

III. Third Party Defendants' Witnesses

Third Party defendants' designations and corresponding counter-designations, rebuttal designations and objections.

Provided by Third Party Defendants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Plaintiffs,)

VS.)

No. 1:16-cv-2119-CMA

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,)

vs.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

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

Third-Party Defendants.)

HIGHLY CONFIDENTIAL

Videotaped Deposition of JOSEPH ALAN MURRAY
(Taken by Plaintiff)
Raleigh, North Carolina
Friday, February 17, 2017

Reported in Stenotype by
Lauren M. McIntee, RPR
Transcript produced by computer-aided transcription

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1 APPEARANCES
 2 ON BEHALF OF THE PLAINTIFF:
 John M. Annesser
 3 Brian Chaiken
 Perlman, Bajandas, Yevoli & Albright, PL
 4 283 Catalonia Avenue, Suite 200
 Coral Gables, Florida 33134
 5 (305) 377-0086
 Jannessers@pbylaw.com
 Bchaiken@pbylaw.com
 6 ON BEHALF OF DEFENDANTS:
 Christopher Lomax
 8 Jones Day
 Brickell World Plaza
 9 600 Brickell Avenue, Suite 3300
 Miami, Florida 33131
 10 (305) 714-9700
 clomax@jonesday.com
 11
 ON BEHALF OF THIRD-PARTY DEFENDANTS J.M. PRODUCTS, INC.,
 12 HENRY JOHNSON, and JAMES BASS:
 Francisco J. León de la Barra (Via telephone)
 13 Aran, Correa & Guarch, P.A.
 225 University Drive
 14 Coral Gables, Florida 33134
 (305) 665-3400
 15 fleon@acg-law.com
 ON BEHALF OF THIRD-PARTY DEFENDANTS FULVIO FABIANI, AND
 16 UNITED STATES QUANTUM LEAP, LLC:
 17 Rudolfo Nuñez (Via telephone)
 Rudolfo Nuñez, P.A.
 18 255 University Drive
 Coral Gables, Florida 33134
 19 (305) 665-3400
 rnunez@acg-law.com
 20
 21 ALSO PRESENT:
 22 MR. MICHAEL KIRBY, CLVS
 DR. ANDREA ROSSI
 23
 24
 25

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1 VIDEOTAPED DEPOSITION OF JOSEPH ALAN MURRAY, a
 2 witness called on behalf of Defendant, before Lauren M.
 3 McIntee, Registered Professional Reporter and Notary
 4 Public, in and for the State of North Carolina, at
 5 CaseWorks Court Reporting, 3509 Haworth Drive, Suite
 6 403, Raleigh, North Carolina, on Friday,
 7 February 17, 2017, commencing at 8:50 a.m.
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1 THE VIDEOGRAPHER: We're on the record at
 2 8:51 a.m. This is the videotaped deposition of
 3 Joseph Murray in the matter of Andrea Rossi, et al,
 4 versus Thomas Darden, et al. This deposition is
 5 being held in the offices of CaseWorks at 3509
 6 Haworth Drive, Suite 403, in Raleigh, North Carolina
 7 27609 on February 17, 2017. The court reporter is
 8 Lauren McIntee. The videographer is Michael Kirby,
 9 both with Caseworks. Would counsel please introduce
 10 themselves.
 11 MR. ANNESSER: John Annesser and Brian
 12 Chaiken on behalf of the Plaintiffs.
 13 MR. LOMAX: I'm Christopher Lomax on behalf
 14 of the Defendants.
 15 THE VIDEOGRAPHER: And would the court
 16 reporter please swear in the witness.
 17 MR. NUÑEZ: Hello there. This is Rudy
 18 joining in.
 19 MR. ANNESSER: Thank you, Rudy. We've
 20 already begun.
 21 MR. NUÑEZ: Okay.
 22 MR. ANNESSER: Please place us on mute.
 23 MR. NUÑEZ: I thought it was 9:00 though,
 24 right?
 25 MR. ANNESSER: Yes, but we, we decided to

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1 opinion you state, "Mr. Murray will describe" -- I'm
 2 sorry. Your disclosure states, "Mr. Murray will
 3 describe how the data generated by Fabio Penon and
 4 Fulvio Fabiani pertaining to the power absorbed during
 5 the testing of the E-Cat plant at the address of Doral
 6 location, JMP" -- is that address of Doral location, was
 7 that, why is that in all caps?
 8 **A. I don't know.**
 9 Q. Was that supposed to actually be the address
 10 of the Doral location?
 11 **A. Potentially.**
 12 Q. Okay. But you didn't draft this. Okay.
 13 -- "is at odds with the amount of power used
 14 at the Doral location as demonstrated by Florida Power
 15 and Light, FP&L records."
 16 **A. Uh-huh.**
 17 Q. What did you do to come to that conclusion?
 18 **A. We received the daily power or energy records**
 19 **from Florida Power and Light via subpoena for periods of**
 20 **time before the plant was installed, the period of time**
 21 **when the plant was operating, and periods of time after**
 22 **the plant was installed. And what we did was we,**
 23 **compared that daily energy level to the daily energy**
 24 **levels that were provided by Fabio Penon and Fulvio**
 25 **Fabiani.**

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1 It reads Excel files. How did you get the data from the
 2 Penon report into that system?
 3 **A. We typed it in by hand.**
 4 Q. Who did?
 5 **A. I typed in some of it. There was -- oh, did**
 6 **you say Penon?**
 7 Q. Penon.
 8 **A. Penon. I typed it in. I had some, some of**
 9 **the younger engineers type it in, and then we had a**
 10 **separate person cross-check it to make sure it all**
 11 **matched.**
 12 Q. Who was the younger engineer and who
 13 cross-checked it?
 14 **A. So Jason Kemp was the person who**
 15 **cross-checked it, and James Hartanto was the young**
 16 **person who actually typed it in.**
 17 Q. Is Mr. Hartanto an engineer?
 18 **A. He is, he has a degree in I believe chemistry**
 19 **and applied math.**
 20 Q. So the answer is no?
 21 **A. No. Yes.**
 22 Q. Okay. And James Kemp, is he an engineer?
 23 **A. Jason Kemp?**
 24 Q. I'm sorry, Jason.
 25 **A. No, he's not.**

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1 Q. How did you compare it?
 2 **A. We used a analytic tool to look at the data**
 3 **and to plot it to make a comparison between them.**
 4 Q. What analytic tool did you use?
 5 **A. We used a series of tools called Python,**
 6 **which is a programming language, with iPython -- it's**
 7 **now called Jupiter Notebook, but it used to be called**
 8 **iPython Notebook. We used NumPy, which is a numerical**
 9 **tool kit; SciPy, which is a scientific library; and**
 10 **something called Pandas, which is a data analytics tool**
 11 **to be able to compare data. And we plotted that --**
 12 Q. What --
 13 **A. -- using Matplotlib to make comparisons**
 14 **between the various data sets.**
 15 Q. So, so what exactly do these program do?
 16 **A. Well, you read the data in. You formulate it**
 17 **so you can get an exact --**
 18 Q. Hold on one second. How do you read the data
 19 in?
 20 **A. So in that, there's a Pandas library that**
 21 **allows you to read in a comma-separated file or an Excel**
 22 **file, other types of files. We read that in and we then**
 23 **com -- then we can directly compare date-matched times**
 24 **and dates and plot the data.**
 25 Q. Okay. Let's talk about that for a moment.

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1 Q. Okay.
 2 **A. They were doing just data transcription.**
 3 Q. Who do they work for?
 4 **A. At that time they worked for Industrial Heat.**
 5 Q. Who do they work for now?
 6 **A. I think Jason Kemp took a job with Pike**
 7 **Electric, and I believe that James Hartanto is getting**
 8 **ready to go to graduate school.**
 9 Q. Okay. Now, the FP&L data, how was that
 10 in-put?
 11 **A. That data was received in a PDF file, and we**
 12 **converted all of that data using an OCR reader to, to,**
 13 **into a comma-separated file or Excel file. And then we**
 14 **actually had Jason and James go back and cross-reference**
 15 **and check it against the original documents.**
 16 Q. Do you know if there were any mistakes in
 17 those? Typos?
 18 **A. I don't know. I mean they went through and**
 19 **checked it and cross-checked it, and I went through and**
 20 **sampled a check as well.**
 21 Q. How much sampling did you do?
 22 **A. I would say hundreds of points. I mean I**
 23 **went through almost line by line to cross-check it, but**
 24 **it becomes very bleary-eyed when you're doing that. So**
 25 **then they did a every-single-line cross checking it to**

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1 the data that was provided under subpoena.

2 Q. So all of the input was done by Industrial

3 Heat employees?

4 A. Yes.

5 Q. So you've got both of those in, and how did

6 you compare them using these programs? Was there a

7 complex analysis, or was it just plotting these out into

8 a graph?

9 A. So first, well, there was also a third piece

10 of data. That was the data provided by Fabio Penon. He

11 provided that, that data in, again in March/April time

12 frame he gave us files. I kind of described that

13 earlier.

14 Q. Mr. Penon did?

15 A. I'm sorry. Fulvio Fabiani provided us files.

16 And so we, we looked at that, that data. Fulvio

17 Fabiani's data actually had two measurements for each

18 day. He had a measurement at, I believe the numbers

19 were 10:30 a.m. and 10:30 p.m. Mr. Penon's data -- I

20 have to be careful, make sure these names are right --

21 Mr. Penon's data was actually only once per day. It was

22 at I believe 10:30 p.m. each day. And the data from

23 Florida Power and Light was each day at midnight.

24 So what we did is we went back and we

25 cross-referenced it and made comparisons on a daily

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1 Q. Okay.

2 A. And so they --

3 Q. So that would be consistent with the data

4 points or the data being measured being accurate,

5 correct?

6 A. It would certainly be consistent with the

7 data being measured coming from the same device.

8 Q. Any reason to believe that either one of them

9 have manipulated the results?

10 A. No.

11 Q. Okay. So the green line is FP&L?

12 A. Yes.

13 Q. All right.

14 A. Florida Power and Light, yes.

15 Q. And for the vast majority of this, the green

16 line is higher than the red line?

17 A. That's correct.

18 Q. So the amount of power supplied by FP&L

19 substantially exceeds the amount of power that was

20 recorded going into this device?

21 A. Yes, yeah.

22 Q. Is that odd to you?

23 A. No. You would imagine that a facility like

24 this, the actual reactor system would absorb some power,

25 but you would imagine that there are also some, some

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1 basis and made, to make sure that we were comparing

2 apples to apples. And then we plotted the data and took

3 the differences between the various data sets and

4 checked the integrity between Penon and Fabiani's data

5 and then checked the comparisons against Florida Power

6 and Light.

7 Q. Okay. So let's look at Exhibit A of

8 Exhibit 11, which you should have in front of you.

9 A. Okay.

10 Q. Is that, sir, the comparison that you did?

11 A. This is part of the comparison, yes.

12 Q. Okay. I only see two lines here, one green

13 and one red.

14 A. Underneath it you can see a few points where

15 Mr. Fabiani -- I'm sorry. We gotta look at the colors

16 here. It's hard to see at this scale. Mr. Fabiani's

17 data diverges from Mr. Penon's data. You can see right

18 about here, and you can see down here. So there were

19 very little divergence between Mr. Fabiani and

20 Mr. Penon's data. In fact, I would, I would argue they

21 were the same exact data.

22 Q. Okay. The same exact?

23 A. Except for these points where they diverge.

24 Because Mr. Fabiani's data, as I said, had two data

25 points per day where Mr. Penon's data only had one.

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1 lights and the fan in the bathroom. There were a few

2 air conditioners around there. There was an office in

3 the front that I imagine would have heat and air

4 conditioning. So you would expect that Florida Power

5 and Light numbers would be higher than the numbers that

6 Mr. Penon and Mr. Fabiani measured. That would be a

7 reasonable expectation.

8 Q. Florida Power and Light's measurements, how

9 were those taken?

10 A. They were taken with a smart meter located on

11 the, on the building.

12 Q. What type of smart meter?

13 A. The smart meter that's approved by the State

14 of Florida.

15 Q. You know it's approved by the State of

16 Florida?

17 A. Yes.

18 Q. How?

19 A. I looked at the Florida Public Works

20 Commission website to find out if these things were

21 approved and how they were approved. And they indicate

22 that for investor-owned utilities, that they have

23 approval and then they give you a link to Florida Power

24 and Light, and in Florida Power and Light's data they

25 give the full description of how they implemented these

TPD - improper counter designation

as to 251:7 - 252:14

TPD - improper counter designation

as to 252:1-14

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1 programs and what the options are for the programs.
 2 Q. When was the FP&L device last calibrated?
 3 A. I have no idea.
 4 Q. Do you know if it's been three years?
 5 A. No idea.
 6 Q. Four years?
 7 A. I have, still have no idea.
 8 Q. Okay. So you, you have absolutely no
 9 information with respect to whether their data is
 10 accurate or not?
 11 A. What I know is that they provided it under
 12 subpoena. They may or may not be accurate.
 13 Q. Okay. So you don't have any reason to
 14 believe that we should rely on those results as opposed
 15 to the results of Mr. Penon or Mr. Fabiani; is that
 16 correct?
 17 A. I disagree with that. I, I would say that we
 18 have to at least look at this and understand why, why
 19 would it be this way. And so my view is that if, if a
 20 company like Florida Power and Light provides data under
 21 subpoena, there would be an expectation that they would
 22 provide, would provide proper and accurate data, and
 23 it's a reasonable way to check the facility. We did
 24 this, I did this kind of anticipating that Florida Power
 25 and Light would always be higher than the measurements

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1 device malfunctions?
 2 A. Oh, absolutely. Absolutely. In fact, I
 3 believe in this facility they actually replaced a smart
 4 meter at some point earlier in the year.
 5 Q. Why do you believe that?
 6 A. Because the registration number of the meter
 7 in the subpoenaed data changed.
 8 Q. When was that?
 9 A. I don't recall. It was earlier in the year.
 10 I would say sometime maybe in the May or June time
 11 frame.
 12 Q. Okay. Do you know if it was hooked up
 13 correctly when it was replaced?
 14 A. I do, I do not.
 15 Q. Okay. So what you've got here is just a
 16 comparison side by side of the two number sets. Is
 17 there anything scientific about that other than looking
 18 at it?
 19 A. It's, it's very alarming to see a drop. I
 20 mean in general when you see this, you see a very, very
 21 consistent amount of power being absorbed by the reactor
 22 system. And when the reactor system has a major drop
 23 like here in the, let's say between July and August you
 24 see a drop off, which I think corresponds to the data
 25 that says, hey, we had some, some reactors go offline,

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1 that were made here.
 2 Q. Okay. And, and the vast majority of the time
 3 here they are?
 4 A. Yes.
 5 Q. With very few exceptions, in fact. And one
 6 exception is between November and December 2015?
 7 A. Yes.
 8 Q. And during that period it, it appears that
 9 the power usage drops by the FP&L measurements, right?
 10 A. The FP&L measurement drops, yes, below the
 11 measurements provided by Mr. Penon and Mr. Fabiani.
 12 Q. Do you know why that would be?
 13 A. I have no idea.
 14 Q. Do you know if it's accurate? Do you know
 15 if, perhaps, there is a problem with the device, the
 16 measuring device?
 17 A. I have no information other than the data
 18 that was provided in the subpoena by Florida Power and
 19 Light.
 20 Q. Okay. So you have no reason to believe that
 21 that information is more accurate than the measurements
 22 taken by Penon and/or Fabiani, correct?
 23 A. No, other than the fact that it's a Florida
 24 utility, and they are regulated. I would think that --
 25 Q. Do regulated Florida utilities ever have

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1 you see that drop. That makes sense. And then sometime
 2 in October they brought all of the units back online and
 3 the power goes up.
 4 So all of the trends seem to be consistent
 5 except for this period of time when, in about from
 6 middle of November to the beginning of December where
 7 you have a power level absorbed into the building lower
 8 than the measured. So that would give -- to me, there
 9 are three potential explanations. Number one, Florida
 10 Power and Light could be wrong. Number two, the
 11 measurements made by Fabiani and Penon could be wrong.
 12 And number four or -- I'm sorry, number three, the data
 13 could have been manipulated. On either part, on either
 14 party.
 15 Q. Do you have any evidence that the data has
 16 been manipulated --
 17 A. No, I don't.
 18 Q. -- by either one?
 19 A. Not by Florida Power and Light or by Fabiani
 20 or Penon.
 21 Q. Okay. So you have no evidence of
 22 manipulation. So what are you opining to specifically
 23 here?
 24 A. Specifically, in this period it was, it was
 25 determined by Mr. Penon that the measurements, the

TPD - improper counter designation as to 256:15 - 257:14

TPD - improper counter designation as to 257:18 - 258:6

TPD - improper counter designation as to 257:18 - 258:6

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1 absorption of power was accurate and reflected what was
2 happening in the reactors. But if, in fact, Florida
3 Power and Light indicates that their data is valid in
4 the data provided under subpoena, then it would be
5 impossible for them to absorb more power than Florida
6 Power and Light provided.

7 Q. Now, you keep saying data provided under
8 subpoena, as if that makes it more accurate. It's the
9 measuring equipment that makes it more accurate or not,
10 correct?
11 **A. Sure.**
12 Q. Not whether it was voluntarily provided or
13 under subpoena?
14 **A. Uh-huh.**
15 Q. Correct?
16 **A. Yeah. My view is that if, if a, if a person**
17 **is providing data under subpoena, they're going to**
18 **probably provide the best possible data they have. We**
19 **also know that Florida Power and Light has hourly**
20 **measurements for this facility, and we have not received**
21 **that data.**
22 Q. Okay. But you don't know whether it was
23 measured correctly or not at that point in time. All
24 you can tell based on this is that there is a
25 difference?

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1 But this is a problem, and these areas down here are a
2 problem. What they're indicating is that nothing else
3 in the building is absorbing power, only the reactor,
4 and that's simply not realistic.

5 Q. And as you said, there's one of three
6 options. Either FP&L is wrong, Penon and Fabiani are
7 wrong, or there's manipulation on the data?
8 **A. On, on the part of some party, yes.**
9 Q. Okay. So basically one or the other is
10 incorrect, and then the third option is that it was
11 intentionally incorrect?
12 **A. Right, by somebody.**
13 Q. By somebody?
14 **A. That's right.**
15 Q. Okay. But you don't know which one is which?
16 **A. No.**
17 Q. Okay. So your opinion is simply that this is
18 an area of concern where it drops below and the other
19 areas where it drops below slightly are --
20 **A. In the context of this one plot, yes.**
21 Q. Okay. Now, the measurements taken by FP&L
22 were taken at what time?
23 **A. Midnight.**
24 Q. Midnight. The measurements taken by Engineer
25 Penon were what time?

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1 A. Yeah. I don't know whether or not any of
2 these lines were measuring correctly at that time.
3 Q. Okay. So what I'm, what I'm trying to
4 determine, because you're, you're giving an opinion as
5 to this, is I can see this as well as you can. I can
6 see this graph.
7 **A. Right.**
8 Q. I can see the, the lines where they drop
9 below the Penon number and, which would indicate that if
10 the FP&L measurements was right, it was supplying less
11 power than the power going into the unit. Okay. But
12 other than that, is there anything scientific that we
13 had to apply, any methodology to apply to, to create
14 this graph?
15 **A. This is just a summary graph. And I think**
16 **there's, might be another plot in this --**
17 Q. There is. And we'll --
18 **A. -- Exhibit B.**
19 Q. And we'll get to that one.
20 **A. Yeah, so there were a series of analyses that**
21 **I completed. And we looked at the baseline power of the**
22 **building, and that gets to, more to the opinion. This**
23 **is just the raw data comparison. And if the raw data**
24 **showed that there was no period, then I think we could**
25 **have said it's potentially a reasonable expectation.**

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1 A. Well, he was only in the facility I believe
2 four times. So I would imagine he only collected the
3 data. He didn't actually take the measurements. So
4 that's why I believe that Fabiani actually collected the
5 data in the logs and provided that to Mr. Penon.

6 Q. That's your belief?
7 **A. It is my belief, yes.**
8 Q. Okay. Do you know what data Mr. Penon
9 received directly?
10 **A. How would Mr. Penon receive data directly?**
11 Q. It's called the internet.
12 **A. Really? No, I have no idea what data. I**
13 **would be interested to see. So he --**
14 Q. Do you know if he did?
15 **A. I do not.**
16 Q. Do you know if he had a computer on site?
17 **A. I believe that there were computers on site**
18 **that were collecting data from, from the instruments,**
19 **yes.**
20 Q. Okay. Do you know if one of those was
21 Mr. Penon's, or Dr. Penon's I should say?
22 **A. I do not.**
23 Q. Okay. Now, now you said that FP&L's data was
24 recorded at midnight?
25 **A. Yes.**

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1 so. Otherwise --

2 MR. ANNESSER: Just because he communicates

3 with counsel doesn't mean he doesn't have to testify

4 to anything that he communicated about. I'm asking

5 his understanding. I'm not asking what was

6 discussed.

7 Q. And I don't want you to tell me what was

8 discussed. I want you to tell me was it your

9 understanding at that point in time that they were

10 preparing for litigation with Dr. Rossi?

11 MR. LOMAX: Objection. If you can answer

12 without divulging what you knew from --

13 MR. ANNESSER: Stop, Mr., Mr. Lomax. You are

14 guiding the witness. Okay. I'm not asking for any

15 communications.

16 BY MR. ANNESSER:

17 Q. You can answer with a yes or no. Was it your

18 understanding, sir, that at that time, as of the end of

19 the test, February 16th and 17th, 2016, that Industrial

20 Heat was preparing for litigation with counsel -- or I'm

21 sorry, litigation with Dr. Rossi?

22 **A. All of my communications were with counsel at**

23 **that time.**

24 Q. All right. That was not the question, sir.

25 Was it your understanding that, that Industrial Heat was

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1 the Vice President of Engineering for Industrial Heat?

2 MR. LOMAX: Objection.

3 **A. So my role as, as Vice President of**

4 **Industrial -- Vice President of Industrial Heat was to**

5 **go and look at this test closeout. In fact, I don't**

6 **even believe that I knew the test closeout was going to**

7 **happen until only a few days before that.**

8 Q. Okay.

9 **A. Maybe a week before it.**

10 Q. What specifically were you asked to do?

11 **A. To observe and find out what was going on in**

12 **the plant, figure out what, what was done, and observe**

13 **what was happening.**

14 Q. Now, at that time -- when did you first learn

15 what, if anything, was on the other side of the wall at

16 JM?

17 **A. When was the first time that I learned? I**

18 **don't know that I actually know what was on the other**

19 **side of the wall. I know there was the container, but**

20 **other than a steam contraption to receive steam and send**

21 **condensate back, I don't know. And, and the noise that**

22 **it was producing while we were there. So I think I saw**

23 **some pictures maybe in the last two weeks, three weeks.**

24 Q. What noise was it producing?

25 **A. Oh, it was just an irritating noise when the,**

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1 preparing litigation with Dr. Rossi?

2 **A. My understanding was that the Industrial Heat**

3 **group anticipated that Dr. Rossi would sue them.**

4 Q. Because they did not plan to pay?

5 MR. LOMAX: Objection. I object to this

6 entire line of questioning.

7 **A. I don't, I don't have any idea about why.**

8 Q. Why would Dr. Rossi sue them?

9 **A. I have no idea. He's a litigious person? I**

10 **don't know.**

11 Q. Is he? How many lawsuits has he filed?

12 MR. LOMAX: Objection. I'm...

13 **A. I have no idea.**

14 Q. Well, you just called him a litigious person?

15 **A. Uh-huh.**

16 Q. Based on what?

17 **A. Based on comments made to me by Tom Darden.**

18 Q. What comments?

19 **A. That he's a litigious person and we need to**

20 **drive this to find out if anything is real here.**

21 Q. And when were those comments made?

22 **A. June of 2015.**

23 Q. So your participation in the, in coming down

24 on the 16th and 17th of February 2016, was that in

25 anticipation of litigation or was that in your role as

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1 **when we were in the lab. It sounded like an air**

2 **compressor running continuously.**

3 Q. Do you know what that was?

4 **A. No. It was very irritating.**

5 MR. ANNESSER: Okay. If we can go off the

6 record for just a moment.

7 THE VIDEOGRAPHER: We're off the record at

8 4:52 p.m.

9 (Recess taken 4:52 p.m. to 4:53 p.m.)

10 THE VIDEOGRAPHER: We are back on the record

11 at 4:53 p.m.

12 BY MR. ANNESSER:

13 Q. Okay. Sir, I have concluded my questioning

14 with one last question. Other than what we have

15 discussed here today, are there any other opinions that

16 you plan on offering in this case?

17 **A. Not that I'm aware of at this time.**

18 MR. ANNESSER: Okay. Thank you. Gentlemen,

19 it's yours.

20 MR. LEÓN: Thank you, John.

21 EXAMINATION

22 BY MR. LEÓN:

23 **Q. Good afternoon, Mr. Murray. My name is**

24 **Francisco León. I'm not sure if you remember. We met**

25 **back at the deposition of Dr. Rossi. I represent JM**

D - Lacks
Foundati
on;
assumes
facts not
in
evidence

D- lacks foundation / assumes facts not in evidence

This objection is as to 349:23 - 350:12

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1 Products, Inc., Henry Johnson, and James Bass. I only
 2 have a couple of questions for you. To start, did you
 3 ever meet Mr. Henry Johnson?
 4 **A. I have not.**
 5 Q. You have not. Great. Have you ever spoken
 6 with him on the phone or via e-mail?
 7 **A. I have not.**
 8 Q. Okay. Have you ever met Mr. James Bass?
 9 **A. I have not.**
 10 Q. You have not. Have you ever spoken with him
 11 via telephone or e-mail?
 12 **A. I have not.**
 13 **MR. LEÓN: Okay. That's all the questions I**
 14 **have. Go ahead, Rudy.**
 15 **THE WITNESS: That was easy. I like that.**
 16 **MR. NUÑEZ: All right.**
 17 **EXAMINATION**
 18 **BY MR. NUÑEZ:**
 19 Q. Good afternoon, Mr. Murray. My name is Rudy
 20 Nuñez. We also met the other day at Dr. Rossi's
 21 deposition. Can you hear me clearly through the
 22 speakerphone?
 23 **A. Yes.**
 24 Q. All right. You let me know if you have any
 25 problems or trouble hearing. Okay?

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1 Q. What were you told about his work
 2 performance, if anything?
 3 **A. That he, you know, he showed up, but you**
 4 **know, he was just kind of a participant in the data**
 5 **collection and, at the plant. He was kind of like**
 6 **Dr. -- or Mr. Rossi's kind of assistant, if you will, or**
 7 **technical assistant, kind of helping him out in the**
 8 **facility.**
 9 Q. Did anyone make any comments to you or talk
 10 to you about any concerns they had with him?
 11 **A. I think there was, there was a, a modest**
 12 **level of concern with how close he was with Mr. Rossi**
 13 **relative to just, you know, the close relationship and**
 14 **whether or not he would be fully -- fully disclose**
 15 **everything to us, but I think the only thing that he**
 16 **hasn't disclosed as far as I'm aware is the actual final**
 17 **report and, and I think maybe he has produced some data.**
 18 **I haven't looked at it though. So it was only a**
 19 **question of if he would release all of the data.**
 20 Q. So to your understanding, the only thing he
 21 didn't do was turn over that final report?
 22 **A. I believe that's, that's correct, yes.**
 23 Q. And I think the raw data too. I don't want
 24 to, you know, I'm not trying to trip you up or anything.
 25 **A. Right, no, no, no. Yeah, I think the raw**

TPD - hearsay as to 352:1 - 353:9

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1 **A. Okay.**
 2 Q. All right. As you testified, you know,
 3 several times today, you brought up Mr. Fabiani. I
 4 represent Fulvio Fabiani and his company, an LLC by the
 5 name of United States Quantum Leap. I certainly don't
 6 have the time to go back through all that you've done
 7 that I would want to, but I did want to, you know, touch
 8 on a few points to kind of maybe clear up some questions
 9 I had.
 10 Let me ask you. When, when you first came on
 11 board with Industrial Heat with regards to Dr. Rossi's
 12 technology, E-Cat, and the plant, what were you told at
 13 the start about Mr. Fabiani?
 14 **A. I was told that Fulvio Fabiani was a close**
 15 **family friend of Mr. Rossi's wife. I, I believe her**
 16 **name is Maddalena, and that she was, you know, a close,**
 17 **almost like a mentor of his, and that Fulvio had worked**
 18 **with, with Mr. Rossi in Italy and on other activities.**
 19 **I also learned that he was a, an avid pinball machine**
 20 **both repairman and developer.**
 21 Q. Anything else?
 22 **A. Other than he had developed some hardware**
 23 **devices for the, the reactor system. And I don't, I**
 24 **don't remember the exact nature of that. And that he**
 25 **had spent a lot of time in, in Raleigh.**

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1 **data, he indicated that there was raw data stored on a**
 2 **server in Russia that was encrypted and he had to, he**
 3 **put it there for safekeeping, and I believe that that**
 4 **data has been released only maybe in the last few days.**
 5 **I, I have not looked at it. I haven't seen it. I**
 6 **haven't inspected it, but I believe that it has been**
 7 **released in the last few days. But I have not seen a**
 8 **final report, and I don't know anything about, you know,**
 9 **if a final report was actually produced.**
 10 Q. All right. Now, getting back to, I was
 11 asking you about conversations and concerns. And again
 12 I don't want to put words in your mouth, but correct me
 13 if I'm wrong that it seemed like you had heard that
 14 there may be concerns about what he was, how honest he
 15 was being with Industrial Heat. Is that a fair way to
 16 phrase it?
 17 **A. I would say that the concern was about his**
 18 **allegiance and his close relationship with Mr. Rossi**
 19 **rather than -- that's how I would characterize it.**
 20 Q. Okay. And do you think, was that something
 21 that was knew over time or would they knew that from the
 22 beginning?
 23 **A. I --**
 24 Q. I should say -- let me strike that.
 25 Was that a new concern or a concern that they

TPD - does not designate an answer; also, irrelevant

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1 may have had all the way going back to the beginning?
 2 **A. I really couldn't say. I only know kind of**
 3 **from when I kind of started to work on this aspect in**
 4 **June of 2015.**
 5 Q. And so we've been talking about conversations
 6 and what you were learning from Industrial Heat. And
 7 who were you talking to about Fulvio Fabiani? Who were
 8 the conversations with?
 9 **A. JT Vaughn, T. Barker Dameron, maybe Tom**
 10 **Darden to some extent. I don't really recall, but those**
 11 **general people.**
 12 Q. Do you recall ever being told that there was
 13 a suspicion that Mr. Fabiani was overheating some of the
 14 equipment, maybe the reactors -- I'm not really
 15 technically savvy -- but was he maybe doing something on
 16 purpose to frustrate the test in North Carolina at any
 17 time?
 18 **A. I have never heard anything about that.**
 19 Q. Now, tell me, how many times did you meet
 20 Mr. Fabiani?
 21 **A. I think I have met him on two occasions. I**
 22 **believe, well, I'm, I'm certain I met him on the 16th**
 23 **and 17th of February 2016. And then I met him again**
 24 **maybe in March, I don't remember the exact time line, at**
 25 **the offices of Jones Day, in the March or April time**

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1 familiar with my background working with the Department
 2 of Defense. And he, he indicated that he had worked in,
 3 on some Israeli imaging video surveillance programs.
 4 And, you know, we had just what I would describe as
 5 chitchat, perfectly pleasant discussions. I think that
 6 was on, probably on the 16th. And then I think the 17th
 7 was a little bit more chaotic because a lot of stuff was
 8 being pulled out and, and I think they had to race to
 9 get Mr. Penon to the, to the airport. I don't remember
 10 the exact sequence of events, but I would say I
 11 chitchatted with him.
 12 And I came to find out, well, it might have
 13 been later in March when, you know, he told me about
 14 his, kind of this side business where he was I think
 15 building and maybe collecting pinball machines and
 16 things of that sort.
 17 THE VIDEOGRAPHER: Mr. Nuñez, you have 10
 18 minutes left on seven hours.
 19 MR. NUÑEZ: I'm sorry. What was that?
 20 THE VIDEOGRAPHER: You have 10 minutes left
 21 on the 7-hour time limit.
 22 MR. NUÑEZ: Wow, I thought I still had, I
 23 clocked in 30 minutes when Francisco started. I, I
 24 still got, by my clock, another 20 minutes.
 25 THE VIDEOGRAPHER: I'm sorry, but

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1 **frame. I don't remember the exact date. And I don't**
 2 **believe other than that, you know, he sent text messages**
 3 **to me.**
 4 **He was, he wanted to arrange to deliver the**
 5 **data and to get his check, and I offered to hand carry**
 6 **the check to him if he would give us the final report**
 7 **and the data. I think I, on at least two or three**
 8 **occasions by text message, we had exchanged text**
 9 **messages and, and maybe it was e-mail or text messages.**
 10 **I don't recall.**
 11 Q. Okay. So, so some, some written
 12 communication, either text message or e-mail, and
 13 potentially two times that you met him in person; is
 14 that right?
 15 **A. Yes.**
 16 Q. All right. The first time you were telling
 17 me, February 15th, I think it was February 15th or 16th?
 18 **A. No. I think it's February 16th and 17th.**
 19 Q. Okay. And that was down at the Doral
 20 facility?
 21 **A. Yes, it was.**
 22 Q. And did you have any occasion to discuss
 23 anything with him or have a conversation with him at
 24 that time?
 25 **A. Yeah. He indicated that, you know, he was**

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1 Mr. Annesser went over by about 9 minutes, 8 or 9
 2 minutes.
 3 BY MR. NUÑEZ:
 4 Q. Okay. Going back to that February meeting,
 5 those two dates, did you have any discussions with him
 6 about the plant or his work with Dr. Rossi?
 7 **A. I think between the two meetings, and I don't**
 8 **know which meeting, I'm sure that we did talk about**
 9 **working in the plant and with, with Mr. Rossi, yes. But**
 10 **I don't know --**
 11 Q. All right.
 12 **A. -- if it was on the 15th or, I don't know if**
 13 **it was on the 16th and 17th or if it was at the**
 14 **March/April meeting. I, I don't recall which.**
 15 Q. And do you have any specific recollections
 16 about your conversation?
 17 **A. You know, just that the -- and actually I'm,**
 18 **I'm pretty confident that this was at the March meeting,**
 19 **was that he, he felt like, you know, he was under a lot**
 20 **of scrutiny and, and, you know, that working for**
 21 **Mr. Rossi was a pretty tough environment, you know.**
 22 **There were a lot of monitoring and, you know, keeping an**
 23 **eye on him and things of that sort.**
 24 Q. You made a comment earlier between a hammer
 25 and an anvil?

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1 **A. Yes, yes.**
 2 Q. That was a phrase that you used?
 3 **A. I, I think that that was, I think that was**
 4 **the one that he put in an e-mail back to me when we were**
 5 **talking about how to get the data and get me down to**
 6 **just deliver a check to him.**
 7 Q. Oh, I gotcha. I think you may have made a
 8 comment that Barry West told you that Mr. Fabiani
 9 threatened Barry?
 10 **A. Yeah. That's what, that's what Mr. West said**
 11 **at the Swansboro meeting. I was kind of taken aback by**
 12 **that, and so I actually carefully annotated that and put**
 13 **that into my notes. Because I really felt like if there**
 14 **was a, if there was any kind of a threat like that, then**
 15 **we just need to get people out of there. And so I did**
 16 **report that up through Industrial Heat.**
 17 Q. And can you tell me about the threat? How
 18 was that, what was it that Mr. West told you
 19 specifically?
 20 **A. He just said that, you know, he, the**
 21 **comment -- and this again, this is almost, you know, it**
 22 **was a year and a half, maybe approaching two years ago.**
 23 **The comment was something to the effect that Barry told**
 24 **me -- or, I'm sorry. Fulvio told me that if I screwed**
 25 **up anything related to the plant, he'd kill me. You**

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1 for instance, did he say that he was scared of Fulvio?
 2 **A. The, he certainly suggested that he was**
 3 **intimidated by him, yes.**
 4 Q. And when you say suggested, what, what do you
 5 mean by that?
 6 **A. You know, the tone of how he made the comment**
 7 **and was looking at us. You know, we were literally**
 8 **sitting at a table having some lunch, and he kind of**
 9 **gave that, that suggestion that, yeah, he's kind of**
 10 **intimidating. You know, like kind of when you look at**
 11 **people, like he was, when he made that comment to me, he**
 12 **was a little bit taken aback when, you know, kind of in**
 13 **those situations. That, that's how I would characterize**
 14 **it.**
 15 Q. Okay. All right. Let's move on. I'm
 16 running out of time. Let me ask you. Your work
 17 assisting Industrial Heat in this litigation, have you
 18 spoken to people over at Industrial Heat about
 19 Mr. Fabiani's contract?
 20 **A. You mean recently or?**
 21 Q. Well, let me, let me strike that.
 22 Are you familiar that, whether or not
 23 Mr. Fabiani had a contract with Industrial Heat?
 24 **A. I was, I was not familiar with the details of**
 25 **a contract, but I do know that at some point there, a**

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1 **know, and I don't know if that's a, an in-passing**
 2 **comment or if it's a -- you know, you just never know**
 3 **because of the context. It's just you don't want to**
 4 **have a, a physical altercation or some kind of an issue**
 5 **come up. And my view was just get people out of there**
 6 **if that's the situation. Maybe it was a highly**
 7 **stressful environment. I don't, I don't really know.**
 8 Q. Had there been a language barrier issue?
 9 MR. LOMAX: Objection.
 10 **A. I wouldn't, I wouldn't know.**
 11 Q. Did Barry ever make any comments to you that
 12 he had a problem communicating with Mr. Fabiani due to
 13 Italian being his primary language?
 14 **A. He didn't, he didn't indicate that. In fact,**
 15 **he indicated that they were kind of, you know, buds and**
 16 **they would go out to the bar and go drinking and go to**
 17 **different things. Get, maybe go, I think he even**
 18 **described going fishing at some point. So I don't know.**
 19 **It was just kind of one of those weird comments that**
 20 **Barry made that, you know, I just felt a responsibility**
 21 **to note it and put it on the record, you know, in case**
 22 **there was anything that was, you know, that happened. I**
 23 **wanted to make sure that people were just aware that**
 24 **that comment was made.**
 25 Q. Did Barry make any more comments? Did he,

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1 **contract had expired and JT Vaughn just kind of**
 2 **continued to pay him on a, what I would describe as kind**
 3 **of month-by-month basis rather than renewing a contract.**
 4 **I don't know the specific dates, but I remember that was**
 5 **a discussion topic.**
 6 Q. And I think you, you testified that you, in
 7 your testimony with regard to his role and, and what his
 8 duties were. Would you agree that Mr. Fabiani's primary
 9 role and duties was to assist Dr. Rossi in his work?
 10 **A. I would agree with that, yes. I think he was**
 11 **kind of like arms and legs, or I may have called him**
 12 **like a, kind of a technician type of a person, helping**
 13 **him and, you know, helping fix stuff and repair stuff**
 14 **and working with Mr. Rossi throughout the test period.**
 15 **Q. All right. Let's, let's move to that meeting**
 16 **in March. And I take it that's the meeting that you had**
 17 **and others with Mr. Fabiani at the offices at Jones Day?**
 18 **A. Yes. I don't know if it was March or April,**
 19 **but it was thereabouts in that kind of time frame.**
 20 **Q. Okay. Who was there at that meeting?**
 21 **A. I was there, JT Vaughn was there, and Chris**
 22 **Pace was there.**
 23 **Q. And that's it? The three of you and**
 24 **Mr. Fabiani?**
 25 **A. I believe so.**

TPD - irrelevant; asked and answered as to 362:1-7

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1 THE WITNESS: Chris, you weren't there, were
2 you?
3 A. No. I think it was --
4 MR. LOMAX: I guess I, I can't answer, but.
5 A. Yeah, I'm sorry. I'm sorry. Yeah, I
6 believe, to the best of my recollection it was just the
7 three of us.
8 Q. Were, were any, was anything offered to
9 Mr. Fabiani for him to turn over the remaining report
10 and data that he ended up claiming was due?
11 A. Well, Mr. Fabiani actually offered up, he
12 said, look, I'm writing this final report and I have all
13 this data. And I don't mean the specific details, but
14 he said we sampled data for specific things, I don't
15 know if it was every 10 seconds or 5 seconds, throughout
16 the entire test period using his system.
17 And he said he was completing a final report
18 for Industrial Heat. And we said, great. And I believe
19 that there was even a discussion of potentially trying
20 to have him help with other aspects, but I don't recall
21 the, the details of that. My, really I was interested
22 in the data and interested in the final report to find
23 out what was going on, because I had hadn't seen any
24 details of how all this stuff was collected and pulled
25 together.

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1 what were you told either before or, you know, at the
2 meeting by the Industrial Heat people of the purpose of
3 that meeting with Mr. Fabiani?
4 A. This is my recollection going back to that
5 time, but my recollection was that Fulvio had this data.
6 We had requested data. And so we were going to meet
7 with him to find out how we get a copy of the data and
8 then pay him the final payment that was offer -- you
9 know, that was due him. And so we actually went down
10 there with the intention of, of doing that.
11 And so, and I, I don't recall if on the first
12 day he didn't have the data and then he went and he got
13 the data, some of the data, the spreadsheets on the next
14 day. And then he said he would deliver the final report
15 and some of the other, the, the final report and the raw
16 data, you know, within the next few days. And we said,
17 great, and then we'll just pay you for the final, you
18 know, payment due.
19 Q. And who set up that meeting? Who, who
20 scheduled it or, do you know?
21 A. I suspect JT Vaughn, but I, I don't, I don't
22 recall.
23 Q. And I think your testimony was at that
24 meeting that Mr. Fabiani came with spreadsheets and
25 documents to turn over?

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1 Q. Was there any offer made to Mr. Fabiani for
2 an extension of continuing to do work for Industrial
3 Heat?
4 A. I think --
5 MR. LOMAX: Objection.
6 A. Okay. I, I think there was, but I can't
7 recall specifically.
8 MR. ANNESSER: One and a half minutes, Rudy.
9 Q. And what were you told about the purpose of
10 that meeting with Mr. Fabiani?
11 MR. LOMAX: Objection to the extent it's
12 about communications with counsel. Otherwise you
13 can answer.
14 A. Okay. I was --
15 Q. What was that?
16 A. I'm sorry.
17 MR. LOMAX: Could you hear me Rudy?
18 MR. NUÑEZ: Yeah.
19 Q. I was going to say I don't want to hear what
20 the attorneys told you. I want to hear what Mr. Vaughn
21 or Mr. Darden told you or Mr. Dameron, whoever else was
22 there.
23 A. Yeah, well, it was just JT and I. What was
24 your question? The purpose of the meeting?
25 Q. Well, yeah. Let me clear that up. You know,

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1 A. Well, the, the next day. He came back with
2 just spreadsheets. Sorry.
3 MR. LOMAX: Rudy, do you have one more
4 question? The time is up, but I, you know --
5 MR. NUÑEZ: Well, here's the thing, guys. I
6 mean I'm not there, but I marked my watch when the
7 court reporter said 31 minutes. I think John had
8 one question. Francisco made two questions. I
9 still have, I mean by my calculation, I've got like
10 7 minutes left. You know, time does not work
11 differently down here, and I marked it when the
12 court reporter said 31 minutes. So I'm not sure how
13 I've lost these 8 minutes because John did not take
14 up 8 minutes asking questions.
15 MR. LOMAX: Well, the court reporter --
16 MR. NUÑEZ: We can go back to the video or we
17 can go back to something. I got a couple more
18 questions left. I don't think I have 10 minutes,
19 but I marked my watch when the court reporter said
20 31 minutes.
21 MR. LOMAX: Well, you know, Rudy, this is
22 Chris. I would, I would be willing to extend 5, 5
23 more minutes. The court reporter is telling us that
24 the time is up.
25 THE WITNESS: So let's go. If you have a

TPD - irrelevant

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1 couple more questions, go ahead, Rudy, quickly.
 2 MR. NUÑEZ: Yeah. I don't have that much, so
 3 I appreciate it, Mr. Murray.
 4 BY MR. NUÑEZ:
 5 Q. And I'll move on from the meeting at Jones
 6 Day. Let's go to the -- and I think it's in your expert
 7 report. You've been asked a lot about it. I'm not
 8 trying to retread all this stuff, but I do want to
 9 confirm a couple things just to clear up with my
 10 questions.
 11 There were -- and correct me if I'm wrong.
 12 Mr. Fabiani provided what I would call, and you correct
 13 me, electric power consumption numbers; is that correct?
 14 A. He provided us with, I think it was a
 15 spreadsheet for each month or maybe it was one
 16 spreadsheet that had numerous tabs. I don't recall
 17 which. And it had the time stamp for twice a day,
 18 cumulative energy in those 12-hour periods. And he
 19 provided us with a, a log that kind of showed dates and
 20 events when things were turned on and the power went off
 21 and this and that and different events, so what I would
 22 describe as a log of events.
 23 And I think those were the two major items
 24 that he had provided to us on the second day, and then
 25 he was going to wait and provide us with the final

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1 Q. Okay. So that was 14 out of, I think it was
 2 350 or almost a year, correct?
 3 A. I believe the number in the final report was
 4 total of 357 days, and then Mr. Penon deducted 5 or 6
 5 days. I don't remember the exact number. And so there
 6 was a cumulative number of maybe 352 days of, of
 7 operational days.
 8 Q. And for lack of a better word, I think there
 9 were discrepancies between Fabiani's numbers versus the
 10 FP&L's numbers. Do you have any reason to believe that
 11 that is a result of Mr. Fabiani manipulating the data
 12 that he was putting into his spreadsheets?
 13 A. At this point, I have no evidence of that
 14 whatsoever.
 15 Q. And do you anticipate any kind of work in the
 16 future between now and trial where you would come to a
 17 different conclusion?
 18 A. I can't say at this point because I think
 19 that there's a lot of data that's just becoming
 20 available. For example, I think the raw data from
 21 Mr. Fabiani just became available, and I have not looked
 22 at that at all.
 23 Q. Okay. Let me ask you, and this will --
 24 MR. LOMAX: And Rudy --
 25 Q. I'm close to the end here.

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1 report and the other data a few days later. He also
 2 said that he had taken data from the flow meter from
 3 time to time, and he had logged it into a spreadsheet on
 4 the desktop of his computer, but his computer was locked
 5 up and he couldn't get to it, and he was going to
 6 provide that data to us as well, but he didn't produce
 7 that data either.
 8 Q. Okay. And now my question relates -- I think
 9 you made an analysis that his power consumption numbers
 10 for the plant don't match the readings from Florida
 11 Power and Light; is that correct?
 12 A. No, which just incidentally we would not
 13 anticipate that they match. We would anticipate that
 14 the building would absorb more power than just the
 15 reactor because there was other, there were other
 16 electrical devices in the building. The primary concern
 17 is where the value goes negative, where the building is
 18 actually absorbing less, less energy per day than the,
 19 than reported by Mr. Fabiani and Mr. Penon.
 20 Q. Okay. And how many times did that happen?
 21 A. How many times? There was a 14-day period.
 22 I think cumulative number of days where it was below
 23 zero was 14 days, and that's just pure absolute
 24 negative. And, you know, and that's just assuming that
 25 nothing else in the building absorbed power.

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1 MR. LOMAX: This is Chris and --
 2 Q. Do you have any evidence --
 3 MR. LOMAX: -- time is up.
 4 Q. -- in your investigation and your work for
 5 Industrial Heat that Mr. Fabiani manipulated improperly
 6 any data?
 7 A. At this point, no, I do not.
 8 MR. LOMAX: And, Rudy, this is Chris. That's
 9 the time.
 10 MR. NUÑEZ: All right. And, yep, that's
 11 going to match up with my time. And I will say
 12 thank you, Mr. Murray. Thank you, everyone. Have a
 13 good weekend.
 14 THE WITNESS: Okay. No problem. Thank you,
 15 guys.
 16 THE VIDEOGRAPHER: This concludes the
 17 videotaped deposition of Joseph Murray. We are off
 18 the record at 5:20 p.m.
 19 (Stenotype record continued off the video record.)
 20 MR. ANNESSER: Just as a formality, sir, you
 21 have the right to read or waive, which means you can
 22 read the deposition before it's finalized, or you
 23 can waive that right.
 24 THE WITNESS: I would like to read it.
 25 MR. ANNESSER: Okay.

TPD - irrelevant
as to 368:15 -
369:1

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1 MR. LOMAX: And Defendants are going to
 2 designate Mr. Murray's testimony at this time as
 3 highly confidential due to a lot of the information
 4 that was provided here today.
 5 (DEPOSITION CONCLUDED AT 5:20 P.M.)
 6 (SIGNATURE RESERVED)
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1 STATE OF NORTH CAROLINA
 COUNTY OF WAKE:
 2
 3 REPORTER'S CERTIFICATE
 4 I, LAUREN McINTEE, RPR, a Notary Public in
 5 and for the State of North Carolina, do hereby certify
 6 that there came before me on Friday, the 17th day of
 7 February, 2017, the person hereinbefore named, who was
 8 by me duly sworn to testify to the truth and nothing but
 9 the truth of his knowledge concerning the matters in
 10 controversy in this cause; that the witness was
 11 thereupon examined under oath, the examination reduced
 12 to typewriting under my direction, and the deposition is
 13 a true record of the testimony given by the witness.
 14 I further certify that I am neither attorney
 15 or counsel for, nor related to or employed by, any
 16 attorney or counsel employed by the parties hereto or
 17 financially interested in the action.
 18 IN WITNESS WHEREOF, I have hereto set my
 19 hand, this the 20th day of February, 2017.
 20
 21 
 22
 23 LAUREN McINTEE, RPR, Notary Public
 Notary Number: 201616600044
 24
 25

Page 372

1 WITNESS'S CERTIFICATE
 2
 3 I, JOSEPH ALAN MURRAY, do hereby certify
 4 that I have read and understand the foregoing
 5 transcript and believe it to be a true, accurate, and
 6 complete transcript of my testimony, subject to
 7 the attached list of changes, if any.
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 JOSEPH ALAN MURRAY

This deposition was signed in my presence by
 _____, on the ____ day of
 _____, 2017.

 Notary Public

My commission expires:

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1 CaseWorks, Inc.
 811 Ninth Street, Suite 260 (Page 1 of 2)
 Durham, North Carolina 27705
 2
 3 E R R A T A S H E E T
 4 Re: Andrea Rossi, et al. vs. Thomas Darden, et al.
 5 Deposition of: JOSEPH ALAN MURRAY
 6
 7 Please read this transcript with care, and if
 you find any corrections or changes you wish made, list
 8 them by page and line number below. DO NOT WRITE IN
 THE TRANSCRIPT ITSELF. Return the
 9 Certificate and Errata Sheet to this office after
 it is signed. We would appreciate your prompt
 10 attention to this matter.
 11
 12 To assist you in making any such corrections,
 please use the form below. If supplemental or
 13 additional pages are necessary, please furnish same and
 attach them to the errata sheet.
 14 Page ____ Line ____ should
 read: _____
 15 Page ____ Line ____ should
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 16 Page ____ Line ____ should
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Third-Party Defendants' Deposition Designation

Case No.: 1:16-cv-21199-CMA/O'Sullivan
Case Style: *Rossi, et al. v. Darden, et al.*
Witness: Joseph Murray
Date: February 17, 2017

No.	Citation	Testimony
1	257:15-17	15. . . . Q. . Do you have any evidence that the data has 16. . been manipulated -- 17. . . . A. . No, I don't.
2	368:8-14 369:2-6	.8. . . . Q. . And for lack of a better word, I think there .9. . were discrepancies between Fabiani's numbers versus the 10. . FP&L's numbers. Do you have any reason to believe that 11. . that is a result of Mr. Fabiani manipulating the data 12. . that he was putting into his spreadsheets? 13. . . . A. . At this point, I have no evidence of that 14. . whatsoever. .2. . . . Q. . Do you have any evidence -- .3. [Comment deleted] .4. . . . Q. . -- in your investigation and your work for .5. . Industrial Heat that Mr. Fabiani manipulated improperly .6. . any data? .7. . A. At this point, no, I do not.
3	362:8-25	8. . . . Q. . Were, were any, was anything offered to .9. . Mr. Fabiani for him to turn over the remaining report 10. . and data that he ended up claiming was due? 11. . . . A. . Well, Mr. Fabiani actually offered up, he 12. . said, look, I'm writing this final report and I have all 13. . this data. And I don't mean the specific details, but 14. . he said we sampled data for specific things, I don't 15. . know if it was every 10 seconds or 5 seconds, throughout 16. . the entire test period using his system. 17. And he said he was completing a final report 18. . for Industrial Heat. And we said, great. And I believe 19. . that there was even a discussion of potentially trying 20. . to have him help with other aspects, but I don't recall 21. . the, the details of that. My, really I was interested 22. . in the data and interested in the final report to find 23. . out what was going on, because I had hadn't seen any

		<p>24· details of how all this stuff was collected and pulled 25· together.</p>
<p>4</p>	<p>363:25-364:18 364:23-365:2</p>	<p>25· . . . Q.· Well, yeah.· Let me clear that up.· You know, ·1· what were you told either before or, you know, at the ·2· meeting by the Industrial Heat people of the purpose of ·3· that meeting with Mr. Fabiani? ·4· . . . A.· This is my recollection going back to that ·5· time, but my recollection was that Fulvio had this data. ·6· We had requested data.· And so we were going to meet ·7· with him to find out how we get a copy of the data and ·8· then pay him the final payment that was offer -- you ·9· know, that was due him.· And so we actually went down 10· there with the intention of, of doing that. 11· And so, and I, I don't recall if on the first 12· day he didn't have the data and then he went and he got 13· the data, some of the data, the spreadsheets on the next 14· day.· And then he said he would deliver the final report 15· and some of the other, the, the final report and the raw 16· data, you know, within the next few days.· And we said, 17· great, and then we'll just pay you for the final, you 18· know, payment due.</p> <p>23· . . . Q.· And I think your testimony was at that 24· meeting that Mr. Fabiani came with spreadsheets and 25· documents to turn over? ·1· . . . A.· Well, the, the next day.· He came back with ·2· just spreadsheets.· Sorry.</p>
<p>5</p>	<p>349:23 – 350:12</p>	<p>23 Q. Good afternoon, Mr. Murray. My name is 24 Francisco León. I'm not sure if you remember. We met 25 back at the deposition of Dr. Rossi. I represent JM 1 Products, Inc., Henry Johnson, and James Bass. I only 2 have a couple of questions for you. To start, did you 3 ever meet Mr. Henry Johnson? 4 A. I have not. 5 Q. You have not. Great. Have you ever spoken 6 with him on the phone or via e-mail? 7 A. I have not. 8 Q. Okay. Have you ever met Mr. James Bass? 9 A. I have not.</p>

		<p>10 Q. You have not. Have you ever spoken with him</p> <p>11 via telephone or e-mail?</p> <p>12 A. I have not.</p>
6	257:15-17	<p>15 Q. . . Do you have any evidence that the data has</p> <p>16 . been manipulated --</p> <p>17 A. . . No, I don't.</p>
7	368:8-14 369:2-6	<p>·8· Q. . . And for lack of a better word, I think there</p> <p>·9· . were discrepancies between Fabiani's numbers versus the</p> <p>10· . FP&L's numbers. Do you have any reason to believe that</p> <p>11· . that is a result of Mr. Fabiani manipulating the data</p> <p>12· . that he was putting into his spreadsheets?</p> <p>13· A. . . At this point, I have no evidence of that</p> <p>14· . whatsoever.</p> <p>·2· Q. . . Do you have any evidence --</p> <p>·3· [Comment deleted]</p> <p>·4· Q. . . -- in your investigation and your work for</p> <p>·5· . Industrial Heat that Mr. Fabiani manipulated improperly</p> <p>·6· . any data?</p> <p>·7· . A. At this point, no, I do not.</p>
8	362:8-25	<p>8· Q. . . Were, were any, was anything offered to</p> <p>·9· . Mr. Fabiani for him to turn over the remaining report</p> <p>10· . and data that he ended up claiming was due?</p> <p>11· A. . . Well, Mr. Fabiani actually offered up, he</p> <p>12· . said, look, I'm writing this final report and I have all</p> <p>13· . this data. And I don't mean the specific details, but</p> <p>14· . he said we sampled data for specific things, I don't</p> <p>15· . know if it was every 10 seconds or 5 seconds, throughout</p> <p>16· . the entire test period using his system.</p> <p>17· And he said he was completing a final report</p> <p>18· . for Industrial Heat. And we said, great. And I believe</p> <p>19· . that there was even a discussion of potentially trying</p> <p>20· . to have him help with other aspects, but I don't recall</p> <p>21· . the, the details of that. My, really I was interested</p> <p>22· . in the data and interested in the final report to find</p> <p>23· . out what was going on, because I had hadn't seen any</p> <p>24· . details of how all this stuff was collected and pulled</p> <p>25· . together.</p>
9	363:25-364:18	<p>25· Q. . . Well, yeah. Let me clear that up. You know,</p> <p>·1· . what were you told either before or, you know, at the</p>

		<p>·2· ·meeting by the Industrial Heat people of the purpose of ·3· ·that meeting with Mr. Fabiani? ·4· · · · A· · This is my recollection going back to that ·5· ·time, but my recollection was that Fulvio had this data. ·6· ·We had requested data. And so we were going to meet ·7· ·with him to find out how we get a copy of the data and ·8· ·then pay him the final payment that was offer -- you ·9· ·know, that was due him. And so we actually went down 10· ·there with the intention of, of doing that. 11· · · · · · And so, and I, I don't recall if on the first 12· ·day he didn't have the data and then he went and he got 13· ·the data, some of the data, the spreadsheets on the next 14· ·day. And then he said he would deliver the final report 15· ·and some of the other, the, the final report and the raw 16· ·data, you know, within the next few days. And we said, 17· ·great, and then we'll just pay you for the final, you 18· ·know, payment due.</p>
10	364:23-365:2	<p>23· · · · Q· · And I think your testimony was at that 24· ·meeting that Mr. Fabiani came with spreadsheets and 25· ·documents to turn over? ·1· · · · A· · Well, the, the next day. He came back with ·2· ·just spreadsheets. Sorry.</p>

Murray, Joseph –Third Party Defendants’ Designations – Defendants’ Counters and Objections

1. Objections

Designation	Objection
349:23-350:12	Lacks Foundation / Assumes Facts Not in Evidence

2. Counter-Designations

Designation	Notes
246:18-25	
251:7-252:14	
256:15-257:14	
257:18-258:6	
351:2-9	
352:1-353:9	
354:19-355:15	
361:15-362:7	
364:19-22	
366:5-368:7	
368:15-369:1	

Third-Party Defendants' Objections and Rebuttal Designations to Defendants' Counter-Designations

Case No.: 1:16-cv-21199-CMA/O'Sullivan

Case Style: *Rossi, et al. v. Darden, et al.*

Witness: Joseph Murray

Date: February 17, 2017

Objections

Defendants' Counter-Designations	Objections
246:18-25	Improper Counter-Designation
251:7-252:14	Improper Counter-Designation
256:15-257:14	Improper Counter-Designation
257:18-258:6	Improper Counter-Designation
351:2-9	Only designates a question without an answer; including the answer the designation is subject to objection on relevance.
352:1-353:9	Hearsay
354:19-355:15	
361:15-362:7	362:1-7 - Irrelevant; asked and answered
364:19-22	Irrelevant
366:5-368:7	
368:15-369:1	Irrelevant

Rebuttal Designations

369:2-7 – Completes testimony on the subject matter and provides full context

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-cv-21199-CMA/O'SULLIVAN

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

Casa de Campo
Resort & Villas
La Romana, D.R.
Wednesday, February 22, 2017
9:06 a.m. - 7:42 p.m.

VIDEOTAPED DEPOSITION OF FABIO PENON

Taken on behalf of the Plaintiffs before
Diana Santos, Shorthand Reporter and Notary Public
in and for the State of Florida at Large, pursuant
to Notice of Taking Deposition filed in the above
cause.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOHN W. ANNESSER, ESQUIRE PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.</p> <p>4 283 Catalonia Avenue Suite 200</p> <p>5 Coral Gables, Florida 33134 Telephone: (305)377-0086</p> <p>6 E-mail: jannesser@pbyalaw.com Attorney for Plaintiffs</p> <p>7</p> <p>8 CHRISTOPHER R.J. PACE, ESQUIRE JONES DAY</p> <p>9 600 Brickell Avenue Suite 3300</p> <p>10 Miami, Florida 33131 Telephone: (305)714-9799</p> <p>11 E-mail: crjpace@jonesday.com Attorney for Defendants</p> <p>12</p> <p>13 JOHN CHARLES LUKACS, ESQUIRE HINSHAW & CULBERTSON LLP</p> <p>14 2525 Ponce de Leon Boulevard Coral Gables, Florida 33134</p> <p>15 Telephone: (305)358-7747 E-mail: jlukacs@hinshawlaw.com</p> <p>16 Attorney for Fabio Penon</p> <p>17</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 Rick A. Smith, P.E., Applied Thermal Engineering, Inc.</p> <p>22 Ugo V. Chiarato, Interpreter</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 DEFENDANT'S EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3</p> <p>4 Exhibit 24 First Amendment to License151 Agreement</p> <p>5</p> <p>6 Exhibit 25 February 20, 2015 E-mail159</p> <p>7 Exhibit 26 ROSSI00009285194</p> <p>8</p> <p>9 Exhibit 27 Assorbimento Elettrico 2015194</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 FABIO PENON</p> <p>5 Direct Examination by MR. ANNESSER8</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 1 Fabio Penon Resume9</p> <p>4</p> <p>5 Exhibit 2 BATES NO. IH-0003071941</p> <p>6</p> <p>7 Exhibit 3 BATES NO. PENON000001545</p> <p>8</p> <p>9 Exhibit 4 BATES NO. PENON000001646</p> <p>10</p> <p>11 Exhibit 5 BATES NO. PENON000004147</p> <p>12</p> <p>13 Exhibit 6 BATES NO. PENON000004850</p> <p>14</p> <p>15 Exhibit 7 BATES NO. PENON000007252</p> <p>16</p> <p>17 Exhibit 8 BATES NO. PENON000008058</p> <p>18</p> <p>19 Exhibit 9 BATES NO. PENON000008959</p> <p>20</p> <p>21 Exhibit 10 BATES NO. PENON000012364</p> <p>22</p> <p>23 Exhibit 11 BATES NO. IH-0000701872</p> <p>24</p> <p>25 Exhibit 12 BATES NO. IH-0001912172</p> <p>26</p> <p>27 Exhibit 13 BATES NO. PENON000021376</p> <p>28</p> <p>29 Exhibit 14 BATES NO. PENON0000021878</p> <p>30</p> <p>31 Exhibit 15 BATES NO. PENON000016591</p> <p>32</p>

<p style="text-align: right;">Page 6</p> <p>1 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION - continued 2 NUMBER DESCRIPTION PAGE 3 4 Exhibit 16 BATES NO. PENON0000292101 5 Exhibit 17 BATES NO. PENON0000268112 6 7 Exhibit 18 BATES NO. PENON0000273113 8 Exhibit 19 BATES NO. PENON0000354115 9 10 Exhibit 20 BATES NO. PENON0000295116 11 Exhibit 21 BATES NO. PENON0000180117 12 13 Exhibit 22 BATES NO. PENON0000333120 14 Exhibit 23 BATES NO. PENON 0000153122 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 and testified as follows: 2 DIRECT EXAMINATION 3 BY MR. ANNESSER: 4 Q Good morning, Dr. Penon. 5 A Good morning. 6 Q Thank you for coming here today. I want 7 to first ask a couple of questions regarding your 8 experience with depositions. Have you ever had your 9 deposition taken before? 10 A No. 11 Q The purpose of this deposition is to learn 12 the facts in this case. Unless I specifically 13 instruct you, I am not asking you for an opinion, 14 I'm asking you -- I'm asking you, sir, for the facts 15 that you know. If you don't know an answer, that is 16 okay, just tell us that. My questions are not meant 17 to harass or embarrass you in any way. If you do 18 not understand any of my questions, please let me 19 know that. If you do not say anything, I will 20 assume that you understood. Is that okay? 21 A Okay. 22 Q If at any time you need a break, or need 23 to speak with your attorney, just let me know and we 24 will -- we will accommodate you. 25 May I ask you to state your full name for</p>
<p style="text-align: right;">Page 7</p> <p>1 THE VIDEOGRAPHER: All right. Good 2 morning. We are now on the video record. This 3 is the videotape deposition of Fabio Penon in 4 the matter of the case Andrea Rossi and 5 Leonardo Corporation, et al. versus Thomas 6 Darden, et al. 7 Today is Wednesday, February the 22nd of 8 2017, and the local time in La Romana, 9 Dominican Republic is 9:06 a.m. 10 At this time, counsel, please introduce 11 themselves for the record and after this the 12 court reporter will swear in the witness. 13 MR. ANNESSER: John Annesser on behalf of 14 the plaintiffs. 15 MR. PACE: Chris Pace on behalf of the 16 defendants, and along with me is Rick Smith. 17 MR. LUKACS: Also in attendance is John 18 Lukacs. I am here as attorney for the witness. 19 (Thereupon, UGO V. CHIARATO was duly 20 sworn, responding "I do," to translate from English 21 to Italian and from Italian to English.) 22 Thereupon: 23 FABIO PENON 24 Was called as a witness and, having been first duly 25 sworn and responding, "I do," was examined</p>	<p style="text-align: right;">Page 9</p> <p>1 the record? 2 A Fabio Penon; F A-B-I-O P-E-N-O-N. 3 Q And what is your business address? 4 A V-I-A; Settefratelli, 5 S-E-T-T-E-F-R-A-T-E-L-L-I Cervi; C-E-R-V-I; Number 6 one; Abano Terme, A-B-A-N-O T-E-R-M-E. 7 Q What is your home address, sir? 8 A The same. Via Settefratalli, 9 S-E-T-T-E-F-R-A-T-A-L-L-I. 10 Q Are you currently employed, sir? 11 A I am a free professional, self-employed 12 and owner of the company, Poesis, P-O-E-S-I-S. 13 MR. ANNESSER: Madam Court Reporter, do 14 you have exhibit labels? 15 THE COURT REPORTER: (Nods head.) 16 MR. ANNESSER: Thank you. 17 BY MR. ANNESSER: 18 Q I will show you a document we will mark as 19 Exhibit 1 and ask you is this a current copy of your 20 resume. 21 (Thereupon, Plaintiff's Exhibit 1 was 22 marked for identification.) 23 THE WITNESS: Yes, sir, it is. 24 BY MR. ANNESSER: 25 Q Is the information contained in this</p>

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1 consistency of the data.
 2 Q Would that machine or that device record
 3 any changes made to the data?
 4 A Yes.
 5 MR. PACE: Objection to the question, but
 6 go ahead.
 7 THE WITNESS: Definitely, yes.
 8 BY MR. ANNESSER:
 9 Q Looking at the fifth column, tank water
 10 T-max. How was that measured?
 11 A With the temperature sensor.
 12 Q Where?
 13 THE INTERPRETER: Where?
 14 BY MR. ANNESSER:
 15 Q Where was the sensor located?
 16 A Indicated in the diagram, if I remember
 17 well, in the reference to --
 18 Q Are you referencing Exhibit 9?
 19 A Yes, Exhibit 9. No, it is not.
 20 MR. PACE: You are covering up the mic.
 21 BY MR. ANNESSER:
 22 Q Let me ask you, sir, not to waste time on
 23 that.
 24 How was that data recorded?
 25 A With the same principle, the analogical

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1 signal reached to a certain -- that realized the
 2 conversion, digital analogical to reverse to
 3 download to my computer.
 4 Q Did you have a computer at the Doral
 5 facility?
 6 A It was that one which had to be -- to
 7 gather all data.
 8 Q Was that data transmitted to you in Italy?
 9 A These are the data that I said them to
 10 transfer regularly to Italy.
 11 Q Did anyone have access to your computer at
 12 the Doral facility? Let me finish. Was it password
 13 protected?
 14 MR. PACE: Objection to the question.
 15 MR. ANNESSER: Let me restate.
 16 BY MR. ANNESSER:
 17 Q Your computer at the Doral facility, was
 18 it password protected?
 19 A Yes, it was protected if I don't -- if I
 20 remember well by a password technology.
 21 Q Did anyone at the Doral facility have
 22 access that they can alter the data recorded in that
 23 computer?
 24 MR. PACE: Objection to the question.
 25 Objection to the question.

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1 THE WITNESS: Not that I can imagine.
 2 BY MR. ANNESSER:
 3 Q How often would you monitor the tank water
 4 temperature from Italy? How often would you
 5 monitor...?
 6 A Each two months they were transmitted to
 7 me and every two months, approximately, I was
 8 checking this data.
 9 Q How were they transmitted to you?
 10 A E-mail.
 11 Q Who would send it to you via e-mail?
 12 A Fabiani.
 13 Q Did he also receive the temperature data
 14 to his computer?
 15 A Can you repeat it?
 16 Q Did Mr. Fabiani also receive the
 17 temperature data to his computer?
 18 A No. I think Fabiani had his own system of
 19 recovering this data.
 20 Q Okay. Okay. Column six, "effective
 21 flowed water". How was that measured?
 22 A Through the measure of the water power.
 23 Q Was that the flowmeter?
 24 A The flow meter, yes.
 25 Q How did you retrieve the data from the

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1 flowmeter?
 2 A Datas were read every night by Dr. Rossi
 3 and Rossi had to report them in the -- in the log --
 4 in the logbook and every night it was transmitted in
 5 this data.
 6 Q Did you have any way to verify the data
 7 that Dr. Rossi was providing you?
 8 A The correctness of the data?
 9 Q Yes.
 10 A When I visited to the Doral plant one of
 11 the controls that I wanted to make is the
 12 reconciliation between the data transmitted by Rossi
 13 and the data relieved in the -- in the meter.
 14 Q So you would reconcile the data provided
 15 by Dr. Rossi with the change from your last visit,
 16 the change in water flow?
 17 A With the relevant data in the opportunity
 18 of my business.
 19 Q Sir, some people have said that it is
 20 impossible to have the same amount of water flow
 21 every -- multiple days in a row. I'm sorry. Can
 22 you explain why -- why the measurements are all to
 23 the -- to the thousandth, I believe they are
 24 thousand kilogram per day?
 25 A Can you repeat?

TPD -
improper
counter
design.;
Mischar.
testimony

Page 138

1 (Thereupon, a recess was taken from 4:44
 2 p.m. - 4:53 p.m., after which the following
 3 proceedings were had:)
 4 THE VIDEOGRAPHER: We are now back on the
 5 record. The time is 4:53.
 6 BY MR. ANNESSER:
 7 Q Sir, have you ever heard of a company
 8 called JM Products?
 9 THE INTERPRETER: GM products?
 10 MR. ANNESSER: JM Products.
 11 THE WITNESS: Yes, I heard about it.
 12 BY MR. ANNESSER:
 13 Q Do you know Mr. Henry Johnson?
 14 A No.
 15 Q Have you ever spoken with him?
 16 A Never.
 17 Q What do you know of JM products?
 18 A Nothing practically.
 19 Q Have you had any communication with
 20 Mr. Johnson whatsoever?
 21 A No.
 22 Q Do you or have you met a gentleman by the
 23 name of James or Jim Bass?
 24 THE INTERPRETER: B-A-S-S.
 25 MR. ANNESSER: Yes.

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1 THE WITNESS: Which company?
 2 BY MR. ANNESSER:
 3 Q I believe he was with JM Products.
 4 A No.
 5 Q Did you ever request from Mr. Bass, or
 6 Mr. Johnson, or anyone at JM products to take any
 7 measurements of the amount of steam received from
 8 the E-Cat plant?
 9 A No.
 10 Q Did anything in your test protocol require
 11 measurements be taken on the JM Product side of the
 12 warehouse?
 13 A No.
 14 Q Did the operation of the JM plant have any
 15 effect whatsoever on your evaluations and
 16 calculation of the COP for the E-Cat?
 17 MR. PACE: Objection.
 18 THE WITNESS: Can we formulate the
 19 question?
 20 BY MR. ANNESSER:
 21 Q Did the operation on the JM side of the
 22 warehouse have any effect whatsoever on his
 23 calculation of the COP -- I'm sorry. On your
 24 calculation of the COP?
 25 MR. PACE: Objection.

Page 140

1 THE WITNESS: I don't understand the kind
 2 of question.
 3 BY MR. ANNESSER:
 4 Q Did the -- did the operation where the
 5 steam was used have any effect on your ability to
 6 measure the COP of the E-Cat plant?
 7 A No, no effect whatsoever.
 8 MR. PACE: Objection. I couldn't get in
 9 there, but objection.
 10 THE WITNESS: No, no effect whatsoever.
 11 BY MR. ANNESSER:
 12 Q Did you ever go -- I'm sorry.
 13 Did you ever see anyone go between the JM
 14 side and the side where the E-Cat plant was?
 15 MR. PACE: Objection. And you can
 16 completely clear it up by telling him what the
 17 JM side was, because I don't know if he said he
 18 actually knows it.
 19 BY MR. ANNESSER:
 20 Q The JM side is the side on the other side
 21 of the wall in the E-Cat plant. Did you ever see
 22 anyone go between the two sides?
 23 A Not to the best of my knowledge.
 24 Q Do you know Mr. Fulvio Fabiani?
 25 A Yes, I do.

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1 Q Did he take any of the measurements that
 2 you relied upon in creating your report?
 3 A To the calculation of COP?
 4 Q Yes.
 5 A So the question is?
 6 Q Did he provide any of the measurements to
 7 you?
 8 A No.
 9 MR. ANNESSER: Sir, that is all the
 10 questions that I have for you. I thank you
 11 very much for your time. Mr. Pace, who
 12 represents the defendants, may have some
 13 questions for you.
 14 MR. LUKACS: Mr. Videographer, may I have
 15 a time, please?
 16 THE VIDEOGRAPHER: Five hours and 29
 17 minutes. Could you please put your microphone
 18 on?
 19 MR. PACE: Oh, my apologies.
 20 CROSS-EXAMINATION
 21 BY MR. PACE:
 22 Q Let me start by asking what title do you
 23 prefer? Do you prefer Dr. Penon; do you prefer
 24 Engineer Penon; do you prefer Mr. Penon?
 25 A Dr. Penon.

TPD - improper counter-designation; misleading

D - FRE 701/702 improper expert testimony

D - FRE 701/702 improper expert testimony

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1 you were -- that you were storing in your computer
 2 with the data that was being collected by Rossi and
 3 Fabiani?
 4 MR. ANNESSER: Object to the form.
 5 THE WITNESS: It happened in some visits
 6 that we compared the data -- the data recovered
 7 on the spot, at the very same time, with the
 8 ones of Fabiani.
 9 BY MR. PACE:
 10 Q And did you ever find any inconsistencies?
 11 A I was not really interested very frankly
 12 in the data of Fabiani, because with the system of
 13 comparison between different -- I was in a condition
 14 of feeling sure about my collection of data.
 15 Q And that collection of data, you said
 16 that -- they sent it to you every couple of weeks?
 17 MR. ANNESSER: Object to the form.
 18 THE WITNESS: No. If you refer to the
 19 data gathered in my computer at Doral I was
 20 real -- I was requesting them to transfer the
 21 data every two months.
 22 BY MR. PACE:
 23 Q And how were they doing that?
 24 A They sent me the file with the entire data
 25 of the period -- of the period in which I was

Page 171

1 interested.
 2 Q And who is the "they"?
 3 THE INTERPRETER: Sorry.
 4 BY MR. PACE:
 5 Q Who would send you this data?
 6 A Fabiani.
 7 Q So Fulvio Fabiani would send you the data
 8 from your computer every couple of months?
 9 MR. ANNESSER: Object to the form.
 10 THE WITNESS: According to my request.
 11 BY MR. PACE:
 12 Q Okay. So you made the request -- let me
 13 rephrase it then.
 14 Roughly every couple of months you made
 15 the request for Fabiani to send you your data and
 16 when you made such a request he would send it to
 17 you?
 18 MR. ANNESSER: Object to the form.
 19 THE WITNESS: Correct. He was sending the
 20 data in the computer.
 21 BY MR. PACE:
 22 Q So he had the ability to access your
 23 computer to make at least a copy of the data to send
 24 you?
 25 MR. ANNESSER: Object to the form.

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1 THE WITNESS: He could access, but for
 2 some limited tasks.
 3 BY MR. PACE:
 4 Q And does that -- does that -- where is
 5 that computer today?
 6 A I think it is in the container at the
 7 Doral.
 8 Q So you -- you did not take that with you
 9 when you returned to Italy in February of 2016?
 10 A No, because I had already all the data.
 11 Q When you -- when you took any of the data
 12 from the computer that you had at Doral, would you
 13 erase it from the computer?
 14 THE INTERPRETER: Excuse me?
 15 BY MR. PACE:
 16 Q After you had reviewed the data that was
 17 on the computer in Doral, would it get erased?
 18 Would it get erased?
 19 MR. ANNESSER: Object to the form.
 20 THE WITNESS: I don't remember honestly.
 21 I took them for sure, but I don't know if I
 22 deleted it.
 23 BY MR. PACE:
 24 Q So it may be on the computer that's in
 25 Doral. You don't know?

Page 173

1 A It could be in the computer.
 2 Q Have you maintained a copy of this, this
 3 data?
 4 A My personal data -- my personal data on my
 5 computer. No additional -- no other copies exist.
 6 Q But just so I understand. These data --
 7 these devices for collecting information are
 8 collecting temperature and pressure readings on a
 9 very regular basis, very consistent basis; correct?
 10 MR. ANNESSER: Object to the form.
 11 THE WITNESS: Correct, yes.
 12 BY MR. PACE:
 13 Q And you testified that your report largely
 14 uses average numbers for a day usually rounded up or
 15 down?
 16 MR. ANNESSER: Object to the form.
 17 THE WITNESS: Can you repeat again?
 18 MR. PACE: Sure.
 19 BY MR. PACE:
 20 Q You were looking with Mr. Annesser at some
 21 of your reports and the annexes to the reports, and
 22 you were talking about how those numbers -- you
 23 don't report several hundred numbers for a given
 24 day. You report one number for a day.
 25 A The reports were related to 24 hours

TPD - improper counter-designation; misleading

Objections as to D's designations for pages 170-172

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1 MR. LUKACS: 9:00 o'clock this morning and
 2 it is now 20 minutes until 8:00.
 3 MR. PACE: And it is now 20 minutes until
 4 8:00 a.m.
 5 MR. LUKACS: 8:00 p.m.
 6 MR. PACE: And at this point -- 8:00 p.m
 7 you are calling it into the deposition.
 8 MR. LUKACS: Most respectfully, I might
 9 add.
 10 THE VIDEOGRAPHER: All right. Going off
 11 the video record. The time is 7:42 p.m. in the
 12 Dominican Republic.
 13 MR. LUKACS: Reporter, thank you so much.
 14 No waive. We'll have an opportunity to read.
 15 (Thereupon, the taking of the deposition
 16 was concluded at 7:42 p.m.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 207


1 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.
 2 DEPO OF: FABIO PENON
 3 TAKEN: February 22, 2017
 4
 5 EXCEPT FOR ANY CORRECTIONS
 6 MADE ON THE ERRATA SHEET BY
 7 ME, I CERTIFY THIS IS A TRUE
 8 AND ACCURATE TRANSCRIPT.
 9 FURTHER DEPONENT SAYETH NOT.
 10
 11 _____
 12 FABIO PENON
 13
 14 STATE OF FLORIDA)
 15) SS:
 16 COUNTY OF MIAMI-DADE)
 17 Sworn and subscribed to before me this
 18 _____ day of _____, 2017.
 19 PERSONALLY KNOWN _____ OR I.D. _____
 20
 21 _____
 22 Notary Public in and for
 23 the State of Florida at
 24 Large.
 25 My commission expires:

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1 ERRATA SHEET
 2 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.
 3 DEPO OF: FABIO PENON
 4 TAKEN: February 22, 2017
 5 JOB# 2547735
 6 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
 7 Page #| Line #| Change | Reason
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 State of Florida)
 22 County of)
 23
 24 Under penalties of perjury, I declare that I have
 25 read by deposition transcript, and it is true and
 correct subject to any changes in form or
 substance entered here.

 25 Date FABIO PENON

Page 209

1 CERTIFICATE OF OATH OF INTERPRETER
 2
 3 STATE OF FLORIDA)
 4) SS:
 5 COUNTY OF MIAMI-DADE)
 6
 7 I, DIANA SANTOS, Notary Public in and for
 8 the State of Florida at Large, certify that the
 9 Interpreter, UGO V. CHIARATO personally appeared
 10 before me on February 22, 2017 and was duly sworn by
 11 me.
 12 WITNESS my hand and official seal this
 13 22nd day of February, 2017.
 14
 15 
 16 _____
 17 DIANA SANTOS
 18 Notary Public, State of Florida
 19 at Large
 20 Notary #FF030013
 21 My commission expires: 7/7/17
 22
 23
 24
 25


Page 210

1 CERTIFICATE OF OATH OF WITNESS
 2
 3 STATE OF FLORIDA)
) SS:
 4 COUNTY OF MIAMI-DADE)
 5
 6 I, DIANA SANTOS, Notary Public in and for
 7 the State of Florida at Large, certify that the
 8 witness, FABIO PENON, personally appeared before me
 9 on February 22, 2017 and was duly sworn by me.
 10 WITNESS my hand and official seal this
 11 22nd day of February, 2017.
 12
 13
 14 
 15 _____
 DIANA SANTOS
 Notary Public, State of Florida
 at Large
 Notary #FF030013
 My commission expires: 7/7/17
 19
 20
 21
 22
 23
 24
 25

Page 212

1 VERITEXT FLORIDA CO.
 ONE BISCAYNE TOWER
 2 2 S. Biscayne Tower, Suite 2250
 Miami, Florida 33131
 3 (305) 371-1884
 4 March, 3 2017
 5 FABIO PENON
 c/o JOHN CHARLES LUKACS, ESQUIRE
 6 HINSHAW & CULBERTSON LLP
 2525 Ponce de Leon Boulevard
 7 Coral Gables, Florida 33134
 Telephone: (305)358-7747
 8 E-mail:jlukacs@hinshawlaw.com
 9 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.
 DEPO OF: FABIO PENON
 10 TAKEN : February 22, 2017
 READ & SIGN BY: April 3, 2017
 11
 12 Dear FABIO PENON:
 13 This letter is to advise you that the transcript
 14 of the deposition listed above is completed and
 is awaiting reading and signing.
 15 Please arrange to stop by our office in Suite 1020,
 16 19 West Flagler Street, Miami, Florida to read and
 sign the transcript. Our office hours are from
 17 8:00 a.m. to 4:00 p.m. Monday through Friday.
 Depending on the length of the transcript, you
 18 should allow yourself sufficient time.
 19 If the reading and signing has not been completed
 prior to the referenced date, we shall conclude
 20 that you have waived the reading and signing of the
 deposition transcript.
 21 Your prompt attention to this matter is appreciated.
 22 Sincerely,
 23 DIANA SANTOS
 24 cc: JOHN W. ANNESSER, ESQUIRE
 CHRISTOPHER R.J. PACE, ESQUIRE
 25

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1 REPORTER'S DEPOSITION CERTIFICATE
 2
 3 I, DIANA SANTOS, certify that I was
 4 authorized to and did stenographically report the
 5 deposition of FABIO PENON, the witness herein on
 6 February 22, 2017; that a review of the transcript
 7 was requested; that the foregoing pages numbered
 8 from 1 to 206 inclusive is a true and complete
 9 record of my stenographic notes of the deposition by
 10 said witness; and that this computer-assisted
 11 transcript was prepared under my supervision.
 12 I further certify that I am not a
 13 relative, employee, attorney or counsel of any of
 14 the parties, nor am I a relative or employee of any
 15 of the parties' attorney or counsel connected with
 16 the action.
 17 DATED this 22nd day of February, 2017.
 18
 19
 20
 21 
 22 _____
 DIANA SANTOS
 23
 24
 25

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1 VERITEXT FLORIDA CO.
 ONE BISCAYNE TOWER
 2 2 S. Biscayne Boulevard, Suite 2250
 Miami, Florida 33131
 3 (305) 371-1884
 4 March, 3 2017
 5
 6 JOHN W. ANNESSER, ESQUIRE
 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.
 7 283 Catalonia Avenue
 Suite 200
 8 Coral Gables, Florida 33134
 Telephone: (305)377-0086
 9 E-mail: jannesser@pbylaw.com
 10 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.
 DEPO OF: FABIO PENON
 11 TAKEN : February 22, 2017
 READ & SIGN BY: April 3, 2017
 12
 13 Dear JOHN W. ANNESSER, ESQUIRE:
 14 The original transcript of the deposition listed
 above was previously provided to your office. The
 15 witness did not waive reading and signing and was
 duly notified to come in and read the transcript.
 16
 17 Attached to this letter you will find a copy
 of the corrections made by the witness.
 PLEASE ATTACH THEM TO YOUR COPY OF THE
 18 DEPOSITION SO IT WILL BE COMPLETE.
 19 The witness made no corrections to transcript.
 20 As of the above date, the witness has not come
 in to read and sign the transcript which has
 21 been noted on the original transcript.
 22 Sincerely,
 23 DIANA SANTOS
 24 cc: JOHN CHARLES LUKACS, ESQUIRE
 CHRISTOPHER R.J. PACE, ESQUIRE
 25

Third-Party Defendants' Deposition Designation

Case No.: 1:16-cv-21199-CMA/O'Sullivan
Case Style: *Rossi, et al. v. Darden, et al.*
Witness: Fabio Penon
Date: February 22, 2017

No.	Citation	Testimony
1	8:25 – 9:2	8:25 Q. May I ask you to state your full name for 9:1 the record? 2 A. Fabio Penon; F-A-B-I-O P-E-N-O-N
2	138:13-16	138:13 Q. Do you know Mr. Henry Johnson? 14 A. No. 15 Q. Have you ever spoken with him? 16 A. Never.
3	138:18-23	138:19 Q. Have you had any communication with 20 Mr. Johnson whatsoever? 21 A. No. 22 Q. Do you or have you met a gentleman by the 23 name of James or Jim Bass? 24 THE INTERPRETER: B-A-S-S. 25 MR. ANNESSER: Yes.
4	139:1-13; 10-13	139:1 THE WITNESS: Which company? 2 BY MR. ANNESSER: 3 Q I believe he was with JM Products. 4 A No. 5 Q Did you ever request from Mr. Bass, or 6 Mr. Johnson, or anyone at JM products to take any 7 measurements of the amount of steam received from 8 the E-Cat plant? 9 A No. 10 Q Did anything in your test protocol require 11 measurements be taken on the JM Product side of the 12 warehouse? 13 A No.
5	139:21 – 140:10	139:21 Q Did the operation on the JM side of the 22 warehouse have any effect whatsoever on his 23 calculation of the COP -- I'm sorry. On your 24 calculation of the COP? 25 MR PACE: Objection. 140:1 THE WITNESS: I don't understand the kind

		<p>2 of question.</p> <p>3 BY MR. ANNESSER:</p> <p>4 Q Did the -- did the operation where the</p> <p>5 steam was used have any effect on your ability to</p> <p>6 measure the COP of the E-Cat plant?</p> <p>7 A No, no effect whatsoever.</p> <p>8 MR. PACE: Objection. I couldn't get in</p> <p>9 there, but objection.</p> <p>10 THE WITNESS: No, no effect whatsoever.</p>
6	140:20-23	<p>20 Q The JM side is the side on the other side</p> <p>21 of the wall in the E-Cat plant. Did you ever see</p> <p>22 anyone go between the two sides?</p> <p>23 A Not to the best of my knowledge.</p>
7	140:24-141:8	<p>24 Q Do you know Mr. Fulvio Fabiani?</p> <p>25 A Yes, I do.</p> <p>1 Q Did he take any of the measurements that</p> <p>2 you relied upon in creating your report?</p> <p>3 A To the calculation of COP?</p> <p>4 Q Yes.</p> <p>5 A So the question is?</p> <p>6 Q Did he provide any of the measurements to</p> <p>7 you?</p> <p>8 A No.</p>

Penon, Fabio – Third Party Defendants’ Designations – Defendants’ Counters and Objections

1. Objections

Designation	Objection
139:21–25	FRE 701/702: Improper Attempt to admit expert testimony on E-Cat Plant performance/performance testing
140:1–10	FRE 701/702: Improper Attempt to admit expert testimony on E-Cat Plant performance/performance testing

2. Counter-Designations

Designation	Notes
108:3–12	Necessary context for testimony on pages 140-41
138:17	
170:15–16; 18-21; 23-171:1	Necessary context for testimony on pages 140-41
171:2-8, 10, 12–17, 19–20, 22–24	Necessary context for testimony on pages 140-41
172:1–2	Necessary context for testimony on pages 140-41

Third-Party Defendants’ Objections and Rebuttal Designations to Defendants’ Counter-Designations

Case No.: 1:16-cv-21199-CMA/O’Sullivan

Case Style: *Rossi, et al. v. Darden, et al.*

Witness: Fabio Penon

Date: February 22, 2017

Objections

Defendants’ Counter-Designations	Objections
108:3-12	Improper Counter-Designation; Mischaracterizes the testimony
138:17	Improper Counter-Designation; Misleading
170:15-16; 18-21; 23-171:1	Improper Counter-Designation; Misleading
171:2-8; 10; 12-17; 19-20; 22-24	Improper Counter-Designation; Misleading
172:1-2	Improper Counter-Designation; Misleading

Rebuttal Designations

108:13-19 – Completes testimony on the subject matter and provides full context

139:21-140:10 – Necessary for context if Defendants’ Counter-Designation 138:17 comes in

DEFENDANTS' OBJECTIONS TO REBUTTAL DESIGNATIONS

I. PLAINTIFFS' REBUTTAL DESIGNATIONS

Dewey Weaver

<u>TESTIMONY</u>	<u>OBJECTION</u>
112:21-23	Irrelevant

II. THIRD-PARTY DEFENDANTS' REBUTTAL DESIGNATIONS

Industrial Heat (John Thomas Vaughn)

<u>TESTIMONY</u>	<u>OBJECTION</u>
289:25-290:1	Incomplete; 290:2-11 must also be designated

Barry West

<u>TESTIMONY</u>	<u>OBJECTION</u>
160:10-161:10	Improper rebuttal

Fabio Penon

<u>TESTIMONY</u>	<u>OBJECTION</u>
139:21-140:10	FRE 701/702 Improper expert testimony