

Composite Exhibit 19

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

PERLMAN, BAJANDAS, YEVOLI &
ALBRIGHT, P.L.
282 CATALONIA AVENUE
SUITE 200
CORAL GABLES, FL 33134
Monday, February 13, 2017
9:07 a.m. - 5:18 p.m.

VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN
(Corporate Representative of Industrial Heat, LLC)

Taken on behalf of the Plaintiff before
Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
and for the State of Florida at Large, pursuant to
Plaintiff's Notice of Taking Deposition in the above
cause.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 ATTORNEYS FOR PLAINTIFFS: 3 JOHN W. ANNESSER, ESQ BRIAN CHAIKEN, ESQ 4 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P L 283 CATALONIA AVENUE 5 SUITE 200 CORAL GABLES FL 33134 6 305-377-0086 Jannesser@pbyalaw.com 7 Bchaiken@pbyalaw.com 8 ATTORNEYS FOR DEFENDANTS: 9 BERNARD P BELL, ESQ 10 MILLER FRIEL, PLLC 1200 NEW HAMPSHIRE AVE, NW 11 SUITE 800 WASHINGTON DC 20036 12 202-760-3158 Bellb@millerfriel.com 13 14 ATTORNEYS FOR THIRD-PARTY DEFENDANTS JM PRODUCTS, INC , HENRY JOHNSON, ESQ AND JAMES BASS: 15 FERNANDO S ARAN, ESQ 16 FRANCISCO J LEON DE LA BARRA, ESQ ARAN CORREA & GUARCH 17 255 UNIVERSITY DRIVE CORAL GABLES FL 33134 18 305-665-3400 Faran@acg-law.com 19 Fleon@acg-law.com 20 ATTORNEYS FOR THIRD-PARTY DEFENDANTS FULVIO FABIANI AND 21 UNITED STATES QUANTUM LEAP, LLC: 22 RUDOLFO NUNEZ, ESQ RUDOLFO NUNEZ, P A 23 200 UNIVERSITY DRIVE CORAL GABLES FL 33134 24 305-665-3400 Rnunez@acg-law.com 25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td style="width: 5%;">2</td> <td style="width: 85%;">WITNESS</td> <td style="width: 10%; text-align: right;">PAGE</td> </tr> <tr> <td>3</td> <td>JOHN THOMAS VAUGHN</td> <td></td> </tr> <tr> <td></td> <td>Direct Examination by Mr. Chaiken</td> <td style="text-align: right;">7</td> </tr> <tr> <td>4</td> <td>Cross-Examination by Mr. Nunez</td> <td style="text-align: right;">261</td> </tr> <tr> <td></td> <td>Cross-Examination Aran</td> <td style="text-align: right;">281</td> </tr> <tr> <td>5</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td style="text-align: center;">E X H I B I T S</td> <td></td> </tr> <tr> <td>7</td> <td>NUMBER</td> <td style="text-align: right;">DESCRIPTION</td> </tr> <tr> <td>8</td> <td>8</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>9</td> <td>Exhibit 1, Notice,</td> <td style="text-align: right;">8</td> </tr> <tr> <td>10</td> <td>Exhibit 2, IH82315 through 82329,</td> <td style="text-align: right;">18</td> </tr> <tr> <td>11</td> <td>Exhibit 3, IH83129 through 83130,</td> <td style="text-align: right;">25</td> </tr> <tr> <td>12</td> <td>Exhibit 4, IH83131 through 83149,</td> <td style="text-align: right;">27</td> </tr> <tr> <td>13</td> <td>Exhibit 5, IH127754 through 127759,</td> <td style="text-align: right;">47</td> </tr> <tr> <td>14</td> <td>Exhibit 6, IH2266 through 2315,</td> <td style="text-align: right;">52</td> </tr> <tr> <td>15</td> <td>Exhibit 7, IH113114,</td> <td style="text-align: right;">61</td> </tr> <tr> <td>16</td> <td>Exhibit 8, IH83307,</td> <td style="text-align: right;">75</td> </tr> <tr> <td>17</td> <td>Exhibit 9, IH117875 through 117876,</td> <td style="text-align: right;">83</td> </tr> <tr> <td>18</td> <td>Exhibit 10, IH18659 through 108661,</td> <td style="text-align: right;">90</td> </tr> <tr> <td>19</td> <td>Exhibit 11, IH84295 through 84297,</td> <td style="text-align: right;">97</td> </tr> <tr> <td>20</td> <td>Exhibit 12, IH136414 through 136430,</td> <td style="text-align: right;">100</td> </tr> <tr> <td>21</td> <td>Exhibit 13, License Agreement,</td> <td style="text-align: right;">103</td> </tr> <tr> <td>22</td> <td>Exhibit 14, First Amendment to the License Agreement,</td> <td style="text-align: right;">111</td> </tr> <tr> <td>23</td> <td>Exhibit 15, April 25, 2013 E-Mail,</td> <td style="text-align: right;">116</td> </tr> <tr> <td>24</td> <td>Exhibit 16, April 15, 2013 Memorandum,</td> <td style="text-align: right;">120</td> </tr> <tr> <td>25</td> <td>Exhibit 17, IH99334 through 99336,</td> <td style="text-align: right;">127</td> </tr> <tr> <td></td> <td>Exhibit 18, IH20906 through 20911,</td> <td style="text-align: right;">130</td> </tr> </table>	2	WITNESS	PAGE	3	JOHN THOMAS VAUGHN			Direct Examination by Mr. Chaiken	7	4	Cross-Examination by Mr. Nunez	261		Cross-Examination Aran	281	5			6	E X H I B I T S		7	NUMBER	DESCRIPTION	8	8	PAGE	9	Exhibit 1, Notice,	8	10	Exhibit 2, IH82315 through 82329,	18	11	Exhibit 3, IH83129 through 83130,	25	12	Exhibit 4, IH83131 through 83149,	27	13	Exhibit 5, IH127754 through 127759,	47	14	Exhibit 6, IH2266 through 2315,	52	15	Exhibit 7, IH113114,	61	16	Exhibit 8, IH83307,	75	17	Exhibit 9, IH117875 through 117876,	83	18	Exhibit 10, IH18659 through 108661,	90	19	Exhibit 11, IH84295 through 84297,	97	20	Exhibit 12, IH136414 through 136430,	100	21	Exhibit 13, License Agreement,	103	22	Exhibit 14, First Amendment to the License Agreement,	111	23	Exhibit 15, April 25, 2013 E-Mail,	116	24	Exhibit 16, April 15, 2013 Memorandum,	120	25	Exhibit 17, IH99334 through 99336,	127		Exhibit 18, IH20906 through 20911,	130															
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<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (Continued): 2 ALSO PRESENT CHRISTIAN HERNANDEZ, VIDEOGRAPHER 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">E X H I B I T S (Continued)</p> <table border="0"> <tr> <td style="width: 5%;">2</td> <td style="width: 85%;">NUMBER</td> <td style="width: 10%; text-align: right;">DESCRIPTION</td> <td style="width: 10%; text-align: right;">PAGE</td> </tr> <tr> <td>3</td> <td>Exhibit 19, Fourth Amended Answer, Additional</td> <td></td> <td style="text-align: right;">151</td> </tr> <tr> <td>4</td> <td>Defenses, Counterclaims and Third Party</td> <td></td> <td></td> </tr> <tr> <td>5</td> <td>Claims,</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td>Exhibit 20, 96250 through 95252,</td> <td></td> <td style="text-align: right;">162</td> </tr> <tr> <td>7</td> <td>Exhibit 21, IH22072 through 22074,</td> <td></td> <td style="text-align: right;">168</td> </tr> <tr> <td>8</td> <td>Exhibit 22, IH81230 through 81234,</td> <td></td> <td style="text-align: right;">172</td> </tr> <tr> <td>9</td> <td>Exhibit 23, IH22156 through 22200,</td> <td></td> <td style="text-align: right;">178</td> </tr> <tr> <td>10</td> <td>Exhibit 24, Feasibility Report of Cold Fusion</td> <td></td> <td style="text-align: right;">182</td> </tr> <tr> <td>11</td> <td>E-Cat of Industrialization in China,</td> <td></td> <td></td> </tr> <tr> <td>12</td> <td>Exhibit 25, 89208 through 89212,</td> <td></td> <td style="text-align: right;">188</td> </tr> <tr> <td>13</td> <td>Exhibit 26, IH4856 through 4857,</td> <td></td> <td style="text-align: right;">198</td> </tr> <tr> <td>14</td> <td>Exhibit 27, Second Amendment to the License Agreement,</td> <td></td> <td style="text-align: right;">200</td> </tr> <tr> <td>15</td> <td>Exhibit 28, IH45757 through 45819,</td> <td></td> <td style="text-align: right;">205</td> </tr> <tr> <td>16</td> <td>Exhibit 29, 107550 through 107552,</td> <td></td> <td style="text-align: right;">205</td> </tr> <tr> <td>17</td> <td>Exhibit 30, 107246 through 247,</td> <td></td> <td style="text-align: right;">207</td> </tr> <tr> <td>18</td> <td>Exhibit 31, 106452 through 106474,</td> <td></td> <td style="text-align: right;">208</td> </tr> <tr> <td>19</td> <td>Exhibit 32, IH10037 through 38,</td> <td></td> <td style="text-align: right;">210</td> </tr> <tr> <td>20</td> <td>Exhibit 33, IH3735,</td> <td></td> <td style="text-align: right;">211</td> </tr> <tr> <td>21</td> <td>Exhibit 34, IH117296 through 297,</td> <td></td> <td style="text-align: right;">221</td> </tr> <tr> <td>22</td> <td>Exhibit 35, IH11865 through 11866,</td> <td></td> <td style="text-align: right;">235</td> </tr> <tr> <td>23</td> <td>Exhibit 36, IH11867 through 11870,</td> <td></td> <td style="text-align: right;">236</td> </tr> <tr> <td>24</td> <td>Exhibit 37, IH12026,</td> <td></td> <td style="text-align: right;">237</td> </tr> <tr> <td>25</td> <td>Exhibit 38, IH80561 through 567,</td> <td></td> <td style="text-align: right;">243</td> </tr> </table>	2	NUMBER	DESCRIPTION	PAGE	3	Exhibit 19, Fourth Amended Answer, Additional		151	4	Defenses, Counterclaims and Third Party			5	Claims,			6	Exhibit 20, 96250 through 95252,		162	7	Exhibit 21, IH22072 through 22074,		168	8	Exhibit 22, IH81230 through 81234,		172	9	Exhibit 23, IH22156 through 22200,		178	10	Exhibit 24, Feasibility Report of Cold Fusion		182	11	E-Cat of Industrialization in China,			12	Exhibit 25, 89208 through 89212,		188	13	Exhibit 26, IH4856 through 4857,		198	14	Exhibit 27, Second Amendment to the License Agreement,		200	15	Exhibit 28, IH45757 through 45819,		205	16	Exhibit 29, 107550 through 107552,		205	17	Exhibit 30, 107246 through 247,		207	18	Exhibit 31, 106452 through 106474,		208	19	Exhibit 32, IH10037 through 38,		210	20	Exhibit 33, IH3735,		211	21	Exhibit 34, IH117296 through 297,		221	22	Exhibit 35, IH11865 through 11866,		235	23	Exhibit 36, IH11867 through 11870,		236	24	Exhibit 37, IH12026,		237	25	Exhibit 38, IH80561 through 567,		243
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<p style="text-align: right;">Page 6</p> <p>1 EXHIBITS (Continued)</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Exhibit 39, Industrial Heat's Supplement to 248 Defendant Industrial Heat, LLC's Amended Responses and Objections to Plaintiff Andrea 5 Rossi's First Set of Interrogatories, 6 Exhibit 40, Technical Consulting Agreement, 263 7 Exhibit 41, IH3717 through IH3718, 274 8 Exhibit 42, Term Sheet, 281</p> <p>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Good morning, Mr. Vaughn.</p> <p>2 A. Good morning.</p> <p>3 Q. Could you please state your name for the 4 record?</p> <p>5 A. John Thomas Vaughn. I also go by JT.</p> <p>6 Q. Can you spell your last name.</p> <p>7 A. V as in Victor, A-U-G-H-N.</p> <p>8 Q. And have you been designated this morning as 9 the corporate representative for Industrial Heat, LLC?</p> <p>10 A. I have been. 11 (Exhibit 1, Notice, was marked for 12 Identification.)</p> <p>13 BY MR. CHAIKEN:</p> <p>14 Q. I will show you what has been marked as 15 Exhibit 1. Sorry, Rudolfo, I have only got four sets. 16 Mr. Vaughn, have you seen Exhibit 1 before?</p> <p>17 A. Exhibit 1, is that -- you mean just the front 18 page or the --</p> <p>19 Q. The entire document.</p> <p>20 A. The entire document? I believe that I have.</p> <p>21 Q. Okay. And who designated you to be the 22 corporate representative for purposes of today's 23 deposition?</p> <p>24 A. The company.</p> <p>25 Q. Who on behalf of the company made that</p>
<p style="text-align: right;">Page 7</p> <p>1 Thereupon,</p> <p>2 THE VIDEOGRAPHER: We are on the record. The 3 date is February 13, 2017. The time is 9:07 a.m. 4 This is media unit one of the video deposition of the 5 corporate representative of Industrial Heat, LLC in 6 the matter of Andrea Rossi, et al. versus Thomas 7 Darden, et al. 8 At this time may counsel please state their 9 appearances for the record.</p> <p>10 MR. CHAIKEN: Good morning. Brian Chaiken and 11 Jonathan Annesser on behalf of the plaintiff.</p> <p>12 MR. BELL: Bernard Bell for defendants.</p> <p>13 MR. ARAN: Fernando Aran for third party 14 defendants JM Products, Henry Johnson and James Bass. 15 And my associate Francisco Leon will be joining 16 us shortly.</p> <p>17 MR. NUNEZ: Rudy Nunez on behalf of third party 18 defendant Fulvio Fabiani and United States Quantum 19 Leap, LLC.</p> <p>20 Thereupon, 21 JOHN THOMAS VAUGHN, 22 having been first duly sworn or affirmed and responded, 23 "I do," was examined and testified as follows: 24 DIRECT EXAMINATION 25 BY MR. CHAIKEN:</p>	<p style="text-align: right;">Page 9</p> <p>1 decision?</p> <p>2 A. That was made in conjunction with the directors 3 of the company, including Tom Darden and John Mazzarino.</p> <p>4 Q. Okay. And do you currently have a position 5 with Industrial Heat, LLC?</p> <p>6 A. I do. Vice president.</p> <p>7 Q. Okay. What did you do to prepare for today's 8 deposition?</p> <p>9 A. Reviewed documents with counsel.</p> <p>10 Q. Okay. Did you do anything else besides that?</p> <p>11 A. Spoke to some of our teammates with counsel.</p> <p>12 Q. Okay. I am not asking the subject of your 13 conversation, but can you tell me the name of the people 14 who were present?</p> <p>15 A. Counsel, and we talked by phone with T. Barker 16 Dameron, as well as Tom Darden, briefly. I believe that's 17 it.</p> <p>18 Q. Okay. Turning to page A-4 of this document, 19 there is a list of areas of inquiry. Are there any areas 20 of inquiry -- and there are 27 areas listed -- are there 21 any areas of inquiry on this page that you are not 22 prepared to testify about today?</p> <p>23 MR. BELL: Give me a minute to check something, 24 Brian.</p> <p>25 MR. CHAIKEN: Sure.</p>

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1 Italy, but would indicate that he was involved in
 2 much more than he -- than he intimated to us. So
 3 Petrol Dragon was a much greater environmental
 4 catastrophe than he intimated to us.
 5 And my research would also indicate that he was
 6 involved in gold trafficking. And so this is all
 7 online research. It may or may not be accurate. But
 8 sitting here today, that's what I know.
 9 BY MR. CHAIKEN:
 10 Q. Okay. Let's talk about the existing parties he
 11 claimed he was engaged with. So you said that you believe
 12 he made inaccurate statements regarding existing parties
 13 he was engaged with prior to entering into the license
 14 agreement with Industrial Heat.
 15 What specific facts are you aware of that lead
 16 you to that conclusion?
 17 A. Petrol -- Defkalion is one. And again, you
 18 know, this is all contextualized information. So do I
 19 have a specific affidavit from somebody at Defkalion? No,
 20 I don't. But based on his reaction to every time
 21 Defkalion was brought up, which is a very strong kind of
 22 visceral reaction, looking back, I suspect that we weren't
 23 getting the full and complete truth about whatever
 24 happened with Defkalion. But we may have been.
 25 So sitting here today, do I have anything that

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1 can kind of blatantly say, Well, you know, he said this
 2 and Defkalion gave us an affidavit that says this, so he
 3 must have been lying, I don't have that.
 4 Q. Okay. Do you have anything that you could
 5 point to specifically that you believe he said that was
 6 inaccurate regarding the state of the art prior to your
 7 entering into the license agreement?
 8 A. State of the art. This gets at Levi and many
 9 others, this report.
 10 Q. Well, let's keep it solely to what Dr. Rossi
 11 told Industrial Heat.
 12 A. Mm-hmm.
 13 Q. Is there something specifically that Dr. Rossi
 14 told Industrial Heat prior to you entering into the
 15 license agreement about the state of the art that you
 16 claim was untruthful?
 17 A. So he is saying, you know, in his e-mail
 18 here --
 19 Q. What are you looking at?
 20 A. I am looking at the document you provided.
 21 Q. Exhibit number?
 22 A. Exhibit 3, page two. So he says, you know,
 23 "Dear all: Please find attached the convalidation of the
 24 certicator made during the 7th of August, which repeated
 25 the same results of the test in July, of July 16th."

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1 So he is -- he is advertising these results to
 2 us as valid. Right? And sitting here today, I would say
 3 that is not to be the case.
 4 Q. That the results are not valid or that he
 5 didn't believe they were valid or that he knew they were
 6 valid at the time -- that he knew they were invalid at the
 7 time and represented that they were?
 8 A. I suspect that at the time he may have known
 9 that they were invalid, but represented that they were.
 10 Whether or not the assessors were pathological, meaning
 11 they wanted it to work so badly that they believed it was
 12 working, they weren't diligent enough to determine that it
 13 wasn't, I don't know. But I believe, you know, even as
 14 early as this date that Rossi knew that it wasn't working
 15 and he represented that it was.
 16 Also, if you -- this just refreshed my memory a
 17 little bit that, you know, he would claim online, if you
 18 go back in history, that it will be on the market in a
 19 commercialization within a year, then X amount of time.
 20 And I think you could say that those are knowingly false
 21 statements. Because every time he said that, it's not
 22 been the case that it has happened with any time period,
 23 much less the time period that he highlighted. But these
 24 would all be online comments he made.
 25 Q. So in response to my question as to false

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1 statements that he made to Industrial Heat prior to
 2 entering into the license agreement, you pointed me to a
 3 document I have just handed you, and you say that that was
 4 your belief that he knowingly stated something that was
 5 false.
 6 Do you have any evidence that these tests or
 7 that the test I handed you, which was Exhibit 4, was
 8 inaccurate or false?
 9 A. We do. And, you know, we tried to replicate
 10 these same tests without success multiple times.
 11 Q. Well, were you present in 2012 when this test
 12 was performed?
 13 A. I was not present when this test was performed.
 14 Q. Okay. Do you have any reason to believe that
 15 the data set forth in that test is inaccurate?
 16 A. Now I do, yes.
 17 Q. And the evidence you have is your attempt to
 18 replicate and your inability to do so?
 19 A. That is correct. As well as others, others'
 20 attempts to replicate and their inability to do so.
 21 Q. Did anyone who was part of this test ever come
 22 out and say the data was manipulated or the data was
 23 inaccurate?
 24 A. They did not.
 25 Q. Okay.

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1 A. That the license agreement has value to date?
 2 Q. Yes.
 3 A. No.
 4 Q. Does Industrial Heat believe that the E-Cat IP
 5 has value?
 6 A. No, with one caveat. And this is, you know, it
 7 would be an obtuse kind of minimal value, which would be
 8 if some of the claims in some of its patent applications
 9 were allowed and they, in fact, relate to something
 10 somebody else is doing that does work. But that is a
 11 pretty hypothetical scenario, so I think the answer is no.
 12 But you could paint a hypothetical or possibly it could be
 13 some value there.
 14 Q. Is there a provision in the license agreement,
 15 that is Exhibit 13 still, that provides that IH must be
 16 able to successfully replicate a certain COP result
 17 without the assistance of Dr. Rossi?
 18 MR. BELL: Objection to form.
 19 THE WITNESS: I would have to review the
 20 license agreement. Clearly, there was a --
 21 requirements that -- I would have to review it,
 22 Brian. I'm not sure.
 23 BY MR. CHAIKEN:
 24 Q. Are you aware of one sitting here today?
 25 A. What is that?

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1 Q. I said, are you aware of one sitting here
 2 today?
 3 MR. BELL: Objection to form.
 4 THE WITNESS: There is a replication
 5 requirement?
 6 BY MR. CHAIKEN:
 7 Q. Yeah. Exactly.
 8 A. I think it was inherent. Now, was it
 9 specifically spelled out in the agreement? I'm not sure.
 10 I would have to go back and review it.
 11 Again, if you have something that is validated
 12 by a bona fide third party and the technology is
 13 transferred, then theoretically you shouldn't need that
 14 requirement, right? But that's -- so if there is not,
 15 that would be why. Because theoretically you shouldn't
 16 need it. But it probably would have been safer to have it
 17 in retrospect.
 18 MR. CHAIKEN: We have got lunch here, so let's
 19 take a break for lunch.
 20 THE VIDEOGRAPHER: We are off the record. The
 21 time is 12:58.
 22 (Thereupon, a recess was taken.)
 23 THE VIDEOGRAPHER: We are back on the record.
 24 The time is 1:25 p.m.
 25 MR. CHAIKEN: Mr. Vaughn, I remind you, you are

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1 still under oath.
 2 MR. BELL: He is under oath.
 3 MR. CHAIKEN: I said Mr. Vaughn. Mr. Bell, do
 4 you want to be under oath? I don't think so.
 5 BY MR. CHAIKEN:
 6 Q. Before we took the break, I was asking you
 7 about the license agreement and whether or not there was a
 8 provision in there that said that, in order for Leonardo
 9 to be entitled to payment, Industrial Heat had to be able
 10 to replicate results without Dr. Rossi's assistance.
 11 Did you find the provision while we were on the
 12 break?
 13 A. I did review the license agreement while we
 14 were on break. If you go to 12, I think it's 12 (b).
 15 Q. Okay.
 16 A. Leonardo and Rossi, jointly and severally,
 17 hereby represents and warrants to the company that the
 18 patents and patent applications identified in Exhibit A
 19 and all other E-Cat IP, all of which is to be delivered to
 20 the company in accordance with Section 3.2 (b) are owned
 21 by Leonardo and/or Rossi and are all the patents and
 22 patent applications and other intellectual property that
 23 are necessary or useful for the company to develop,
 24 manufacture, make, have made, use, have used, etc.,
 25 deriving from the E-Cat IP in the territory.

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1 So that in combination with 13-1, in
 2 consideration of the payment set forth herein, Rossi will
 3 provide ongoing training and support to the company and
 4 the use of the plant in a production of the E-Cat products
 5 for a period of not less than 12 months following
 6 validation, as well as to the extent reasonably requested
 7 by the company to enable it to utilize the E-Cat IP,
 8 operate the plant and produce E-Cat products, etc.
 9 Q. I'm sorry. I didn't see the word "replicate"
 10 in any of those -- either of those two paragraphs. Did I
 11 miss it?
 12 A. I don't think you missed it.
 13 Q. Okay.
 14 A. But I think those paragraphs combined, clearly
 15 we had to have the ability to replicate the technology.
 16 It had to be transferred and we had to know how to use it
 17 and operate it.
 18 Q. Okay. Now, the ability to replicate was a
 19 pretty big issue for Industrial Heat, correct?
 20 A. It was.
 21 Q. In fact, a lot of your response to the
 22 complaint is about the fact that you were unable to
 23 replicate, correct?
 24 A. Correct.
 25 Q. So if it was that important, why didn't the

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1 word "replicate" appear anywhere in the agreement?
 2 MR. BELL: Objection to form.
 3 THE WITNESS: As I stated earlier this morning,
 4 we were, when Andrea drafted the agreement, we were
 5 trying not to change his language unless we felt
 6 absolutely we needed to. And when you combine 12 (b)
 7 and 13-1, we believe that gets the same effect.
 8 BY MR. CHAIKEN:
 9 Q. During the one year following validation, call
 10 it May 1, 2013, did Industrial Heat ever tell Dr. Rossi
 11 that it could not replicate?
 12 A. Yes.
 13 Q. When did it do that?
 14 A. I believe on numerous different occasions. But
 15 one explicit conversation that comes to mind is a
 16 conversation that Tom and I had with Andrea around the
 17 kitchen table at Triangle Drive. Triangle Drive is where
 18 the initial facility where Andrea worked is located. And
 19 the basis of that conversation was to say to Andrea, you
 20 know, Look, you think things are going swimmingly. We
 21 don't believe that is the case. We can't replicate it.
 22 You think it's -- the results are fine. We are not seeing
 23 the same results.
 24 And it became a heated conversation. And Tom
 25 eventually, you know, after he kind of pounded the table

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1 quite literally, stormed out. And I think that was in the
 2 fall -- I know that was in the fall of '13. I don't
 3 remember was it September, October, November. I don't
 4 remember exactly. But it was during that period of time.
 5 Q. Did Industrial Heat ever make that
 6 communication to Dr. Rossi in writing?
 7 A. I don't know if we did. And we were seeing him
 8 quite frequently in person at that time. And so it
 9 wouldn't surprise me if we did not, that it was only
 10 verbal. But I don't know. There may be some written
 11 communication along those lines.
 12 And, you know, the other thing is, it was much
 13 easier to communicate in person with Andrea than it was
 14 via e-mail because of the way he would react or appeared
 15 to react via e-mail. You can see that in his responses.
 16 Q. Mr. Vaughn, did you ever -- and I was hoping to
 17 get a yes or no question to this, you can explain if you
 18 need to -- did you ever in writing point to those two
 19 contractual provisions that you just pointed me to, and
 20 put those in writing and say, Dr. Rossi, you are in
 21 violation of these two provision?
 22 A. I don't believe that we did, with the
 23 explanation I just provided.
 24 (Exhibit 19, Fourth Amended Answer, Additional
 25 Defenses, Counterclaims and Third Party Claims, was

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1 marked for Identification.)
 2 BY MR. CHAIKEN:
 3 Q. Okay. I am going to show you, let's mark this
 4 one as Exhibit 19. This is the Fourth Amended Answer,
 5 Additional Defenses, Counterclaims and Third Party Claims
 6 filed by the defendants in this case.
 7 You said you reviewed this before?
 8 A. Yeah. And I also during break reviewed this
 9 document. And I was -- you know, you had asked me earlier
 10 about did we believe that Rossi had violated the protocol
 11 for validation. And so I reviewed this. This is, as I
 12 said, I might need to go back to review these claims. It
 13 refreshed me that only 18 of the specified 30 units were
 14 tested. This was based on a health law requirement Andrea
 15 represented to us.
 16 But, anyway, that was another example of a
 17 validation of that process. I apologize. I didn't -- I
 18 reviewed it during break and wanted to highlight that. I
 19 didn't recall that specific example when you asked me
 20 earlier.
 21 Q. I am glad you brought that up. Let's go to
 22 that. So on page 37 you write here, Industrial Heat
 23 states that paragraph 49, Because Leonardo and Rossi knew
 24 that the plant could not achieve validation at the time of
 25 the license agreement, they manipulated the validation

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1 testing procedure to deceive counter-plaintiffs into
 2 making the second payment under the license agreement.
 3 You say "manipulated the validation testing
 4 procedure." Does that include manipulating actual data or
 5 is it just the procedure we are talking about?
 6 A. That is a good question. You know, I mean, I
 7 don't know that we know whether or not he manipulated the
 8 data, as well, in addition to the procedure. If we go
 9 through it, if you read kind of 50, and 50 to -- on a
 10 little bit, it talks about how the protocol was
 11 manipulated with this health office issue, etc., etc.
 12 Q. Okay. Well, let's talk about that for a
 13 second. Let's just be very clear. There is a difference
 14 between manipulating procedure and manipulating data,
 15 correct?
 16 MR. BELL: Objection to form.
 17 THE WITNESS: There is a difference between
 18 manipulating procedure and data. I would say that
 19 that's true.
 20 BY MR. CHAIKEN:
 21 Q. Okay.
 22 A. But it could be -- it could be overlapped.
 23 Q. Okay. Well, just for purposes of my question,
 24 I want to make sure that we are talking about -- we are
 25 separating those two different things.

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1 is February 2016, 25, 25, 25 percent. I think that all
 2 those 25 percents were made, you know, those were the
 3 February 2016 success -- so, anyway, your question was why
 4 did that never change? 25 percent was chosen on
 5 February 2016.
 6 Q. So as of February -- well, it is February 2016
 7 and you still hadn't been able to replicate, right?
 8 A. Right.
 9 Q. So --
 10 A. So one question would be, why is this higher
 11 than the 15 percent, presumably?
 12 Q. Well, why is it higher than 15 percent? Why is
 13 it higher than all the -- one of the other investments,
 14 other projects that you are looking at?
 15 A. Well, there is another that was at 25 percent
 16 and then there is one at 35 percent.
 17 Q. Right.
 18 A. And presumably this would have been due to -- I
 19 am guessing -- the other independent reports, which kind
 20 of compile all those factors.
 21 MR. CHAIKEN: Okay. You know what, put that
 22 one aside for now. I am going to show you a
 23 different one.
 24 (Exhibit 24, Feasibility Report of Cold Fusion
 25 E-Cat of Industrialization in China, was marked for

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1 Identification.)
 2 BY MR. CHAIKEN:
 3 Q. I am going to show you what has been marked as
 4 Exhibit 24. Exhibit 24 is a copy of a Feasibility Report
 5 of Cold Fusion E-Cat of Industrialization in China.
 6 Have you seen this report before?
 7 A. I don't know.
 8 Q. Do you know if Tom Darden ever used this
 9 PowerPoint as a presentation that he made in China?
 10 MR. BELL: What is the source of this? This
 11 doesn't appear that it was produced by us and it
 12 doesn't have any other indicia of where it came from.
 13 MR. ANNESSER: It was attached to an e-mail
 14 provided by your clients.
 15 MR. BELL: It was produced in this case?
 16 MR. ANNESSER: Yes.
 17 MR. BELL: Okay.
 18 THE WITNESS: Sorry, Brian, what was your
 19 question again?
 20 BY MR. CHAIKEN:
 21 Q. My question is, do you know if Tom Darden ever
 22 presented this on a trip to China, to whether it be the
 23 investors or parties?
 24 A. I don't know.
 25 Q. You have never seen it before?

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1 A. I don't think that I have, Brian. But that is
 2 why I am flipping through it here. I did not make it.
 3 Q. Looking at, let's see, the third slide says
 4 1.2, at the top E-Cat.
 5 A. Okay.
 6 Q. It says: "Cherokee funds in 2013 owned the
 7 E-Cat intellectual property and set up Industrial Heat,
 8 LLC in Raleigh Triangle Industrial Park."
 9 You used the word "Cherokee" in the same -- as
 10 probably the same testimony you gave earlier about the use
 11 of the word "Cherokee"?
 12 MR. BELL: Objection to form.
 13 THE WITNESS: Again, I didn't make this. So...
 14 BY MR. CHAIKEN:
 15 Q. Okay.
 16 A. So I would never have said "Cherokee funds."
 17 But I don't know who made this. And it is hard for me to
 18 comment on it.
 19 Q. Let me ask you this. There is a statement on
 20 this slide, it says "they improved the E-Cat reactor to
 21 COP of 20 to 80, the test data of Industrial Heat, LLC."
 22 Is that a false statement, as far as you know?
 23 A. As far as I know, yes.
 24 Q. And, in fact, if someone from Industrial Heat
 25 made this presentation, this would have been a false

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1 presentation, right?
 2 MR. BELL: Objection to form.
 3 THE WITNESS: As a vice president of Industrial
 4 Heat, I never saw this before it went out. This is
 5 not my work. And if somebody made this presentation
 6 that was part of Industrial Heat, I would be
 7 surprised.
 8 BY MR. CHAIKEN:
 9 Q. Okay. But my question is, if someone made this
 10 representation to potential investors, this would have
 11 been false?
 12 A. It would have been false.
 13 MR. BELL: Objection to form.
 14 BY MR. CHAIKEN:
 15 Q. Okay. One more slide on this exhibit that I
 16 want to take a look at. Section 3.6, Company Structure.
 17 It states under this slide -- are you with me?
 18 A. Yes.
 19 Q. In the first paragraph: "Set up a
 20 Sino-American joint venture. United States side transfers
 21 the whole technology of E-Cat for getting a part of the
 22 stake in the joint venture accordingly."
 23 Are you aware of any joint venture that
 24 Industrial Heat did with anyone in China?
 25 A. No.

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1 August 2013. I know that Andrea felt he needed to rebuild
 2 the unit, which we assisted him in doing. And then
 3 otherwise it should have been started shortly thereafter.
 4 He kept wanting to work on other things, specifically
 5 preparing for the Lugano test, which ended up taking place
 6 in February and March of '15. So he was running a lot of
 7 tests to destruction and doing this, that and the other.
 8 But there was no reason that it shouldn't have started in
 9 August or September.
 10 Q. Did Industrial Heat ask Dr. Rossi to start the
 11 test in August or September of 2013?
 12 A. We -- we had conversations about what his plans
 13 were in that regard, you know, and he was delaying. What
 14 reason? I think the reason was he wanted to focus on the
 15 Lugano test. But we definitely did talk about that and
 16 where it would be located and things like that.
 17 Q. Did Industrial Heat have the funding lined up
 18 to pay Dr. Rossi \$89 million as of August 2013?
 19 A. Yes. The funding was not a concern of ours, so
 20 long as he performed. It would be in addition to
 21 Woodford's interest, others would be more -- it would be
 22 an easy thing to raise capital for. So that wasn't --
 23 that wasn't at the top of our concern list. Our concern
 24 was, does it work and can it be proven to work and is the
 25 technology transferred? If we could prove those things,

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1 then 89 million was pretty easy, in our view of the world.
 2 Q. If you turn to page three of this document, it
 3 has a paragraph in the middle of the page that says "new
 4 facility." Do you see that?
 5 A. I see it.
 6 Q. It says: "Later on," in the middle of the
 7 paragraph, "later on, we hope to find a nearby beta
 8 customer with a secure site where we can operate this
 9 plant for a year or more. We are impeded in finding this
 10 customer now because we are not publicizing our
 11 involvement. If any of you have a suggestion, please let
 12 me know."
 13 Whose idea was it to have a customer for the
 14 purposes of testing the E-Cat equipment?
 15 A. Andrea's. And, you know, I think Tom mentions
 16 that because Andrea had already broached that idea.
 17 Q. And when did he broach that idea?
 18 A. I'm not sure of the exact time, but clearly
 19 early on, after delivery of the plant in August 2015.
 20 Q. I see.
 21 A. One of his consistent themes was, you know, we
 22 always -- he believed it needed to be ratified by a
 23 customer. We could care less about a customer, but that
 24 was important to Andrea.
 25 Q. Did you have conversations with Dr. Rossi about

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1 finding a customer in North Carolina?
 2 A. We did talk to him about that, you know, as he
 3 was asking about this. So there was customer next door.
 4 It was at -- Southern Industrial Contractors was the
 5 facility next door and actually the owner of our building
 6 that we were in. And they washed trucks using hot water,
 7 hot steam, steam such water. So one easy thing that we
 8 proposed was just piping up hot water, you know, piping
 9 the heat, I should say, over there to heat their water for
 10 that purpose for washing their trucks.
 11 Another one was brick company installation. I
 12 can't remember if it was brick or plywood. Anyway, there
 13 was a facility just kind south of Raleigh, an industrial
 14 area where Tom was familiar with.
 15 Q. Did Industrial Heat ever make agreements with
 16 anyone else to do that exact experiment, combine the E-Cat
 17 with an existing customer?
 18 A. No. Andrea kept coming up with reasons as to
 19 why it wasn't sufficient or he didn't want to do it. His
 20 goal was to get it down in Miami.
 21 Q. Did Industrial Heat ever ask specifically
 22 Dr. Rossi to start doing the guaranteed performance tests
 23 required by the contract?
 24 A. You know, I imagine that that conversation came
 25 up. It is hard to believe that that conversation wouldn't

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1 have come up, as when do you want to start this text?
 2 When is this test going to start? And what is that
 3 process going to be? Are there e-mail communications on
 4 that? I'm not sure. Again, at this point we were seeing
 5 him almost daily, so it would have been easier to talk
 6 about it.
 7 Q. Did Industrial Heat ask Dr. Rossi to
 8 participate in tests in Industrial Heat's facility in
 9 North Carolina?
 10 A. Sure. But these were not -- these were tests
 11 of single devices.
 12 Q. Right.
 13 A. Sure, we did.
 14 Q. Was there any -- was there ever a time that
 15 Dr. Rossi told you that he would not agree to participate
 16 in doing testing, whether it be in Industrial Heat's
 17 facility or anywhere else?
 18 A. Do you mean with regard to one megawatt or do
 19 you mean with regard to testing of the individual units?
 20 Q. Let's talk about everything other than the one
 21 megawatt.
 22 A. Any time we wanted to conduct testing, he
 23 always -- he wouldn't -- he would be very obstructionist
 24 or not participate, unless he was controlling all the
 25 variables, which was not helpful to us. We wanted him to

<p style="text-align: right;">Page 198</p> <p>1 Andrea wanted to amend it to have it focus on a different 2 unit, what he called a six-cylinder unit, versus the -- 3 what was tested in one megawatt unit, so called. 4 (Exhibit 26, IH4856 through 4857, was marked 5 for Identification.) 6 BY MR. CHAIKEN: 7 Q. Let me show you what has been marked as 8 Exhibit 26. 9 And before I ask you about Exhibit 26, is your 10 testimony that it was Andrea who wanted to test the 11 six-cylinder, not Industrial Heat? 12 A. Correct. Yeah. He was -- he was putting that 13 forth. We were -- we were going to accommodate him on 14 that front. But that is what -- that was broached by him, 15 if I recall correctly. 16 Q. Is it your testimony that Industrial Heat would 17 have preferred the one megawatt over the six-cylinder? 18 MR. BELL: Objection to form. 19 THE WITNESS: That we would have preferred -- 20 BY MR. CHAIKEN: 21 Q. To test. 22 A. We -- what we wanted was a definitive and clear 23 test, an assessment of the technology. Whether it be the 24 six-cylinder or the one megawatt. If the six-cylinder had 25 put out, I think it was contemplated it would put</p>	<p style="text-align: right;">Page 200</p> <p>1 through 4857. It's a series of e-mails in July of 2013 2 between Tom Darden and Dr. Rossi. You are cc'd on some of 3 these, as well. I believe the conversation's about 4 working to set up the facility, so as to be able to 5 perform testing on the one megawatt unit. 6 A. Mm-hmm. 7 Q. Is that accurate to you? 8 A. It looks like that is an exchange between 9 Andrea and Tom with two workers, saying something about a 10 flag at the end. And Andrea saying, looks like, you know, 11 I need an expert plumber, an electricist, I presume an 12 electrician, blue collar, not engineer. One expert 13 welder, ability to TIG weld. 14 Q. And Tom asks on July 18, "One question, when do 15 you estimate the work will begin?" And then Dr. Rossi 16 responds, "When all the two containers will have arrived 17 we can start. Therefore, I would say end of August." 18 A. Mm-hmm. 19 Q. And is it your understanding that Dr. Rossi 20 wanted to start the one megawatt test at the end of 21 August? 22 A. It appears to be what he is saying here. 23 (Exhibit 27, Second Amendment to the License 24 Agreement, was marked for Identification.) 25 BY MR. CHAIKEN:</p>
<p style="text-align: right;">Page 199</p> <p>1 250 kilowatts or something like that. You know, that's -- 2 that's a significant amount of real output. If that was 3 at a COP of ten, you know, we would have... 4 Q. Did Industrial Heat have a preference? 5 A. One megawatt versus six-cylinder? As I said, 6 we were willing to accommodate him. We cared about the 7 validity of the test. I think one megawatt of real output 8 is slightly better than anything short of that, all else 9 equal. 10 Q. Okay. 11 A. But it's -- you know, we were going to 12 accommodate him and just never put it into effect. 13 Q. Okay. But putting aside the accommodating 14 Dr. Rossi, did Industrial Heat have a reference as to 15 whether it used the one megawatt or the six-cylinder? 16 A. I would say if you had -- besides the fact we 17 were trying to keep him happy, take that out of the 18 picture, I would say that our preference would have been 19 for a higher power unit, which would have been a one 20 megawatt, right? 21 Q. Okay. 22 A. All else equal. But factor in the 23 accommodating Andrea, we were trying to keep him happy, as 24 well. 25 Q. Exhibit 26 has been Bates stamped IH4856</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay. Mark this one as Exhibit 27. Exhibit 27 2 is the second amendment -- I didn't mean to throw it at 3 you -- the second amendment to the license agreement. 4 Have you seen this document before? 5 A. Yes, sir. 6 Q. And do you know who drafted this? 7 A. I don't recall who did the original draft. 8 Q. Okay. And do you know why this was drafted? 9 A. This was, you know, Andrea was wanting to 10 change the unit under test from the one megawatt, I 11 believe. I haven't read this yet, but to a six-cylinder. 12 Q. Okay. In paragraph -- the under the whereas 13 and therefore clauses, it states: Section 5 of the 14 agreement is hereby amended to delete in its entirety and 15 replace it with the following: 5. Guaranteed 16 performance. Payment of the amount set forth in Section 17 3(c) which is contingent upon a six cylinder Hot Cat unit 18 reasonably acceptable to the company "the six cylinder 19 unit," operating at the same level or better at which 20 validation is achieved for a period of 350 days, even if 21 not consecutive, within a 400-day period commencing on the 22 date agreed to in writing between the parties. 23 "Guaranteed performance." 24 See that? 25 A. I see that.</p>

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1 Q. So at that time, at least at the time of this
 2 document, was Industrial Heat willing to postpone the
 3 start of the guaranteed performance test?
 4 MR. BELL: Objection to form.
 5 THE WITNESS: It appears that that was
 6 contemplated by this amendment, which was never put
 7 into effect.
 8 BY MR. CHAIKEN:
 9 Q. Okay. And whose signature is on page three?
 10 A. Tom Darden's and Andrea Rossi's.
 11 Q. And you say this agreement was not put into
 12 effect, and you say that because why?
 13 A. It was never signed by AEG. For it to be
 14 effective, it had to be signed by all parties. And I
 15 think there was later notice circulated that said it was
 16 not in effect because it had never been signed by AEG.
 17 Q. Got it. Did -- any time after October 2013 and
 18 prior to this lawsuit beginning, did Industrial Heat
 19 inform Dr. Rossi that, The time had passed, you could no
 20 longer achieve guaranteed performance, and you could no
 21 longer achieve an \$89 million payment?
 22 A. I'm not sure that we informed him of that
 23 verbatim, as you stated.
 24 Q. Okay. Did you say it to him in any -- any
 25 summary of that, in any -- in any way did you say, Listen,

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1 the time has passed, you are -- we are not having a
 2 guaranteed performance test?
 3 A. I am trying to recall. You know, I -- I don't
 4 recall.
 5 Q. Do you think that was something that would be
 6 important to inform him, that he no longer had the
 7 opportunity to earn \$89 million?
 8 A. Again, we were planning to pay him, if he could
 9 perform. Notwithstanding the fact that he had violated
 10 the agreement, not met the conditions of the agreement.
 11 So if we had done that, let's take a hypothetical
 12 scenario, dealing with a volatile character, you don't
 13 know how he is going to respond. Our goal, as stewards
 14 and as managers, is to determine definitively the state of
 15 the art. And by being confrontational, sooner rather than
 16 later, it ensured that you would just blow up in -- there
 17 was a chance, at least, that you would blow up the entire
 18 relationship and Andrea would stop working on it
 19 altogether and so, therefore, we just wouldn't know.
 20 Versus getting more information and getting more data to
 21 determine the state of the art.
 22 Q. Well, couldn't you have told him, Hey,
 23 Dr. Rossi, we think that the time has passed, but if you
 24 perform, we are willing to still pay you?
 25 MR. BELL: Objection to form.

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1 THE WITNESS: Again, in a hypothetical
 2 scenario, a lot of things are possible and that is
 3 one possibility.
 4 BY MR. CHAIKEN:
 5 Q. Did you ever -- did you ever say that or
 6 communicate that with Dr. Rossi?
 7 A. No. He wanted to do a specific thing and we
 8 wanted to allow him to do that thing to better understand
 9 the state of the art.
 10 Q. Did Industrial Heat inform its investors that
 11 it had considered the time for performance of the
 12 guaranteed performance test having -- had passed?
 13 A. I believe that we did.
 14 Q. And how did you do that?
 15 A. I am guessing, but I am guessing it was either
 16 an e-mail -- most likely an e-mail or in a memo. But at
 17 the same time, Woodford was as eager as we were to pay him
 18 if it performed and the technology would have been
 19 transferred.
 20 Q. And you know that because Woodford told you
 21 that?
 22 A. Correct. I think, more precisely, said that to
 23 Tom.
 24 BY MR. CHAIKEN:
 25 Q. When did Industrial Heat first come to the

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1 conclusion that the time for the guaranteed performance
 2 test had passed?
 3 A. I don't recall. But from a technical
 4 perspective, it would have been 60 days after delivery of
 5 the plants, presumably.
 6 (Exhibit 28, IH45757 through 45819, was marked
 7 for Identification.)
 8 BY MR. CHAIKEN:
 9 Q. I will show you what has been marked as
 10 Exhibit 28. Exhibit 28 has been Bates marked IH45757
 11 through 45819. It is a letter from Myers Bigel to Tom
 12 Darden.
 13 Have you seen this before?
 14 MR. BELL: Before you answer, any questions on
 15 this document, I believe we called this back, did we
 16 not?
 17 MR. CHAIKEN: I believe we contested that.
 18 MR. BELL: I am not going to let him answer any
 19 questions on it.
 20 MR. CHAIKEN: Okay. You are going to instruct
 21 him not to answer?
 22 MR. BELL: I am going to instruct him not to
 23 answer.
 24 MR. CHAIKEN: Okay. We will save that one.
 25 (Exhibit 29, 107550 through 107552, was marked

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1 acknowledging that we had been planning and willing to pay
 2 him for performance notwithstanding his inability to meet
 3 the requirements of the contract. So this was -- this
 4 would be provided to Woodford as a potential -- as a
 5 capital needs and business plan.
 6 Q. Okay. Was there anything that prevented
 7 Industrial Heat from performing the guaranteed performance
 8 test in North Carolina?
 9 A. Only Andrea.
 10 Q. Was there any regulatory impediment?
 11 A. No.
 12 Q. Did anybody from Industrial Heat say that there
 13 was a regulatory impediment?
 14 A. No, not that I recall. I know we talked about
 15 this with the director of the EPA in North Carolina. And
 16 we also had a consultant on this issue.
 17 (Exhibit 32, IH10037 through 38, was marked for
 18 Identification.)
 19 BY MR. CHAIKEN:
 20 Q. Let me show you what has been marked as
 21 Exhibit 32. Exhibit 32 is Bates stamped IH10037 through
 22 38. It is a series of e-mails from August of 2013.
 23 And I am going to refer you specifically to the
 24 one on the second page. It doesn't appear that you were
 25 cc'd on this e-mail. Do you recall ever seeing this

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1 before?
 2 A. I don't think so. I don't think so.
 3 Q. On the second page is an e-mail from Dr. Rossi
 4 to Tom Darden and other people. He states in paragraph
 5 three: "Some update certification, the BV certification
 6 makes easier the application to six cylinders. In October
 7 Bianchini will come to Raleigh to make the job regarding
 8 the authorizations."
 9 Who is Bianchini?
 10 A. I think that is a guy that Rossi would have do
 11 background radiation assessments.
 12 Q. And what authorizations is he referring to in
 13 this e-mail? Do you know?
 14 A. I'm not sure. I think he's -- it was some
 15 process that he was wanting to run. Maybe it was a safety
 16 certification or something else that he was doing. I'm
 17 not sure.
 18 (Exhibit 33, IH3735, was marked for
 19 Identification.)
 20 BY MR. CHAIKEN:
 21 Q. Okay. I am going to show you what has been
 22 marked as Exhibit 33. Exhibit 33 is Bates stamped IH3735.
 23 Do you know who Stephen Browne is?
 24 A. He was a nuclear radiation compliance
 25 consultant.

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1 Q. And was he retained by Industrial Heat?
 2 A. He was.
 3 Q. And why was he retained by Industrial Heat?
 4 A. I think we asked him to do some research into
 5 how this product may be regulated, if it turned out to
 6 work and to emit radiation. What -- you know, what's the
 7 process for that? What would we -- what should we be
 8 preparing for from a regulatory perspective?
 9 Q. And did he also -- was he also asked to
 10 determine whether or not there was regulatory approval
 11 required to run a 350-day test in North Carolina?
 12 A. I can't recall if we asked him that exact
 13 question. Again, he was more of a -- kind of at a higher
 14 level. Forget about the test. We were concerned about
 15 the commercialization of the product. If this is real and
 16 it does work, what is required from a compliance or
 17 regulatory perspective?
 18 Q. If you read the last paragraph, it states:
 19 "Barring the revelation of new information that would
 20 indicate that the device contains licensable amounts of
 21 radioactive material or emits measurable quantities of
 22 ionizing radiation, there is in my opinion no basis for
 23 considering the manufacture or possession, use of transfer
 24 of these devices to be subject to any licensing
 25 requirements or safety regulations for ionizing radiation

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1 under current state or federal regulatory authority."
 2 Was that specifically what he was required to
 3 do or requested to do?
 4 MR. BELL: Objection to form.
 5 BY MR. CHAIKEN:
 6 Q. Provide an opinion as to that?
 7 A. I believe it is. You know, as I recollect, we
 8 engaged him to look into what sort of regulatory
 9 compliance issues we may face if this technology performed
 10 as advertised from a commercialization perspective.
 11 Q. When did Dr. Rossi first propose to do the
 12 guaranteed performance test in Florida?
 13 MR. BELL: Objection to form.
 14 BY MR. CHAIKEN:
 15 Q. I will rephrase.
 16 Did Dr. Rossi ever propose to do the guaranteed
 17 performance test in Florida?
 18 A. I'm not sure when he proposed doing testing,
 19 like when he first said, I want to do any further testing
 20 in Florida. I just don't recall when he first broached
 21 that idea. I think that it would have been in the fall of
 22 '13, as I state here. I am getting my years mixed up.
 23 '13. But I don't recall precisely when he first brought
 24 that up. But I am sure it's in the e-mails.
 25 Q. Did Industrial Heat agree to do the test in

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1 Florida?

2 MR. BELL: Objection to form.

3 THE WITNESS: No. What we allowed him to move

4 forward with his proposal, which was to do testing

5 with a customer he represented as an affiliate of

6 Johnson Matthey in Florida. And we thought, Well,

7 you know, if a group like Johnson Matthey can affirm

8 that this technology performs as advertised, that is

9 a good thing. And so we allowed that to proceed.

10 BY MR. CHAIKEN:

11 Q. We will get into that in a second.

12 But what equipment did Industrial Heat agree

13 would be tested in Florida?

14 MR. BELL: Objection to form.

15 THE WITNESS: Again, he wanted to test, what he

16 was telling us, was the one megawatt plant in Florida

17 with a customer. And so, you know, again, trying to

18 be accommodative and probably overly gracious, in

19 hindsight, we allowed that.

20 BY MR. CHAIKEN:

21 Q. So you agreed to test the one megawatt plant in

22 Florida?

23 MR. BELL: Objection to form.

24 BY MR. CHAIKEN:

25 Q. Agreed?

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1 A. We allowed him to do what he was proposing to

2 do.

3 Q. Okay. And what he was proposing to do is test

4 the one megawatt?

5 MR. BELL: Objection to form.

6 THE WITNESS: He was proposing to install the

7 one megawatt at a facility where an affiliate of

8 Johnson Matthey would use it for industrial processes

9 and would provide, you know, feedback on their power

10 consumption from the one megawatt device.

11 BY MR. CHAIKEN:

12 Q. Was the discussion about him doing that test

13 with a six cylinder?

14 MR. BELL: Objection to form.

15 THE WITNESS: I don't recall. I recall him,

16 again, around the second amendment, but I don't

17 recall whether or not at that point he was requesting

18 the six cylinder.

19 BY MR. CHAIKEN:

20 Q. At this point in time the owner of the one

21 megawatt was Industrial Heat, correct?

22 A. Correct.

23 Q. And Industrial Heat controlled where that unit

24 was located, correct?

25 A. Correct. All the while, trying to keep Andrea

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1 happy.

2 Q. Okay. But it had full control. Andrea

3 couldn't move the one megawatt without Industrial Heat's

4 agreement, correct?

5 A. Again, we allowed him to take it down there.

6 Q. Right. And, in fact, Industrial Heat did ship

7 the one megawatt to Florida, did it not?

8 A. I believe that we helped Andrea ship it. Now,

9 did we ship it or did Andrea ship it? I don't recall.

10 But it would not surprise me if, in fact, we contracted to

11 transfer, a transportation contractor that was used to

12 move it.

13 Q. Do you know exactly when it was shipped?

14 A. I don't recall exactly. I believe it would

15 have been -- was it December of '14? I don't recall

16 exactly. January of '15. I don't recall exactly.

17 Q. December '14, January '15, somewhere around

18 there?

19 A. I think. I'm not sure.

20 Q. Did -- well, was there -- was there a

21 requirement in the contract, and I know we talked about

22 this a little bit before, that there be an actual customer

23 using the heat generated by the heat gap?

24 A. No.

25 Q. Okay. Would or could that guaranteed -- I will

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1 call it for purposes of ease and reference, I am going to

2 call it the guaranteed performance test. You can dispute

3 whether it was or not, but just for the sake of my

4 questioning, I am going to use that term. Fair?

5 A. Okay.

6 Q. Could the guaranteed performance test have been

7 performed without an actual customer?

8 MR. BELL: Objection to form.

9 THE WITNESS: Sure. As originally

10 contemplated, there was no customer involved.

11 BY MR. CHAIKEN:

12 Q. Right. But did IH think it was important to

13 have an actual customer?

14 A. We thought, when we thought it was Johnson

15 Matthey, we were thinking, wow, that is a real reputable

16 company. It was not totally absurd that it would be

17 Johnson Matthey, weirdly enough. I realize if someone

18 said, Well, GE is going to do this, that would maybe sound

19 crazy. But Johnson Matthey has a weird history in the

20 LENR field. They have been involved through supplying of

21 materials and kind of a -- if you do a little bit of

22 research on it, they are not -- they do appear to have at

23 least some tangential interest in the LENR field. So it

24 wasn't totally absurd that, of all the companies out

25 there, Johnson Matthey might actually be willing to test a

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1 significant sized prototype.

2 Q. Putting Johnson Matthey aside, and my question

3 doesn't even relate to them. In general, did Industrial

4 Heat think it was useful to have an actual customer, you

5 know, use the heat?

6 A. It depends on the customer, I would say. And

7 we were -- we were always trying to be accommodative to

8 Andrea. We wanted to understand the performance of the

9 technology. Andrea's perspective was always, You got to

10 have -- it's got to be market value, it's got to be

11 validated by the market. That is the only time it will be

12 accepted.

13 So he felt the need to have a customer. Once

14 we heard that that customer was Johnson Matthey, we

15 thought, Well, that is a real customer. And if they

16 affirmed that they consumed the amount of power that was

17 supposedly being supplied, then that would be a -- that

18 would be a positive thing. It would be

19 credibility-enhancing.

20 Q. Would using the truck washing company be

21 equally as enhancing?

22 A. Again, if they could -- if they could affirm

23 that the amount of power consumed was, in fact, the amount

24 of power. If they used the amount of power that was

25 claimed to be consumed, that would be good.

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1 Now, Southern Industrial Contractors, that is

2 the company, are they as impressive as Johnson Matthey? I

3 would say not, from an outsider's perspective, because

4 more people probably know Johnson Matthey than Southern

5 Industrial Contractors.

6 Q. Sure. Putting aside the name of the company,

7 for purposes of my question.

8 A. Okay.

9 Q. Irrespective, and I understand what you are

10 saying about Johnson Matthey specifically. But did you

11 think it was going to be useful to be able to tell

12 potential investors, Hey, we have a customer who,

13 regardless of who it is, made use of the steam?

14 A. That was -- I don't think that that was a key

15 focus of ours. Right? And if it -- what we wanted was a

16 -- some sort of reputable body, whether it be through

17 their involvement in a prototype test or just a contracted

18 assessment to say, We hereby affirm the performance of

19 this device.

20 Q. So to you -- what mattered most to Industrial

21 Heat was the name of the company, not what the company was

22 doing or what it was -- what kind of business it was

23 engaged in?

24 MR. BELL: Objection to form.

25 BY MR. CHAIKEN:

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1 Q. Did I misstate that?

2 A. I think that what mattered most to us is that

3 it -- you are talking about in regards to a customer?

4 Q. Yes. A customer generally.

5 A. Our desire was that we know the state of the

6 art. And if a customer was a bona fide reputable company,

7 presumably such as Johnson Matthey, in our view that was

8 credibility-enhancing.

9 Q. So -- okay. So when it comes to that, would

10 you agree that who the customer was was an important issue

11 or called a core issue for Industrial Heat for purposes of

12 making the decision to allow Dr. Rossi to go to Florida

13 with it?

14 A. I would say that it was convincing to us, or

15 interesting or intriguing, I don't know the right word,

16 that he represented it that it was Johnson Matthey.

17 Because that's clearly better than a company that he and

18 his attorney formed. Right? If we had known that, that

19 is a different story.

20 Q. And if you had known it was not -- a company

21 not affiliated with Johnson Matthey, your testimony is you

22 never would have allowed the one megawatt to go to

23 Florida?

24 A. Well, if it were not affiliated with Johnson

25 Matthey, but was a subsidiary of GE or something, for

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1 example, then maybe so. But if it were just -- if we knew

2 that it was, in fact, what it turned out to be, no, we

3 would not have allowed that.

4 MR. BELL: Can we take a short break?

5 MR. CHAIKEN: Sure. Off the record.

6 THE VIDEOGRAPHER: Off the record. The time is

7 3:18 p m.

8 (Thereupon, a recess was taken.)

9 THE VIDEOGRAPHER: We are back on the record.

10 The time is 3:26 p m.

11 (Exhibit 34, IH117296 through 297, was marked

12 for Identification.)

13 BY MR. CHAIKEN:

14 Q. Mr. Vaughn, I am going to show you what has

15 been marked as Exhibit 34. Exhibit 34 is Bates stamped

16 IH117296 through 297. It is two e-mails. First one on

17 the first page is from Tom Darden. Second one on the

18 second page is from Andrea Rossi to Tom Darden, and I

19 believe you are cc'd on this one.

20 Do you recall seeing this e-mail before?

21 A. I'm not sure, but clearly it went to me. So...

22 Q. On the second page, the e-mail from Andrea

23 Rossi to yourself and Tom Darden and others, Andrea

24 states, paragraph two or number two: "Since August 2013

25 it has been impossible to communicate to us the where to

Page 222

1 install and make operative the plant."
 2 Do you see that?
 3 A. I see that.
 4 Q. Do you -- do you contest that Industrial Heat
 5 made it impossible to communicate where to install the
 6 plant to Dr. Rossi?
 7 A. I do contest that. And that, you know, he
 8 could have tested it right where it was delivered to.
 9 There was no reason that it couldn't have been tested
 10 there. Or, you know, any number of other locations around
 11 there, that the truck contractor which actually was right
 12 next door, the brick plant or the plywood plant there,
 13 just south of Raleigh.
 14 Q. If you go to the next page, Tom Darden
 15 responds: "Your e-mail refers to contract sections, but I
 16 haven't read them since we signed. I will need to get a
 17 copy of the document and read it."
 18 That is not a true statement, is it?
 19 MR. BELL: Objection to form.
 20 THE WITNESS: Which statement? Your e-mail
 21 refers to contract sections, but I haven't read them
 22 since we signed. I will need to get a copy of the
 23 document and read it.
 24 BY MR. CHAIKEN:
 25 Q. This part where he says "I haven't read them

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1 since we signed," that is not true, is it?
 2 A. I have no reason to believe that it's not true.
 3 Q. I mean, you guys had your internal
 4 conversations leading up to this regarding whether or not
 5 the guaranteed performance test had been waived,
 6 basically, by Dr. Rossi, right?
 7 MR. BELL: Objection to form.
 8 THE WITNESS: Our key focus was on whether or
 9 not the technology worked and whether or not we could
 10 make it work. But, you know, I don't -- I don't
 11 believe that there is any reason that Tom would have
 12 been reading the agreement. Right?
 13 I mean, counsel would say, if you have a
 14 conference call, for example, your counsel would say,
 15 X, Y, Z, he is in breach of agreement because of X,
 16 Y, Z. Maybe I would have said the same thing. I'm
 17 not sure. But I don't have a reason to believe that
 18 Tom is not telling the truth here.
 19 BY MR. CHAIKEN:
 20 Q. Okay. Next sentence he says: "Ideally, we
 21 would not make a decision about this new location for a
 22 while longer. We have 69 days before the plant is to
 23 start up, so perhaps decision can wait a while."
 24 Do you see that?
 25 A. I see it.

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1 Q. So here we are in June of 2014. Was Industrial
 2 Heat pushing the guaranteed performance test to start? Or
 3 did it matter to Industrial Heat when it started?
 4 A. In June of 2014?
 5 Q. Sure.
 6 A. From my perspective, it would have been better
 7 if it had started before then, well before then. But...
 8 Q. Is there any written communication from you or
 9 Tom to Dr. Rossi, saying, Let's start the guaranteed
 10 performance test. Why are we waiting? Something to that
 11 effect?
 12 A. I'm not sure. Again, we were in constant human
 13 contact with him for a period of time. Where I'm sure we
 14 communicated these things. He is a difficult guy to deal
 15 with.
 16 Q. Is it your testimony that you had said on
 17 multiple occasions to Dr. Rossi orally, Hey, time to start
 18 the guaranteed performance test, and he refused to do so?
 19 MR. BELL: Objection to form.
 20 THE WITNESS: My testimony is that we had
 21 talked about when to start the test and where to
 22 start the test, and he came up with various different
 23 reasons for why not to start it or why he was
 24 focussed on something else, through the fall of 2013.
 25 BY MR. CHAIKEN:

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1 Q. Now, there was a meeting held in Raleigh
 2 between yourself, Tom, Dr. Rossi and Henry Johnson. Do
 3 you recall that meeting?
 4 A. Was that the meeting that took place at Red
 5 Robin?
 6 Q. I believe so.
 7 A. If it was, then that is the meeting I recall.
 8 Q. Did you have multiple meetings with Dr. Rossi
 9 and Henry Johnson or just the one?
 10 A. I think it was just the one, but that is the
 11 one I recall.
 12 Q. Okay. Then that is the one I am referring to.
 13 A. Okay.
 14 Q. Was anybody else there besides the four of you
 15 at that meeting?
 16 A. I don't believe so.
 17 Q. Okay. What did you know about Henry Johnson at
 18 that time?
 19 A. I don't know if we realized it during the
 20 meeting or later that he was also Rossi's attorney. But
 21 at some point, either during the meeting or after the
 22 meeting, his name, you know, rang our bell and we said, We
 23 have seen that name before, and I think we saw it
 24 originally in connection of escrowing of funds for the
 25 validation step.

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1 Q. Right. What was the purpose of that meeting?
 2 A. To meet a corporate representative of Johnson
 3 Matthey.
 4 Q. Specifically to meet a corporate representative
 5 of Johnson Matthey?
 6 A. That is what Andrea had said. And then we got
 7 to the meeting and it was Henry Johnson, and then the
 8 company that they were talking about was JM Chemical
 9 Products or JM Products, I can't think of what the name
 10 was. And Andrea said, Well, you know, Johnson Matthey
 11 doesn't want publicity around this or wants to not be --
 12 be detached from this, so they have set up a subsidiary
 13 which Henry Johnson is going to be the president of.
 14 Q. Before we get to the meeting and what was said
 15 at the meeting, how did or when did Dr. Rossi inform you
 16 that the purpose of the meeting was to meet the corporate
 17 representative of the Johnson Matthey?
 18 A. Prior to the meeting, he was saying, you know,
 19 we will go and we will meet Johnson Matthey's
 20 representative.
 21 Q. And did he say that in writing or was that
 22 oral?
 23 A. I can't recall if it was in writing or oral or
 24 both. But my recollection is that's why we were both
 25 there at that meeting, right? I mean, if we were just

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1 going to be there to meet his real estate attorney, I
 2 don't think Tom would have taken the time to come.
 3 Q. Is there some e-mail you can point me to where
 4 Dr. Rossi said specifically, We are going to meet with
 5 representatives of Johnson Matthey?
 6 A. There may be. I'm not sure. I am not the guy
 7 who has gone through all the discovery.
 8 Q. Okay. Because I didn't -- if there wasn't one
 9 produced in discovery, it doesn't exist, correct?
 10 A. I suppose it. Yeah, everything was produced in
 11 discovery. So if it is not in the discovery batch, then
 12 it doesn't exist.
 13 Q. Now, at the meeting, what was said by Dr. Rossi
 14 at that meeting?
 15 A. I don't recall quotes. What I recall is being
 16 surprised, and I don't remember if it was during the
 17 meeting or after the meeting, that it was Henry Johnson,
 18 you know, Rossi's attorney who was going to be the
 19 president of this company.
 20 Q. Okay.
 21 A. So I don't remember, excuse me, quotes or, you
 22 know, exactly how he introduced him. It would be just,
 23 Here is Henry Johnson, the president of JM Chemical
 24 Products, Inc. or JM Products, Inc. or whatever the name
 25 of the company was, or if he would have said, you know,

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1 This is Henry Johnson, who Johnson Matthey has hired to be
 2 the president of JM Chemical Products, Inc. and they are
 3 trying to distance themselves from it.
 4 You know, I don't remember exactly what he
 5 communicated. But that was the effect of the message. He
 6 wanted us -- we wanted to meet a representative and we
 7 were even willing to go to the UK to meet somebody at
 8 Johnson Matthey who could affirm what he was saying. He
 9 said, Well, actually, I will have their representative
 10 come up. He is in Miami. And we will meet in Raleigh.
 11 And that is the meeting at Red Robin.
 12 Q. Is there anything else that Dr. Rossi said at
 13 that meeting?
 14 A. I am sure he said other stuff.
 15 Q. I mean in general.
 16 A. I don't remember.
 17 Q. Substance.
 18 A. The thing that I recall is what I have
 19 described, the points that I recall is what I described.
 20 Q. What did Henry Johnson say at that meeting?
 21 A. I don't recall him saying a whole lot, you
 22 know. I remember being unimpressed by his general
 23 appearance and presence and disposition. He doesn't come
 24 off as a particularly confidence-inspiring person. But I
 25 don't remember anything specific that he said. Other than

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1 just, Hey, how is it going? Nice to meet you. Things
 2 like that.
 3 Q. After that meeting, did Industrial Heat perform
 4 any due diligence into JM Chemicals or JM Products at that
 5 time?
 6 A. I don't recall. You know, I think there was
 7 some analysis done on where the entity was -- was formed
 8 by the secretary of state filings. And then there was an
 9 OFAC compliance document that had representations in it
 10 that were signed by Johnson and by Andrea.
 11 Q. Now, where did you find out JM Products was
 12 formed?
 13 A. I believe that it is formed in the state of
 14 Florida. And I don't remember when we discovered that,
 15 but they represented that it was controlled by a UK
 16 company.
 17 Q. Did you know what JM Products business was or
 18 did you inquire into that?
 19 A. I believe we were told, if I recall correctly,
 20 that they were manufacturing some sort of platinum sponges
 21 or things like that. We were always -- it was always kind
 22 of under the guise, Oh, you can't -- they want to be top
 23 secret about this. You can't know what they are doing.
 24 And they don't want you to know that Johnson Matthey is
 25 involved, but they are involved.

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1 And so it wasn't like we could go and say,
 2 without causing a big ruckus, Hey, we want to know exactly
 3 what is going on in this side of the building, and let us
 4 see it. It was always kind of communicated to us that
 5 that was proprietary and confidential.
 6 Q. Did you know how long JM Products had been in
 7 business?
 8 A. I believe we knew, I am trying to recall, that
 9 it was recently formed entity. And it is not that Andrea
 10 was necessarily hiding that. I think he said, This was
 11 formed, they formed this entity to do this test and kind
 12 of keep some separation. But under the auspices of it
 13 being Johnson Matthey behind the entire thing.
 14 Q. So you knew before you entered into the term
 15 sheet that this was a newly formed company, right?
 16 A. I don't know. I just don't know. I don't know
 17 at what point we knew that. And as you see, they changed
 18 the name of the company. So it is hard to determine, you
 19 know, what exactly the name of the company was and,
 20 therefore, hard to look it up.
 21 Q. Did you do any due diligence into Henry Johnson
 22 himself?
 23 A. He is a lawyer. I do believe that our counsel
 24 affirmed that he does have his law license, surprisingly
 25 so. But I can't recall a lot of additional information

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1 that, you know, that we pulled on him.
 2 Q. Did you think it was important to do due
 3 diligence into Henry Johnson?
 4 A. We thought that a lawyer was -- would not be so
 5 inclined to deceive and just -- you know, just -- deceive
 6 us from what was really going on. So probably in
 7 retrospect we should have done it further. And even still
 8 today, I would like to know more about Henry Johnson and
 9 his motives.
 10 Q. Didn't answer my question.
 11 A. Okay.
 12 Q. Did you think it was important to do due
 13 diligence into Henry Johnson?
 14 A. To the extent that we did due diligence, yes.
 15 Q. Did you think it was important to do due
 16 diligence into JM Products or JM Chemicals?
 17 A. Again, to the extent that we did it, yes.
 18 Q. Okay. And the extent wasn't very great, was
 19 it? I mean, it wasn't that important. You didn't do that
 20 much due diligence, right?
 21 MR. BELL: Objection to form.
 22 THE WITNESS: We did. We did do some due
 23 diligence. And we had a lawyer representing that it
 24 was controlled by a company in the UK. And we had
 25 Rossi saying that, you know, he was talking with

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1 Johnson Matthey and that Johnson Matthey was behind
 2 this effort.
 3 BY MR. CHAIKEN:
 4 Q. Were you aware that at the time the term sheet
 5 was entered into or ever before then, that JM Chemicals,
 6 JM Products, didn't have a facility in the state of
 7 Florida?
 8 A. That JM Chemical Products didn't or JM
 9 Products?
 10 Q. Whatever it was called at the time, whatever it
 11 was represented to you, that they did not have an actual
 12 facility at the time?
 13 A. Yeah, I didn't know whether or not they did or
 14 did not.
 15 Q. Did you do any due diligence to that?
 16 A. No. Because, again, Rossi described it as
 17 Johnson Matthey setting up this entity to do this small
 18 batch testing.
 19 Q. Right.
 20 A. And they are going to use our heat to do that.
 21 And he and his lawyer represented that it was a UK
 22 company, totally disconnected from them, that owned and
 23 controlled this operation.
 24 Q. I understand. My question is merely limited to
 25 the facility.

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1 A. I answered the question.
 2 Q. Okay. Did you, Industrial Heat, send some
 3 employees to help Dr. Rossi find a facility for purposes
 4 of setting up JM Products?
 5 A. He had found --
 6 MR. BELL: Objection to form.
 7 THE WITNESS: He had found a facility on his
 8 own, I believe.
 9 BY MR. CHAIKEN:
 10 Q. Okay. Did your -- did IH contractors or IH
 11 employees ever go and see that facility before the plant
 12 was set up?
 13 A. Yes.
 14 Q. Did that concern you?
 15 A. What's that?
 16 Q. The fact that they were setting up a brand new
 17 facility for purposes of doing the test?
 18 A. To a degree that I have already described,
 19 right? So it was all part of the pitch from Andrea than
 20 Johnson Matthey was there to set up this to do small batch
 21 testing, they were going to use our heat, blah, blah,
 22 blah, blah, blah.
 23 Q. So prior to -- or let's go to the date in which
 24 you entered the term sheet. I believe it was in August of
 25 2013. Sound right?

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1 MR. BELL: '14.
 2 MR. CHAIKEN: '14. Thank you. '14. I
 3 apologize.
 4 BY MR. CHAIKEN:
 5 Q. August 2014. At the time you entered into the
 6 term sheet, was Industrial Heat aware that JM Chemicals
 7 was only recently formed?
 8 A. I don't recall whether or not we learned that
 9 at the time, I mean, shortly after or months after.
 10 Q. At the time in which Industrial Heat entered
 11 into the term sheet, was it aware that JM Chemicals had no
 12 existing facility in Florida?
 13 A. I don't know if -- I don't recall being aware
 14 if they had a facility or not. And I also don't recall
 15 when Andrea got the facility. Right? Or he was saying,
 16 Oh, this is where all this will take place. JM will use
 17 the front, we will use the back. I don't remember if that
 18 happened before or after August 14th.
 19 Q. At the time Industrial Heat entered into the
 20 term sheet, was Industrial Heat aware that it was going to
 21 be Dr. Rossi who was going to be operating JM's facility?
 22 A. No.
 23 Q. Are you sure about that?
 24 A. We did not know that it would be Dr. Rossi that
 25 would be operating JM's facility.

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1 Q. He never told you that?
 2 A. No. He told us that JM would have an engineer
 3 there. This is James Bass. And that they would be
 4 managing their side and that he would be controlling the
 5 input power.
 6 (Exhibit 35, IH11865 through 11866, was marked
 7 for Identification.)
 8 BY MR. CHAIKEN:
 9 Q. Let me show you what has been marked as
 10 Exhibit 35. Exhibit 35 has been Bates stamped IH11865
 11 through 11866. It is an e-mail, a series of e-mails from
 12 Andrea Rossi to you, as well as Tom Darden.
 13 So prior to entering into the contract with --
 14 let's call it the term sheet. Prior to entering into the
 15 term sheet, you were aware certainly that Dr. Rossi's
 16 attorney was the CEO of the company, right?
 17 A. No. He says in this e-mail their attorney is
 18 also their CEO. So I am trying to remember, recall a
 19 point at which we knew that Hank Johnson was also his
 20 attorney, was their attorney. I don't recall
 21 specifically. But in this e-mail he is acknowledging,
 22 which is what -- this is consistent with what Henry
 23 Johnson said. You know, I am president, Andrea says CEO,
 24 I believe Henry Johnson said president, of JM Chemical
 25 Products.

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1 Q. Do you think Dr. Rossi was intending to deceive
 2 Industrial Heat by hiding the fact that Henry Johnson was
 3 Dr. Rossi's attorney?
 4 MR. BELL: Objection to form.
 5 THE WITNESS: I think he was trying to deceive
 6 us through the whole scheme. Now, whether or not
 7 intentionally hiding Henry Johnson as being his
 8 attorney, I'm not sure, you know.
 9 BY MR. CHAIKEN:
 10 Q. Do you think that he was, in fact, attempting
 11 to hide the fact that Henry Johnson was his attorney?
 12 A. It appears that way, from this e-mail. There
 13 are other e-mails where he acknowledges that Henry Johnson
 14 is his attorney. I'm not sure. But here he is hiding
 15 that fact. He is not saying that, Their attorney is my
 16 owner and also the CEO, the president of JM Chemical
 17 Products. He doesn't acknowledge that.
 18 MR. BELL: Read the whole thing, if you want.
 19 (Exhibit 36, IH11867 through 11870, was marked
 20 for Identification.)
 21 BY MR. CHAIKEN:
 22 Q. Let me show you Exhibit 36. Exhibit 36 has
 23 been Bates stamped IH11867 through 11870. And, again,
 24 it's a series of e-mails that were forwarded to you.
 25 In fact, Dr. Rossi on that same day states:

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1 "Correction, the fact that my attorney's also the CEO is a
 2 guarantee for us."
 3 Do you see that?
 4 A. Where is this?
 5 Q. Very first --
 6 A. Oh, okay. So he did. So he wasn't trying to
 7 hide it. Again, I said I didn't know.
 8 But the whole thing was a -- what he was trying
 9 to deceive us with is a whole scheme, not any particular
 10 point. I imagine that this is a -- did we point out to
 11 him or did he automatically correct that? We were
 12 surprised.
 13 So while we are still on this document, this is
 14 an e-mail from Tom, in followup to Andrea. It says: "We
 15 were surprised to see your lawyer in the role of customer
 16 instead of someone from JM. So this has required some
 17 added analysis."
 18 So only after being called out on it did he
 19 then admit to the fact that, My attorney is also their CEO
 20 is a guarantee for us.
 21 (Exhibit 37, IH12026, was marked for
 22 Identification.)
 23 BY MR. CHAIKEN:
 24 Q. Let me show you what was marked as Exhibit 37.
 25 Exhibit 37 is Bates stamped IH12026. It is an e-mail from

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1 Andrea Rossi dated June 10, 2014 to Tom Darden, yourself,
 2 Joe Pike.
 3 Have you seen this e-mail before?
 4 A. I suppose that I have if, it was sent to me. I
 5 don't recall reviewing it recently.
 6 Q. So, again, this is a June 10, 2014 e-mail.
 7 This predates the e-mails I just showed you. And in the
 8 middle of the page, I will just read the first three
 9 sentences. He says: "I have completed the organization
 10 of my plan to put the one megawatt in operation. I
 11 confirm all I already said. We have a customer who pays a
 12 thousand dollars a day to rent the one megawatt plant.
 13 Put it in his factory in Miami, produce catalyzers that he
 14 sells." And then he says, I will direct -- "I will direct
 15 the operation of the plant for the first year."
 16 A. Right. He means the one megawatt plant.
 17 Q. Are you sure?
 18 A. That is how I read it. And I think any other
 19 interpretation would be an incorrect interpretation. Why
 20 would he be running -- why would he say, I will operate
 21 Johnson Matthey's plant? It doesn't make sense.
 22 Q. Where does he say Johnson Matthey in this
 23 e-mail?
 24 A. That was his whole -- that was his whole pitch
 25 at the time. This is Johnson Matthey, Johnson Matthey,

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1 Johnson Matthey. Why would Andrea be saying to us, I am
 2 going to operate Johnson Matthey's plant? Clearly, that
 3 doesn't make sense.
 4 Q. Sure, it does. If, in fact, he intended to
 5 operate JM's facility for a year.
 6 A. He never intended to do that. That is why he
 7 had James Bass involved as their makeshift corporate
 8 representative.
 9 What he is saying here is, you know, I will
 10 direct the operation of the plant, the one megawatt plant
 11 as referenced in the prior sentence, for the first year.
 12 Q. Did you have a conversation with him after you
 13 received that first e-mail where that was clarified?
 14 A. I don't recall if I did or not. There is no
 15 need to clarify something that is clear.
 16 MR. BELL: He is just asking you what you --
 17 what Industrial Heat --
 18 BY MR. CHAIKEN:
 19 Q. It says right after that, I will -- after he
 20 says, "I will direct the operation of the plant for the
 21 first year, the contract will be for three years,
 22 renewable," was there a three-year commitment or was there
 23 a three-year test having to do with the one megawatt
 24 plant?
 25 MR. BELL: Objection to form.

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1 THE WITNESS: I think what he is saying here is
 2 that, you know, you could continue to sell energy to
 3 these guys, if you wanted to, for up to three years.
 4 BY MR. CHAIKEN:
 5 Q. Who negotiated the term sheet with JM Products
 6 on behalf of Industrial Heat?
 7 A. Tom and myself.
 8 Q. Okay. And who represented Leonardo
 9 Corporation?
 10 A. Andrea.
 11 Q. And who represented JM Products or JM
 12 Chemicals?
 13 A. Presumably, Henry Johnson.
 14 Q. Did you ever exchange drafts of the term sheet
 15 with Henry Johnson?
 16 A. No. Again, this was all part of Andrea's
 17 scheme, you know. I am coordinating with these guys. Let
 18 me tell you what they are willing to do.
 19 BY MR. CHAIKEN:
 20 Q. Isn't it possible that Dr. Rossi was
 21 representing JM Products or Chemicals for the purposes of
 22 that negotiation?
 23 A. Is it possible that --
 24 MR. BELL: Objection to form.
 25 BY MR. CHAIKEN:

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1 Q. Was it possible?
 2 MR. BELL: Objection to form.
 3 THE WITNESS: Again, as I acknowledged earlier,
 4 anything is hypothetically possible.
 5 BY MR. CHAIKEN:
 6 Q. Did Industrial Heat's attorneys review the term
 7 sheet prior to it being executed?
 8 A. Yes.
 9 Q. Which attorneys were those?
 10 A. Schell Bray.
 11 Q. Industrial Heat is seeking damages against
 12 Leonardo Corporation and Dr. Rossi; is that correct?
 13 A. I believe so.
 14 Q. And Industrial Heat claims it has been damaged;
 15 is that correct?
 16 A. I believe so.
 17 Q. And what are the damages that Industrial Heat
 18 is claiming?
 19 A. All the out-of-pocket expenses incurred
 20 associated in dealing with Andrea.
 21 Q. Are there any other damages besides the
 22 out-of-pocket expenses incurred?
 23 A. Besides reputational damages? I would have to
 24 reference our claims. I'm not sure. But it's -- I think
 25 it is like a \$20 million number.

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1 Q. And how is that \$20 million number computed?

2 A. 11 and a half to Andrea directly. 5.05, I

3 believe, to AEG, plus equity to AEG, which we would also

4 like back. And then also other, you know, the cost of

5 building an engineering team, the cost of rebuilding the

6 plant, the cost of the facilities, equipment costs, travel

7 costs, all the costs associated with anything to with, my

8 understanding, the state of the art of the E-Cat.

9 Q. And has Industrial Heat sued AmpEnergO for the

10 return of the 5.05?

11 A. At this time, I don't believe so.

12 Q. Does it intend to?

13 A. To be determined.

14 Q. To be determined by whom?

15 A. By events.

16 Q. Have you informed AmpEnergO that you intend to

17 sue them?

18 A. I didn't say we intend to sue them.

19 MR. CHAIKEN: Okay. I want to go off the

20 record. Well, actually, before I go off the record,

21 just in terms of time, I want to give the other

22 counsel in the room an opportunity to ask questions.

23 Are we not going to have any agreement with respect

24 to extending the time beyond the seven hours?

25 MR. BELL: It is my understanding, unless there

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1 is some new development that I am not aware of with

2 respect to the discussions, that is correct.

3 MR. CHAIKEN: Okay. So we are going to stop at

4 seven hours. So we can go off the record, take a

5 quick break.

6 THE VIDEOGRAPHER: We are off the record. The

7 time is 3:53 p.m.

8 (Thereupon, a recess was taken.)

9 THE VIDEOGRAPHER: We are back on the record.

10 The time is 3:58 p m.

11 (Exhibit 38, IH80561 through 567, was marked

12 for Identification.)

13 BY MR. CHAIKEN:

14 Q. Mr. Vaughn, I am handing you what has been

15 marked as Exhibit 38. Exhibit 38 has been Bates stamped

16 IH80561 through 567. It is an e-mail chain between Tom

17 Darden and Joe and Daniel Pike.

18 I think we talked about Joe Pike. Who is

19 Daniel Pike?

20 A. That is his son.

21 Q. Okay. This is an e-mail chain that starts in

22 March of 2015. Specifically, it looks like Tom Darden is

23 responding to comments made by Joe and Daniel Pike to one

24 of their contacts. Do you see that?

25 MR. BELL: I'm sorry, what was the question

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1 again?

2 MR. CHAIKEN: Yeah, I am just trying to put

3 this into context.

4 BY MR. CHAIKEN:

5 Q. It looks as if Tom Darden's commenting on

6 information that was being provided by Joe and Daniel Pike

7 to one of their contacts.

8 Does that look accurate to you?

9 A. Yeah. I haven't read the whole thing yet, so

10 let me know if I need to.

11 Q. I am just trying to put it into context.

12 A. Yeah, I think you put it into the right

13 context, yes.

14 Q. So the comment up above on March 23, 2015, Tom

15 Darden says: "My comments are just nuances. We

16 definitely are producing steam for a customer. My lack of

17 clarity is just around, one, precisely how much, we cannot

18 definitively represent this yet. And two, what is the

19 nature of the customer. But these are picky nuances, not

20 related to the core issue."

21 See that?

22 A. I see that.

23 Q. So at least according to Tom Darden in March of

24 2015, the nature of the customer wasn't a core issue.

25 Would you agree with that?

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1 MR. BELL: Objection to form.

2 THE WITNESS: I think Tom was saying that the

3 core issue was the state of the art, does it work and

4 to what degree? He is getting more particular that

5 -- one and two are more particular. Who is the

6 customer? And then how much steam or presumably

7 energy is being supplied? But I believe the core

8 issue he is referencing is, does it work and to what

9 degree?

10 BY MR. CHAIKEN:

11 Q. Did Industrial Heat ever tell any of its

12 investors or partners that the customer in the group that

13 Leonardo had or Industrial Heat had was, in fact, an

14 affiliate of Johnson Matthey?

15 A. I am not sure. We may have. Just because, you

16 know, that's what we were led to believe. But I'm not

17 sure.

18 Q. Did the tests done in Florida begin in around

19 February 2015?

20 A. Yes.

21 Q. Now, when the test was running, did anyone from

22 Industrial Heat ever express anything other than positive

23 feedback to Dr. Rossi regarding that test?

24 MR. BELL: Can I have the question read back,

25 please?

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1 (A portion of the record was read by the
 2 reporter.)
 3 MR. BELL: So from 2-15 to 2-16? February '15
 4 to February '16?
 5 BY MR. CHAIKEN:
 6 Q. You know what, let's bracket it February '15 to
 7 November '15 as the time frame.
 8 A. Well, definitely we did in December.
 9 Q. Okay.
 10 A. Through communication from Jones Day. Prior to
 11 that, Joe Murray and I tried to go down to do more of an
 12 assessment. I believe this was in July of '15.
 13 Q. But my question was really narrow. It was, did
 14 you ever express anything other than positive feedback
 15 during that window? It wasn't whether you visited the
 16 plant.
 17 A. I don't know. I don't know.
 18 MR. CHAIKEN: Okay.
 19 MR. BELL: I think you need to let him finish
 20 his answer.
 21 MR. CHAIKEN: Well, he wasn't answering my
 22 question.
 23 MR. BELL: You asked -- the question called
 24 for -- was about whether he was provided anything
 25 other than positive feedback, and he was beginning to

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1 explain the visit, which would have involved feedback
 2 and you didn't let him finish.
 3 BY MR. CHAIKEN:
 4 Q. I will restate my question. Did anyone from
 5 Industrial Heat ever express negative feedback to
 6 Dr. Rossi from February 2015 to November 2015?
 7 A. I would have to go back review the
 8 communication between, for example, did T. Barker say
 9 anything after his visit? I'm not sure. By and large,
 10 our protocol at that time was to allow him to continue to
 11 operate the technology to see if we could learn more about
 12 his performance before being confrontational.
 13 Joe Murray and I tried to go down there in
 14 July of '15 and were barred from doing so, Joe was.
 15 Presumably, because he is engineer with a skill set
 16 necessary to determine exactly what is going on.
 17 Q. Did Industrial Heat ever bring potential
 18 investors to the facility in Doral?
 19 A. As I mentioned before, we took Paul Lamacraft
 20 there prior to Woodford's investment. So you could have
 21 considered him a potential investor at that point. That
 22 visit was very eye-opening.
 23 Q. I am not asking you about what happened at the
 24 visit; I am just asking if you brought them.
 25 A. Sure.

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1 Q. Did you bring any other investors?
 2 A. I did not bring any others. I believe there
 3 was a visit by Tom with others from China. And whether or
 4 not those were prospective investors or not, I'm not sure.
 5 Q. Why did Industrial Heat bring investors to the
 6 facility in Doral?
 7 A. One, I am not certain, other than Paul
 8 Lamacraft, right, that we did. Two, it would have been,
 9 if Tom did, and I'm not sure if he did or not, then it
 10 would have been to say, Well, you know, this is one of X
 11 number of things we have going on in the LENR world, and
 12 who knows whether or not this will pan out.
 13 (Exhibit 39, Industrial Heat's Supplement to
 14 Defendant Industrial Heat, LLC's Amended Responses
 15 and Objections to Plaintiff Andrea Rossi's First Set
 16 of Interrogatories, was marked for Identification.)
 17 BY MR. CHAIKEN:
 18 Q. I will mark this one as Exhibit 39. Let me
 19 show you what has been marked as Exhibit 39.
 20 A. Thanks.
 21 Q. Exhibit 39 are Industrial Heat's Supplement to
 22 Defendant Industrial Heat, LLC's Amended Responses and
 23 Objections to Plaintiff Andrea Rossi's First Set of
 24 Interrogatories. That is a hell of a title.
 25 Have you seen -- let me say it this way. I

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1 don't want to walk through it. I have one specific
 2 interrogatory I would like you to review. It is number --
 3 let's see. Interrogatory number five, starts on page 12.
 4 The interrogatory number five asks about visits to the
 5 Doral facility.
 6 A. Mm-hmm.
 7 Q. And your response provides, beginning at the
 8 bottom of page 13, a list of all the visits made by
 9 Industrial Heat to that facility.
 10 And if you go to page 14, you will see a list
 11 of people that on March 27th, Daniel Pike, Mia Pike, Xu
 12 Hang and Zhang Jjian visited the testing facility.
 13 Who were all those people?
 14 A. I don't know. I will tell you who I do know.
 15 Daniel, as I mentioned, is Joe's son. Mia is Daniel's
 16 wife. I don't know Xu Hang and Zhang Jjian. I don't know
 17 who those guys are.
 18 Q. What about the one, very next one, July 7,
 19 2015, listed?
 20 A. I will tell you who I know. How about that?
 21 Steven Hartanto and Hady Hartanto. Hady Hartanto is an
 22 investor in Industrial Heat. Steven Hartanto, he helps,
 23 you know his dad on his investments, and is an analyst at
 24 Cherokee.
 25 Q. Okay.

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1 seeing the plant and seeing the facility and just,
 2 you know, saying there is no way that what they are
 3 claiming could be technically true.
 4 BY MR. CHAIKEN:
 5 Q. Did you ever ask Dr. Rossi to work with Joe
 6 Murray?
 7 A. Yes. When I said, Joe and I are going to come
 8 visit you in July, I believe it was, of '15, June or July.
 9 And he said, you know, No. Joe is not welcome.
 10 Q. After that, did you make any requests that he
 11 work with Joe Murray?
 12 A. I don't remember if we did or not.
 13 MR. CHAIKEN: Okay. Off the record.
 14 THE VIDEOGRAPHER: Off the record. The time is
 15 4:18 p m.
 16 (Thereupon, a recess was taken.)
 17 THE VIDEOGRAPHER: We are back on the record.
 18 The time is 4:25 p m.
 19 BY MR. CHAIKEN:
 20 Q. Mr. Vaughn, in front of you is Exhibit 39,
 21 which is the interrogatory responses. I am going to refer
 22 you to page 31 of that document. It is interrogatory 16.
 23 Interrogatory 16 states: Did you or did you not have
 24 access to \$89 million as of February 15, 2016? If you had
 25 less than \$89 million, then identify the amount of money

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1 you did have. And the answer states: Yes, Industrial
 2 Heat did have access to 89 million as of February 15, 2016
 3 through fundraising from investors.
 4 Did you have a binding commitment for
 5 \$89 million as of that date?
 6 A. Binding commitment, yes, in that Woodford had
 7 options that it could exercise up to 150 million. But to
 8 answer your question more specifically, maybe they were
 9 not required to exercise those options. So outside of
 10 that, did we have a binding commitment for 89 million?
 11 No.
 12 Q. Okay. So that additional investment on
 13 Woodford's behalf was optional on their part, right?
 14 A. It was.
 15 Q. Okay. Then you state: Industrial Heat had
 16 available cash balance of 16 million and change in its
 17 accounts on February 15, 2016.
 18 Is that true?
 19 A. I suppose it was.
 20 Q. And then you state: Industrial Heat has not
 21 called upon investors to fund any other capital as of that
 22 date because it already knew well before February 15,
 23 2016, that Rossi and Leonardo could not guarantee
 24 performance under the license agreement.
 25 When did Industrial Heat know that Rossi and

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1 Leonardo could not achieve guaranteed performance under
 2 the license agreement?
 3 A. My answer would be the same as before. That
 4 after -- excuse me, Joe Murray and his team had thoroughly
 5 assessed the technology, as well, that around about that
 6 time, we begin kind of thinking, all right, it seems that
 7 there is no way that this technology performs as
 8 advertised.
 9 Q. Well, I am looking for a specific date.
 10 Because it seems, based on your answer here, that you knew
 11 a specific date and it was well before February 15, 2016.
 12 MR. BELL: Objection to form.
 13 THE WITNESS: As I said before, there wasn't a
 14 specific date. There was a lot of data points
 15 combined with our analysis of the situation, which
 16 was a developing analysis, based on the events that
 17 were occurring.
 18 BY MR. CHAIKEN:
 19 Q. How long would it have taken Industrial Heat to
 20 raise the additional money to pay the \$89 million?
 21 A. If it worked, it would be very quick. Woodford
 22 would have been very eager to fund that, as would have
 23 others.
 24 Q. 30 days? 60 days?
 25 A. It likely could have been much quicker than

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1 that if, you know, if it worked.
 2 Q. And you know this because you talked to
 3 Woodford about it?
 4 A. Woodford from the earliest days was always
 5 asking, Well, if it works, notwithstanding the fact that
 6 he's not met the obligations of the contract, if it works
 7 and you guys can prove the technology has been
 8 transferred, our response is sure. And so, I mean, this
 9 would not have been a big issue, if the technology worked
 10 as advertised.
 11 MR. CHAIKEN: Okay. I am going to end my
 12 questioning and turn it over to --
 13 MR. NUNEZ: Let's go off the record, so I can
 14 get situated.
 15 THE VIDEOGRAPHER: We are off the record. The
 16 time is 4:29 p.m.
 17 (Thereupon, a recess was taken.)
 18 THE VIDEOGRAPHER: We are back on the record.
 19 The time is 4:31 p m.
 20 CROSS-EXAMINATION
 21 BY MR. NUNEZ:
 22 Q. Good afternoon, Mr. Vaughn my name is Rudy
 23 Nunez. We met before. I represent Fulvio Fabiani and
 24 USQL, LLC, United States Quantum Leap, LLC.
 25 I know you touched upon it earlier, but can you

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1 September 2013; is that correct?
 2 A. That sounds right.
 3 Q. I think it is on the first page.
 4 A. I see it back at the back. 9-9-13. Yes. It
 5 is effective as of September 1, '13. And it looks like he
 6 signed it, there is a joinder signed on 9-9-13.
 7 Q. And does that date seem, to your recollection,
 8 when he actually did start working --
 9 A. I believe so.
 10 Q. -- for you guys?
 11 A. Yeah. I believe so.
 12 Q. And where was that work taking place at that
 13 time?
 14 A. At that time it was in Raleigh.
 15 Q. Do you recall at that time, did Mr. Fabiani,
 16 were any of his duties related to collection of data for
 17 Industrial Heat?
 18 A. At that time, I am trying to recall if he
 19 collected data at that time. I think he did help Andrea
 20 with some of that. Meaning we didn't, you know, Fulvio
 21 wasn't our data capturing expert. To the de gree that
 22 Andrea directed him to record data and capture data, he
 23 may have done that. But I don't recall specifically.
 24 You know, I remember him more during that
 25 period of time kind of helping build things and do

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1 electrical -- modify electrical input power, things like
 2 that, at Andrea's direction.
 3 Q. So your company wasn't relying on him for any
 4 data collection that you can recall to date?
 5 MR. BELL: Objection to form.
 6 THE WITNESS: At that period of time, if he did
 7 supply us data, you know, we were definitely looking
 8 at it and it is a data point that is relevant.
 9 Later, he was providing us some data from the test in
 10 Doral and then stopped doing that.
 11 BY MR. NUNEZ:
 12 Q. Okay. Well, we will get to that.
 13 A. Okay.
 14 Q. But in his time in Raleigh, that wasn't his --
 15 that wasn't part of his duties?
 16 A. It may have been something that he did, but it
 17 wasn't our -- it wasn't the primary thing that jumps out
 18 that he was doing, you know, providing us data.
 19 Q. And I think you testified a lot today about the
 20 performance and the measurement of performance of
 21 Mr. Rossi's invention.
 22 A. Mm-hmm.
 23 Q. And I think your testimony was that it wasn't
 24 reaching -- you weren't seeing the results that you needed
 25 to under the agreements between Industrial Heat and your

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1 affiliates?
 2 A. Yeah, any results, yeah.
 3 Q. You weren't seeing any results. You weren't
 4 using Mr. Fabiani's data for those conclusions, were you?
 5 A. It was a -- again, I guess I will go back to
 6 kind of the stuff that he provided in Doral. It would be
 7 of interest to us if we could have all of his data sets,
 8 to compare those against anything that Andrea may have
 9 provided or Fabiani.
 10 Q. Well, let me stop you. Because I understand
 11 your claims and I understand that is part of your claims
 12 today.
 13 A. Right.
 14 Q. I am ask asking you back in Raleigh, when you
 15 are making --
 16 A. Okay. So you are back in Raleigh?
 17 Q. Yeah, back to Raleigh, when you are making the
 18 decisions that you are not seeing the result, any result,
 19 you weren't relying on anything Mr. Fabiani was doing? Or
 20 you weren't relying on any data that Mr. Fabiani was
 21 providing you?
 22 A. To a degree that it was -- I would say that it
 23 could be some data that we would rely on. For example,
 24 Fabiani was collecting and reporting input power data that
 25 would have been of interest to us. Right? So it is hard

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1 to say that he didn't provide us any data that we relied
 2 on. He may have.
 3 What -- again, the primary role or
 4 responsibility that I recollect Fulvio having is modifying
 5 power supplies and working on designs that Andrea would
 6 instruct him to work on.
 7 Q. Do you recall if that technical consulting
 8 agreement, was it ever extended or did you enter into an
 9 extension? Because I believe that contract's for one
 10 year, correct?
 11 A. I would have to review. But I don't know. I
 12 would have to review whether or not we extended.
 13 Is this only a one-year contract or is this a
 14 two-year contract?
 15 Q. I think if you go to paragraph eight, duration
 16 of the agreement.
 17 A. Mm-hmm. Okay. So I don't recall if we -- if
 18 this contract was extended and we assigned it -- if there
 19 was another fully executed contract after this or if we
 20 just began paying Fulvio month to month after that and he
 21 was operating in effectively the same capacity.
 22 I know at one point his contract had lapsed and
 23 we were just paying him month to month. But I don't
 24 remember if the initial ones extended and then that
 25 happened or if that happened after the initial contract.

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1 Q. Do you recall if there was ever a new contract
 2 entered into by Industrial Heat and Mr. Fabiani that
 3 increased his duties with regard to data collection?
 4 A. I don't recall. I don't recall entering into a
 5 contract -- another contract with Fabiani that focussed on
 6 his abilities or comments with regard to collecting data.
 7 Q. And the reason I ask, obviously now in the
 8 complaint there's -- the main charge against him is that
 9 he hasn't given you certain data. I mean, that is one of
 10 the big things.
 11 A. Mm-hmm.
 12 Q. But when the contract started, I think his
 13 duties were to assist Mr. Rossi. So I wanted to, was
 14 there ever a time that in writing increased his duties to
 15 require him to give you more than he had in Raleigh?
 16 A. Yeah. At some point I believe Fulvio was
 17 saying to us, Hey, you know, I will supply you this data.
 18 I will send you updates. You need any data, you just let
 19 me know. So we said, Great, you know, we need the data.
 20 And sometimes he would send it, or periodically he would
 21 send it. And then towards the end he stopped providing
 22 any data.
 23 So that was -- that is the answer to your
 24 question. I don't know if that's, you know, what you are
 25 looking for.

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1 Q. So I guess my question is, was that in writing
 2 or was that verbal?
 3 A. I don't recall precisely, but I would think
 4 that there may be e-mails around this with Fabiani. But
 5 it may not have been, actually. Because often I would
 6 call Fabiani or -- I am trying to remember -- or e-mail
 7 him -- or I'm not sure. I don't remember if that's
 8 captured in the e-mail.
 9 Because -- but I do recall exchanges with him,
 10 whether or not it was in e-mail or phone or otherwise,
 11 saying, Hey, you know, we need more data. Can you send us
 12 more data? Sure. Sure. No problem. I will send you
 13 what you want. You know, that was just kind of Fulvio's
 14 classic quote. What you want? I will send you what you
 15 want. Let me know.
 16 Q. Well, let me -- we are short on time, so don't,
 17 you know, please excuse me if I cut you off.
 18 A. Mm-hmm.
 19 Q. Would it be fair to say that there was no
 20 written contract between Industrial Heat and Fabiani or
 21 United States Quantum Leap that increased or added
 22 additional duties to provide data?
 23 MR. BELL: Objection to form.
 24 THE WITNESS: I don't believe that we entered
 25 an additional contract that specified data

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1 collection.
 2 BY MR. NUNEZ:
 3 Q. Okay. Now, we talked about Raleigh. And you
 4 were discussing some issues with Doral, I think in your
 5 answer. So when the plant moved to Doral, Mr. Fabiani
 6 also moved, came down to Doral to work with Mr. Rossi; is
 7 that correct?
 8 A. That is correct. And I don't recall exactly
 9 who moved down there first exactly. But pretty much when
 10 Rossi and the plant moved down there. Fabiani may have
 11 moved before then. I don't recall.
 12 Q. Okay. And a couple minutes ago your testimony
 13 was that you would ask him to give you more data. He said
 14 yes, he would.
 15 A. Mm-hmm.
 16 Q. So is it correct that he would send you
 17 periodically data from the test ongoing in Doral at the
 18 Doral facility?
 19 A. Periodically I believe that he provided some
 20 data, you know. But then he stopped providing it.
 21 Q. Do you know the time period around when he
 22 stopped providing the data that you are complaining of in
 23 the complaint?
 24 A. I would have to review the complaint. I mean,
 25 clearly, at the end we asked Fulvio to send us all the

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1 data that he had, and he didn't do that. Prior to that,
 2 you know, when is the last time I specifically requested
 3 the data from Fulvio? I don't recall. And when is the
 4 last time he sent data, regardless of whether or not I
 5 explicitly requested it? Because I kind of said, Sure,
 6 please, send us monthly data. I don't recall when he
 7 stopped sending it.
 8 Q. Now, I don't have them and we don't have the
 9 time to go through them and look through them, but I know
 10 that there are some e-mails in March or April of 2016 when
 11 maybe Mr. Murray, Mr. Dameron are requesting from him,
 12 Hey, remember to send us the data.
 13 Would you agree that those e-mails reflect the
 14 time where he was being requested for data that he wasn't
 15 turning over?
 16 A. That is one time, yes. And I don't know if
 17 there were others.
 18 I know Joe and I met with him here in Miami and
 19 talked about it. And he said, I will prepare it, I will
 20 send it to you. No problem. What you want? I mean,
 21 typical kind of response.
 22 Q. Do you recall the date of that meeting?
 23 A. Oh, man. It was after the plant had shut down.
 24 I think it was in February. It may have been in March. I
 25 don't remember the exact date.

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1 Industrial Heat?
 2 A. Yes, sir.
 3 Q. Okay. May I ask you to look at number 19,
 4 which is on page two of the document?
 5 A. Okay.
 6 Q. It says: "JMC will keep records of the
 7 operation of the one megawatt plant as reasonably
 8 requested by Leonardo or IH and will provide copies of
 9 such records to Leonardo and IH upon request."
 10 To your knowledge, did you make -- did you or
 11 anyone at IH make any specific requests of JMC for
 12 records?
 13 A. I'm not sure.
 14 Q. If in fact you had, would I be correct in
 15 stating that they would have been produced in response
 16 to --
 17 A. Correct.
 18 Q. -- all the discovery that has been ongoing?
 19 A. Correct.
 20 Q. And if none was produced, there were no
 21 specific records made, correct?
 22 A. Correct.
 23 Q. Okay. Let me now refer you to what is part of
 24 Exhibit 13, last page, it says "compliance with OFAC."
 25 A. Go ahead and ask your question.

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1 Q. Is there any mention of Johnson Matthey as a
 2 company or entity in that document?
 3 A. No, with the explanation that I provided
 4 earlier.
 5 Q. There is none, correct?
 6 A. The explanation that I provided earlier, which
 7 is --
 8 Q. We know the explanation, sir, but I only have
 9 ten minutes.
 10 A. Keep going.
 11 Q. Your explanation is on the record.
 12 A. Okay.
 13 Q. Now, let me ask you to take a look at
 14 Exhibit -- I missed one, the response to the
 15 interrogatories.
 16 MR. CHAIKEN: Exhibit 39, I think.
 17 BY MR. ARAN:
 18 Q. I think you were referred before to the bottom
 19 of page 13.
 20 A. Okay.
 21 Q. And that deals with the number of visits to the
 22 Doral location.
 23 A. Okay.
 24 Q. Am I correct that the only visit to the Doral
 25 location involving Mr. Bass would be that described in

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1 item number two, the visit of February 9, 2015?
 2 A. I believe that is correct. Can I review it
 3 just quickly, to see if he was present at others? I
 4 believe that is correct.
 5 Q. And you were present at this meeting also,
 6 correct?
 7 A. I was.
 8 Q. And the other people were Thomas Darden, Andrea
 9 Rossi, Fulvio Fabiani and Barry West, correct?
 10 A. February 9th?
 11 Q. February 9, 2015.
 12 A. Yes. Yes. I'm sorry, I see that. I didn't
 13 see that. And Paul Lamacraft.
 14 Q. Correct. Who is Barry West?
 15 A. Barry West is an electrical technician that we
 16 contracted to assist Andrea.
 17 Q. And he worked at the --
 18 A. At the Doral.
 19 Q. At the E-Cat side of the plant?
 20 A. Right.
 21 Q. And he was present in this meeting?
 22 A. Well, not the meeting with -- he was present
 23 there, but when we met with Bass, it was Tom, Paul
 24 Lamacraft, Andrea and myself.
 25 Q. Okay.

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1 A. So he was present at the facility, but not in
 2 the meeting. He was on the other side.
 3 Q. So during that meeting, so the meeting
 4 described here did not include Mr. West, nor Mr. Fabiani?
 5 A. Correct.
 6 Q. What specifically -- so of the two hours that
 7 the visit took, how much time did you spend speaking or
 8 meeting specifically with Mr. Bass?
 9 A. I would guess probably about 45 minutes.
 10 Q. And of those 45 minutes, what did Mr. Bass --
 11 what did you ask Mr. Bass, if anything, and what did he
 12 respond?
 13 A. I recall Bass running the meeting initially
 14 and asking Andrea a lot of questions. You know, how is it
 15 going? When is it going to start up? Blah, blah, blah.
 16 And then Andrea responding and then Bass asked Tom
 17 questions. I am trying to remember the specifics. It may
 18 have been about Tom's background or something like that.
 19 I am trying to remember if either I or Paul
 20 Lamacraft had questions of Bass or Andrea. I'm not sure
 21 that we did. I think mainly we listened while Bass talked
 22 about what they were doing there and looking forward to
 23 having the plant online and --
 24 Q. You mentioned he was asking questions. Were
 25 those questions being responded to by those persons that

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1 he asked?
 2 A. Yes.
 3 Q. Did he get answers?
 4 A. Yes.
 5 Q. What specifically do you recall him actually
 6 saying?
 7 A. Well, he said, for example, to Andrea, you
 8 know, When is this going to be online? When is it going
 9 to be ready? And Andrea was saying, Well, we have had a
 10 little setback, but it will be -- it should be in the next
 11 week or so. Questions like that.
 12 Q. Questions of that nature?
 13 A. Yes.
 14 Q. Did he make any representations at that meeting
 15 that the plant was operating correctly? I would assume
 16 not, correct? Because it wasn't.
 17 A. Yeah. He was asking, if I recall correctly,
 18 kind of when is it going to be ready? When is it going to
 19 be online?
 20 Q. So were you at any point in time involved or
 21 present in any conversation with Bass where he was
 22 actually stating that the amount of steam received by the
 23 JMC side was sufficient or good or enough?
 24 A. I was not in a meeting with Bass that he stated
 25 that.

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1 Q. Do you know anybody that was in a meeting with
 2 Bass when he may have stated that?
 3 A. Not to my knowledge. We didn't meet with Bass
 4 frequently. I think -- I think that this was the only
 5 time that we met with Bass.
 6 Q. And when you met with Mr. Bass, Mr. Darden was
 7 also present, correct?
 8 A. Correct.
 9 Q. So let me ask you, other than in a meeting, in
 10 this meeting, did you have any other conversations with
 11 Mr. Bass? On the phone?
 12 A. On the phone or e-mail? I don't recall talking
 13 to him on the phone.
 14 Q. Okay.
 15 A. And I am trying to recall if we ever e-mailed
 16 with him. I'm not sure.
 17 Q. Okay. Was this the only meeting that IH would
 18 have had with Mr. Bass as a company?
 19 A. I'm not sure. But it is the only one that
 20 comes to mind.
 21 Q. Okay. And if there would have been another
 22 meeting with Mr. Bass where the other party present was
 23 IH, it in all likelihood would have been you or
 24 Mr. Darden, correct, at that point?
 25 A. There were other people that could have been,

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1 you know, a representative of IH in a meeting with Bass,
 2 Joe Murray or T. Barker Dameron or others. So it wouldn't
 3 have had to be Tom or me.
 4 Q. Did any of those people report to you that they
 5 had, in fact, met with Mr. Bass?
 6 A. I don't recall. You know, at one point I think
 7 Barry reported that he had met Bass on occasion. But not
 8 had a meeting with him, but just kind of met him. I don't
 9 recall if others met with him.
 10 Q. Am I correct in summing up your testimony, and
 11 I hate to do that, but time is limited, that at least from
 12 your perspective, you never heard of any conversation or
 13 representation by Mr. Bass concerning the adequacy or
 14 sufficiency of the power being received by JMC from the
 15 E-Cat side of the plant?
 16 A. What we received in that regard was mainly from
 17 Hank Johnson, the quarterly, like a request to bill him
 18 effectively. I don't recall Bass sending
 19 representations --
 20 Q. Okay.
 21 A. -- regarding the performance of the technology.
 22 Q. And now that you mentioned that, in that
 23 request by Mr. Johnson to send the invoice, based upon the
 24 steam received, do you recall whether IH ever sent him an
 25 invoice?

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1 A. I don't believe that we did.
 2 Q. They did not, correct? No other
 3 representations that you recall at all from Bass to you or
 4 to another IH individual?
 5 A. Aside from those made in the meetings? I mean,
 6 he did represent to be the engineering manager, plant
 7 manager for JM Chemical Products. Aside from anything
 8 made in the meeting of February 9th, I'm not sure if
 9 anything comes to mind. I am trying to recall if we met
 10 with -- if anybody else met with him at another time, and
 11 nothing is coming to mind.
 12 Q. Okay. And have you since learned whether
 13 Mr. Bass is, in fact, a licensed engineer with a degree
 14 from Rutgers University?
 15 A. I don't know if he is or not.
 16 Q. Did you do any research to find out if he was?
 17 A. I, myself, have not. Others may have looked
 18 into it.
 19 Q. Did you know that he worked -- he has worked in
 20 the Armed Forces and dealt with matters that dealt with
 21 nuclear power?
 22 A. I did not know that.
 23 Q. And controls for nuclear power?
 24 A. I did not know that.
 25 Q. Any reason to believe that he was not an

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1 engineer?

2 A. At this point in time or at the time of --

3 Q. Even then.

4 A. You know, we came out of the meeting and Paul

5 Lamacraft's statement to me was, Well, that really felt

6 like a contrived meeting, yeah.

7 Q. So it felt contrived, so all the less perhaps

8 to accept whatever Bass had to say, or question? What do

9 you mean by "contrived"?

10 A. Well, it felt contrived. Meaning it felt like

11 his questions were prepared.

12 Q. Okay.

13 A. And Andrea's answers were prepared. And I

14 said, Yeah, I agree, it felt very contrived.

15 Q. And being contrived, does it suggest to you

16 that the question was not properly answered? Or any basis

17 to believe that what was being answered was not --

18 A. It felt like they went in there with a game

19 plan, right? Of here is a question, here is the answer,

20 here is a question, here is the answer.

21 Q. At that point in time the E-Cat plant had not

22 commenced operation, correct?

23 A. Andrea was still working on it, I believe.

24 Q. So Bass himself couldn't have made any

25 representations concerning the plant or its efficiency?

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1 A. He was there to represent JM.

2 Q. Or anything else, correct? Could he have done

3 any work at that point in time, if the plant had not been

4 delivered?

5 A. I don't know. You would have to ask Bass.

6 Q. From your perspective. If a plant hadn't

7 arrived --

8 A. It was there, but --

9 Q. Not operational yet?

10 A. Yeah. Bass was an engineering representative

11 and supposedly he could be doing other stuff. I don't

12 know.

13 Q. Okay. Is it IH's position today as you sit

14 here that Mr. Bass committed a fraud by any statements

15 that he may have made to you at that meeting or to IH?

16 A. He participated in one. So he was -- he was

17 participating with Dr. Rossi in a fraudulent

18 representation of this company being, you know, a Johnson

19 Matthey affiliate.

20 Q. Was Mr. Bass there when Mr. Rossi made any of

21 those representations to you or anyone else?

22 A. As I said, I only met Bass in that meeting.

23 Q. And did he make any of those representations in

24 that meeting?

25 A. He represented that he was an engineering plant

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1 manager for JM. And I can't recall if he said he was

2 affiliated with Johnson Matthey or not.

3 Q. You don't remember one way or the other, do

4 you?

5 A. I don't remember if he said he was affiliated

6 with Johnson Matthey, no.

7 Q. What are the damages that you believe were

8 caused by whatever it is Mr. Bass may or may not have

9 said?

10 A. A prolonged -- a deception, which cost us time

11 and money following the process when --

12 Q. How much?

13 A. 20 million.

14 Q. \$20 million?

15 A. That is what I provided earlier.

16 Q. Were caused by him being in a meeting where he

17 asked some questions?

18 A. Caused by the compounding of factors, of which

19 he was one, that led to us expensing the money we have

20 expensed associated with Rossi and E-Cat.

21 Q. What information do you have to suggest that

22 Mr. Bass knew or -- knew that it was represented that

23 Johnson Matthey was, in fact, the company behind it?

24 A. I know that there are e-mails where Andrea is

25 telling Bass exactly what to say to us when we visit.

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1 Q. Okay. So Andrea was telling him what to say?

2 A. Yes. So -- and also Andrea was paying him,

3 right? And directing him. So, you know, to the extent

4 that he was a puppet of Andrea's, he was involved in the

5 scheme.

6 Q. But any of those representations that Andrea --

7 that you have seen indicate that Bass knew that Johnson

8 Matthey was representing to be, if that is the case, the

9 owner of JMC?

10 A. I don't know the extent of Bass's knowledge in

11 that regard.

12 Q. But the communications you are relating to, do

13 not have Johnson Matthey as the subject of it, do they?

14 A. Which communications?

15 Q. The communications that you are saying. You

16 are saying that Mr. Bass was told by Mr. -- that you have

17 seen e-mails or whatever, that back and forth?

18 A. Right.

19 Q. That Bass was looking to?

20 A. I don't recall seeing Johnson Matthey

21 explicitly referenced in the communication.

22 Q. So he may have represented to Bass, that,

23 Listen, I want you to talk about A and B or C and B, if,

24 you know, if there is steam, the steam is good. But you

25 never saw anything to say, And by the way, let him know or

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1 CERTIFICATE OF OATH OF WITNESS
2
3
4 STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)
5
6 I, ELIZABETH CORDOBA, RMR, CRR, FPR, Notary
7 Public in and for the State of Florida at Large, certify
8 that the witness, JOHN THOMAS VAUGHN, personally appeared
9 before me on February 13, 2017 and was duly sworn by me.
10 WITNESS my hand and official seal this
11 February 26, 2017.
12
13 *e cordoba*
ELIZABETH CORDOBA, RMR, CRR, FPR
Notary Public, State of Florida
14 at Large
15
16 Notary #EE075383
17 My commission expires: 3/17/2019
18
19
20
21
22
23
24
25

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1 VERITEXT FLORIDA REPORTING CO
2 South Biscayne Blvd , Suite 2250
2 Miami, Florida 33131
(305) 371-1884
3
4 February 27, 2017
5
6 JOHN THOMAS VAUGHN
c/o BERNARD P BELL, ESQ
MILLER FRIEL, PLLC
7 1200 NEW HAMPSHIRE AVE, NW
SUITE 800
8 WASHINGTON DC 20036
9 RE: ANDREA ROSSI, ET AL v THOMAS DARDEN, ET AL
DEPO OF: JOHN THOMAS VAUGHN
10 TAKEN : February 13, 2017
READ & SIGN BY: Within 30 Days
11
12 Dear JOHN THOMAS VAUGHN:
13 This letter is to advise you that the transcript of the
deposition listed above is completed and is awaiting
14 reading and signing
15 Please arrange to stop by our office in Suite 2250, 2
South Biscayne Blvd , Miami, Florida to read and sign the
16 transcript Our office hours are from 8 00 a m to 4 00
p m Monday through Friday Depending on the length of
17 the transcript, you should allow yourself sufficient
time
18
19 If the reading and signing has not been completed prior
to the referenced date, we shall conclude that you have
waived the reading and signing of the deposition
20 transcript Your prompt attention to this matter is
appreciated
21
22 Sincerely,
23
24 ELIZABETH CORDOBA, RMR, CRR, FPR
25 cc: All counsel on appearance page

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1 REPORTER'S DEPOSITION CERTIFICATE
2
3 I, ELIZABETH CORDOBA, RMR, CRR, FPR,
4 certify that I was authorized to and did stenographically
5 report the deposition of JOHN THOMAS VAUGHN, the witness
6 herein on February 13, 2017; that a review of the
7 transcript was requested; that the foregoing pages
8 numbered from 1 to 301 inclusive is a true and complete
9 record of my stenographic notes of the deposition by said
10 witness; and that this computer-assisted transcript was
11 prepared under my supervision.
12 I further certify that I am not a relative,
13 employee, attorney or counsel of any of the parties, nor
14 am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action.
16 DATED this February 26, 2017.
17
18
19 *e cordoba*
ELIZABETH CORDOBA, RMR, CRR,
FPR
20
21
22
23
24
25

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1 VERITEXT FLORIDA REPORTING CO
2 South Biscayne Blvd , Suite 2250
2 Miami, Florida 33131
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3
4 February 27, 2017
5
6 BRIAN CHAIKEN, ESQ
PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P L
283 CATALONIA AVENUE
7 SUITE 200
CORAL GABLES FL 33134
8
9 RE: ANDREA ROSSI, ET AL v THOMAS DARDEN, ET AL
DEPO OF: JOHN THOMAS VAUGHN
10 TAKEN: February 13, 2017
READ & SIGN BY: Within 30 Days
11
12
13 Dear Counsel:
14 The original transcript of the deposition listed above is
enclosed for your file The witness did not waive
15 reading and signing and has been sent a letter notifying
them to come in and read and sign their deposition
16 transcript
17 The witness will be provided a copy of their deposition
transcript for reading in our office should they come in
18 to review the transcript, and we will forward to you any
corrections made by the witness at that time, along with
19 an original signature page which should be attached to
the original transcript which is in your possession
20
21
22 Sincerely,
23
24 ELIZABETH CORDOBA, RMR, CRR, FPR
25

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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