

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

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.)

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

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.)

**DEFENDANTS' REPLY TO
RESPONSE OF THIRD-PARTY
DEFENDANTS FULVIO FABIANI
AND USQL IN OPPOSITION TO
DEFENDANTS' CONSOLIDATED
MOTION IN LIMINE**

INTRODUCTION

Defendants Thomas Darden, John T. Vaughn, Industrial Heat, LLC (“IH”), IPH International B.V. (“IPH”) and Cherokee Investment Partners, LLC, hereby reply to the opposition brief submitted by Third-Party Defendants Fulvio Fabiani (“Fabiani”) and United States Quantum Leap, LLC (“USQL”) (collectively, “Third-Party Defendants”), in response to Defendants’ Consolidated Motion in Limine.

It is undisputed here that “spoliation is established when the party seeking sanctions proves (1) that the missing evidence existed at one time; (2) that the alleged spoliator had a duty to preserve the evidence; and (3) that the evidence was crucial to the movant being able to prove its *prima facie* case or defense.” *Floeter v. City of Orlando*, No. 6:05-cv-400-Orl-22KRS, 2007 WL 486633, at *5 (M.D. Fla. Feb. 7, 2007) (citations omitted).¹ For immediate purposes, it is important to emphasize that Third-Party Defendants—like Plaintiffs and JMP before them—concede in their opposition to Defendants’/Counter-Plaintiffs’ Motion in Limine that “the communications [were] admittedly deleted by Fabiani.” D.E. 288, at 2-3. Thus, as with Plaintiffs and JMP, the sole question before the Court is whether the destroyed or missing evidence was of sufficient importance that its absence prejudices Defendants’ case on the merits, thereby warranting a limiting instruction to the jury. Nothing in the Third-Party Defendants’ opposition calls into question the inescapable conclusion that spoliation occurred in this case, that it was extremely serious, and that a remedy is necessary to ensure a fair trial.

Rather than grapple with the case law—which clearly gives rise to spoliation in this case—Third-Party Defendants lead by claiming that Magistrate Judge O’Sullivan already rejected Defendants’ position when he ruled on their spoliation motion.

¹ In an effort to avoid redundancy, Defendants hereby incorporate by reference the arguments made under the governing legal standards in their reply to Plaintiffs’ and J.M. Products, Inc.’s (“JMP”) oppositions to the instant motion. D.E. 297.

But Judge O’Sullivan’s ruling did not apply to Fabiani or USQL because their counsel was not available for the hearing on Defendants’ motion. D.E. 266. In any event, Judge O’Sullivan’s ruling is on appeal to this Court and is not binding on this Court.

Thereafter, Third-Party Defendants devote the bulk of their opposition to statements of fact that are internally inconsistent and belied by the record:

- (1) Third-Party Defendants claim that, although they admittedly destroyed data, Defendants in fact have all the data they need from other sources. D.E. 288, at 3. This is false. For example, the Third Party Defendants testified to having individual data collected from each of dozens of E-Cat reactors used in connection with the operation of the 1 MW Plant in Florida, but that data was not produced and has been destroyed.
- (2) Alternatively, Third-Party Defendants claim that, before they destroyed the data, they hand-delivered it to Defendants in Miami. *Id.* at 3. This is incorrect. The only data Third-Party Defendants provided at that meeting was summaries of raw data, with a promise to produce the underlying raw data later.]
- (3) Third-Party Defendants nevertheless claim that they provided “the sought after electrical and thermal raw data” during discovery. *Id.* Although they did provide some raw data during discovery, there is other raw data that they have never produced and that, at least according to Third Party Defendants’ testimony, no longer exists.
- (4) Third-Party Defendants next claim that they destroyed the data pursuant to the Technical Consulting Agreement with IH (the “Agreement”), and that they had no “notice that [Fabiani] would be subject to a claim in the dispute between the Defendants and Dr. Rossi.” D.E., at 3. The record is clear that Third-Party Defendants were on notice that it was important to retain—and not unilaterally destroy—the data. And the Agreement expressly required them to provide any data they had to IH, not to destroy it in lieu of providing it to IH. Any contrary suggestion is specious.

In sum, Third-Party Defendants’ arguments are without merit and should be rejected. As a consequence of the spoliation that occurred in this case, the Court should instruct the jury that,

as to the Third Party Defendants, (a) their email communications with Penon would have demonstrated that they (along with Rossi and Leonardo) were manipulating the claimed results of the alleged Guaranteed Performance Test; and (d) they (along with Rossi and Leonardo) intentionally deceived IH and IPH about the operations of the 1MW Plant at the Doral Warehouse and the Guaranteed Performance Test, and obstructed IH and IPH's ability to learn the truth about those activities.

ARGUMENT

I. Fabiani Admittedly Destroyed Data and *Never* Provided Complete Data to Defendants.

Third-Party Defendants first argue that Fabiani gave all the data to an IH engineer at Jones Day on a flash drive in March of 2016, and that this engineer – Joseph Murray – corroborated these events. D.E. 288, at 3. At a minimum, they add, this shows there is no bad faith on their part. *Id.* at 6.

It is undisputed, however, that the Third-Party Defendants collected data that was never provided to IH or Mr. Murray. First, Third-Party Defendants admitted in their deposition that Fabiani collected temperature data from the individual E-Cat reactor units that were being used at the Doral Warehouse and that he destroyed that data. Ex. 1 (excerpts from Fabiani Deposition Transcript (“Dep. Tr.”)) at 40:6-15; 46:10-47:19; 85:3-99:8.

Second, Third-Party Defendants destroyed email communications with Fabio Penon, who was to be measuring the performance of the 1 MW Plant largely from abroad. Those emails transmitted data to Mr. Penon, but Mr. Penon and Third-Party Defendants disagree as to just what data was transmitted. Penon Dep. 169:19-172:2; Fabiani Dep. 38:3-39:10; 88:8-89:2. Who is right and who is wrong in this disagreement could be resolved by reviewing the emails and

their attached data, but that cannot be done because of the Third-Party Defendants' document destruction.

Third, as Mr. Murray explains in his accompanying declaration, Fabiani also informed him at the March 2016 meeting that Fabiani "had a nearly complete final report and a spreadsheet with some flow rate measurements that he personally took from time-to-time in a file on his computer." Ex. 2 (declaration of Joseph Murray ("Murray Decl.")) ¶ 3. In an email that preceded this March meeting, Third-Party Defendants described this report as one that would "bring to light all the flaws and functional deficiencies of the [E-Cat] system." Ex. 3 (Feb. 23, 2016 email). Mr. Murray repeatedly requested this report and data from the Third Party Defendants, but they refused to provide it. Ex. 4 (Apr. 1, 2016 email).

Because Third-Party Defendants admit that they destroyed data, including data sent via email to Mr. Penon regarding the performance of the 1 MW Plant, their argument that they gave some thermal raw data to Defendants during discovery (D.E. 288, at 3) does not eliminate the spoliation that occurred in this case. Likewise, Third-Party Defendants' suggestion that Defendants can just get the missing data from Penon (*Id.* at 5) is whimsical. Penon is not a party to this litigation, so Defendants cannot serve him with a document request. In addition, he lives outside the United States and is therefore not subject to this Court's subpoena power.

Finally, Third Party Defendants' suggestion that Fabiani destroyed the emails and data for purposes of complying with his understanding of the client confidentiality requirements in the Agreement with IH (D.E. 288, at 4) is contradicted by the terms of that Agreement. The Agreement expressly states, in clear language, that whatever files, tests, results, documents "and the like ... including any of the foregoing that are electronically maintained" relating to the work Third-Party Defendants were doing in connection with the 1 MW Plant "shall remain the sole

property of Industrial Heat.” It states that “[u]pon termination of this Agreement or upon the prior demand of Industrial Heat, USQL shall immediately return all such items and materials ... to Industrial Heat.” There is no conceivable way that the Agreement can be read as authorizing Third-Party Defendants to destroy data relating to the performance of the 1 MW Plant in Florida rather than providing it to IH.

Third-Party Defendants’ position is also belied by the document production in this case. They did produce some emails – namely, their emails with Defendants. They just targeted for destruction their emails with anyone else relating to the 1 MW Plant or what took place at the Doral Warehouse. Also after being compelled to do so in discovery (following a hearing before Magistrate Judge O’Sullivan), Third-Party Defendants did produce some data, as they admit in their opposition. That they selectively retained some data and selectively destroyed other data puts the lie to their claim that they thought the Agreement required them to destroy *all* data.

In sum, it is *undisputed* that significant amounts of data and other evidence relating to the alleged Guaranteed Performance Test was destroyed by Plaintiffs and Third-Party Defendants. Third-Party Defendants’ attempt to obfuscate that reality by tinkering around the edges of the facts is unavailing. The only question remaining is whether the destroyed and missing data was significant to the merits of Plaintiffs’ breach-of-contract claims within the meaning of the Eleventh Circuit’s test for spoliation. As Defendants have repeatedly argued in their filings to date, and as Mr. Murray’s further Declaration makes clear, there can be no serious question that the destroyed data was important for purposes of determining whether the purported Guaranteed Performance Test was properly executed. If the alleged Guaranteed Performance Test did not produce the outcomes required under the License Agreement, Plaintiffs do not—and cannot—have a colorable breach-of-contract claim for \$89 million in damages.

II. Third Party Defendants' Admitted Destruction of Crucial Data Warrants a Limiting Instruction Here.

Third-Party Defendants argue that the testimony of Defendants' experts—Messrs. Murray and Smith—comparing electrical absorption data in fact depended on the data Fabiani *did* provide, so the missing data is not crucial to Defendants' case. D.E. 288, at 5. This argument completely misses the point. The truth of the matter is that Defendants' experts had to *make do with* incomplete information because Third-Party Defendants destroyed large quantities of the underlying data. The bad-faith destruction of electronic data warrants a negative inference against the party that spoliates such evidence. *See Southeastern Mechanical Svcs., Inc. v. Brody*, 657 F.Supp.2d 1293, 1302 (M.D. Fla. 2009). Third Party Defendants' unwarranted spoliation is precisely why the instant motion is before the Court: Defendants have been prejudiced. As Mr. Murray states:

[N]o real physical system produces the same exact temperature day after day, hour after hour, second after second for weeks on end. Yet the summary data from Penon and separately from Fabiani show a remarkable consistency over a nearly one year period. The consistency of the data they provided clearly indicates that either the data was manipulated or it was incorrectly processed. Raw data would be needed to determine how and where errors were made.

Murray Decl. ¶ 10.

Third-Party Defendants' final pitch against a limiting instruction—that they had no idea that they should have retained the information they destroyed—is unavailing. Their counsel cites no support for this position, and that is because there is no support. As J.T. Vaughn explained in a declaration submitted with an earlier filing in this Court, Third-Party Defendants were told at the March meeting that they would be drawn into litigation if they did not provide all of the data and information they had to IH. Ex. 5 (declaration of J.T. Vaughn).

In addition, the Agreement unequivocally directs Third-Party Defendants to provide to IH the data they collected in connection with the performance of the 1 MW Plant. Their destruction of evidence in the face of that Agreement is definitive proof that they were not acting in good faith, but in an effort to conceal the deceptive scheme against Defendants in which they participated.

Furthermore, as Mr. Murray explains in his Declaration, Third-Party Defendants told him that they took careful measures to secure and protect the data that they collected relating to the performance of the 1 MW Plant. Murray Dec. ¶ 4. This is further evidence that Third-Party Defendants fully understood that they possessed critical data to evaluating the performance of the Plant. In fact, this evidence is bolstered by the fact that, after Third-Party Defendants meet with Mr. Murray, he repeatedly requested the data from Third-Party Defendants. Ex. 4.

In sum, Third-Party Defendants selectively destroyed significant data that should have been preserved and turned over to Defendants. They admit to the destruction, and their justifications for the destruction are patently frivolous. Third-Party Defendants' selective destruction, in breach of the Agreement and in the face of impending litigation, is the archetype of bad faith spoliation that requires a strong remedy. This conclusion is made all the more clear by the facts that IH specifically requested the data from Third-Party Defendants (Ex. 4), Third-Party Defendants said they would be providing the data (Ex. 3), and then Third-Party Defendants destroyed the data. *See Southeastern Mechanical Svcs., Inc.* 657 F.Supp.2d at 1302.

CONCLUSION

For the foregoing reasons, Defendants' Consolidated Motion in Limine should be granted.

Dated: May 12, 2017

Respectfully submitted,

/s/ Christopher R. J. Pace

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record.

/s/ Michael A. Maugans

Michael A. Maugans

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

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

ANDREA ROSSI and
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Plaintiffs,

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

Defendants.

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.

600 Brickell Avenue
Miami, Florida
February 28, 2017
Tuesday, 7:45 A.M.

<p>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</p>	<p>Page 2</p> <p>VIDEO DEPOSITION</p> <p>OF</p> <p>FULVIO FABIANI</p> <p>Taken on Behalf of the Defendants Pursuant to Notice of Taking Deposition</p>	<p>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</p>	<p style="text-align: center;">INDEX</p> <p>2 FULVIO FABIANI</p> <p>3 Examination by Mr. Pace 8</p> <p style="text-align: center;">EXHIBITS</p> <p>8 Deposition Exhibit 1 54 5-20-13 email</p> <p>9 Deposition Exhibit 2 96 2-27-15 email</p> <p>11 Deposition Exhibit 3 100 13-page document</p> <p>12 Deposition Exhibit 4 125 3-6-15 email</p> <p>14 Deposition Exhibit 5 126 4-13-15 email</p> <p>15 Deposition Exhibit 6 128 5-13-15 email</p> <p>17 Deposition Exhibit 7 134 1-14-13 email</p> <p>18 Deposition Exhibit 8 135 6-19-15 email</p> <p>20 Deposition Exhibit 9 140 7-7-15 email</p> <p>21 Deposition Exhibit 10 141 2-23-16 email</p> <p>23 Deposition Exhibit 11 142 5-15-16 email</p>
<p>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</p>	<p>Page 3</p> <p>APPEARANCES</p> <p>3 On behalf of the Plaintiffs: 4 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L. 283 Catalonia Avenue, Suite 200 Coral Gables, FL 33134 BY: BRIAN CHAIKEN, ESQ. bchaiken@pbylaw.com</p> <p>7 On behalf of the Defendants/Counter-Plaintiffs: 8 JONES DAY 600 Brickell Avenue Brickell World Plaza Suite 3300 Miami, FL 33131 BY: CHRISTOPHER R.J. PACE, ESQ. and ERIKA HANDELSON, ESQ. cpace@jonesday.com ehandelson@jonesday.com</p> <p>13 On behalf of JM Products, Henry Johnson and James Bass: 15 ARAN, CORREA & GUARCH, P.A. 255 University Drive Coral Gables, FL 33134-6732 BY: FRANCISCO LEON DE LA BARRA, ESQ. fleon@acg-law.com</p> <p>18 On behalf of United States Quantum Leap and Fulvio Fabiani: 19 RODOLFO NUNEZ, P.A. 255 University Drive Coral Gables, Florida 33134 21 BY: RODOLFO NUNEZ, ESQ. rnunez@acg-law.com</p> <p>22 Also Present: Norma Merlano, Interpreter Todd Cohen, Videographer</p>	<p>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</p>	<p style="text-align: center;">Page 5</p> <p>THE VIDEOGRAPHER: We are now on the video record. My name is Todd Cohen, representing Veritext. The date today is February 28th, 2017, and the time on the video record is 7:45 a.m.</p> <p>This deposition is being held at Jones Day, located at 600 Brickell Avenue in Miami, Florida. The caption of the case is Andrea Rossi and Leonardo Corporation, et cetera, et al., versus Thomas Darden, John T. Vaughn, Industrial Heat, LLC, et cetera, et al.</p> <p>The case is being held in the United States District Court, Southern District of Florida, Miami Division. The case number is 1:16-cv-21199-CMA. The name of our witness this morning is Fulvio Fabiani.</p> <p>At this time may I please have counsel in the room announce their appearances for our court reporter. Then Kelli Ann Willis, the court reporter with Veritext, will then swear the witness and we can begin.</p> <p>MR. PACE: Can I ask one quick question? Is what you just said being recorded?</p> <p>THE VIDEOGRAPHER: Only by Kelli.</p> <p>MR. PACE: This is Chris Pace and Erika</p>

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1 mean Rudy Nunez?
 2 A. Yes.
 3 Q. Dr. Penon testified the other day that you
 4 sent to him a series of emails. Did you send email
 5 communications to Dr. Penon?
 6 A. During the development of my work for
 7 Industrial Heat.
 8 Q. Did these emails include attachments of
 9 data?
 10 THE INTERPRETER: One moment. The
 11 interpreter's microphone fell off. We are
 12 good.
 13 THE VIDEOGRAPHER: Thank you.
 14 THE INTERPRETER: I'm sorry. What kind of
 15 data?
 16 BY MR. PACE:
 17 Q. Data. Attachments of data.
 18 A. Yes.
 19 Q. This included data that you took off of a
 20 computer owned by Dr. Penon?
 21 MR. NUNEZ: Object to form.
 22 MR. LEON DE LA BARRA: Object to form.
 23 THE WITNESS: The answer is no.
 24 BY MR. PACE:
 25 Q. Did Dr. Penon have a computer at the Doral

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1 location?
 2 A. Where precisely?
 3 Q. At the warehouse in Doral.
 4 A. Yes, in the studio where the plant was.
 5 Q. Did you -- is this -- did you have access
 6 to that computer?
 7 A. What do you mean by access?
 8 Q. Were you able to access the data or
 9 information on that computer?
 10 A. No.
 11 Q. What was the data that you sent -- you
 12 would send by email to Dr. Penon?
 13 A. I did not understand the question.
 14 THE INTERPRETER: Maybe the interpreter
 15 did not translate it correctly.
 16 MR. PACE: No problem.
 17 BY MR. PACE:
 18 Q. What data would you send to Dr. Penon by
 19 email?
 20 A. My summary of the --
 21 DR. ROSSI: Operation.
 22 THE WITNESS: -- operation of the --
 23 DR. ROSSI: Plant.
 24 THE WITNESS: -- the plant. Okay.
 25

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1 MR. PACE: Let's do that again.
 2 THE INTERPRETER: I've got it now.
 3 BY MR. PACE:
 4 Q. Mr. Fabiani, let me ask my question again
 5 to allow for translation again.
 6 What data would you send to Dr. Penon by
 7 email?
 8 A. A summary of the operation of the plant.
 9 Q. How often would you send those emails to
 10 Dr. Penon?
 11 A. Usually every two months. Every two
 12 months.
 13 Q. Have you saved those emails?
 14 A. No, absolutely not.
 15 Q. When did you delete those emails?
 16 A. The day after the contract expired.
 17 Q. And you did not -- before deleting those
 18 emails, you did not send copies of those emails
 19 either to Industrial Heat or to your counsel?
 20 MR. NUNEZ: Object to form.
 21 THE WITNESS: Before the expiration of the
 22 contract --
 23 THE INTERPRETER: (In Italian.)
 24 THE WITNESS: Before -- had been sent
 25 to --

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1 THE INTERPRETER: (In Italian.)
 2 MR. PACE: He's translating for the
 3 translator. Mr. Fabiani, I know you understand
 4 English, but you have to let her translate.
 5 THE INTERPRETER: It is reference to --
 6 no, no.
 7 MR. PACE: Let's do this again. Let me
 8 ask my question again, and he can answer.
 9 THE INTERPRETER: (In Italian.)
 10 THE WITNESS: (In Italian.)
 11 It is not correct, the translation.
 12 MR. PACE: That's why I'm asking. I
 13 realize you understand English, Mr. Fabiani.
 14 THE WITNESS: Thank you, thank you.
 15 BY MR. PACE:
 16 Q. Prior to deleting your emails with
 17 Dr. Penon, did you send those emails either to your
 18 counsel or to -- or to Industrial Heat?
 19 A. Before the expiration of the contract --
 20 THE INTERPRETER: (In Italian.) I'm
 21 sorry.
 22 DR. ROSSI: I can help.
 23 MR. PACE: Let's take a break.
 24 THE VIDEOGRAPHER: Stand by to go off the
 25 record. Going off at 9:49.

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1 MR. PACE: Data.
 2 THE WITNESS: Document.
 3 After my contract was completed, I
 4 proceeded -- I proceeded --
 5 THE INTERPRETER: (In Italian.)
 6 THE WITNESS: -- to the cancelation of all
 7 of that, everything that did not have to do
 8 with the renewing of the contract.
 9 BY MR. PACE:
 10 Q. As to data that you sent to Dr. Penon, you
 11 sent Dr. Penon temperature data?
 12 A. Yes.
 13 Q. You sent Dr. Penon electrical data?
 14 A. Yes.
 15 Q. Did you send Dr. Penon pressure data?
 16 A. Yes.
 17 Q. From where did you obtain the temperature
 18 data?
 19 THE INTERPRETER: Temperature?
 20 DR. ROSSI: Correct.
 21 THE WITNESS: From my -- from my data,
 22 from my part of the plan.
 23 DR. ROSSI: Control system.
 24 THE WITNESS: The control system.
 25

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1 BY MR. PACE:
 2 Q. And your testimony is that the same data
 3 you sent to Dr. Penon, you also turned over to an
 4 engineer for Industrial Heat at the offices of Jones
 5 Day?
 6 A. Yes. Yes.
 7 Q. Your testimony is you turned this data
 8 over in a flash drive?
 9 A. Yes.
 10 Q. Let's talk a little bit about the time you
 11 were in the offices of Jones Day. You met with J.T.
 12 Vaughn and an engineer from Industrial Heat,
 13 correct?
 14 A. Also with the presence of the attorney.
 15 Q. And the attorney who was present was
 16 myself?
 17 A. Yes.
 18 DR. ROSSI: (In Italian.)
 19 THE INTERPRETER: (In Italian.)
 20 THE WITNESS: I do remember that, yes, I
 21 do.
 22 BY MR. PACE:
 23 Q. Mr. Fabiani, even though --
 24 A. I was at the Jones Day office two times.
 25 Jones Day.

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1 BY MR. PACE:
 2 Q. From where did you obtain the electrical
 3 data?
 4 A. From the PC 800 --
 5 DR. ROSSI: PCE.
 6 THE INTERPRETER: PCE-830.
 7 MR. PACE: Dash 30.
 8 BY MR. PACE:
 9 Q. And that is the electrical data that you
 10 sent to Dr. Penon?
 11 A. Yes.
 12 Q. And then you sent -- from where did you
 13 obtain the pressure data that you sent to Dr. Penon?
 14 A. From one of my pressure --
 15 DR. ROSSI: A probe, pressure probe in my
 16 control system.
 17 THE WITNESS: My pressure.
 18 THE INTERPRETER: Pressure probe within my
 19 control system.
 20 BY MR. PACE:
 21 Q. Did you send water level information to
 22 Dr. Penon?
 23 THE INTERPRETER: Water level data?
 24 MR. PACE: Yes.
 25 THE WITNESS: No.

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1 Q. Mr. Fabiani, for purposes of the
 2 deposition, if you can wait for the Italian
 3 translation before responding. Otherwise, we are
 4 talking over each other.
 5 A. Sorry. I apologize.
 6 Q. During this meeting at Jones Day, you
 7 spoke about -- about your interactions with James
 8 Bass?
 9 THE INTERPRETER: Interactions.
 10 MR. PACE: That is a bad word. Let me
 11 start over.
 12 BY MR. PACE:
 13 Q. At this meeting you spoke about your --
 14 your --
 15 MR. PACE: Let me start this over.
 16 THE INTERPRETER: The interpreter would
 17 like to know, "you" singular or "you" plural?
 18 You or he spoke or they all spoke?
 19 MR. PACE: Give me a second.
 20 BY MR. PACE:
 21 Q. At this meeting, you discussed your work
 22 at the Doral location, correct?
 23 A. Which one of the two visits?
 24 Q. The first.
 25 A. Yes.

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1 Unit Number 2. The time is 12:54 p.m.
 2 BY MR. PACE:
 3 Q. Mr. Fabiani, you understand that you are
 4 still under oath?
 5 A. Yes.
 6 Q. You testified earlier today that there was
 7 a contract between US Quantum Leap and Industrial
 8 Heat, correct?
 9 A. Yes.
 10 Q. That agreement was entered in the summer
 11 or fall of 2013?
 12 A. More or less the fall of 2013, if I
 13 recall.
 14 Q. When did that agreement end?
 15 A. It was a renewal --
 16 THE INTERPRETER: (In Italian.)
 17 THE WITNESS: I would have to look back at
 18 the documents, but it was either March or
 19 April, 2016.
 20 BY MR. PACE:
 21 Q. During the time of this agreement,
 22 Industrial Heat was paying US Quantum Leap for the
 23 work you were doing?
 24 A. Yes. Yes.
 25 Q. And were you also paid an amount for an

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1 apartment rental?
 2 A. Yes. It was included in the contract.
 3 Q. And that was -- that was also money that
 4 was paid by Industrial Heat?
 5 A. This what?
 6 Q. I'm sorry. The amount that was being paid
 7 for your apartment rental?
 8 A. Yes.
 9 Q. We spoke -- we were discussing earlier
 10 today the 1-MW plant, correct?
 11 A. Yes.
 12 Q. What do you understand the 1-MW plant to
 13 be?
 14 A. I'm not understanding the question.
 15 Q. What is the 1-MW plant?
 16 A. It is a container. It contains more
 17 groups of reactors.
 18 Q. How many groups of reactors?
 19 A. Six. Six small ones and -- six done with
 20 the small reactors and four done with the large
 21 reactors.
 22 Q. Were the four groups of large reactors
 23 sometimes called Big Frankies?
 24 A. Yes.
 25 Q. Was there any name for the six group of

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1 the small reactors?
 2 A. No. They were numbered alphabetically.
 3 Q. Do you recall that the 1-MW plant was sent
 4 to Doral warehouse in late 2014?
 5 A. I was present when it was unloaded, but I
 6 don't remember the exact date.
 7 Q. Do you remember that the 1-MW plant was
 8 operated -- was run at the Doral warehouse in 2015
 9 and early 2016?
 10 A. Did you say at the end of 2016?
 11 Q. No. Let me ask my question again.
 12 THE INTERPRETER: Maybe it was a mistake
 13 of the interpreter.
 14 THE WITNESS: No, no. I did hear 2016.
 15 BY MR. PACE:
 16 Q. Do you recall that the plant was operated
 17 at the Doral warehouse -- was operated at the Doral
 18 warehouse in 2015 and early 2016?
 19 A. Yes.
 20 Q. In connection with running the 1-MW plant
 21 at the Doral warehouse, there were measurements
 22 being taken in connection with running the plant,
 23 correct?
 24 A. The question is very confusing. Can you
 25 reformulate it a little bit?

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1 Q. I can.
 2 A. Thank you.
 3 Q. When the 1-MW plant was being operated in
 4 Doral, were there measurements being taken of the
 5 inputs into and the outputs from the plant?
 6 A. They were taken in more ways.
 7 Q. I wanted to ask you about those
 8 measurements and how they were made.
 9 A. Okay. I understood the question.
 10 I need to give a long answer because it is
 11 three different -- it is three systems.
 12 Q. Uh-huh.
 13 A. Okay. The first part was the system that
 14 would give data to me to be able to see and regulate
 15 the functioning during the date -- throughout the
 16 day.
 17 The second system was the -- was the
 18 system that would memorize the data that the
 19 engineer -- the third system would be Engineer Penon
 20 would come to verify his data and his certified
 21 instrument -- instruments. Instruments.
 22 Okay. Perfect. There were occasions in
 23 which during the visits of Industrial Heat, from
 24 J.T. -- J.T. -- J.T. --
 25 Q. J.T. Vaughn?

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1 A. -- J.T. Vaughn and Tom Darden, photographs
 2 of the apparatus and the data. And Barry West,
 3 during the development of the test, of the tests,
 4 took pictures of the electrical meter. Meter. And
 5 the hydraulic meter.
 6 Q. The data collected from the first system,
 7 how was that stored?
 8 THE INTERPRETER: I'm trying to think of
 9 the word "stored."
 10 MR. PACE: Let me ask a different
 11 question.
 12 BY MR. PACE:
 13 Q. There were measuring devices that were
 14 used for collecting the data for Engineer Penon,
 15 correct?
 16 A. Of course.
 17 Q. And those measurement devices measured --
 18 actually let me start again. Let me start again.
 19 What measurement devices were used in
 20 Doral to collect data for Engineer Penon?
 21 A. Okay. Engineer Penon had two systems at
 22 his disposal. The first system was an electronic
 23 system that would permit the registering or
 24 registration of data that was necessary to
 25 understand if the system would function in a

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1 continuous cycle.
 2 The second -- the second set of
 3 instruments were certified instruments sent from
 4 Penon -- sent by Penon and installed in the plant
 5 once -- okay, to be able to do a measuring, a
 6 certified measurement.
 7 Q. The data collected in the electronic
 8 system for Engineer Penon, where was that data held
 9 or stored?
 10 A. Okay. The data for the certified
 11 instrument was inside the certified instrument.
 12 Okay. The data, because there are two instruments,
 13 the first one was the certified instruments. The
 14 second was the registered data from the electronic
 15 control system inside of Penon's computer.
 16 Q. Then there was also a system that
 17 collected data that you would use to operate the
 18 plant?
 19 A. Yes.
 20 Q. What data did you collect for purposes of
 21 operating the plant?
 22 A. Electrical, incoming temperature -- input
 23 temperature, output temperature, pressure.
 24 Q. Anything else?
 25 A. No.

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1 Q. Where is -- was that data that you just
 2 described, was that stored in the computer
 3 somewhere?
 4 A. It was stored in my server. From this
 5 data, I extracted the file that was delivered in the
 6 attorney's office during my second meeting.
 7 Attorney Pace, the attorney next to the interpreter.
 8 Q. You testified earlier today that you sent
 9 data to Engineer Penon. Was that -- was that data
 10 from your system?
 11 A. Yes. Yes. I could not get into
 12 Mr. Penon's --
 13 MR. PACE: Computer.
 14 THE INTERPRETER: I could not hear the
 15 word. Into the system?
 16 THE WITNESS: I could not enter into
 17 Mr. Penon's system.
 18 BY MR. PACE:
 19 Q. And so the system for the electronic
 20 control, the measurement system of Engineer Penon
 21 for the electronic controls, that data was stored in
 22 a computer of Dr. Penon's?
 23 A. Yes.
 24 Q. And no one other than Dr. Penon accessed
 25 that computer?

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1 A. Yes. We were only to see if it functioned
 2 or did not.
 3 Q. Who is "we"?
 4 A. All of those that would enter the command.
 5 Q. Container?
 6 A. Container. Okay. It is a small container
 7 where the office is inside.
 8 Q. How is the data kept for the certified
 9 instruments?
 10 A. I could only speak for one of the
 11 certified instruments.
 12 Q. Which one is that?
 13 A. PCE-130. Oh, 830.
 14 Q. Where was the data for the PC-830 stored?
 15 A. Inside of the PCE-830.
 16 Q. Who installed the measurement equipment
 17 for the system that you operated?
 18 A. Which instruments? There are so many.
 19 Q. Let's go through each of them.
 20 The instrument for measuring the
 21 electrical power.
 22 THE INTERPRETER: Measuring?
 23 MR. PACE: Electrical power.
 24 THE WITNESS: For the PCE-830, yes, it was
 25 installed, Barry West, under my direct

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1 supervision.
 2 BY MR. PACE:
 3 Q. I think we may have gotten our questions
 4 crossed there a little bit.
 5 I'm asking about the measurement equipment
 6 that you used, not that Dr. -- not that Engineer
 7 Penon used, for measuring electrical usage.
 8 A. For the amount of the measured
 9 electricity -- power, one instrument alone was used.
 10 I only had access only to the data, read data.
 11 Q. On the screen?
 12 A. On the screen, while Penon had the
 13 possibility of unload the data and verify it.
 14 Q. So both you and Dr. Penon -- I'm sorry.
 15 Let me start this over again.
 16 Both you and Engineer Penon were using the
 17 same device for measuring the electrical usage?
 18 A. In two different ways, yes.
 19 Q. Would you, for the way that you received
 20 the data, did you have to do that manually, write it
 21 down?
 22 A. Yes.
 23 Q. For the input temperature data that you
 24 used for operating the system at the Doral
 25 warehouse, what device did you use to measure that?

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1 A. Okay. Thermal waves. Thermal waves.
 2 Thermal probes.
 3 THE INTERPRETER: Sorry. Probes.
 4 THE WITNESS: They were identical to the
 5 ones that were used by Engineer Penon.
 6 BY MR. PACE:
 7 Q. Mr. Fabiani, you understand that the term
 8 thermal -- the English term "thermal couple"?
 9 A. Thermal couple.
 10 Q. For these purposes, why don't we both use
 11 the term "thermal couple"?
 12 A. Thermal couple, yes.
 13 Q. So the -- you were measuring the input
 14 temperature using the same type of thermal couple as
 15 Engineer Penon?
 16 A. Yes, the same type.
 17 Q. But it was -- but it was a different
 18 thermal couple?
 19 A. Yes. Yes. Positioned at 10 centimeters
 20 of distance, perhaps even 16. I don't remember
 21 exactly.
 22 Q. Who installed both of those thermal
 23 couples?
 24 MR. NUNEZ: Objection to form.
 25 THE WITNESS: The hydraulic worker

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1 directed by Rossi, by Dr. Rossi, and I did the
 2 connection to the reading system.
 3 BY MR. PACE:
 4 Q. You did the connection between the thermal
 5 couple and the control panel?
 6 A. It is not exactly like that.
 7 THE INTERPRETER: I need to have that
 8 repeated.
 9 THE WITNESS: Okay. The thermal couple
 10 was connected with a conversion.
 11 MR. PACE: Converter.
 12 THE WITNESS: A conversion board, board.
 13 It is like an electronic board. And it would
 14 transmit the data to the computer that he was
 15 assigned.
 16 To be able to distinguish the two plants,
 17 a board, a board was created for Penon's
 18 thermal couple. And another separate board was
 19 installed for my thermal couple, to not risk --
 20 THE INTERPRETER: I'm not understanding
 21 the word.
 22 THE WITNESS: To tie.
 23 MR. PACE: Ask him if he can explain it
 24 again.
 25 THE WITNESS: To have the data pass

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1 through the same lines.
 2 DR. ROSSI: No, no.
 3 THE WITNESS: To avoid the data to go
 4 through the same lines.
 5 THE INTERPRETER: I didn't hear "to
 6 avoid."
 7 BY MR. PACE:
 8 Q. Let me ask, for the output -- for the
 9 measurements of the output temperature, thermal
 10 couples were also used?
 11 A. Yes.
 12 Q. How many thermal couples?
 13 A. From my plant, one thermal couple for each
 14 reactor. And one output thermal couple for the
 15 superior level of the tubal -- pipe.
 16 THE INTERPRETER: That's what I thought,
 17 pipe.
 18 THE WITNESS: And one output thermal
 19 couple for an inferior pipe level.
 20 BY MR. PACE:
 21 Q. And then how many thermal couples were
 22 used for Engineer Penon?
 23 A. Two thermal couples for the output of the
 24 whole plant. And two thermal couples for the input
 25 of the plant.

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1 Q. And what equipment was used to measure the
 2 pressure for the outflow from the plant?
 3 MR. PACE: The outflow of the plant.
 4 MR. NUNEZ: Not output.
 5 MR. PACE: The output of the plant.
 6 THE WITNESS: I do understand outflow. It
 7 is one of the engineering terms. For the
 8 pressure, we had two instruments. The first
 9 one was an instrument manometer. The second
 10 one --
 11 THE INTERPRETER: A wire? Cable?
 12 THE WITNESS: Wave.
 13 MR. PACE: Let him explain it again.
 14 THE WITNESS: A pressure probe, a pressure
 15 probe for Engineer Penon and a pressure probe
 16 for my system of --
 17 BY MR. PACE:
 18 Q. Control?
 19 A. For my system of data, memorizing data,
 20 memorizing. Data memorizing. Perfect.
 21 Q. And who installed the pressure-measuring
 22 devices?
 23 A. The installation was done from the
 24 hydraulic -- from the hydraulic worker of Dr. Rossi,
 25 in front of my verification, and at the arrival of

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1 Engineer Penon, Engineer Penon verified the
 2 installation of all of the probes.
 3 Q. Do you know the name of the hydraulic
 4 worker?
 5 A. Rossi used more contracts -- no.
 6 THE INTERPRETER: The interpreter is not
 7 understanding what that word means.
 8 THE WITNESS: We had several hydraulic
 9 workers that worked in the plant. I don't
 10 recall the names.
 11 BY MR. PACE:
 12 Q. Were any of the -- were any of these --
 13 did any of these measuring devices have to be
 14 replaced in 2015 or early 2016?
 15 THE INTERPRETER: The hydraulic?
 16 MR. PACE: Let me start the question over.
 17 BY MR. PACE:
 18 Q. Did any of these measuring devices have to
 19 be replaced in 2015?
 20 THE INTERPRETER: (In Italian.)
 21 THE WITNESS: (In Italian.)
 22 THE INTERPRETER: Two thousand?
 23 MR. PACE: '15.
 24 THE WITNESS: During the work of the
 25 plant, we had -- we had hydraulic losses, and

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1 it was necessary to disconnect and connect
 2 again, at the necessary time, some of the
 3 probes. This would happen normally during the
 4 maintenance of the plant, with the presence and
 5 the collaboration of Barry West.
 6 BY MR. PACE:
 7 Q. And this would include the probes of
 8 Engineer Penon?
 9 A. No. Only my probes. Engineer Penon's
 10 probes were always attached. In case of loss,
 11 silicone was placed to avoid the loss. But thermal
 12 silicone.
 13 MR. PACE: I'm going to mark as -- I think
 14 we are only on Exhibit 2. I'm marking as
 15 Exhibit 2 a February 27th, 2015 email.
 16 (The referred-to document was marked by
 17 the court reporter for Identification as
 18 Deposition Exhibit 2.)
 19 BY MR. PACE:
 20 Q. Mr. Fabiani, was there -- early in 2015
 21 was there a problem with the temperature probes?
 22 A. February 27th?
 23 Q. February 27, 2015.
 24 A. Could you go down a little bit? Yes, I
 25 recall this incident very well.

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1 Q. These probes were burning out because they
 2 were grounded probes?
 3 A. Yes. Yes, I understand the question.
 4 These probes that burnt were not connected to the
 5 area of the small reactors, where an error in
 6 insulation -- where an error in installation
 7 occurred.
 8 These were probes that were not -- that
 9 were not involved in the -- in the memorization of
 10 the data, because it was chosen to exclude that part
 11 of the plant because it was done wrongfully. And it
 12 doesn't have anything to do with --
 13 THE INTERPRETER: No. I'm not
 14 understanding.
 15 THE WITNESS: Oh, okay. It does form part
 16 of the -- the utilized probes that were used
 17 for the test for one year. For one year.
 18 BY MR. PACE:
 19 Q. These probes were connected to the smaller
 20 reactors?
 21 A. Yes.
 22 Q. And during 2015, how often were the
 23 smaller reactors operating?
 24 A. In 2015, okay. It was -- there was a --
 25 a -- it was -- we tried -- yes, we tried -- we tried

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1 to turn on the small reactors, but we found
 2 installation defects that did not allow to be able
 3 to work with the small reactors.
 4 Q. Was that insulation problem more than just
 5 the problem with the temperature probes?
 6 A. Okay. That insulation problem derived
 7 from an error, an erred system of electrical
 8 cabling. This led to -- led to having current,
 9 current, like electricity, on the metallic mats.
 10 For this reason is why they burnt out.
 11 Q. And those small reactors burnt out in
 12 early 2015?
 13 A. They were not turned on in 2015. They
 14 were turned on only for testing.
 15 Q. So the -- any output from the 1-MW plant
 16 was from the four big Frankie units?
 17 A. Ninety-nine percent, yes.
 18 Q. What is the 1 percent wrong?
 19 A. Thank you. Is okay. The 1 percent is if
 20 the -- 1 percent -- oh, from the startup, the
 21 1 percent of the system, to then be able to turn off
 22 all of the small reactors for a problem of short
 23 circuit to the -- the -- the -- during the -- during
 24 the turning on -- oh, during the functioning.
 25 THE INTERPRETER: I'm sorry. The words

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1 were choppy.
 2 BY MR. PACE:
 3 Q. The small reactors were operating for a
 4 very short time when the plant was first turned on?
 5 A. Yes. Yes. In the documents that were
 6 delivered in the Excel file, there are the comments
 7 for each day. And it is written when we had to turn
 8 off the small reactors, the small reactors.
 9 MR. PACE: Why don't we take a short break
 10 and we will get that spreadsheet out, too.
 11 MR. NUNEZ: Chris, before we -- before we
 12 go off the record, I don't know if it needs to
 13 be on the video record, I told you we were here
 14 for the seven hours. It is not seven hours of
 15 questioning. I mean, you could speak with me
 16 if you need a little bit longer. We're at 2:00
 17 now.
 18 MR. PACE: Our position is under the rules
 19 we are entitled to seven hours of questioning.
 20 If you guys want to turn off the Skype and stop
 21 the deposition, you can do so at your own risk.
 22 That's up to you.
 23 How much time are we at?
 24 THE VIDEOGRAPHER: I can tell you when we
 25 go off. Stand by to go off Media Unit

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1 Number 2. Going off the record at 1:55 p.m.
 2 (Thereupon, a recess was taken, after
 3 which the following proceedings were held:)
 4 THE VIDEOGRAPHER: We are now back on the
 5 video record. This is the beginning of Media
 6 Unit 3. The time on the record is 2:24 p.m.
 7 BY MR. PACE:
 8 Q. Mr. Fabiani, before we broke you made a
 9 reference to a document that reflects when different
 10 parts of the E-CAT -- the 1-MW plant was working or
 11 was stopped.
 12 I want to show you what I have marked here
 13 as Exhibit 3.
 14 (The referred-to document was marked by
 15 the court reporter for Identification as
 16 Deposition Exhibit 3.)
 17 BY MR. PACE:
 18 Q. Just looking at this first page of the
 19 exhibit, is this the -- and I will represent to you
 20 that this was produced by your lawyer in discovery.
 21 Does this -- is this the document you discussed?
 22 A. This part seems like it, yes.
 23 MR. NUNEZ: Let me just -- I'm sorry. Not
 24 so much -- Fulvio, one second.
 25 Mr. Pace, just because you said this was

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1 produced by us, is there a reason it doesn't
 2 have the Bates stamps on it?
 3 MS. HANDELSON: We didn't get Bates stamps
 4 on any of our production.
 5 MR. PACE: This was 13 and 14. I don't
 6 think it had the Bates stamps on it.
 7 MR. NUNEZ: All right. Go on. I'm going
 8 to look. I'm pretty sure it did.
 9 MR. PACE: I want to say it is 13 or 14.
 10 It is one or both.
 11 MR. NUNEZ: I think this one was 14.
 12 THE INTERPRETER: I'm sorry. The
 13 interpreter left her glasses right there.
 14 Sorry, Counsel. Sorry about that.
 15 BY MR. PACE:
 16 Q. If we go to the -- if we go to the second
 17 page.
 18 MR. NUNEZ: Just for the record, just
 19 because you had made that reference, because
 20 mine do have Bates stamp, it looks like a
 21 different copy.
 22 MR. PACE: Did you look at 13? I think
 23 you produced the same thing. Production 13 and
 24 14.
 25 MR. NUNEZ: Right, because 13 -- just bear

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1 AFFIDAVIT
 2 STATE OF FLORIDA)
 3 COUNTY OF)
 4
 5 I, _____, being first
 6 duly sworn, do hereby acknowledge that I did
 7 read a true and certified copy of my deposition
 8 which was taken in the case of ROSSI V. DARDEN,
 9 taken on the 28th day of February, 2017, and
 10 the corrections I desire to make are as
 11 indicated on the attached Errata Sheet.
 12
 13 CERTIFICATE
 14 STATE OF FLORIDA)
 15 COUNTY OF)
 16
 17 Before me personally appeared _____
 18 to me well known / known to me to be the
 19 person described in and who executed the
 20 foregoing instrument and acknowledged to and
 21 before me that he executed the said instrument
 22 in the capacity and for the purpose therein
 23 expressed.
 24 Witness my hand and official seal, this
 25 _____ day of _____, _____.

 (Notary Public)
 MY Commission Expires: _____

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1 CERTIFICATE OF OATH
 2 STATE OF FLORIDA)
 3 COUNTY OF MIAMI-DADE)
 4
 5 I, the undersigned authority, certify
 6 that FULVIO FABIANI personally appeared before me
 7 and was duly sworn.
 8 WITNESS my hand and official seal this
 9 13th day of February, 2016.
 10
 11 
 12 KELLI ANN WILLIS, RPR, CRR
 13 Notary Public, State of Florida
 14 My Commission No. PF911443
 15 Expires: 2/16/20
 16 + + + + +
 17 CERTIFICATE
 18 STATE OF FLORIDA)
 19 COUNTY OF MIAMI-DADE)
 20 I, KELLI ANN WILLIS, Registered
 21 Professional Reporter and Certified Realtime
 22 Reporter do hereby certify that I was
 23 authorized to and did stenographically report
 24 the foregoing deposition of _____ 2017; That a review
 25 of the transcript was requested; and that the
 transcript is a true record of my stenographic
 notes.
 I FURTHER CERTIFY that I am not a
 relative, employee, attorney, or counsel of any
 of the parties, nor am I a relative or employee
 of any of the parties' attorney or counsel
 connected with the action, nor am I financially
 interested in the action.
 Dated this 13th day of February, 2016.

 KELLI ANN WILLIS, RPR, CRR

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1 ERRATA SHEET
 2 PAGE LINE REMARKS
 3 _____
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 23 _____
 24 _____
 25 _____

Signature of Witness

 (Notary Public)
 Dated this _____ day of _____, _____.
 MY Commission Expires: _____

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1 _____, 2017
 2 Fulvio Fabiani
 3 c/o Rodolfo Nunez, Esq.
 4 255 Alahambra Circle
 5 Coral Gables, Florida 33134
 6 RE: Rossi v. Darden
 7 DEPO OF: Fulvio Fabiani
 8 TAKEN: 2-28-17
 9 NUMBER OF PAGES: 150
 10 AVAILABLE FOR READING UNTIL: 30 days
 11 Dear Sir:
 12 This letter is to advise you that the transcript of
 13 your deposition is available for reading and
 14 signing.
 15 PLEASE CALL 305 376-8800 TO MAKE AN APPOINTMENT to
 16 come to the Veritext office to read and sign the
 17 transcript. Our office hours are 9:00 a.m. to 5:00
 18 p.m., Monday through Friday.
 19 In the event other arrangements are made, please
 20 send us a notarized list of any and all corrections
 21 and/or changes, noting page and line numbers, and
 22 the reason for such changes, so that we can furnish
 23 respective counsel with a copy.
 24 If the reading and signing has not been completed
 25 prior to the above-referenced date, we shall
 conclude that you have waived the reading and
 signing of the deposition transcript.
 Your prompt attention to this matter is appreciated.
 Sincerely,

 Kelli Ann Willis, RPR, CRR
 cc: All counsel of record

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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EXHIBIT 2

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

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.)

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

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.)

**DECLARATION OF JOSEPH
MURRAY**

I, Joseph Murray, in accordance with 28 U.S.C. § 1746, declare as follows:

1. I participated in a meeting with Fulvio Fabiani on 18 March 2016 at the offices of Jones Day in Miami, Florida. At that meeting, Mr. Fabiani provided summary data related to the operation of the 1MW Plant (“Plant”) in Doral from approximately February 2015 to February 2016.

2. During that meeting, Mr. Fabiani stated that he had secured all of the raw data from the operation of the Plant in Doral on servers in Russia encrypted and in triplicate. Mr. Fabiani claimed this data contained measurements taken every few seconds.

3. In addition, Mr. Fabiani stated that he had a nearly complete final report and a spreadsheet containing flow rate measurements that he personally collected during the operation of the Plant in Doral. According to Fabiani, the flow rate measurements were stored in a file on his computer.

4. Based on the fact that Mr. Fabiani told us that he had the data in triplicate, encrypted, and stored on three unique servers in Russia, it was my understanding at the time of the March 2016 meeting that Mr. Fabiani was very aware of the critical nature of the data.

5. When I reviewed the data from reports prepared by Fabio Penon in relation to the operation of the Plant in Doral, it was clear to me that the data that provided, summarized and “processed” to daily values was highly suspect. The only data Mr. Penon provided was, in fact, a synopsis of what was claimed to be actual measurements in the form of daily summaries for one pressure transducer (or something that was an aggregation of pressure), one thermocouple measure in the pipe going to the JM Products facility, and one thermocouple in the return pipe.

It also reflected a level of consistency across days not consistent with the way that data occurs in the real world. To the extent the data provided by Mr. Fabiani and United States Quantum Leap, LLC (“USQL”) purported to measure the same variables as Mr. Penon, their data reflected the same issue -- and in fact their data precisely matched Mr. Penon’s data, even though it supposedly was collected using different measuring devices placed at different locations in connection with the 1 MW Plant (differences of even inches should produce variances when purportedly doing precise measurements of temperature, for example).

6. Mr. Fabiani provided data exclusively in the form of “.ods” files (an open standard file format for spreadsheets) for two temperature measurements and one pressure measurement — that were sampled at 30 minute intervals. Note that a significant amount of work is required to take data samples for all of these devices (dozens of thermocouples and pressure sensors) every 10 seconds and to distill them into aggregate data values every 30 minutes. It would have been easier for Mr. Fabiani simply to have provided the raw data to us.

7. With the raw 10-second data from the pressure transducers and thermocouples, we could clearly determine what was happening in the system.

8. When we inspected the Plant in the Doral facility a few months back, we took numerous pictures of Keller pressure transducers and thermocouples on each of the reactor outlet pipes. There should exist 10-second raw data for 55 pressure transducers and 55 thermocouples on the outlet of each of the reactors (51 small reactors and 1 each for the 4 large reactors).

9. In addition, there was a bank of thermocouples in the return water pipe near the internal reservoir tank. This data should have partially shown the state of the fluid (pressure and temperature) at each reactor exhaust. With this information, we could build up to the aggregate value that the reactors provided and ultimately each daily value. This is the very first step we would have taken in our analysis if we had access to the raw data. Analyzing this information would shed light on the integrity of the data we received and the information that was ultimately provided in Fabio Penon's report.

10. No real physical system produces the same exact temperature day after day, hour after hour, second after second for weeks on end. Yet the summary data from Penon and separately from Fabiani show a remarkable consistency over a nearly one year time period. The consistency of the data they provided clearly indicates that either the data was manipulated or it was incorrectly processed. Raw data would be needed to determine how and where errors were made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of May, 2017.



Joseph Murray

EXHIBIT 3

From: M.Eng. Fulvio Fabiani <fulvio.fabiani@mail.com>
Sent: Tuesday, February 23, 2016 10:28 AM
To: JT Vaughn
Cc: tdarden
Subject: Ecat final documentation

Dear JT (and Dear Tom who reads us in copy),
finally after a year of stress I have slept a full weekend (YEAAAAHHHH)

I wanted to let you know the schedule of how to proceed for the next days.

First step: Condensation of digital data for not distracting precise analysis.
At the end I will send you a excel file with all electrical and thermal data of the system throughout the period test.
This step will keep me busy until approximately the first week of March 2016.

Then I will work on my official report to bring to light all the flaws and functional deficiencies of the system in order to have sufficient information to replicate a system with lower costs and with greater reliability.

In that report, the plant stop periods (total or partial) will be also mentioned and the reasons therefor.

This phase will use my time to the end of March 2016.

At the same time I believe it is appropriate to clarify if you are interested in the continuation of our counseling relationship maybe exchanging a draft of a contract renewal.

I am convinced that we will be able to find a point of mutual interest and useful to meet together the future development of the project.

Best regards.
M.Eng. Fulvio Fabiani
+1(919)812-7863

EXHIBIT 4

From: Joseph Murray <jmurray@industrialheat.co>
Sent: Friday, April 01, 2016 12:51 PM
To: fulvio.fabiani@mail.com
Subject: Re: Follow Up

Fulvio,

I hope this message finds you well. A few weeks back I requested a copy of the original raw data as well as the unofficial data you recorded that included the flow meter logs. JT indicated that you were in Canada but would get back with me. Could you please pass along that information.

In addition I think your final report was to be completed by 3/31/16. Can you send that along with all of the supporting data?

Thanks and hope all is well.

B/R,

Joe.

On Tue, Mar 22, 2016 at 5:52 PM, Joseph Murray <jmurray@industrialheat.co> wrote:
Fulvio,

I hope this message finds you well. I have gone through the data that you provided and it was very helpful. I think it clarifies many things that were ambiguous with the other data sets that we were provided by Penon.

Did you have any success in finding the other log data that you were going to look for on the other computer? We were interested in your informal measurements from the flow meter.

Also, is it possible for you to send me a raw data files with the data sampled at the raw rate? This would be most helpful.

Best regards,

Joe.

--

Joe Murray
Industrial Heat
p: 919.670.2771
e: jmurray@industrialheat.co

EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

ANDREA ROSSI, et al.,)
)
 Plaintiffs,)
 v.)
)
 THOMAS DARDEN, et al.,)
)
 Defendants.)
 _____)

No. 16-cv-21199-CMA (JJO)

DECLARATION OF JOHN T. VAUGHN

I, John T. Vaughn, in accordance with 28 U.S.C. § 1746, declare as follows:

1. I am the Vice President of Industrial Heat, LLC (“Industrial Heat”).
2. On or about September 1, 2013, Industrial Heat entered into a Technical Consulting Agreement with United States Quantum Leap, LLC (“USQL”), through its sole member, Fulvio Fabiani (“Fabiani”) (the “USQL Agreement”).
3. The USQL Agreement was renewed twice. It ultimately expired on March 31, 2016.
4. Pursuant to the USQL Agreement, Industrial Heat paid USQL’s consulting fee and monthly rent from September 2013 through February 2016.
5. The only payment Industrial Heat has not made to USQL is payment of USQL’s March 2016 invoice.
6. Industrial Heat did not make that payment because USQL and Fabiani breached the USQL Agreement by failing to turn over documents and data that are Industrial Heat’s property under the USQL Agreement.

7. On March 18, 2016, I attended a meeting at the offices of Jones Day in Miami, Florida. Also present at the meeting were Christopher Pace, Joseph Murray and Fabiani.

8. At the meeting, Fabiani said he did not want to get involved in any lawsuit between Industrial Heat and Andrea Rossi ("Rossi"). Fabiani was told that if he did not tell Industrial Heat everything he knew about the operations of the 1MW E-Cat in Doral, Florida and the involvement of J.M. Products, and if he did not provide Industrial Heat with all of the documents and data he had relating to those operations, he would be involved in any litigation between Industrial Heat and Rossi.

9. Also, at the meeting, Fabiani stated that, during the time he was working on the 1MW E-Cat in Doral, Florida, he barely saw James Bass and he did not know what work James Bass did.

10. Additionally, I have reviewed the following documents attached to Defendants' Motion for Summary Judgment and I attest that the documents were kept in the course of Industrial Heat's regularly conducted activities; I further attest that I have knowledge of the following documents and that they are what they claim to be:

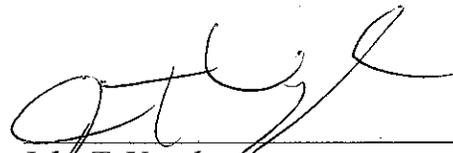
- (1) 4th Am. AACT, Ex. 9;
- (2) IH-00098392;
- (3) 4th Am. AACT, Ex. 7;
- (4) 4th Am. AACT, Ex. 8;
- (5) IH-00089736;
- (6) IH-00131929;
- (7) 4th Am. AACT, Ex. 16;
- (8) IH-00090895;

- (9) IH-00007120;
- (10) IH-00090826;
- (11) IH-00011864;
- (12) IH-00089932;
- (13) 4th Am. AACT, Ex. 17;
- (14) IH-00011231;
- (15) 4th Am. AACT, Ex. 19;
- (16) IH-00131928;
- (17) 4th Am. AACT, Ex. 11;
- (18) IH-00012657;
- (19) 4th Am. AACT, Exs. 28 & 29;
- (20) 4th Am. AACT, Ex. 21;
- (21) IH-00011081;
- (22) IH-00015792;
- (23) IH-00124079;
- (24) IH-00011073;
- (25) IH-00089928;
- (26) IH-00011488;
- (27) IH-00011492;
- (28) IH-00091696;
- (29) IH-00016937;
- (30) IH-00019103;
- (31) IH-00019055;

- (32) IH-00087145;
- (33) IH-00120031;
- (34) IH-00011095;
- (35) IH-00012026;
- (36) IH-00011150.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of March, 2017.



John T. Vaughn