

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

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Plaintiffs,)

v.)

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

Defendants.)

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

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

Counter-Plaintiffs,)

v.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

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

Third-Party Defendants.)

JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER

ANDREA ROSSI, LEONARDO CORPORATION, THOMAS DARDEN, JOHN T. VAUGHN, INDUSTRIAL HEAT, LLC, IPH INTERNATIONAL B.V., CHEROKEE INVESTMENT PARTNERS, LLC, J.M. PRODUCTS, INC., HENRY JOHNSON, UNITED STATES QUANTUM LEAP, LLC, FULVIO FABIANI, and JAMES BASS (collectively, the “Parties”) jointly move this Court to enter a protective order governing the Parties’ treatment of confidential information disclosed by the Parties and any third parties throughout the course of this litigation.

MEMORANDUM OF LAW

The Parties are engaged in discovery that calls for the production of confidential commercial information and/or trade secret information. In an effort to ensure the continuing confidentiality of such information, the Parties jointly prepared a proposed Protective Order (“Proposed Protective Order”), which is attached to this motion.

Federal Rule of Civil Procedure 26(c)(1) authorizes the entry of protective orders upon a showing of “good cause.” Good cause exists for entry of the Proposed Protective Order because this case involves sensitive proprietary information, such as information relating to “trade secret[s] or other confidential research, development, or commercial information.” *See Corcel Corp v. Ferguson Enters., Inc.*, 291 F.R.D. 680, 681 (S.D. Fla. 2013) (quoting Fed. R. Civ. P. 26(c)(1)(G)). In addition, the Proposed Protective Order will obviate the need for unnecessary and time consuming “document by document” litigation before the Court to preserve the confidentiality of discovery materials. *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1307 (11th Cir. 2001) (holding that good cause exists for entry of a protective order where such an order will “replace[] the need to litigate the claim to protection document by

document, and postpone[] the necessary showing of ‘good cause’ required for entry of a protective order until the confidential designation is challenged.”).

As this Court is aware, the use of protective orders similar to the Proposed Protective Order is common in commercial cases here in the Southern District because they promote the efficient use of confidential information during pretrial proceedings and conserve judicial resources by avoiding judicial review on a document by document basis, unless a particular document’s designation is challenged by the non-producing party. *See, e.g., Tracfone Wireless, Inc. v. Simply Wireless, Inc.*, No. 1:15-cv-24565, 2016 WL 4581320 (S.D. Fla. Aug. 16, 2016); *Gunson v. BMO Harris Bank, N.A.*, 300 F.R.D. 581, 583 (S.D. Fla. 2014). Like many of those orders, the Proposed Protective Order requires a good faith basis for designation as confidential, provides the Parties the ability to challenge confidentiality designations, expressly requires the Parties to follow this Court’s Local Rules if a party wishes to submit confidential information to the Court, and requires the return or destruction of confidential information by the non-producing party at the conclusion of this litigation.

CONCLUSION

Wherefore, the Parties jointly move this Court to enter the Proposed Protective Order.

Dated: October 13, 2016.

/s/ John W. Annesser

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 13, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record.

/s/ Christopher Lomax

Christopher Lomax