

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.)

**DEFENDANT JOHN T. VAUGHN'S RESPONSES AND OBJECTIONS TO
PLAINTIFF ANDREA ROSSI'S FIRST SET OF INTERROGATORIES**

Defendant JOHN T. VAUGHN ("Vaughn"), pursuant to Federal Rules of Civil Procedure ("Federal Rules") 26 and 33, hereby responds to Plaintiff Andrea Rossi's ("Rossi") First Set of Interrogatories ("Interrogatories").

PRELIMINARY STATEMENT

Vaughn provides these responses and objections ("Responses") without waiving any objections as to the admissibility in evidence of these Responses, the information produced pursuant to, or referenced in, these Responses, or the subject matter of the Interrogatories or of the information produced pursuant to, or referenced in, these Responses. The Responses are also subject to and without waiver of Vaughn's rights: (i) to object to other discovery directed to the subject matter of the Interrogatories or Responses; (ii) to make additional objections or to seek protective orders; and (iii) to revise, correct, add to, or clarify the Responses or information referred to below in accordance with all applicable rules. Vaughn reserves the right to supplement these Responses after he has had a full and fair opportunity to participate in discovery.

Vaughn has not completed investigation of the facts related to this case. Therefore, Vaughn responds to these Interrogatories based upon information and documents acquired and reviewed to date, which may or may not be inclusive of all documents relevant to the matters in dispute in this case. Accordingly, the present Responses are offered without prejudice to supplementation or modification at a later date.

GENERAL OBJECTIONS

Vaughn asserts the following General Objections to each of the Interrogatories. These objections are in addition to objections set forth separately in each and every Interrogatory.

1. Vaughn objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure of documents or other information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, protection or restriction upon discovery (“Applicable Privilege or Protection”). Inadvertent disclosure of any privileged or protected information or documents in response to these Interrogatories shall not be deemed a waiver of the Applicable Privilege or Protection.

2. To the extent an Interrogatory seeks proprietary information possessed by Vaughn, information which would invade the privacy rights of third parties if disclosed, or information that is otherwise confidential, Vaughn will produce such information – unless subject to an objection stated herein, including that information is subject to an Applicable Privilege or Protection – pursuant to the terms of a protective order governing confidentiality entered by the Court. Vaughn anticipates that the parties will propose such a protective order to the Court soon.

3. Vaughn objects to Rossi’s Definitions, Instructions and Interrogatories to the extent they seek to impose duties upon Vaughn beyond those imposed by the Federal Rules, the Local Rules of this Court, or the Court’s Order Setting Trial and Pre-Trial Schedule, as amended if amended. Vaughn objects to Instruction No. 1 to the extent it purports to require information in a privilege log beyond what is required under the Federal Rules and the Local Rules. Vaughn objects to Instruction No. 5 as not an instruction to guide the completion of interrogatories, but what amounts to a separate interrogatory, and which would be objectionable as a separate

interrogatory because of its vagueness and overbreadth (seeking information on any unavailable document that simply somehow relates to the subsequent interrogatories).

4. Vaughn objects to Rossi's Interrogatories to the extent words or phrases used by Rossi in his Definitions, Instructions and Interrogatories are vague, ambiguous, undefined, and/or subject to multiple interpretations. Vaughn will respond to such Interrogatories according to his understanding of the ordinary meaning of such words or phrases.

5. Vaughn objects to the definition of "E-Cat IP" to the extent that it is intended to encompass information beyond that encompassed by the definition of "E-Cat IP" contained in the License Agreement.

6. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Vaughn to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request. Furthermore, to the extent any defined term or phrase in the Interrogatories reflects a characterization by Rossi but the meaning of the defined term or phrase is clear (such as describing the property located at 7861 NW 46th Street¹ as the "Testing Facility"), Vaughn does not accept or endorse the characterization, but does not object to the defined term or phrase since its meaning is clear and any characterization is irrelevant.

7. Vaughn objects to the definitions of Industrial Heat, IPH and Cherokee (and the alternative terms used for these entities) to the extent they include persons or entities "purporting to act," but not in fact acting, on behalf of Industrial Heat, IPH International or Cherokee Investment Partners because Rossi has provided no basis for the identification of such persons or

¹ As explained below, Rossi's First Set of Interrogatories to Vaughn states that the property located at 4861 NW 46th Street is the "Testing Facility." Vaughn assumes that Rossi intended to reference the property located at 7861 NW 46th Street.

entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so.

INTERROGATORY RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1: Please identify each and every company and/or business entity in which you are/were named as, or act(ed) as, an officer, director, employee, independent contractor, agent or representative at any time between January 1, 2012 through the date of your answer to this interrogatory. For each company and/or business entity identified, please state with specificity:

- (a) the title or position currently held by you;
- (b) any titles or positions previously held by you;
- (c) the location of the primary office for such business;
- (d) the date you became affiliated with such entity;
- (e) the nature of type of business such entity is engaged in;
- (f) whether you have ownership interest in such entity;
- (g) the percentage ownership you have in such entity;
- (h) where and when such entity was formed; and
- (i) your duties and responsibilities with respect to each title or position

ANSWER: In addition to his General Objections, Vaughn objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to lead to the discovery of admissible evidence. Vaughn is in the private equity business, and the nature of that business necessarily involves numerous business holdings, investments, and corporate roles. The information requested in this Interrogatory relating to each and every company and/or business entity in which Vaughn was named as, or act(ed) as an officer, director, employee, independent contractor, agent, or representative is not relevant to any of the claims or defenses at issue in this lawsuit. Vaughn further objects to this Interrogatory because the term “representative” as something other than an employee, independent contractor, or agent is vague and ambiguous. This Interrogatory is a fishing expedition divorced from the allegations in the Complaint (as narrowed by the Court’s Order on

Defendants' motion to dismiss (the "Dismissal Order")) and the Second Amended Answer, Additional Defenses, Counterclaims and Third Party Claims ("AACT").

Subject to and without waiving the foregoing General and Specific Objections, Vaughn states that, between January 1, 2012 and the date of this Response, he was not an officer, director or employee of IPH International, B.V. or Cherokee Investment Partners, LLC. On October 24, 2012, Vaughn became the Vice President of Industrial Heat, LLC, and on July 1, 2015, Vaughn became an employee of Industrial Heat, LLC.

INTERROGATORY NO. 2: Please state, with specificity, each and every company, business entity, joint venture or enterprise in which you have or had an ownership interest or other beneficial interest at any time between January 1, 2012 through the date of your response to this interrogatory. For each company, business entity, joint venture or enterprise identified, please state:

- (a) the date you acquired your ownership interest;
- (b) the percentage ownership held by you;
- (c) the type/nature of the business the entity/venture is engaged in;
- (d) the location of the primary office for such business; and
- (e) if a business entity, where and when such entity was formed.

ANSWER: In addition to his General Objections, Vaughn objects to this Interrogatory on the grounds that it is duplicative of Interrogatory No. 1, overbroad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to lead to the discovery of admissible evidence. Vaughn is in the private equity business, and the nature of that business necessarily involves numerous business holdings, investments, and corporate roles. The information requested in this Interrogatory relating to each and every company, business, entity, joint venture, or enterprise in which Vaughn had an ownership interest or other beneficial interest is not relevant to any of the claims or defenses at issue in this lawsuit. This Interrogatory is a fishing expedition divorced from the allegations in the Complaint (as narrowed by the Dismissal Order) and the AACT.

INTERROGATORY NO. 3: Please identify each and every computer, laptop, electronic notebook, tablet, smart phone, telephone, cellular phone, or other electronic device used by you at any time between January 1, 2012 and the present, to communicate with any other person and/or entity in which you referenced, referred to, or discussed (1) Andrea Rossi; (2) Leonardo Corporation (3) the E-Cat, or (4) E-Cat IP or any part thereof. For each device identified, please state the following information, with specificity:

- (a) the make, model, color and serial number for each device;
- (b) the name of the person(s) or entity currently in possession of the device;
- (c) the communication format used on such device (i.e. e-mail, text messaging, telephone call, face-time call, social media, etc.);
- (d) the address and/or specific location where the device is currently kept;
- (e) whether the devices is (sic) currently operational; and
- (f) if any device is not operational, please state when the device became inoperable and the cause of such failure.

ANSWER: In addition to his General Objections, Vaughn objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to the discovery of admissible evidence. There is no claim or defense in this case addressing electronic communication devices used by Vaughn, nor has Rossi provided any basis for needing information on electronic communication devices used by Vaughn. This Interrogatory is a fishing expedition divorced from the allegations in the Complaint (as narrowed by the Dismissal Order) and the AACT.

INTERROGATORY NO. 4: Please identify, with specificity, each and every conversation, discussion or other communication (written or oral) between you and Andrea Rossi and/or Leonardo Corporation regarding the E-Cat or the E-Cat IP from January 1, 2012 through the date of your response to this interrogatory. For each such communication identified, please state, with specificity, (a) any and all representations made by Andrea Rossi or Leonardo Corporation regarding the E-Cat or E-Cat IP, (b) the date of such representation(s), (c) the names of any persons present when such representations were made, (d) how such representation was made (i.e. e-mail, text message, telephone call, statement made in person, etc.), and (e) if such representation(s) was made in person, where such representation was made.

ANSWER: In addition to his General Objections, Vaughn objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome, as it requests in essence a running narrative or description of the broad swath of the relationship between the parties. Furthermore, for

months Rossi was working at the same location as Vaughn in North Carolina, so it would not be possible for Vaughn to attempt to reconstruct and state with specificity the details of all those daily interactions which frequently related, in one way or another, to the E-Cat or E-Cat IP.

Subject to, and without waiving the foregoing General and Specific Objections, Vaughn's counsel will meet and confer with Rossi's counsel to address the scope and procedure for a reasonable search of Vaughn's paper and electronic documents and data that reflect communications with Rossi or Leonardo about the E-Cat or E-Cat IP, from which Rossi can ascertain the answer to this Interrogatory at least as it relates to written communications.

INTERROGATORY NO. 5: Please identify each and every online account, online profile or other online alias used by you at any time between January 1, 2012 through the date of your answer to this interrogatory including, but not limited to, e-mail addresses, Facebook usernames, aliases used on blog websites, twitter account profiles and other online social networking or communication services. For each account or profile identified, please provide (a) the website used to access such account/profile/alias, (b) the date you first set up such account/profile/alias, (c) whether the account/profile/alias is capable of sending and/or receiving communications, and (d) whether you have ever used such account/profile/alias to communicate with any of the parties to this action.

ANSWER: In addition to his General Objections, Vaughn objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to the discovery of admissible evidence. There is no claim or defense in this case addressing the email or social media services used by Vaughn, nor has Rossi provided any basis for needing information on email or social media services used by Vaughn. This Interrogatory is a fishing expedition divorced from the allegations in the Complaint (as narrowed by the Dismissal Order) and the AACT.

Subject to, and without waiving the foregoing General and Specific Objections, Vaughn states that between January 1, 2012, through the date of this response, Vaughn has used the following e-mail addresses:

- i. jvaughn@cherokeefund.com. This account was set up on or about August 16, 2010. This email account is capable of sending and/or receiving communications, and Vaughn has used this account to communicate with Rossi and/or Leonardo Corporation.
- ii. jvaughn@industrialheat.co. This account was set up in or about May of 2014. This email account is capable of sending and/or receiving communications, and Vaughn has used this account to communicate with Rossi and/or Leonardo Corporation.
- iii. jtvaughn@gmail.com. This account was set up in or about July of 2006. This email account is capable of sending and/or receiving communications, but Vaughn has not used this account to communicate with Rossi and/or Leonardo Corporation.
- iv. jtvaughn@protonmail.com. This account was set up in or about May of 2015. This email account is capable of sending and/or receiving communications, but Vaughn has not used this account to communicate with Rossi and/or Leonardo Corporation.

Vaughn has had social media accounts during the time between January 1, 2012, through the date of this response, but Vaughn has not used any of these accounts to communicate with or about Rossi and/or Leonardo Corporation.

INTERROGATORY NO. 6: Please identify each and every paragraph of Defendants' Amended Counterclaim to which you have personal knowledge. For each such paragraph, please state with specificity (a) any and all knowledge you have regarding the allegations contained within such paragraph, and (b) how your obtained such knowledge.

ANSWER: In addition to his General Objections, Vaughn objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome, as it indiscriminately sweeps an entire

pleading and impermissibly requires Vaughn to provide in essence a running narrative or description of the entire case. Vaughn further objects to this Interrogatory as seeking information that can be obtained in a more convenient, less burdensome, and less expensive manner through either or both of a review of documents and data produced in discovery and depositions (with the time limit for depositions requiring a party to focus on facts in dispute and significant to the resolution of this litigation as opposed to every allegation included in a particular pleading). Vaughn also objects to this Interrogatory to the extent it seeks information protected by an Applicable Privilege or Protection.

Dated: October 7, 2016.

Respectfully submitted,

/s/ Christopher R.J. Pace

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VERIFICATION

I, John T. Vaughn, have read the Responses and Objections to Rossi's First Set of Interrogatories ("Responses") and know the contents thereof, and I state that the facts contained in the Responses are true and correct to the best of my knowledge, information and belief, subject to the objections set forth in the Responses. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON October 7th, 2016

BY: 
John T. Vaughn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail on counsel of record on the service list below this 7th day of October, 2016.

/s/ Erika S. Handelson

Erika S. Handelson

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