2 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

3. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 3 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 3 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

4. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 4 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 4 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

5. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 5 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 5 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

6. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 6 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

7. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 7 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

8. Third-Party Defendants deny the allegations contained in Paragraph 8 of the Third-Party Claims.

9. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 9 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

10. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 10 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

11. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 11 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

## **THE PARTIES**

12. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 12 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

13. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 13 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

14. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 14 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

15. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 15 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

16. Third-Party Defendants admit the allegations in Paragraph 16 of the Third-Party Claims.

17. Third-Party Defendants admit the allegations in Paragraph 17 of the Third-Party Claims.

18. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 18 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

19. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 19 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

20. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 20 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

21. Third-Party Defendants admit the allegations in Paragraph 21 of the Third-Party Claims.

### **JURISDICTION AND VENUE**

22. Third-Party Defendants admit the allegations in Paragraph 22 of the Third-Party Claims.

23. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 23 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

24. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 24 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

25. Third-Party Defendants admit the allegations in Paragraph 25 of the Third-Party Claims.

26. Third-Party Defendants admit the allegations in Paragraph 26 of the Third-Party Claims.

27. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 27 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

28. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 28 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

29. Third-Party Defendants admit the allegations in Paragraph 29 of the Third-Party Claims.

30. Third-Party Defendants admit that venue is proper in this judicial district as to the allegations against Third-Party Defendants. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remainder of the allegations in Paragraph 30 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. Third-Party Defendants further deny that any “acts or omissions” have occurred to give rise to the claims asserted against them in the Third-Party Claims.

#### **FACTUAL BACKGROUND**

##### ***Thomas Darden’s initial meeting with Rossi.***

31. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 31 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

32. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 32 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

33. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 33 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

34. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 34 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***The License Agreement between Industrial Heat, Leonardo, Rossi, and AEG.***

35. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 35 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

36. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 36 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 36 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

37. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 37 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 37 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

38. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 38 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 38 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

39. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 39 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 39 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

40. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 40 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 40 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

41. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 41 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 41 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

42. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 42 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 42 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

43. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 43 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack



sufficient knowledge or information to admit or deny the allegations in Paragraph 43 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

44. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 44 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

45. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 45 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 45 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***The First Amendment to the License Agreement and assignment of Industrial Heat's rights to IPH.***

46. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 46 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

47. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 47 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

48. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 48 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 48 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***Testing the Plant in Italy, North Carolina, and Florida.***

*Validation testing in Italy.*

49. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 49 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

50. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 50 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

51. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 51 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

52. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 52 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

53. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 53 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

54. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 54 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

55. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 55 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

56. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 56 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

57. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 57 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

58. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 58 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***Rossi and Industrial Heat's inability to replicate Validation results in North Carolina***

59. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 59 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

60. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 60 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

61. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 61 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

62. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 62 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

63. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 63 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

64. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 64 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

65. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 65 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

66. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 66 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

67. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 67 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***The Plant moves to Miami to service a fake “customer.”***

68. Third-Party Defendants deny the allegations in Paragraph 68 of the Third-Party Claims as to any role allegedly played by JMP, Johnson, or Bass. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 68 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

69. Third-Party Defendants admit that Johnson filed the Articles of Incorporation for J.M. Chemical Products, Inc. in June 2014 and that Johnson filed Articles of Amendment to Articles of Incorporation in September 2016 to change the name of the corporation to J.M.

Products, Inc. Third-Party Defendants deny the remainder of the allegations in Paragraph 69 of the Third-Party Claims.

70. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 70 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

71. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 71 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

72. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 72 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

73. Third-Party Defendants deny the allegations in Paragraph 73 of the Third-Party Claims and demand strict proof thereof. Third-Party Defendants further state that Complaint Exhibit B speaks for itself.

74. Third-Party Defendants admit that IH, JMP, and Leonardo entered into an agreement to deliver the Plant to the facility of JMP and that such agreement was memorialized in a "Term Sheet" on or about August 13, 2014, attached as Exhibit 17 to the Third-Party Claims. Third-Party Defendants deny the remaining allegations in Paragraph 74 of the Third-Party Claims.

75. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 75 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

76. Third-Party Defendants deny the allegations in Paragraph 76 of the Third-Party Claims.

77. Third-Party Defendants deny the allegations in Paragraph 77 of the Third-Party Claims.

78. Third-Party Defendants admit that Bass met with IH at the Doral facility and that a copy of Bass' business card is attached to the Third-Party Claims as Exhibit 20. Third-Party Defendants deny the remaining allegations in Paragraph 78 of the Third-Party Claims.

79. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 79 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

80. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 80 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

81. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 81 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

82. Third-Party Defendants deny the allegations in Paragraph 82 of the Third-Party Claims and demand strict proof thereof.

83. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 83 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

84. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 84 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

85. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 85 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

86. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 86 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

87. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 87 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

88. Third-Party Defendants admit that Johnson is currently listed as the President of J.M. Products, Inc. and Leonardo Corporation, and that Johnson filed the Articles of Organization for United States Quantum Leap, LLC and remains its registered agent. To the extent the allegations in Paragraph 88 of the Third-Party Claims attempt to allege or imply any wrongdoing on the part of Third-Party Defendants, the allegations are denied.

89. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 89 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

90. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 90 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

91. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 90 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

**COUNT I: BREACH OF CONTRACT  
(Validation and Disclosure of E-Cat IP)  
(Industrial Heat and IPH against Leonardo and Rossi)**

92. In response to Paragraph 92 of the Third-Party Claims, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

93. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 93 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 93 and demand strict proof thereof.

94. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 94 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 94 and demand strict proof thereof.

95. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 95 is required by Third-Party



Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 95 and demand strict proof thereof.

96. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 96 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 96 and demand strict proof thereof.

97. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 97 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 97 and demand strict proof thereof.

98. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 98 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 98 and demand strict proof thereof.

**COUNT II: BREACH OF CONTRACT  
(Various Provisions in the License Agreement)  
(IPH against Leonardo and Rossi)**

99. In response to Paragraph 99 of the Third-Party Claims, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

***Confidentiality***

100. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 100 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 100 and demand strict proof thereof.

101. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 101 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 101 and demand strict proof thereof.

102. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 102 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 102 and demand strict proof thereof.

103. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 103 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 103 and demand strict proof thereof.

104. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 104 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 104 and demand strict proof thereof.

105. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 105 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 105 and demand strict proof thereof.

106. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 106 is required by Third-Party

Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 106 and demand strict proof thereof.

107. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 107 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 107 and demand strict proof thereof.

108. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 108 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 108 and demand strict proof thereof.

109. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 109 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 109 and demand strict proof thereof.

***Failure to Assign Licensed Patents***

110. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 110 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 110 and demand strict proof thereof.

111. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 111 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 111 and demand strict proof thereof.

112. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 112 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 112 and demand strict proof thereof.

113. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 113 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 113 and demand strict proof thereof.

***Failure to Inform/Consult on Patent Applications***

114. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 114 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 114 and demand strict proof thereof.

115. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 115 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 115 and demand strict proof thereof.

116. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 116 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 116 and demand strict proof thereof.

117. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 117 is required by Third-Party

Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 117 and demand strict proof thereof.

118. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 118 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 118 and demand strict proof thereof.

119. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 119 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 119 and demand strict proof thereof.

***Covenant Not to Compete***

120. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 120 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 120 and demand strict proof thereof.

121. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 121 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 121 and demand strict proof thereof.

122. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 122 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 122 and demand strict proof thereof.

123. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 123 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 123 and demand strict proof thereof.

124. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 124 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 124 and demand strict proof thereof.

***Failure to Pay Taxes***

125. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 125 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 125 and demand strict proof thereof.

126. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 126 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 126 and demand strict proof thereof.

127. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 127 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 127 and demand strict proof thereof.

128. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 128 is required by Third-Party

Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 128 and demand strict proof thereof.

129. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 129 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 129 and demand strict proof thereof.

130. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 130 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 130 and demand strict proof thereof.

131. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 131 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 131 and demand strict proof thereof.

132. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 132 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 132 and demand strict proof thereof.

**COUNT III: FRAUDULENT INDUCEMENT**  
**(Term Sheet)**  
**(Industrial Heat against Rossi, Leonardo, JMP, and Johnson)**

133. In response to Paragraph 133, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.<sup>1</sup>

134. Third-Party Defendants deny the allegations in Paragraph 134 of the Third-Party Claims and demand strict proof thereof.

135. Third-Party Defendants deny the allegations in Paragraph 135 of the Third-Party Claims and demand strict proof thereof.

136. Third-Party Defendants deny the allegations in Paragraph 136 of the Third-Party Claims and demand strict proof thereof.

137. Third-Party Defendants deny the allegations in Paragraph 137 of the Third-Party Claims and demand strict proof thereof.

138. Third-Party Defendants deny the allegations in Paragraph 138 of the Third-Party Claims and demand strict proof thereof.

**COUNT IV: FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT  
(Industrial Heat and IPH against all Counter-Defendants and Third-Party Defendants)**

139. In response to Paragraph 139, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

140. Third-Party Defendants deny the allegations in Paragraph 140 of the Third-Party Claims and demand strict proof thereof.

141. Third-Party Defendants deny the allegations in Paragraph 141 of the Third-Party Claims and demand strict proof thereof.

142. Third-Party Defendants deny the allegations in Paragraph 142 of the Third-Party Claims and demand strict proof thereof.

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<sup>1</sup> Bass is not a party to Count III of the Third-Party Claims and therefore no responses by Bass to these allegations are required. To the extent that a response by Bass is required, Bass denies all of the allegations in Count III of the Third-Party Claims.



143. Third-Party Defendants deny the allegations in Paragraph 143 of the Third-Party Claims and demand strict proof thereof.

144. Third-Party Defendants deny the allegations in Paragraph 144 of the Third-Party Claims and demand strict proof thereof.

145. Third-Party Defendants deny the allegations in Paragraph 145 of the Third-Party Claims and demand strict proof thereof.

146. Third-Party Defendants deny the allegations in Paragraph 146 of the Third-Party Claims and demand strict proof thereof.

147. Third-Party Defendants deny the allegations in Paragraph 147 of the Third-Party Claims and demand strict proof thereof.

148. Third-Party Defendants deny the allegations in Paragraph 148 of the Third-Party Claims and demand strict proof thereof.

**COUNT V: BREACH OF CONTRACT  
(Industrial Heat against Fabiani and USQL)**

149. In response to Paragraph 149 of the Third-Party Claims, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

150. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 150 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 150 and demand strict proof thereof.

151. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 151 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 151 and demand strict proof thereof.

152. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 152 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 152 and demand strict proof thereof.

153. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 153 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 153 and demand strict proof thereof.

154. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 154 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 154 and demand strict proof thereof.

155. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 155 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 155 and demand strict proof thereof.

156. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 156 is required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 156 and demand strict proof thereof.

157. In light of the fact that Third-Party Defendants are not parties to Count V of the Third-Party Claims, no response to the allegations in Paragraph 157 is required by Third-Party

Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 157 and demand strict proof thereof.

### **COUNTER-PLAINTIFFS' PRAYER FOR RELIEF**

Third-Party Defendants deny that Counter-Plaintiffs are entitled to any relief on the Third-Party Claims. Third-Party Defendants further deny all captions, headings, titles, introductory paragraphs, subparagraphs, and allegations in the Third-Party Claims that are not specifically admitted in this Answer. Third-Party Defendants request this Honorable Court award Third-Party Defendants their reasonable attorneys' fees and costs incurred in the defense of the Third-Party Claims.

### **AFFIRMATIVE DEFENSES**

#### Affirmative Defense No. 1: Voluntary Payment

"Where one makes a payment of any sum under a claim of right with knowledge of the facts, such a payment is voluntary and cannot be recovered." *Ruiz v. Brink's Home Sec, Inc.*, 777 [So. 2d 1062, 1064 \(Fla. 2d DCA 2001\)](#) (quoting *City of Miami v. Keton*, [115 So. 2d 547, 551 \(Fla. 1959\)](#)); *see also Sanchez v. Time Warner, Inc.*, 1998 U.S. Dist. LEXIS 22011, 1998 WL 834345, at \*2 (M.D. Fla. 1998) ("It is a well-recognized rule that money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back, and this is true even though the claim thus paid was illegal. . . .") (quoting *McMullen v. Inland Realty Corp.*, [113 Fla. 476, 152 So. 740 \(Fla. 1933\)](#)). *Sundance Apts. I, Inc. v. Gen. Elec. Capital Corp.*, 581 F. Supp. 2d 1215, 1224, 2008 U.S. Dist. LEXIS 99459, \*21, 21 Fla. L. Weekly Fed. D 261 (S.D. Fla. 2008). Here, Counter-Plaintiffs paid Counter-Defendants over \$11 million dollars while having full knowledge of all

relevant facts with respect to the E-Cat IP, the testing protocol and results, as well as the nature of the relationships between the Counter-Defendants and Third-Party Defendants.

Affirmative Defense No. 2: Waiver and Laches

At all relevant times, Counter-Plaintiffs had the opportunity to, and did in fact, participate in the establishment of test protocols, the selection of independent third party evaluators, and the selection of the location for the Guaranteed Performance Test. At all relevant times, Counter-Plaintiffs knew that the Guaranteed Performance Test would take approximately one year to perform at a substantial commitment of time, expense and effort on the part of many persons, including Counter-Plaintiffs. Further, despite having their own subject matter expert, engineer T. Barker Dameron, review the testing protocols, measurements and results during the course of the year-long test, Mr. Dameron was instructed by Defendant Thomas Darden not to discuss any perceived problems or deficiencies with Third-Party Defendants. Counter-Plaintiffs withheld any objection whatsoever to the testing protocols, location of the Plant, or test results until the year-long test was complete and Plaintiffs demanded payment.

Affirmative Defense No. 3: Unclean Hands

Counter-Plaintiffs engaged in a scheme to deceive Third-Party Defendants by, *inter alia*, fraudulently inducing Third-Party Defendants to enter into the Term Sheet while actively developing a strategy that sought to avoid payments due under a separate agreement with Counter-Defendants, partially based on the relocation of the Plant to Florida.

Affirmative Defense No. 4: Estoppel

Counter-Plaintiffs had the opportunity to, and did in fact, negotiate the terms of Term Sheet before entering into the agreement. Counter-Plaintiffs cannot in hindsight claim representations made prior to entering the Term Sheet to be material when such representations

were not included in the Term Sheet despite Counter-Plaintiffs' negotiation of same. In addition, Counter-Plaintiffs had the opportunity to, and did in fact, employ personnel to assist and oversee the operation of the Plant in the Doral facility. Furthermore, Counter-Plaintiffs had the opportunity to implement any measures or protocols they deemed necessary for the operation and measurement of the Plant. Accordingly, Counter-Plaintiffs cannot now claim that Third-Party Defendants withheld information or provided false information when Counter-Plaintiffs had every opportunity to discover same and instead willfully turned a blind eye as to the measurement of the Plant, did not object or otherwise suggest alternative protocols, and otherwise failed to undertake or insist upon alternative verification of any measurements.

Affirmative Defense No. 5: Acquiescence and Ratification

Counter-Plaintiffs understood the relationship between Third-Party Defendants and Counter-Defendants before executing the Term Sheet and acquiescing to the relocation of the Plant to Florida. Counter-Plaintiffs then permitted Counter-Defendants to receive and re-build the Plant in the Doral facility, and to conduct a year-long test, all the while knowing that Counter-Plaintiffs were going to challenge the results of the testing. Counter-Plaintiffs ratified the Term Sheet when, knowing of the underlying facts of which they now complain, they allowed the testing to proceed in the Doral facility.

Affirmative Defense No. 6: Assumption of Risk

Counter-Plaintiffs were aware of each of the bases for the Third-Party Claims before the relocation of the E-Cat Plant. They realized and appreciated the possibility that the technology might not work, and expressed skepticism about Counter-Defendants in written communications. Therefore, Counter-Plaintiffs voluntarily exposed themselves to the danger of incurring the damages they now claim.

Affirmative Defense No. 7: Setoff

Counter-Plaintiffs do not allege any scheme involving Third-Party Defendants prior to the first two payments to Counter-Defendants pursuant to the License Agreement and the transportation of the Plant to Florida. Therefore, Counter-Plaintiffs cannot allege damages purportedly incurred prior to the entering of the Term Sheet and subsequent transportation of the Plant to the Doral facility.

**RESERVATION OF RIGHTS**

The above affirmative defenses are based on the facts and information currently known to Third-Party Defendants. Third-Party Defendants reserve the right to amend or add defenses or affirmative defenses based on facts later discovered, pleaded, or offered.

Dated: February 15, 2017

Respectfully submitted,

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By: /s/ Francisco J. León de la Barra  
Francisco J. León de la Barra, Esq.  
Florida Bar No.: 105327  
Fernando S. Arán, Esq.  
Florida Bar No.: 349712

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 15, 2017, I electronically filed the foregoing with the Clerk of Court using CM/ECF and copies of the foregoing will be served upon all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Francisco J. León de la Barra  
Francisco J. León de la Barra