

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

ANDREA ROSSI, *et al.*,

Plaintiffs,

v.

THOMAS DARDEN, *et al.*,

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENT
TO THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Brief Introduction

Plaintiffs seek leave to supplement their Motion for Partial Summary Judgement solely as it relates to newly discovered information obtained from the Court-ordered Rule 30(b)(6) re-deposition of Defendants IPH International B.V. (“IPH”) The re-deposition took place on May 5, 2017 as result of IPH’s failure to properly comply with Rule 30(b)(6). The proposed Supplement is attached hereto as **Exhibit 1**.

1. On March 21, 2017, the Court entered an Order granting all parties until March 22, 2017 to submit pretrial and *Daubert* motions. ECF No. 192. Pursuant to such Order, Plaintiffs filed their Motion for Partial Summary Judgment on such date. ECF No. 214.

2. After the motion deadline, on March 24, 2017, Magistrate Judge O’Sullivan granted Plaintiffs’ motion for sanctions against Defendants, Cherokee Investment Partners, LLC (“Cherokee”) and IPH International B.V. (“IPH”), for failure to comply with Rule 30(b)(6). ECF

No. 218. Judge O'Sullivan specifically found that the testimony given by Cherokee and IPH was insufficient, and granted Plaintiffs permission to re-depose such 30(b)(6) witnesses on or before April 7, 2017. *Id.*

3. However, on April 20, 2017, the parties returned before Magistrate Judge O'Sullivan, in part, on Defendants' motion for protective order with respect to the foregoing re-depositions. Judge O'Sullivan denied such protective order, and ordered that the depositions take place on or before May 5, 2017, absent an agreement of the parties. ECF No. 266.

4. Ultimately, the parties agreed to hold the re-depositions on May 5, 2017 and May 8, 2017.

5. Due to the fact Plaintiffs were unable to re-depose the 30(b)(6) representatives prior to May 8, 2017, Plaintiffs could not include such testimony in their March 22, 2017 Motion for Partial Summary Judgment.

6. Furthermore, following the re-depositions, Plaintiffs required time to obtain the transcripts thereof, review and analyze the same.

7. Plaintiffs accordingly request leave to supplement their Motion for Partial Summary Judgment only with the newly obtained testimony.

8. Plaintiffs request such leave in good faith, and acted diligently to prepare the Supplemental Motion within a reasonable time after the re-depositions.

WHEREFORE, Plaintiffs, Andrea Rossi and Leonardo Corporation, respectfully request the Court enter the Proposed Order attached hereto as **Exhibit 2**, grant Plaintiffs leave to file the Supplemental Motion for Partial Summary Judgment attached hereto as **Exhibit 1**, and grant any further relief the Court deems just and proper.

Dated: May 16, 2017.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

The undersigned counsel hereby certifies that, in compliance with Local Rule 7.1(a)(3), the undersigned counsel has conferred with counsel for Defendants in a good faith effort to resolve by agreement the issues raised in this Motion. At the time of filing the present Motion, Defendants have advised that they do not consent to the relief requested by Plaintiffs.

/s/ Brian W. Chaiken
Brian W. Chaiken, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was served in the manner specified below on May 16, 2017 on all counsel and parties of record on the attached Service List.

/s/ Brian W. Chaiken
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