

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

**CASE NO. 16-21199-CIV-ALTONAGA/O'Sullivan**

**ANDREA ROSSI, et al.,**

Plaintiffs,

v.

**THOMAS DARDEN, et al.,**

Defendants.

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**ORDER**

**THIS CAUSE** came before the Court upon a review of Plaintiffs, Andrea Rossi and Leonardo Corporation's Motion for Sanctions for Bad Faith Litigation Conduct ("Plaintiffs' Motion") [ECF No. 167], filed March 9, 2017; and Defendants, Thomas Darden; John T. Vaughn; Industrial Heat, LLC; IPH International B.V.; and Cherokee Investment Partners, LLC's Motion for Sanctions Based on . . . Spoliation of Evidence ("Defendants' Motion") [ECF No. 194], filed March 22, 2017.

Plaintiffs' Motion asserts Defendants, through their agents, are "tampering with witnesses" and "otherwise harassing individuals in abuse of the judicial process." (Pls.'s Mot. 2). According to Plaintiffs, Defendants "attempt[ed] to coerce untruthful[] testimony" from the co-authors of a report validating the efficacy of Rossi's technology (*id.* 10 (alterations added)), in an effort to "materially impact the evidence underlying this action" (*id.* 8).

Defendants' Motion, in turn, charges Plaintiffs and Third-Party Defendants with destroying "critical evidence" in bad faith. (Defs.'s Mot. 2). Defendants assert Plaintiffs destroyed email communications and physical evidence from a Miami-area testing facility, while Third-Party Defendants destroyed email communications and data collected during the E-Cat

Plant's operation. (*See id.*).

Both Motions level accusations of tampering with or manipulating evidence central to the issues in the litigation. (*See generally id.*; Pls.'s Mot.). Both similarly seek dismissal of the claims and/or defenses of the parties accused of misconduct, arguing any lesser sanction would be inadequate. (*See* Defs.'s Mot. 15–16; Pls.'s Mot. 10–11). Because the Motions essentially seek sanctions for purported interference in and wrongdoing throughout the discovery process, it is

**ORDERED AND ADJUDGED** that Plaintiffs' Motion for Sanctions for Bad Faith Litigation Conduct [ECF No. 167] and Defendants' Motion for Sanctions Based on . . . Spoliation of Evidence [ECF No. 194] are **DENIED**. Again, and as stated in the Order Setting Trial [ECF No. 23], all discovery matters have been referred to United States Magistrate Judge John J. O'Sullivan. Judge O'Sullivan holds a regular discovery calendar. **No written discovery motions, including motions to compel, for protective order, or related motions for sanctions shall be filed unless the Magistrate Judge so directs at his discovery calendar.** Counsel must actually confer and engage in reasonable compromise in a genuine effort to resolve their discovery disputes before noticing the dispute for the discovery calendar. If, after conferring, the parties are unable to resolve their discovery dispute without Court intervention, they shall not file written motions. Rather, the "moving party" shall contact the chambers of Magistrate Judge O'Sullivan at (305) 523-5920 and place the matter on the next available discovery calendar.

**DONE AND ORDERED** in Miami, Florida this 23rd day of March, 2017.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record