

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

**CASE NO. 1:16-CV-21199-CMA/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,

And

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

Third-Party Defendants.

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**THIRD-PARTY DEFENDANTS' MOTION FOR LEAVE TO RE-FILE  
COMBINED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Third-Party Defendants, J.M. Products, Inc., Henry Johnson, James A. Bass, United States Quantum Leap, LLC, and Fulvio Fabiani, by and through their undersigned counsel, and pursuant to Local Rules 5.4 and 7.1, hereby move the Court for an order permitting the Third-

Party Defendants to Re-File the Combined Motion for Partial Summary Judgment and as grounds therefore, state:

1. Third-Party Defendants timely filed a corrected version of their Combined Motion for Partial Summary Judgment on March 22, 2017 (“Motion”) with exhibits. (**ECF No. 204**). The Motion was filed under seal based on a then pending Motion to File Under Seal. (**ECF No. 199**). The Motion was served upon all parties.

2. The Motion to File Under Seal was denied by this Court (**ECF No. 209**). The clerk thereafter deleted the filing of the Motion made by the Third-Party Defendants and it was not made public. (*See ECF No. 204*).

3. Through inadvertence counsel for the JM Products group of Third-Party Defendants and counsel for the USQL group of Third-Party Defendants failed to properly delegate the task of re-filing the Motion and made the assumption that the Motion and exhibits were indeed filed of record. This error was only now determined to exist in the further briefing of the pending summary judgment motions.

4. This motion is being filed in an effort to present a correct record to the Court for the resolution of the summary judgment motions. Third-Party Defendants seek leave of the Court to re-file the Combined Motion for Partial Summary Judgment and to deem the Motion filed *nunc pro tunc* as of the original filing date

5. Undersigned contacted counsel for the Third-Party Plaintiffs to confer regarding the relief requested. Opposing counsel communicated that the Third-Party Plaintiffs had been served with the Motion and were in the process of completing their opposition to the Motion. Opposing counsel had no objection to the relief requested in this motion.

WHEREFORE, Third-Party Defendants, J.M. Products, Inc., Henry Johnson, James A. Bass, United States Quantum Leap, LLC, and Fulvio Fabiani, respectfully request that this Court enter an Order permitting the re-filing of Third-Party Defendants' Combined Motion for Partial Summary Judgment, *nunc pro tunc*, and such other and further relief this Court deems just.

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

I HEREBY CERTIFY that in conformance with Local Rule 7.1 we have conferred with counsel for Defendants/Counter-Plaintiffs/Third-Party Plaintiffs and counsel for Plaintiffs/Counter-Defendants and they did not object to the relief sought in this Motion.

/s/ Rodolfo Nunez  
Rodolfo Nuñez, Esq.  
Fla. Bar No.: 16950

Respectfully submitted this 5<sup>th</sup> day of April, 2017.

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/s/ Rodolfo Nunez  
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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 April 5, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. Copies of the foregoing document will be served on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Rodolfo Nunez

Rodolfo Nuñez, Esq.

Fla. Bar No.: 16950