

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Plaintiffs,)

v.)

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

Defendants.)

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

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

Counter-Plaintiffs,)

v.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

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

Third-Party Defendants.)

**INDUSTRIAL HEAT, LLC AND
IPH INTERNATIONAL B.V.'S
OPPOSITION TO THIRD-PARTY
DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
IN SUPPORT OF COMBINED
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Counter-Plaintiffs Industrial Heat, LLC (“Industrial Heat”) and IPH International, B.V. (“IPH”) (collectively, “Counter-Plaintiffs”) hereby oppose Third-Party Defendants’ Statement of Undisputed Material Facts in support of their Combined Motion for Partial Summary Judgment [D.E. 204] as follows:

1. Admitted. A true and correct copy of the License Agreement is attached hereto as Exhibit 1.

2. Admitted.

3. Admitted.

4. Admitted. A true and correct copy of the Term Sheet is attached hereto as Exhibit 2.

5. Admitted. However, Industrial Heat states that the original drafts of the proposed Term Sheet were prepared by Plaintiffs and named the “customer” as “Johnson Matthey” (Johnson Matthey, plc), and that Plaintiffs later changed the “customer” in the Term Sheet to “J.M. Chemicals, Inc.” (the former name of J.M. Products) on the basis that Johnson Matthey wanted its involvement in the venture to remain confidential. *See* Composite Ex. 3 ([IH-00007120-00007123]; [IH-00007117-00007118]; [IH-00007129-00007131]; [IH-00007113-00007114]; [IH-00007110-00007112]; [ROSSI_00000865]; [IH-00090826-00090827]; [IH-00089932-00089938]); Darden Dep. (excerpts of which are attached hereto as Composite Ex. 4) 185:18-186:18; Vaughn Dep. (excerpts of which are attached hereto as Composite Ex. 5) 194:9-16, 274:14-20, 275:7-8, 275:15-20, 275:25-276:3; Rossi Dep. (excerpts of which are attached hereto as Composite Ex. 6) 183:9-184:11; J.M. Products Dep. (excerpts of which are attached hereto as Composite Ex. 7) 66:22-67:2; Johnson Dep. (excerpts of which are attached hereto as Composite Ex. 8) 88:8-21, 97:13-18; Composite Ex. 9 (Johnson Dep. Exs. 11 & 12).

6. Admitted. However, Industrial Heat states that it attempted to contact and investigate Johnson Matthey, but that Plaintiffs rebuffed such attempts on the basis that Johnson Matthey wanted its involvement in the venture to remain confidential. *See* Ex. 3 at [IH-00007117-00007118], [IH-00007113-00007114], [IH-00090826-00090827]; Ex. 4 at 177:11-178:2; Ex. 5 at 198:7-20, 199:20-200:3, 271:7-16; Industrial Heat Dep. (excerpts of which are attached hereto as Composite Ex. 10) 228:4-11; Composite Ex. 11 ([IH-00011867-00011870]; [IH-00011871-00011872]; [IH-00011864]).

7. Admitted.

8. Admitted.

9. Admitted. However, *see* ¶ 5 *supra*.

10. Admitted.

11. Denied. Plaintiffs hired Third-Party Defendant James Bass as an independent contractor (not employee) of J.M. Products, and Bass worked under Plaintiffs' direction, not J.M. Products'. Further, Bass was hired as a "scientific consultant," not "Director of Engineering," for J.M. Products. Ex. 7 at 26:4-13, 44:2-4; Ex. 8 at 59:22-60:3, 119:8-120:4, 158:5-11; Leonardo Corp. Dep. (excerpts of which are attached hereto as Composite Ex. 12) 209:14-18; Bass Dep. (excerpts of which are attached hereto as Composite Ex. 13) 98:1-3, 113:5-17, 118:1-11, 157:16-20.

12. Admitted. However, Counter-Plaintiffs state that Bass represented to them that J.M. Products was satisfied with, and that its electricity bills had been dramatically reduced as a result of, the power it was purportedly receiving from the 1 MW Plant. *See* Ex. 4 at 295:25-296:12, 298:15-17, 300:1-14, 300:23-301:3, 301:7-8, 301:16-19, 303:4-6, 303:16-22; Ex. 7 at 56:4-15, 61:9-18. In addition, Tom Darden testified that Bass's statements regarding the amount

of steam J.M. Products was receiving “represented half of the equation that it [the 1 MW Plant] was getting enough steam that it must have had that high COP.” Ex. 4 at 301:19-21; *see also id.* at 300:23-301:2 (“[T]he COP was a function of how much electricity the facility used versus the production of steam from the plant. So if the steam – if the plant produced a megawatt worth of steam, then it had a high COP.”), 303:12-17 (“That was the other side of the equation. In other words, I’m saying that he gave – he gave us half of the information that would lead us to believe that it had that COP because he was buying a megawatt worth of steam from us and he said he was getting all the steam he was supposed to be buying.”).

13. Admitted.

14. Admitted.

15. Denied. Joseph Murray (“Murray”) testified that if Florida Power and Light’s (“FPL”) power absorption data was correct, then Third-Party Defendant Fulvio Fabiani and Fabio Penon’s power absorption data must have been incorrect, as “it would be impossible for [the 1 MW Plant] to absorb more power than [FPL] provided.” Murray Dep. (excerpts of which are attached hereto as Composite Ex. 14) 258:2-6; *see also id.* at 281:25-282:3, 282:8-10.

16. Denied. There is evidence that Fabiani manipulated or falsified the power absorption data he provided to Counter-Plaintiffs. For one, Fabiani and Penon’s power absorption data were nearly identical. *See* Ex. 14 at 118:16-119:5, 147:2-13, 251:18-252:7; Composite Ex. 15 (Fabiani Dep. Ex. 3, Penon Dep. Ex. 21, Murray Dep. Ex. 11). Further, the power absorption data that Fabiani and Penon provided Counter-Plaintiffs reflected that during certain time periods, the 1 MW Plant was used more power than Florida Power and Light (“FPL”) was providing to the entire warehouse facility where the 1 MW Plant was located. Ex. 14 at 254:13-260:14, 279:14-283:6, 367:8-368:7; Ex. 15; Composite Ex. 16 (Murray Dep. Exs.

12 & 13). In addition, following the termination of the 1 MW Plant testing in the Florida, Fabiani, on behalf of USQL, destroyed certain data and communications regarding the 1 MW Plant's operations. *See* ¶ 59 *infra*. Separately, one of Third-Party Defendants' citations in support of Paragraph 16 does not support the propositions contained therein. Specifically, Murray testified that if FPL's power absorption data was correct, then Fabiani and Penon's power absorption data must have been incorrect, as "it would be impossible for [the 1 MW Plant] to absorb more power than [FPL] provided," *see* Ex. 14 at 258:2-6; *see also id.* at 281:25-282:3, 282:8-10.

17. Admitted.

18. Admitted.

19. Admitted. A true and correct copy of the USQL Agreement is attached as Exhibit 17.

20. Counter-Plaintiffs state that the USQL Agreement speaks for itself, and therefore deny any statements in Paragraph 20 inconsistent therewith. The USQL Agreement reflects multiple "stated purpose[s]."

21. Counter-Plaintiffs state that the USQL Agreement speaks for itself, and therefore deny any statements in Paragraph 21 inconsistent therewith. The intent of the parties in that Agreement extends beyond Fabiani continuing to assist Rossi.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied. Third-Party Defendants cite to only Defendants' Fourth Amended Answer, Additional Defenses, Counterclaims, and Third-Party Claims ("AACT") ¶¶ 68-75.

Those paragraphs explain how Plaintiffs, Third-Party Defendant Henry Johnson, and J.M. Products made representations to Counter-Plaintiffs regarding J.M. Products; they do not state that Fabiani made no such representations to Counter-Plaintiffs. In addition, Fabiani stated to Counter-Plaintiffs in March 2016 that during the time he was working on the 1 MW Plant in Doral, Florida, he barely saw Bass and did not know what work Bass did. Vaughn Dec. (attached hereto as Ex. 42) ¶ 9. Further, Fabiani was involved in prohibiting Counter-Plaintiffs from learning anything about J.M. Products' supposed operations. *See* West Dep. (excerpts of which are attached hereto as Composite Ex. 18) at 81:12-82:17, 100:22-101:7, 206:12-21.

26. Denied. Fabiani worked with Bass under Plaintiffs' direction on a control system project for J.M. Products. Ex. 7 at 201:2-14; Ex. 8 at 61:5-62:5; Ex. 12 at 300:15-301:7, 302:4-303:5, 306:4-10. In addition, Fabiani participated in J.M. Products' supposed processing of platinum sponges and otherwise assisted Plaintiffs in operating J.M. Products. Ex. 8 at 20:4-21:18, 56:7-20.

27. Admitted. However, Counter-Plaintiffs state that Fabiani was involved in prohibiting them from learning anything about J.M. Products' supposed operations. *See* Ex. 18 at 81:12-82:17, 100:22-101:7, 206:12-21. In addition, one of Third-Party Defendants' citations in support of Paragraph 27 does not support the proposition contained therein. Specifically, J.T. Vaughn on Industrial Heat's behalf testified that he was not sure whether Industrial Heat had evidence that Fabiani restricted Industrial Heat's access to J.M. Products' side of the Doral warehouse facility, not that no such evidence existed. *See* Ex. 10 at 280:4-8.

28. Denied. Fabiani testified that he sent measurement data collected only from his own equipment, not from Penon's equipment, to Penon throughout the testing of the 1 MW Plant in Doral, Florida. Fabiani Dep. (excerpts of which are attached hereto as Ex. 19) 38:3-18, 39:11-

40:12, 46:10-47:19, 88:8-17. Penon testified that he relied on the data Fabiani sent him in generating his final report on the testing of the 1 MW Plant in Florida, but that he believed this data was taken from his own (rather than Fabiani's) measurement equipment. Penon Dep. (excerpts of which are attached hereto as Composite Ex. 20) 170:15-171:20. Thus, if Fabiani's testimony is true, then Penon necessarily relied on Fabiani's measurement data in generating his final report. Penon also testified that he compared the data taken from his own measurement equipment to the data collected separately by Fabiani. Ex. 20 at 169:19-170:8.

29. Denied. *See* ¶ 16 *supra*.

Additional Facts

30. Beginning in June 2014, Rossi, on behalf of Leonardo, repeatedly stated to Industrial Heat that he had "found" a "customer" with its own facility in Florida, and that this "customer" had a commercial need for, and was going to use in a chemical manufacturing process, steam that Rossi and Leonardo intended to produce from the 1 MW Plant. *See* Ex. 4 at 164:19-23; Ex. 5 at 180:8-22, 181:7-17, 194:17-20, 198:16-20, 267:18-268:4, 268:23-269:4; Ex. 6 at 183:9-184:5, 199:9-16; Ex. 10 at 215:3-10, 229:17-21, 232:15-23; Composite Ex. 21 (4th Am. AACT Ex. 16; Rossi Dep. Exs. 13 & 14; [IH-00011175-00011176]).

31. Rossi also represented, on behalf of Leonardo, that this "customer" was affiliated with Johnson Matthey, plc ("Johnson Matthey"), a British multinational specialty chemical company with over £10 billion in revenue. *See* Ex. 3 at [IH-00007120-00007123], [IH-00007117-00007118], [IH-00007129-00007131], [IH-00007113-00007114]; Ex. 4 at 172:6-173:12, 185:18-186:2, 186:9-18; Ex. 5 at 180:13-181:25, 194:9-16; Ex. 10 at 213:25-214:9, 215:3-10, 229:21-230:5; 231:22-232:23; Ex. 22 ([IH-00090895-00090896]).

32. This “customer” was J.M. Products, who at the time was known as J.M. Chemical Products, Inc. *See* Ex. 6 at 183:9-184:11; Ex. 7 at 66:22-67:2; Ex. 8 at 88:8-21, 97:13-18; Ex. 9.

33. Rossi asserted to Industrial Heat that having a “real customer” with a need for steam would be an independent check on how the 1 MW Plant would operate, in that the “customer’s” purchase of the Plant’s steam would confirm that such steam was being produced. *See* Ex. 12 at 242:21-243:2; Ex. 21 at 4th Am. AACT Ex. 16.

34. On July 28, 2014, Industrial Heat, Rossi, and Third-Party Defendant Henry Johnson (“Johnson”) met in North Carolina to discuss moving the 1 MW Plant from Industrial Heat’s facility in North Carolina to J.M. Products’ facility in Florida. Ex. 4 at 173:21-174:2; Ex. 8 at 230:18-231:6. Prior to the meeting, Rossi had told Industrial Heat that the purpose of the meeting would be to meet a Johnson Matthey representative. *See* Ex. 3 at [IH-00007110-00007112], [ROSSI_00000865], [IH-00090826-00090827]; Ex. 4 at 171:14-172:3, 174:3-11; Ex. 5 at 205:8-9, 270:21-24; Ex. 10 at 226:1-6, 226:14-227:2. During the meeting, Rossi introduced Johnson as J.M. Products’ president, and further represented (with Johnson’s acquiescence) that J.M. Products was affiliated with Johnson Matthey. *See* Ex. 4 at 174:12-175:11, 186:9-18; Ex. 5 at 203:6-9, 203:15-20, 204:11-21, 205:17-23, 269:8-270:6; Ex. 8 at 237:13-22; Ex. 10 at 226:6-13, 228:4-11. Both Rossi and Johnson further represented that J.M. Products had its own facility in Florida, and was intending to use steam produced by the 1 MW Plant in a chemical manufacturing process. *See* Ex. 4 at 175:12-176:14, 180:7-12, 181:5-17; Ex. 8 at 237:13-22.

35. Following the July 28, 2014 meeting, Rossi continued to make representations to cause Industrial Heat to believe that J.M. Products was affiliated with Johnson Matthey, and that publicly identifying Johnson Matthey would lose J.M. Products as a “customer.” *See* Ex. 11.

36. Further, on August 6, 2014, Johnson, on behalf of J.M. Products, signed a representation that J.M. Products “[was] owned by an entity formed in the United Kingdom.” *See* Ex. 8 at 239:15-240:2, 247:16-249:25; Composite Ex. 23 (Johnson Dep. Exs. 50, 51, & 52).

37. From the time Rossi first raised the “customer” with Industrial Heat to the time the Term Sheet was executed, J.M. Products did not have a chemical manufacturing process in place with a need for the steam to be produced by the 1 MW Plant. In fact, it did not have any operations at all. *See* Ex. 6 at 191:18-192:1; Ex. 7 at 34:9-14; Ex. 8 at 31:19-25, 35:13-15, 90:25-91:3, 219:19-221:15, 222:3-24, 235:19-236:2.

38. Also during this time period, J.M. Products was not in any way affiliated with Johnson Matthey; it was owned by a U.S. trust over which Johnson had control as trustee. *See* Ex. 6 at 202:8-203:11; Ex. 7 at 111:11-112:7, 204:21-205:19; Ex. 8 at 14:21-15:12, 171:13-173:3, 240:7-20, 243:20-244:1.

39. The only connections between J.M. Products and Johnson Matthey were that Rossi, on behalf of J.M. Products, once asked for a price quote from Johnson Matthey for the purchase of platinum sponge, and then later bought some filters from a Johnson Matthey subsidiary in the United States (to mine them for platinum sponge contained therein). *See* Ex. 6 at 201:14-203:11; Ex. 7 at 104:3-112:17; Ex. 8 at 125:8-127:25; Ex. 12 at 215:14-218:14, 221:8-223:16; Ex. 24 (Leonardo Corp. Dep. Ex. 17).

40. Rossi, on behalf of Leonardo, and Johnson, on behalf of J.M. Products, each made these representations regarding the “customer” to induce Industrial Heat to sign a Term Sheet to allow Rossi and Leonardo to move the 1 MW Plant to Florida. *See* Ex. 4 at 177:11-178:2, 185:18-186:8; Ex. 6 at 192:21-25, 200:1-3; Ex. 8 at 230:18-231:6, 232:9-19, 234:2-235:18,

237:13-22; Ex. 10 at 191:13-16, 192:15-20, 215:6-10, 218:9-13, 226:1-228:11, 236:22-237:20; Ex. 22;

41. In reliance on these representations, Industrial Heat entered into a Term Sheet on or about August 13, 2014 with Leonardo and J.M. Products. *See* Ex. 2; Ex. 4 at 156:24-162:5, 164:19-167:14, 169:21-24, 180:15-181:3, 191:21-23; Ex. 5 at 182:5-183:8, 184:7-15, 185:3-10, 197: 8-16, 198:7-201:2, 267:18-268:7, 272:5-12, 276:19-277:9; Ex. 10 at 191:21-24, 213:25-214:19, 215:20-216:12, 217:12-221:3, 231:24-232:20.

42. Industrial Heat would not have entered into the Term Sheet or allowed Rossi to remove the 1 MW Plant to Florida if Industrial Heat had known that the “customer” had no affiliation with Johnson Matthey or any other publicly traded company, and no real manufacturing process or need for steam or heat. *See* Ex. 10 at 218:2-221:3; Darden Dec. (attached hereto as Ex. 25) ¶ 14.

43. Rossi rented the premises at 7861 N.W. 46th Street, Doral, FL 33166 (sometimes referred to as the “Doral Facility”) on behalf of Leonardo. *See* Ex. 6 at 200:9-17; Ex. 7 at 24:25-25:9, 72:7-20, 83:6-17; Ex. 8 at 40:25-41:6, 110:12-111:18, 123:10-17; Composite Ex. 26 (Johnson Dep. Ex. 15; J.M. Products Dep. Ex. 3).

44. After the 1 MW Plant moved to the Doral Location, Rossi, acting at times for Leonardo, and at other times for J.M. Products, took the following steps to create the intentionally false illusion that J.M. Products was a “real customer” of Leonardo using steam produced by the 1 MW Plant:

- a. Distinguishing J.M. Products from Rossi and Leonardo in communications with Industrial Heat and with others, and instructing others to do the same. *See*

Composite Ex. 27 (Leonardo Corp. Dep. Ex. 20; Johnson Dep. Exs. 17 & 23; AEG Dep. Ex. 28; Bass Dep. Ex. 20; [Rossi_00004860]).

- b. Holding out Third-Party Defendant James Bass (“Bass”) as J.M. Products’ “Director of Engineering.” *See* Ex. 13 at 157:2-15.
 - c. Representing J.M. Products as having its own operations and a use for the 1 MW Plant’s steam. *See* Ex. 10 at 285:6-23; Ex. 27 at Leonardo Corp. Dep. Ex. 20.
 - d. Representing J.M. Products as being satisfied with the power it was purportedly receiving from the 1 MW Plant. *See* Ex. 27 at Leonardo Corp. Dep. Ex. 20.
 - e. Representing J.M. Products as being affiliated with Johnson Matthey. *See* Ex. 4 at 179:16-180:12; Ex. 10 at 229:21-230:5; Ex. 28 ([IH-00011231]).
45. After the 1 MW Plant moved to the Doral Location, Johnson, acting for J.M.

Products, took the following steps to create the intentionally false illusion that J.M. Products was a “real customer” of Leonardo using steam produced by the 1 MW Plant:

- a. Sending letters to Industrial Heat on the amount of power J.M. Products was receiving and offering to pay for such power. *See* Ex. 4 at 294:16-295:18; Ex. 5 at 246:14-17; Ex. 8 at 120:15-121:1, 167:24-168:2, 168:13-169:3, 170:22-171:3; 172:23-173:12, 174:17-21, 178:23-179:3, 179:16-25; Ex. 10 at 288:16-18; Ex. 27 at Johnson Dep. Ex. 17; Composite Ex. 29 (Johnson Dep. Exs. 18, 32, 33, 34, 35, 36, 37, 38, & 39; Rossi Dep. Ex. 21).
- b. Sending letters to Industrial Heat representing J.M. Products to be an “Advanced Derivatives of Johnson Matthew Platinum Sponges.” *See* Ex. 8 at 123:10-124:4, 171:13-173:3; Composite Ex. 29 at Johnson Dep. Exs. 18, 34, & 35.

46. After the 1 MW Plant moved to the Doral Location, Bass took the following steps to create the intentionally false illusion that J.M. Products was a “real customer” of Leonardo using steam produced by the 1 MW Plant:

- a. Holding himself out as J.M. Products’ “Director of Engineering.” *See* Ex. 4 at 227:21-228:6; Ex. 7 at 44:5-9; Ex. 10 at 289:2-7, 291:23-292:1; Ex. 13 at 157:2-10, 158:7-159:17; Ex. 30 (Bass Dep. Ex. 28)
- b. Representing J.M. Products as having its own operations and a use for the 1 MW Plant’s steam. *See* Ex. 4 at 228:7-24, 291:8-12; Ex. 10 at 285:6-23.
- c. Representing J.M. Products as being satisfied with the power it was purportedly receiving from the 1 MW Plant. *See* Ex. 4 at 295:25-296:12, 298:15-17; Ex. 7 at 56:4-15, 61:9-18.

47. Each of Rossi, Leonardo, Johnson, J.M. Products, and Bass’s actions enumerated above were meant to present J.M. Products to Industrial Heat as a check on, and confirmation of, claims by Rossi, Leonardo, and Penon that the 1 MW Plant was operating effectively and producing a high volume of steam. *See* Ex. 12 at 242:21-243:2; Ex. 27 at Leonardo Corp. Dep. Ex. 20.

48. In reality, following the execution of the Term Sheet, J.M. Products had no manufacturing process to use the steam allegedly produced by the 1 MW Plant, made no products, and had no customers other than Leonardo itself. *See* Ex. 7 at 31:3-25, 32:14-17, 77:16-23, 233:14-16, 237:12-15, 248:23-249:3; Ex. 8 at 19:13-21:17, 22:24-23:8, 50:16-23, 53:7-11, 198:9-11, 224:20-226:10; Ex. 13 at 71:1-15, 133:23-135:12, 136:12-19; Stokes Dep. (excerpts of which are attached hereto as Composite Ex. 31) 92:6-21, 93:21-94:6, 165:1-21, 191:16-22, 199:18-200:5.

49. In addition, Rossi and Leonardo entirely controlled and funded J.M. Products and Bass. *See* Ex. 7 at 6:18-23, 17:6-16, 18:4-20, 22:16-23:4, 24:13-25:9; Ex. 8 at 56:13-15, 116:9-18, 117:23-118:1, 142:6-16, 144:16-146:14, 153:14-155:25, 158:5-11, 160:1-162:7, 229:8-18, 241:23-25; Ex. 12 at 207:24-209:13, 227:11-15; Ex. 13 at 96:13-20, 97:5-17, 98:1-3; Composite Ex. 32 (Johnson Dep. Exs. 16, 27, 29, 30, & 31). Moreover:

- a. Johnson and Bass had little to no knowledge of or participation in J.M. Products' supposed business and operations. *See* Ex. 8 at 19:13-21:17, 22:24-23:8, 50:16-23, 53:7-11, 56:7-10, 198:9-21, 217:5-12; Ex. 13 at 27:15-28:16, 41:17-42:18, 71:1-15.
- b. The monthly letters to Industrial Heat prepared on J.M. Products letterhead and signed by Johnson, which reported levels of power allegedly received from the 1 MW Plant, were drafted and the information contained therein provided by Rossi. *See* Ex. 6 at 271:11-272:2, 276:6-23; Ex. 8 at 121:2-12, 167:15-169:8, 170:9-171:3, 173:6-174:3, 179:23-179:25; Ex. 29 at Johnson Dep. Exs. 17, 18, 33, 34, 35, 36, 37, & 38.

50. In addition, J.M. Products was not an affiliate of Johnson Matthey and was not controlled by a trust formed in the United Kingdom. Rather, it was owned by a United States trust over which Johnson had control as a trustee. *See* Ex. 6 at 202:8-203:11; Ex. 7 at 111:11-112:7, 204:21-205:19; Ex. 8 at 14:21-15:12, 171:13-173:3, 240:7-20, 243:20-244:1.

51. In addition to providing his measurement data to Penon (*see* Paragraph 28 *supra*), Fabiani also provided his measurement data to Counter-Plaintiffs. Ex. 5 at 256:7-11; Ex. 14 at 118:20-25, 120:10-15, 366:11-24; Ex. 19 at 38:3-18, 39:11-40:12, 44:14-48:9, 87:16-88:23, 99:5-8, 100:8-22, 142:5-10.

52. Rossi, on behalf of Leonardo, walled off a portion of the Doral Facility for the ostensible purpose of creating a space within which J.M. Products would “operate.” Rossi, with each Third-Party Defendant’s concurrence, thereafter prohibited Industrial Heat personnel from entering the J.M. Products side of the Doral Facility or learning about J.M. Products’ supposed operations. *See* Ex. 5 at 238:7-239:8; Ex. 7 at 38:3-6; Ex. 14 at 216:9-11, 314:10-13; Ex. 18 at 81:6-82:17, 100:22-101:7, 157:23-158:2, 159:4-15, 178:16-19, 180:11-23, 181:7-9, 206:12-21, 210:23-212:3, 226:3-12; Composite Ex. 33 (Bass Dep. Exs. 25, 26, & 27).

53. Rossi, on behalf of Leonardo, refused to grant Industrial Heat access to the Doral Facility in December 2015. Johnson, on behalf of J.M. Products, complied with and enforced this refusal. Ex. 8 at 182:11-183:6, 184:23-185:19, 187:1-14, 228:11-229:6; Composite Ex. 35 (Johnson Dep. Exs. 40 & 41).

54. Once Murray gained access to the Plant in February 2016, he was promptly able to determine that Rossi’s claims about the Plant were false. *See* Ex. 14 at 145:5-8; Ex. 36 (4th Am. AACT Ex. 5).

55. On February 23, 2016, Fabiani acknowledged that Fabiani, on behalf of Third-Party Defendant United States Quantum Leap, LLC (“USQL”), would provide Industrial Heat with “all electrical and thermal data of the system throughout the period of the test” and an “official report to bring to light all the flaws and functional deficiencies of the system,” which would also mention all “plant stop periods (total or partial)” and the reasons therefor. *See* Ex. 37 (4th Am. AACT Ex. 21).

56. Beginning in March 2016, Industrial Heat repeatedly requested from Fabiani, on behalf of USQL, copies of the promised raw thermal and electrical data as well as the final report

relating to the testing in Doral. Industrial Heat also requested flow meter records that Fabiani had represented he had. *See* Ex. 38 ([IH-00011081-00011802]).

57. In April and May 2016, Industrial Heat requested these documents and data again. *See* Composite Ex. 39 (Fabiani Dep. Ex. 11; [IH-00011074]).

58. Fabiani refused to provide Industrial Heat with the requested documents and data. *See* Ex. 10 at 270:7-22; Ex. 14 at 116:18-117:3, 193:8-194:8, 352:11-353:9, 366:25-367:7; Ex. 19 at 142:11-19; Ex. 40 (Murray Dep. Ex. 4).

59. Following the termination of the 1 MW Plant testing in Florida, Fabiani, on behalf of USQL, destroyed certain data and communications regarding the 1 MW Plant's operations. *See* Ex. 19 at 33:10-37:12, 38:3-40:16, 46:3-8, 93:8-15, 138:6-13.

60. The scheme orchestrated by Rossi, Leonardo, Johnson, J.M. Products, Bass, Fabiani, and USQL, including Rossi, Leonardo, Johnson, and J.M. Products' inducement of Industrial Heat to enter the Term Sheet, caused Counter-Plaintiffs to pay for (1) the Plant's transportation to Florida; (2) the procurement and delivery of equipment for the Plant's reassembly in Florida; (3) the procurement and transportation of personnel to assemble the Plant in Florida; (4) repairs and maintenance of the 1 MW Plant; (5) new equipment for the Doral Facility; and (6) personnel to work at the Doral Facility, including Barry West (an independent contractor), T. Barker Dameron (an Industrial Heat employee), Murray, and Fabiani. *See* Ex. 4 at 249:14-20, 305:21-306:5; Ex. 5 at 247:1-6; Ex. 10 at 241:19-242:8, 292:7-20; Ex. 12 at 134:24-135:4, 137:16-138:18, 141:16-142:17, 143:14-144:16, 145:11-148:24, 295:11-18; Ex. 19 at 82:21-83:8; Ex. 20 at 119:10-15; Composite Ex. 41 ([IH-00131929]; [IH-00131928]; [IH-00014673]; [IH-00003745]; [IH-00013195]; [IH-00092023]; [IH-00011989]; Leonardo Corp. Dep. Ex. 7).

Dated: April 5, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 5, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record.

/s/ Christina T. Mastrucci

Christina T. Mastrucci