

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

CASE NO. 1:16-cv-21199-CIV-ALTONAGA/O'Sullivan

ANDREA ROSSI and LEONARDO  
CORPORATION,

Plaintiffs,

v.

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

Defendants.

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

Counter-Plaintiffs,

v.

ANDREA ROSSI and LEONARDO  
CORPORATION,

Counter-Defendants,

v.

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

Third-Party Defendants.

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**FULVIO FABIANI AND UNITED STATES QUANTUM LEAP, LLC'S  
ANSWER AND AFFIRMATIVE DEFENSES TO COUNTER-PLAINTIFES  
INDUSTRIAL HEAT, LLC AND IPH INTERNATIONAL, B.V.'S  
THIRD-PARTY CLAIMS**

Third-Party Defendants, United States Quantum Leap, LLC and Fulvio Fabiani (collectively referred to as “Third-Party Defendants”), by and through their undersigned hereby set forth their Answer and Affirmative Defenses to Counter-Plaintiffs Industrial Heat, LLC (“IH”) and IPH International, B.V. (“IPH”) Fourth Amended Answer, Affirmative Defenses, Counterclaims and Third-Party Claims (“Third-Party Claims”) and state as follows:

### **INTRODUCTION**

1. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 1 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

2. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 2 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

3. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 3 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 3 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

4. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 4 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 4 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

5. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 5 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 5 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

6. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 6 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

7. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 7 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

8. Third-Party Defendants deny the allegations contained in Paragraph 8 of the Third-Party Claims.

9. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 9 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

10. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 10 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

11. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 11 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

## **THE PARTIES**

12. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 12 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

13. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 13 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

14. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 14 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

15. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 15 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

16. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 16 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

17. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 17 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

18. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 18 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

19. Third-Party Defendants deny the allegations contained in Paragraph 19 of the Third-Party Claims.

20. Third-Party Defendants deny the allegations contained in Paragraph 20 of the Third-Party Claims.

21. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 21 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

### **JURISDICTION AND VENUE**

22. Third-Party Defendants admit the allegations in Paragraph 22 of the Third-Party Claims.

23. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 23 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

24. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 24 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

25. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 25 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

26. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 26 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

27. Third-Party Defendants admit the allegations in Paragraph 27 of the Third-Party Claims.

28. Third-Party Defendants deny the allegations contained in Paragraph 28 of the Third-Party Claims.

29. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 29 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

30. Third-Party Defendants admit that venue is proper in this judicial district as to the allegations against Third-Party Defendants. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remainder of the allegations in Paragraph 30 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. Third-Party Defendants further deny that any “acts or omissions” have occurred to give rise to the claims asserted against them in the Third-Party Claims.

### **FACTUAL BACKGROUND**

#### ***Thomas Darden’s initial meeting with Rossi.***

31. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 31 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

32. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 32 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

33. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 33 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

34. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 34 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***The License Agreement between Industrial Heat, Leonardo, Rossi, and AEG.***

35. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 35 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

36. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 36 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 36 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

37. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 37 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 37 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

38. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 38 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack

sufficient knowledge or information to admit or deny the allegations in Paragraph 38 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

39. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 39 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 39 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

40. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 40 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 40 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

41. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 41 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 41 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

42. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 42 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 42 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.



43. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 43 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 43 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

44. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 44 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

45. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 45 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 45 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***The First Amendment to the License Agreement and assignment of Industrial Heat's rights to IPH.***

46. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 46 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

47. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 47 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

48. Third-Party Defendants state that the License Agreement and amendments thereto speak for themselves. Third-Party Defendants deny the allegations in Paragraph 48 to the extent that they are inconsistent with the terms of the License Agreement. Third-Party Defendants lack

sufficient knowledge or information to admit or deny the allegations in Paragraph 48 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***Testing the Plant in Italy, North Carolina, and Florida.***

***Validation testing in Italy.***

49. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 49 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

50. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 50 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

51. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 51 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

52. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 52 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

53. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 53 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

54. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 54 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

55. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 55 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

56. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 56 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

57. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 57 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

58. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 58 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***Rossi and Industrial Heat's inability to replicate Validation results in North Carolina***

59. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 59 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

60. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 60 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

61. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 61 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

62. Third-Party Defendants state that the Technical Consulting Agreement speaks for itself. Third-Party Defendants deny the allegations in Paragraph 62 to the extent that they are inconsistent with the terms of the Agreement.

63. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 63 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

64. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 64 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

65. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 65 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

66. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 66 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

67. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 67 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

***The Plant moves to Miami to service a fake “customer.”***

68. Third-Party Defendants deny the allegations in Paragraph 68 of the Third-Party Claims as to any role allegedly played by Fabian or USQL and demand strict proof thereof.

69. Third-Party Defendants deny the allegations in Paragraph 69 of the Third-Party Claims as to any role allegedly played by Fabian or USQL and demand strict proof thereof

70. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 70 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

71. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 71 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

72. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 72 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

73. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 73 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

74. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 74 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

75. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 75 of the Third-Party Claims and therefore deny the same and

demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

76. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 76 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

77. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 77 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

78. Third-Party Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 78 of the Third-Party Claims and therefore deny the same and demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

79. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 79 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

80. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 80 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

81. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 81 of the Third-Party Claims and therefore deny the same and

demand strict proof thereof. To the extent those allegations attempt to imply wrongdoing on the part of Third-Party Defendants, they are denied.

82. Third-Party Defendants deny the allegations in Paragraph 82 of the Third-Party Claims and demand strict proof thereof.

83. Third-Party Defendants deny the allegations in Paragraph 83 of the Third-Party Claims and demand strict proof thereof.

84. Third-Party Defendants state that the Technical Consulting Agreement speaks for itself. Third-Party Defendants deny the allegations in Paragraph 84 to the extent that they are inconsistent with the terms of the Agreement.

85. Third-Party Defendants deny the allegations in Paragraph 85 of the Third-Party Claims and demand strict proof thereof.

86. Third-Party Defendants deny the allegations in Paragraph 86 of the Third-Party Claims and demand strict proof thereof.

87. Third-Party Defendants deny the allegations in Paragraph 87 of the Third-Party Claims and demand strict proof thereof.

88. Third-Party Defendants admit that Johnson filed the Articles of Organization for United States Quantum Leap, LLC and remains its registered agent. To the extent the allegations in Paragraph 88 of the Third-Party Claims attempt to allege or imply any wrongdoing on the part of Third-Party Defendants, the allegations are denied.

89. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 89 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

90. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 90 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

91. Third-Party Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 91 of the Third-Party Claims and therefore deny the same and demand strict proof thereof.

**COUNT I: BREACH OF CONTRACT  
(Validation and Disclosure of E-Cat IP)  
(Industrial Heat and IPH against Leonardo and Rossi)**

92. In response to Paragraph 92 of the Third-Party Claims, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

93. In light of the fact that Third-Party Defendants are not parties to Count I of the Third-Party Claims, no response to the allegations in Paragraph 93 through 98 are required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 93 through 98 and demand strict proof thereof.

**COUNT II: BREACH OF CONTRACT  
(Various Provisions in the License Agreement)  
(IPH against Leonardo and Rossi)**

99. In response to Paragraph 99 of the Third-Party Claims, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

***Confidentiality***

100. In light of the fact that Third-Party Defendants are not parties to Count II of the Third-Party Claims, no response to the allegations in Paragraph 100 through 132 are required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required,



Third-Party Defendants deny the allegations in Paragraph 100 through 132 and demand strict proof thereof.

**COUNT III: FRAUDULENT INDUCEMENT  
(Term Sheet)  
(Industrial Heat against Rossi, Leonardo, JMP, and Johnson)**

133. In response to Paragraph 133, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

134. In light of the fact that Third-Party Defendants are not parties to Count III of the Third-Party Claims, no response to the allegations in Paragraph 133 through 138 are required by Third-Party Defendants. To the extent any response by Third-Party Defendants is required, Third-Party Defendants deny the allegations in Paragraph 133 through 138 and demand strict proof thereof.

**COUNT IV: FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT  
(Industrial Heat and IPH against all Counter-Defendants and Third-Party Defendants)**

139. In response to Paragraph 139, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

140. Third-Party Defendants deny the allegations in Paragraph 140 of the Third-Party Claims and demand strict proof thereof.

141. Third-Party Defendants deny the allegations in Paragraph 141 of the Third-Party Claims and demand strict proof thereof.

142. Third-Party Defendants deny the allegations in Paragraph 142 of the Third-Party Claims and demand strict proof thereof.

143. Third-Party Defendants deny the allegations in Paragraph 143 of the Third-Party Claims and demand strict proof thereof.

144. Third-Party Defendants deny the allegations in Paragraph 144 of the Third-Party Claims and demand strict proof thereof.

145. Third-Party Defendants deny the allegations in Paragraph 145 of the Third-Party Claims and demand strict proof thereof.

146. Third-Party Defendants deny the allegations in Paragraph 146 of the Third-Party Claims and demand strict proof thereof.

147. Third-Party Defendants deny the allegations in Paragraph 147 of the Third-Party Claims and demand strict proof thereof.

148. Third-Party Defendants deny the allegations in Paragraph 148 of the Third-Party Claims and demand strict proof thereof.

**COUNT V: BREACH OF CONTRACT  
(Industrial Heat against Fabiani and USQL)**

149. In response to Paragraph 149, Third-Party Defendants re-allege their responses to Paragraphs 1-88 as if fully set forth herein.

150. Third-Party Defendants state that the Technical Consulting Agreement speaks for itself. Third-Party Defendants deny the allegations in Paragraph 150 to the extent that they are inconsistent with the terms of the Agreement. Third-Party Defendants also deny that the Agreement was properly renewed.

151. Third-Party Defendants state that the Technical Consulting Agreement speaks for itself. Third-Party Defendants deny the allegations in Paragraph 151 to the extent that they are inconsistent with the terms of the Agreement.

152. Third-Party Defendants state that the Technical Consulting Agreement speaks for itself. Third-Party Defendants deny the allegations in Paragraph 152 to the extent that they are inconsistent with the terms of the Agreement.

153. Third-Party Defendants state that the Technical Consulting Agreement speaks for itself. Third-Party Defendants deny the allegations in Paragraph 153 to the extent that they are inconsistent with the terms of the Agreement.

154. Third-Party Defendants deny the allegations in Paragraph 154 of the Third-Party Claims and demand strict proof thereof.

155. Third-Party Defendants deny the allegations in Paragraph 155 of the Third-Party Claims and demand strict proof thereof.

156. Third-Party Defendants deny the allegations in Paragraph 156 of the Third-Party Claims and demand strict proof thereof.

157. Third-Party Defendants deny the allegations in Paragraph 157 of the Third-Party Claims and demand strict proof thereof.

#### **COUNTER-PLAINTIFFS' PRAYER FOR RELIEF**

Third-Party Defendants deny that Counter-Plaintiffs are entitled to any relief on the Third-Party Claims. Third-Party Defendants further deny all captions, headings, titles, introductory paragraphs, subparagraphs, and allegations in the Third-Party Claims that are not specifically admitted in this Answer. Third-Party Defendants request this Honorable Court award Third-Party Defendants their reasonable attorneys' fees and costs incurred in the defense of the Third-Party Claims.

#### **AFFIRMATIVE DEFENSES**

##### First Affirmative Defense

The Third-Party Plaintiff lacks personal jurisdiction over Fulvio Fabiani, individually, because Mr. Fabiani is a foreign national that does not reside in the State of Florida. Third-Party

Plaintiff has failed to adequately allege jurisdictional facts that bring Mr. Fabiani under the jurisdiction of this Court.

#### Second Affirmative Defense

Third-Party Plaintiff has failed to state a cause of action against Third-Party Defendants due to their failure to properly allege and prove all the elements necessary to recover for a FDUTPA claim. Third-Party Plaintiffs will be unable to establish a deceptive act on the part of the Third-Party Defendants. To the extent a deceptive act can be established, such act was not the cause of the damages claimed by the Third-Party Plaintiffs. Finally, the Third-Party Plaintiffs shall be unable to establish the necessary damages required by a FDUTPA claim. Third-Party Defendants were not involved in the substantive acts alleged as part of Count IV and any acts or omissions on their part were not the cause of the damages alleged by the Third-Party Plaintiffs.

#### Third Affirmative Defense

The Technical Consulting Agreement is sufficiently ambiguous that upon a determination of the intent of the parties, no breach by the Third-Party Defendants has occurred. The intent of the parties was for Mr. Fabiani to assist Dr. Rossi in his work on the Ecat technology. Mr. Fabiani's duties and obligations to provide data were of minor consequence to the Third-Party Plaintiff and Mr. Fabiani did in fact provide data to the Third-Party Plaintiff for the entire term of the working relationship. Any data not provided was excused by the failure to pay all sums due to the Third-Party Defendants.

#### Fourth Affirmative Defense

Third-Party Defendants' obligations under the Technical Consulting Agreement and any properly executed extensions were excused by the precedent breach by the Third-Party Plaintiffs

by the failure to make timely payment to the Third-Party Defendants in accordance with the agreement.

Fifth Affirmative Defense

Any damages sustained by the Third-Party Plaintiff must be set off by the amounts due to the Third-Party Defendants and unpaid by Third-Party Plaintiff. Specifically, Third-Party Plaintiff owes the Third-Party Defendants a one month payment under the agreement between the parties.

Sixth Affirmative Defense

Any damages sought by the Third-Party Plaintiffs must be reduced because of the Third-Party Plaintiffs' failure to mitigate the damages it alleges to have suffered. Third-Party Plaintiffs decided many months before the alleged breach of contract by the Third-Party Defendants that Dr. Rossi would not be paid under the applicable agreements between them. Third-Party Defendants further knew long before the start of 2016 that any results of the Rossi tests in Doral would not be considered legitimate, alleged to be based on improper conduct, and deny entitlement to Dr. Rossi any further payment. Despite such knowledge, the Third-Party Plaintiffs continued making payments to the Third-Party Defendants. Third-Party Plaintiffs cannot seek as damages such payments to the Third-Party Defendants.

Seventh Affirmative Defense

Third-Party Plaintiffs must be estopped from any recovery based on the precedent knowledge that Mr. Fabiani had a prior history with Dr. Rossi and that the intended purpose of the Technical Consulting Agreement was simply for Mr. Fabiani to assist Dr. Rossi with his work on the LENR technology. At all times Mr. Fabiani worked, with the knowledge and consent of the Third-Party Plaintiffs, at the direction and control of Dr. Rossi. Third-Party

Plaintiffs must be estopped from now imposing duties and responsibilities on the Third-Party Defendants that were never intended by the parties to the Technical Consulting Agreement.

**RESERVATION OF RIGHTS**

The above affirmative defenses are based on the facts and information currently known to Third-Party Defendants. Third-Party Defendants reserve the right to amend or add defenses or affirmative defenses based on facts later discovered, pleaded, or offered.

Respectfully submitted this 21<sup>st</sup> day of February, 2017.

**RODOLFO NUÑEZ, P.A.**

255 University Drive  
Coral Gables, Florida 33143  
Telephone: (305) 443-2440  
Facsimile: (305) 443-2334  
rnunez@acg-law.com

*/s/ Rodolfo Nunez*

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Rodolfo Nuñez, Esq.  
Fla. Bar No.: 016950

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel on the attached Service List by the electronic filing of the foregoing document with the Clerk of Court using CM/ECF on February 21, 2017.

/s/ Rodolfo Nunez  
Rodolfo Nuñez, Esq.

**SERVICE LIST**

John W. Annesser, Esq.  
Brian Chaiken, Esq.  
Paul D. Turner, Esq.  
D. Porpoise Evans, Esq.  
PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.  
283 Catalonia Avenue, Suite 200  
Coral Gables, FL 33134  
Telephone: (305) 377-0086  
jannesser@pbyalaw.com  
bchaiken@pbyalaw.com  
pturner@pbyalaw.com  
pevans@pbyalaw.com  
Attorneys for Plaintiffs/Counter-Defendants

Christopher R.J. Pace, Esq.  
Christopher Lomax, Esq.  
JONES DAY  
Brickell World Plaza  
600 Brickell Avenue, Suite 3300  
Miami, FL 33131  
Tel.: 305.714.9700  
crjpace@jonesday.com  
clomax@jonesday.com  
Attorneys for Defendants/Counter-Plaintiffs/  
Third Party-Plaintiffs

Fernando S. Aran, Esq.  
ARAN, CORREA & GUARCH, P.A.  
255 University Drive  
Coral Gables, FL 33134-6732  
Tel.: 305-665-3400  
Fax: 305-665-2250  
faran@acg-law.com  
Attorneys for Third Party-Defendants