

Composite Exhibit 10

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

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

4 ANDREA ROSSI, ET AL.,

5 Plaintiffs,

6 vs.

7 THOMAS DARDEN, ET AL.,

8 Defendants.

9 _____/

10 PERLMAN, BAJANDAS, YEVOLI &
11 ALBRIGHT, P.L.

12 282 CATALONIA AVENUE

13 SUITE 200

14 CORAL GABLES, FL 33134

Monday, February 13, 2017

9:07 a.m. - 5:18 p.m.

15
16
17 VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN
(Corporate Representative of Industrial Heat, LLC)

18
19
20 Taken on behalf of the Plaintiff before
21 Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
22 and for the State of Florida at Large, pursuant to
23 Plaintiff's Notice of Taking Deposition in the above
24 cause.
25

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 ATTORNEYS FOR PLAINTIFFS:</p> <p>3 JOHN W. ANNESSER, ESQ</p> <p>4 BRIAN CHAIKEN, ESQ</p> <p>5 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P L</p> <p>6 283 CATALONIA AVENUE</p> <p>7 SUITE 200</p> <p>8 CORAL GABLES FL 33134</p> <p>9 305-377-0086</p> <p>10 Jannesser@pbylaw.com</p> <p>11 Bchaiken@pbylaw.com</p> <p>12</p> <p>13 ATTORNEYS FOR DEFENDANTS:</p> <p>14 BERNARD P. BELL, ESQ</p> <p>15 MILLER FRIEL, PLLC</p> <p>16 1200 NEW HAMPSHIRE AVE, NW</p> <p>17 SUITE 800</p> <p>18 WASHINGTON DC 20036</p> <p>19 202-760-3158</p> <p>20 Bellb@millerfriel.com</p> <p>21 ATTORNEYS FOR THIRD-PARTY DEFENDANTS JM PRODUCTS, INC.,</p> <p>22 HENRY JOHNSON, ESQ AND JAMES BASS:</p> <p>23 FERNANDO S. ARAN, ESQ</p> <p>24 FRANCISCO J. LEON DE LA BARRA, ESQ</p> <p>25 ARAN CORREA & GUARCH</p> <p>26 255 UNIVERSITY DRIVE</p> <p>27 CORAL GABLES FL 33134</p> <p>28 305-665-3400</p> <p>29 Faran@acg-law.com</p> <p>30 Fleon@acg-law.com</p> <p>31</p> <p>32 ATTORNEYS FOR THIRD-PARTY DEFENDANTS FULVIO FABIANI AND</p> <p>33 UNITED STATES QUANTUM LEAP, LLC:</p> <p>34 RUDOLFO NUNEZ, ESQ</p> <p>35 RUDOLFO NUNEZ, P A</p> <p>36 200 UNIVERSITY DRIVE</p> <p>37 CORAL GABLES FL 33134</p> <p>38 305-665-3400</p> <p>39 Rnunez@acg-law.com</p>	<p>Page 4</p> <p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 JOHN THOMAS VAUGHN</p> <p>4 Direct Examination by Mr. Chaiken 7</p> <p>5 Cross-Examination by Mr. Nunez 261</p> <p>6 Cross-Examination Aran 281</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 Exhibit 1, Notice, 8</p> <p>11 Exhibit 2, IH82315 through 82329, 18</p> <p>12 Exhibit 3, IH83129 through 83130, 25</p> <p>13 Exhibit 4, IH83131 through 83149, 27</p> <p>14 Exhibit 5, IH127754 through 127759, 47</p> <p>15 Exhibit 6, IH2266 through 2315, 52</p> <p>16 Exhibit 7, IH113114, 61</p> <p>17 Exhibit 8, IH83307, 75</p> <p>18 Exhibit 9, IH117875 through 117876, 83</p> <p>19 Exhibit 10, IH18659 through 108661, 90</p> <p>20 Exhibit 11, IH84295 through 84297, 97</p> <p>21 Exhibit 12, IH136414 through 136430, 100</p> <p>22 Exhibit 13, License Agreement, 103</p> <p>23 Exhibit 14, First Amendment to the License Agreement, 111</p> <p>24 Exhibit 15, April 25, 2013 E-Mail, 116</p> <p>25 Exhibit 16, April 15, 2013 Memorandum, 120</p> <p>26 Exhibit 17, IH99334 through 99336, 127</p> <p>27 Exhibit 18, IH20906 through 20911, 130</p>
<p>Page 3</p> <p>1 APPEARANCES (Continued):</p> <p>2 ALSO PRESENT</p> <p>3 CHRISTIAN HERNANDEZ, VIDEOGRAPHER</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 EXHIBITS</p> <p>2 (Continued)</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Exhibit 19, Fourth Amended Answer, Additional Defenses, Counterclaims and Third Party Claims, 151</p> <p>5 Exhibit 20, 96250 through 95252, 162</p> <p>6 Exhibit 21, IH22072 through 22074, 168</p> <p>7 Exhibit 22, IH81230 through 81234, 172</p> <p>8 Exhibit 23, IH22156 through 22200, 178</p> <p>9 Exhibit 24, Feasibility Report of Cold Fusion E-Cat of Industrialization in China, 182</p> <p>10 Exhibit 25, 89208 through 89212, 188</p> <p>11 Exhibit 26, IH4856 through 4857, 198</p> <p>12 Exhibit 27, Second Amendment to the License Agreement, 200</p> <p>13 Exhibit 28, IH45757 through 45819, 205</p> <p>14 Exhibit 29, 107550 through 107552, 205</p> <p>15 Exhibit 30, 107246 through 247, 207</p> <p>16 Exhibit 31, 106452 through 106474, 208</p> <p>17 Exhibit 32, IH10037 through 38, 210</p> <p>18 Exhibit 33, IH3735, 211</p> <p>19 Exhibit 34, IH117296 through 297, 221</p> <p>20 Exhibit 35, IH11865 through 11866, 235</p> <p>21 Exhibit 36, IH11867 through 11870, 236</p> <p>22 Exhibit 37, IH12026, 237</p> <p>23 Exhibit 38, IH80561 through 567, 243</p> <p>24</p> <p>25</p>

<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. 2 A. Good morning. 3 Q. Could you please state your name for the 4 record? 5 A. John Thomas Vaughn. I also go by JT. 6 Q. Can you spell your last name. 7 A. V as in Victor, A-U-G-H-N. 8 Q. And have you been designated this morning as 9 the corporate representative for Industrial Heat, LLC? 10 A. I have been. 11 (Exhibit 1, Notice, was marked for 12 Identification.) 13 BY MR. CHAIKEN: 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? 17 A. Exhibit 1, is that -- you mean just the front 18 page or the -- 19 Q. The entire document. 20 A. The entire document? I believe that I have. 21 Q. Okay. And who designated you to be the 22 corporate representative for purposes of today's 23 deposition? 24 A. The company. 25 Q. Who on behalf of the company made that</p>
<p style="text-align: right;">Page 7</p> <p>1 Thereupon, 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. 10 MR. CHAIKEN: Good morning. Brian Chaiken and 11 Jonathan Annesser on behalf of the plaintiff. 12 MR. BELL: Bernard Bell for defendants. 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. 17 MR. NUNEZ: Rudy Nunez on behalf of third party 18 defendant Fulvio Fabiani and United States Quantum 19 Leap, LLC. 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? 2 A. That was made in conjunction with the directors 3 of the company, including Tom Darden and John Mazzarino. 4 Q. Okay. And do you currently have a position 5 with Industrial Heat, LLC? 6 A. I do. Vice president. 7 Q. Okay. What did you do to prepare for today's 8 deposition? 9 A. Reviewed documents with counsel. 10 Q. Okay. Did you do anything else besides that? 11 A. Spoke to some of our teammates with counsel. 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? 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. 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? 23 MR. BELL: Give me a minute to check something, 24 Brian. 25 MR. CHAIKEN: Sure.</p>

<p style="text-align: right;">Page 38</p> <p>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</p>	<p style="text-align: right;">Page 40</p> <p>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</p>
<p style="text-align: right;">Page 39</p> <p>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."</p>	<p style="text-align: right;">Page 41</p> <p>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.</p>

<p style="text-align: right;">Page 146</p> <p>1 A. That the license agreement has value to date?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. Does Industrial Heat believe that the E-Cat IP</p> <p>5 has value?</p> <p>6 A. No, with one caveat. And this is, you know, it</p> <p>7 would be an obtuse kind of minimal value, which would be</p> <p>8 if some of the claims in some of its patent applications</p> <p>9 were allowed and they, in fact, relate to something</p> <p>10 somebody else is doing that does work. But that is a</p> <p>11 pretty hypothetical scenario, so I think the answer is no.</p> <p>12 But you could paint a hypothetical or possibly it could be</p> <p>13 some value there.</p> <p>14 Q. Is there a provision in the license agreement,</p> <p>15 that is Exhibit 13 still, that provides that IH must be</p> <p>16 able to successfully replicate a certain COP result</p> <p>17 without the assistance of Dr. Rossi?</p> <p>18 MR. BELL: Objection to form.</p> <p>19 THE WITNESS: I would have to review the</p> <p>20 license agreement. Clearly, there was a --</p> <p>21 requirements that -- I would have to review it,</p> <p>22 Brian. I'm not sure.</p> <p>23 BY MR. CHAIKEN:</p> <p>24 Q. Are you aware of one sitting here today?</p> <p>25 A. What is that?</p>	<p style="text-align: right;">Page 148</p> <p>1 still under oath.</p> <p>2 MR. BELL: He is under oath.</p> <p>3 MR. CHAIKEN: I said Mr. Vaughn. Mr. Bell, do</p> <p>4 you want to be under oath? I don't think so.</p> <p>5 BY MR. CHAIKEN:</p> <p>6 Q. Before we took the break, I was asking you</p> <p>7 about the license agreement and whether or not there was a</p> <p>8 provision in there that said that, in order for Leonardo</p> <p>9 to be entitled to payment, Industrial Heat had to be able</p> <p>10 to replicate results without Dr. Rossi's assistance.</p> <p>11 Did you find the provision while we were on the</p> <p>12 break?</p> <p>13 A. I did review the license agreement while we</p> <p>14 were on break. If you go to 12, I think it's 12 (b).</p> <p>15 Q. Okay.</p> <p>16 A. Leonardo and Rossi, jointly and severally,</p> <p>17 hereby represents and warrants to the company that the</p> <p>18 patents and patent applications identified in Exhibit A</p> <p>19 and all other E-Cat IP, all of which is to be delivered to</p> <p>20 the company in accordance with Section 3.2 (b) are owned</p> <p>21 by Leonardo and/or Rossi and are all the patents and</p> <p>22 patent applications and other intellectual property that</p> <p>23 are necessary or useful for the company to develop,</p> <p>24 manufacture, make, have made, use, have used, etc.,</p> <p>25 deriving from the E-Cat IP in the territory.</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. I said, are you aware of one sitting here</p> <p>2 today?</p> <p>3 MR. BELL: Objection to form.</p> <p>4 THE WITNESS: There is a replication</p> <p>5 requirement?</p> <p>6 BY MR. CHAIKEN:</p> <p>7 Q. Yeah. Exactly.</p> <p>8 A. I think it was inherent. Now, was it</p> <p>9 specifically spelled out in the agreement? I'm not sure.</p> <p>10 I would have to go back and review it.</p> <p>11 Again, if you have something that is validated</p> <p>12 by a bona fide third party and the technology is</p> <p>13 transferred, then theoretically you shouldn't need that</p> <p>14 requirement, right? But that's -- so if there is not,</p> <p>15 that would be why. Because theoretically you shouldn't</p> <p>16 need it. But it probably would have been safer to have it</p> <p>17 in retrospect.</p> <p>18 MR. CHAIKEN: We have got lunch here, so let's</p> <p>19 take a break for lunch.</p> <p>20 THE VIDEOGRAPHER: We are off the record. The</p> <p>21 time is 12:58.</p> <p>22 (Thereupon, a recess was taken.)</p> <p>23 THE VIDEOGRAPHER: We are back on the record.</p> <p>24 The time is 1:25 p.m.</p> <p>25 MR. CHAIKEN: Mr. Vaughn, I remind you, you are</p>	<p style="text-align: right;">Page 149</p> <p>1 So that in combination with 13-1, in</p> <p>2 consideration of the payment set forth herein, Rossi will</p> <p>3 provide ongoing training and support to the company and</p> <p>4 the use of the plant in a production of the E-Cat products</p> <p>5 for a period of not less than 12 months following</p> <p>6 validation, as well as to the extent reasonably requested</p> <p>7 by the company to enable it to utilize the E-Cat IP,</p> <p>8 operate the plant and produce E-Cat products, etc.</p> <p>9 Q. I'm sorry. I didn't see the word "replicate"</p> <p>10 in any of those -- either of those two paragraphs. Did I</p> <p>11 miss it?</p> <p>12 A. I don't think you missed it.</p> <p>13 Q. Okay.</p> <p>14 A. But I think those paragraphs combined, clearly</p> <p>15 we had to have the ability to replicate the technology.</p> <p>16 It had to be transferred and we had to know how to use it</p> <p>17 and operate it.</p> <p>18 Q. Okay. Now, the ability to replicate was a</p> <p>19 pretty big issue for Industrial Heat, correct?</p> <p>20 A. It was.</p> <p>21 Q. In fact, a lot of your response to the</p> <p>22 complaint is about the fact that you were unable to</p> <p>23 replicate, correct?</p> <p>24 A. Correct.</p> <p>25 Q. So if it was that important, why didn't the</p>

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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.

<p style="text-align: right;">Page 182</p> <p>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</p>	<p style="text-align: right;">Page 184</p> <p>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</p>
<p style="text-align: right;">Page 183</p> <p>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?</p>	<p style="text-align: right;">Page 185</p> <p>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.</p>

<p style="text-align: right;">Page 190</p> <p>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,</p>	<p style="text-align: right;">Page 192</p> <p>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</p>
<p style="text-align: right;">Page 191</p> <p>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</p>	<p style="text-align: right;">Page 193</p> <p>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>

<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>

<p style="text-align: right;">Page 202</p> <p>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,</p>	<p style="text-align: right;">Page 204</p> <p>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</p>
<p style="text-align: right;">Page 203</p> <p>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.</p>	<p style="text-align: right;">Page 205</p> <p>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</p>

<p style="text-align: right;">Page 210</p> <p>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</p>	<p style="text-align: right;">Page 212</p> <p>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</p>
<p style="text-align: right;">Page 211</p> <p>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.</p>	<p style="text-align: right;">Page 213</p> <p>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</p>

<p style="text-align: right;">Page 214</p> <p>1 Florida?</p> <p>2 MR. BELL: Objection to form.</p> <p>3 THE WITNESS: No. What we allowed him to move</p> <p>4 forward with his proposal, which was to do testing</p> <p>5 with a customer he represented as an affiliate of</p> <p>6 Johnson Matthey in Florida. And we thought, Well,</p> <p>7 you know, if a group like Johnson Matthey can affirm</p> <p>8 that this technology performs as advertised, that is</p> <p>9 a good thing. And so we allowed that to proceed.</p> <p>10 BY MR. CHAIKEN:</p> <p>11 Q. We will get into that in a second.</p> <p>12 But what equipment did Industrial Heat agree</p> <p>13 would be tested in Florida?</p> <p>14 MR. BELL: Objection to form.</p> <p>15 THE WITNESS: Again, he wanted to test, what he</p> <p>16 was telling us, was the one megawatt plant in Florida</p> <p>17 with a customer. And so, you know, again, trying to</p> <p>18 be accommodative and probably overly gracious, in</p> <p>19 hindsight, we allowed that.</p> <p>20 BY MR. CHAIKEN:</p> <p>21 Q. So you agreed to test the one megawatt plant in</p> <p>22 Florida?</p> <p>23 MR. BELL: Objection to form.</p> <p>24 BY MR. CHAIKEN:</p> <p>25 Q. Agreed?</p>	<p style="text-align: right;">Page 216</p> <p>1 happy.</p> <p>2 Q. Okay. But it had full control. Andrea</p> <p>3 couldn't move the one megawatt without Industrial Heat's</p> <p>4 agreement, correct?</p> <p>5 A. Again, we allowed him to take it down there.</p> <p>6 Q. Right. And, in fact, Industrial Heat did ship</p> <p>7 the one megawatt to Florida, did it not?</p> <p>8 A. I believe that we helped Andrea ship it. Now,</p> <p>9 did we ship it or did Andrea ship it? I don't recall.</p> <p>10 But it would not surprise me if, in fact, we contracted to</p> <p>11 transfer, a transportation contractor that was used to</p> <p>12 move it.</p> <p>13 Q. Do you know exactly when it was shipped?</p> <p>14 A. I don't recall exactly. I believe it would</p> <p>15 have been -- was it December of '14? I don't recall</p> <p>16 exactly. January of '15. I don't recall exactly.</p> <p>17 Q. December '14, January '15, somewhere around</p> <p>18 there?</p> <p>19 A. I think. I'm not sure.</p> <p>20 Q. Did -- well, was there -- was there a</p> <p>21 requirement in the contract, and I know we talked about</p> <p>22 this a little bit before, that there be an actual customer</p> <p>23 using the heat generated by the heat gap?</p> <p>24 A. No.</p> <p>25 Q. Okay. Would or could that guaranteed -- I will</p>
<p style="text-align: right;">Page 215</p> <p>1 A. We allowed him to do what he was proposing to</p> <p>2 do.</p> <p>3 Q. Okay. And what he was proposing to do is test</p> <p>4 the one megawatt?</p> <p>5 MR. BELL: Objection to form.</p> <p>6 THE WITNESS: He was proposing to install the</p> <p>7 one megawatt at a facility where an affiliate of</p> <p>8 Johnson Matthey would use it for industrial processes</p> <p>9 and would provide, you know, feedback on their power</p> <p>10 consumption from the one megawatt device.</p> <p>11 BY MR. CHAIKEN:</p> <p>12 Q. Was the discussion about him doing that test</p> <p>13 with a six cylinder?</p> <p>14 MR. BELL: Objection to form.</p> <p>15 THE WITNESS: I don't recall. I recall him,</p> <p>16 again, around the second amendment, but I don't</p> <p>17 recall whether or not at that point he was requesting</p> <p>18 the six cylinder.</p> <p>19 BY MR. CHAIKEN:</p> <p>20 Q. At this point in time the owner of the one</p> <p>21 megawatt was Industrial Heat, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And Industrial Heat controlled where that unit</p> <p>24 was located, correct?</p> <p>25 A. Correct. All the while, trying to keep Andrea</p>	<p style="text-align: right;">Page 217</p> <p>1 call it for purposes of ease and reference, I am going to</p> <p>2 call it the guaranteed performance test. You can dispute</p> <p>3 whether it was or not, but just for the sake of my</p> <p>4 questioning, I am going to use that term. Fair?</p> <p>5 A. Okay.</p> <p>6 Q. Could the guaranteed performance test have been</p> <p>7 performed without an actual customer?</p> <p>8 MR. BELL: Objection to form.</p> <p>9 THE WITNESS: Sure. As originally</p> <p>10 contemplated, there was no customer involved.</p> <p>11 BY MR. CHAIKEN:</p> <p>12 Q. Right. But did IH think it was important to</p> <p>13 have an actual customer?</p> <p>14 A. We thought, when we thought it was Johnson</p> <p>15 Matthey, we were thinking, wow, that is a real reputable</p> <p>16 company. It was not totally absurd that it would be</p> <p>17 Johnson Matthey, weirdly enough. I realize if someone</p> <p>18 said, Well, GE is going to do this, that would maybe sound</p> <p>19 crazy. But Johnson Matthey has a weird history in the</p> <p>20 LENR field. They have been involved through supplying of</p> <p>21 materials and kind of a -- if you do a little bit of</p> <p>22 research on it, they are not -- they do appear to have at</p> <p>23 least some tangential interest in the LENR field. So it</p> <p>24 wasn't totally absurd that, of all the companies out</p> <p>25 there, Johnson Matthey might actually be willing to test a</p>

<p style="text-align: right;">Page 218</p> <p>1 significant sized prototype.</p> <p>2 Q. Putting Johnson Matthey aside, and my question</p> <p>3 doesn't even relate to them. In general, did Industrial</p> <p>4 Heat think it was useful to have an actual customer, you</p> <p>5 know, use the heat?</p> <p>6 A. It depends on the customer, I would say. And</p> <p>7 we were -- we were always trying to be accommodative to</p> <p>8 Andrea. We wanted to understand the performance of the</p> <p>9 technology. Andrea's perspective was always, You got to</p> <p>10 have -- it's got to be market value, it's got to be</p> <p>11 validated by the market. That is the only time it will be</p> <p>12 accepted.</p> <p>13 So he felt the need to have a customer. Once</p> <p>14 we heard that that customer was Johnson Matthey, we</p> <p>15 thought, Well, that is a real customer. And if they</p> <p>16 affirmed that they consumed the amount of power that was</p> <p>17 supposedly being supplied, then that would be a -- that</p> <p>18 would be a positive thing. It would be</p> <p>19 credibility-enhancing.</p> <p>20 Q. Would using the truck washing company be</p> <p>21 equally as enhancing?</p> <p>22 A. Again, if they could -- if they could affirm</p> <p>23 that the amount of power consumed was, in fact, the amount</p> <p>24 of power. If they used the amount of power that was</p> <p>25 claimed to be consumed, that would be good.</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. Did I misstate that?</p> <p>2 A. I think that what mattered most to us is that</p> <p>3 it -- you are talking about in regards to a customer?</p> <p>4 Q. Yes. A customer generally.</p> <p>5 A. Our desire was that we know the state of the</p> <p>6 art. And if a customer was a bona fide reputable company,</p> <p>7 presumably such as Johnson Matthey, in our view that was</p> <p>8 credibility-enhancing.</p> <p>9 Q. So -- okay. So when it comes to that, would</p> <p>10 you agree that who the customer was was an important issue</p> <p>11 or called a core issue for Industrial Heat for purposes of</p> <p>12 making the decision to allow Dr. Rossi to go to Florida</p> <p>13 with it?</p> <p>14 A. I would say that it was convincing to us, or</p> <p>15 interesting or intriguing, I don't know the right word,</p> <p>16 that he represented it that it was Johnson Matthey.</p> <p>17 Because that's clearly better than a company that he and</p> <p>18 his attorney formed. Right? If we had known that, that</p> <p>19 is a different story.</p> <p>20 Q. And if you had known it was not -- a company</p> <p>21 not affiliated with Johnson Matthey, your testimony is you</p> <p>22 never would have allowed the one megawatt to go to</p> <p>23 Florida?</p> <p>24 A. Well, if it were not affiliated with Johnson</p> <p>25 Matthey, but was a subsidiary of GE or something, for</p>
<p style="text-align: right;">Page 219</p> <p>1 Now, Southern Industrial Contractors, that is</p> <p>2 the company, are they as impressive as Johnson Matthey? I</p> <p>3 would say not, from an outsider's perspective, because</p> <p>4 more people probably know Johnson Matthey than Southern</p> <p>5 Industrial Contractors.</p> <p>6 Q. Sure. Putting aside the name of the company,</p> <p>7 for purposes of my question.</p> <p>8 A. Okay.</p> <p>9 Q. Irrespective, and I understand what you are</p> <p>10 saying about Johnson Matthey specifically. But did you</p> <p>11 think it was going to be useful to be able to tell</p> <p>12 potential investors, Hey, we have a customer who,</p> <p>13 regardless of who it is, made use of the steam?</p> <p>14 A. That was -- I don't think that that was a key</p> <p>15 focus of ours. Right? And if it -- what we wanted was a</p> <p>16 -- some sort of reputable body, whether it be through</p> <p>17 their involvement in a prototype test or just a contracted</p> <p>18 assessment to say, We hereby affirm the performance of</p> <p>19 this device.</p> <p>20 Q. So to you -- what mattered most to Industrial</p> <p>21 Heat was the name of the company, not what the company was</p> <p>22 doing or what it was -- what kind of business it was</p> <p>23 engaged in?</p> <p>24 MR. BELL: Objection to form.</p> <p>25 BY MR. CHAIKEN:</p>	<p style="text-align: right;">Page 221</p> <p>1 example, then maybe so. But if it were just -- if we knew</p> <p>2 that it was, in fact, what it turned out to be, no, we</p> <p>3 would not have allowed that.</p> <p>4 MR. BELL: Can we take a short break?</p> <p>5 MR. CHAIKEN: Sure. Off the record.</p> <p>6 THE VIDEOGRAPHER: Off the record. The time is</p> <p>7 3:18 p m.</p> <p>8 (Thereupon, a recess was taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record.</p> <p>10 The time is 3:26 p m.</p> <p>11 (Exhibit 34, IH117296 through 297, was marked</p> <p>12 for Identification.)</p> <p>13 BY MR. CHAIKEN:</p> <p>14 Q. Mr. Vaughn, I am going to show you what has</p> <p>15 been marked as Exhibit 34. Exhibit 34 is Bates stamped</p> <p>16 IH117296 through 297. It is two e-mails. First one on</p> <p>17 the first page is from Tom Darden. Second one on the</p> <p>18 second page is from Andrea Rossi to Tom Darden, and I</p> <p>19 believe you are cc'd on this one.</p> <p>20 Do you recall seeing this e-mail before?</p> <p>21 A. I'm not sure, but clearly it went to me. So...</p> <p>22 Q. On the second page, the e-mail from Andrea</p> <p>23 Rossi to yourself and Tom Darden and others, Andrea</p> <p>24 states, paragraph two or number two: "Since August 2013</p> <p>25 it has been impossible to communicate to us the where to</p>

<p style="text-align: right;">Page 222</p> <p>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</p>	<p style="text-align: right;">Page 224</p> <p>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:</p>
<p style="text-align: right;">Page 223</p> <p>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.</p>	<p style="text-align: right;">Page 225</p> <p>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.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. Right. What was the purpose of that meeting?</p> <p>2 A. To meet a corporate representative of Johnson</p> <p>3 Matthey.</p> <p>4 Q. Specifically to meet a corporate representative</p> <p>5 of Johnson Matthey?</p> <p>6 A. That is what Andrea had said. And then we got</p> <p>7 to the meeting and it was Henry Johnson, and then the</p> <p>8 company that they were talking about was JM Chemical</p> <p>9 Products or JM Products, I can't think of what the name</p> <p>10 was. And Andrea said, Well, you know, Johnson Matthey</p> <p>11 doesn't want publicity around this or wants to not be --</p> <p>12 be detached from this, so they have set up a subsidiary</p> <p>13 which Henry Johnson is going to be the president of.</p> <p>14 Q. Before we get to the meeting and what was said</p> <p>15 at the meeting, how did or when did Dr. Rossi inform you</p> <p>16 that the purpose of the meeting was to meet the corporate</p> <p>17 representative of the Johnson Matthey?</p> <p>18 A. Prior to the meeting, he was saying, you know,</p> <p>19 we will go and we will meet Johnson Matthey's</p> <p>20 representative.</p> <p>21 Q. And did he say that in writing or was that</p> <p>22 oral?</p> <p>23 A. I can't recall if it was in writing or oral or</p> <p>24 both. But my recollection is that's why we were both</p> <p>25 there at that meeting, right? I mean, if we were just</p>	<p style="text-align: right;">Page 228</p> <p>1 This is Henry Johnson, who Johnson Matthey has hired to be</p> <p>2 the president of JM Chemical Products, Inc. and they are</p> <p>3 trying to distance themselves from it.</p> <p>4 You know, I don't remember exactly what he</p> <p>5 communicated. But that was the effect of the message. He</p> <p>6 wanted us -- we wanted to meet a representative and we</p> <p>7 were even willing to go to the UK to meet somebody at</p> <p>8 Johnson Matthey who could affirm what he was saying. He</p> <p>9 said, Well, actually, I will have their representative</p> <p>10 come up. He is in Miami. And we will meet in Raleigh.</p> <p>11 And that is the meeting at Red Robin.</p> <p>12 Q. Is there anything else that Dr. Rossi said at</p> <p>13 that meeting?</p> <p>14 A. I am sure he said other stuff.</p> <p>15 Q. I mean in general.</p> <p>16 A. I don't remember.</p> <p>17 Q. Substance.</p> <p>18 A. The thing that I recall is what I have</p> <p>19 described, the points that I recall is what I described.</p> <p>20 Q. What did Henry Johnson say at that meeting?</p> <p>21 A. I don't recall him saying a whole lot, you</p> <p>22 know. I remember being unimpressed by his general</p> <p>23 appearance and presence and disposition. He doesn't come</p> <p>24 off as a particularly confidence-inspiring person. But I</p> <p>25 don't remember anything specific that he said. Other than</p>
<p style="text-align: right;">Page 227</p> <p>1 going to be there to meet his real estate attorney, I</p> <p>2 don't think Tom would have taken the time to come.</p> <p>3 Q. Is there some e-mail you can point me to where</p> <p>4 Dr. Rossi said specifically, We are going to meet with</p> <p>5 representatives of Johnson Matthey?</p> <p>6 A. There may be. I'm not sure. I am not the guy</p> <p>7 who has gone through all the discovery.</p> <p>8 Q. Okay. Because I didn't -- if there wasn't one</p> <p>9 produced in discovery, it doesn't exist, correct?</p> <p>10 A. I suppose it. Yeah, everything was produced in</p> <p>11 discovery. So if it is not in the discovery batch, then</p> <p>12 it doesn't exist.</p> <p>13 Q. Now, at the meeting, what was said by Dr. Rossi</p> <p>14 at that meeting?</p> <p>15 A. I don't recall quotes. What I recall is being</p> <p>16 surprised, and I don't remember if it was during the</p> <p>17 meeting or after the meeting, that it was Henry Johnson,</p> <p>18 you know, Rossi's attorney who was going to be the</p> <p>19 president of this company.</p> <p>20 Q. Okay.</p> <p>21 A. So I don't remember, excuse me, quotes or, you</p> <p>22 know, exactly how he introduced him. It would be just,</p> <p>23 Here is Henry Johnson, the president of JM Chemical</p> <p>24 Products, Inc. or JM Products, Inc. or whatever the name</p> <p>25 of the company was, or if he would have said, you know,</p>	<p style="text-align: right;">Page 229</p> <p>1 just, Hey, how is it going? Nice to meet you. Things</p> <p>2 like that.</p> <p>3 Q. After that meeting, did Industrial Heat perform</p> <p>4 any due diligence into JM Chemicals or JM Products at that</p> <p>5 time?</p> <p>6 A. I don't recall. You know, I think there was</p> <p>7 some analysis done on where the entity was -- was formed</p> <p>8 by the secretary of state filings. And then there was an</p> <p>9 OFAC compliance document that had representations in it</p> <p>10 that were signed by Johnson and by Andrea.</p> <p>11 Q. Now, where did you find out JM Products was</p> <p>12 formed?</p> <p>13 A. I believe that it is formed in the state of</p> <p>14 Florida. And I don't remember when we discovered that,</p> <p>15 but they represented that it was controlled by a UK</p> <p>16 company.</p> <p>17 Q. Did you know what JM Products business was or</p> <p>18 did you inquire into that?</p> <p>19 A. I believe we were told, if I recall correctly,</p> <p>20 that they were manufacturing some sort of platinum sponges</p> <p>21 or things like that. We were always -- it was always kind</p> <p>22 of under the guise, Oh, you can't -- they want to be top</p> <p>23 secret about this. You can't know what they are doing.</p> <p>24 And they don't want you to know that Johnson Matthey is</p> <p>25 involved, but they are involved.</p>

<p style="text-align: right;">Page 230</p> <p>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</p>	<p style="text-align: right;">Page 232</p> <p>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.</p>
<p style="text-align: right;">Page 231</p> <p>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</p>	<p style="text-align: right;">Page 233</p> <p>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?</p>

<p style="text-align: right;">Page 234</p> <p>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.</p>	<p style="text-align: right;">Page 236</p> <p>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:</p>
<p style="text-align: right;">Page 235</p> <p>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.</p>	<p style="text-align: right;">Page 237</p> <p>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</p>

<p style="text-align: right;">Page 238</p> <p>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,</p>	<p style="text-align: right;">Page 240</p> <p>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:</p>
<p style="text-align: right;">Page 239</p> <p>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.</p>	<p style="text-align: right;">Page 241</p> <p>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.</p>

<p style="text-align: right;">Page 242</p> <p>1 Q. And how is that \$20 million number computed?</p> <p>2 A. 11 and a half to Andrea directly. 5.05, I</p> <p>3 believe, to AEG, plus equity to AEG, which we would also</p> <p>4 like back. And then also other, you know, the cost of</p> <p>5 building an engineering team, the cost of rebuilding the</p> <p>6 plant, the cost of the facilities, equipment costs, travel</p> <p>7 costs, all the costs associated with anything to with, my</p> <p>8 understanding, the state of the art of the E-Cat.</p> <p>9 Q. And has Industrial Heat sued AmpEnergio for the</p> <p>10 return of the 5.05?</p> <p>11 A. At this time, I don't believe so.</p> <p>12 Q. Does it intend to?</p> <p>13 A. To be determined.</p> <p>14 Q. To be determined by whom?</p> <p>15 A. By events.</p> <p>16 Q. Have you informed AmpEnergio that you intend to</p> <p>17 sue them?</p> <p>18 A. I didn't say we intend to sue them.</p> <p>19 MR. CHAIKEN: Okay. I want to go off the</p> <p>20 record. Well, actually, before I go off the record,</p> <p>21 just in terms of time, I want to give the other</p> <p>22 counsel in the room an opportunity to ask questions.</p> <p>23 Are we not going to have any agreement with respect</p> <p>24 to extending the time beyond the seven hours?</p> <p>25 MR. BELL: It is my understanding, unless there</p>	<p style="text-align: right;">Page 244</p> <p>1 again?</p> <p>2 MR. CHAIKEN: Yeah, I am just trying to put</p> <p>3 this into context.</p> <p>4 BY MR. CHAIKEN:</p> <p>5 Q. It looks as if Tom Darden's commenting on</p> <p>6 information that was being provided by Joe and Daniel Pike</p> <p>7 to one of their contacts.</p> <p>8 Does that look accurate to you?</p> <p>9 A. Yeah. I haven't read the whole thing yet, so</p> <p>10 let me know if I need to.</p> <p>11 Q. I am just trying to put it into context.</p> <p>12 A. Yeah, I think you put it into the right</p> <p>13 context, yes.</p> <p>14 Q. So the comment up above on March 23, 2015, Tom</p> <p>15 Darden says: "My comments are just nuances. We</p> <p>16 definitely are producing steam for a customer. My lack of</p> <p>17 clarity is just around, one, precisely how much, we cannot</p> <p>18 definitively represent this yet. And two, what is the</p> <p>19 nature of the customer. But these are picky nuances, not</p> <p>20 related to the core issue."</p> <p>21 See that?</p> <p>22 A. I see that.</p> <p>23 Q. So at least according to Tom Darden in March of</p> <p>24 2015, the nature of the customer wasn't a core issue.</p> <p>25 Would you agree with that?</p>
<p style="text-align: right;">Page 243</p> <p>1 is some new development that I am not aware of with</p> <p>2 respect to the discussions, that is correct.</p> <p>3 MR. CHAIKEN: Okay. So we are going to stop at</p> <p>4 seven hours. So we can go off the record, take a</p> <p>5 quick break.</p> <p>6 THE VIDEOGRAPHER: We are off the record. The</p> <p>7 time is 3:53 p.m.</p> <p>8 (Thereupon, a recess was taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record.</p> <p>10 The time is 3:58 p.m.</p> <p>11 (Exhibit 38, IH80561 through 567, was marked</p> <p>12 for Identification.)</p> <p>13 BY MR. CHAIKEN:</p> <p>14 Q. Mr. Vaughn, I am handing you what has been</p> <p>15 marked as Exhibit 38. Exhibit 38 has been Bates stamped</p> <p>16 IH80561 through 567. It is an e-mail chain between Tom</p> <p>17 Darden and Joe and Daniel Pike.</p> <p>18 I think we talked about Joe Pike. Who is</p> <p>19 Daniel Pike?</p> <p>20 A. That is his son.</p> <p>21 Q. Okay. This is an e-mail chain that starts in</p> <p>22 March of 2015. Specifically, it looks like Tom Darden is</p> <p>23 responding to comments made by Joe and Daniel Pike to one</p> <p>24 of their contacts. Do you see that?</p> <p>25 MR. BELL: I'm sorry, what was the question</p>	<p style="text-align: right;">Page 245</p> <p>1 MR. BELL: Objection to form.</p> <p>2 THE WITNESS: I think Tom was saying that the</p> <p>3 core issue was the state of the art, does it work and</p> <p>4 to what degree? He is getting more particular that</p> <p>5 -- one and two are more particular. Who is the</p> <p>6 customer? And then how much steam or presumably</p> <p>7 energy is being supplied? But I believe the core</p> <p>8 issue he is referencing is, does it work and to what</p> <p>9 degree?</p> <p>10 BY MR. CHAIKEN:</p> <p>11 Q. Did Industrial Heat ever tell any of its</p> <p>12 investors or partners that the customer in the group that</p> <p>13 Leonardo had or Industrial Heat had was, in fact, an</p> <p>14 affiliate of Johnson Matthey?</p> <p>15 A. I am not sure. We may have. Just because, you</p> <p>16 know, that's what we were led to believe. But I'm not</p> <p>17 sure.</p> <p>18 Q. Did the tests done in Florida begin in around</p> <p>19 February 2015?</p> <p>20 A. Yes.</p> <p>21 Q. Now, when the test was running, did anyone from</p> <p>22 Industrial Heat ever express anything other than positive</p> <p>23 feedback to Dr. Rossi regarding that test?</p> <p>24 MR. BELL: Can I have the question read back,</p> <p>25 please?</p>

<p style="text-align: right;">Page 246</p> <p>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</p>	<p style="text-align: right;">Page 248</p> <p>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</p>
<p style="text-align: right;">Page 247</p> <p>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.</p>	<p style="text-align: right;">Page 249</p> <p>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.</p>

<p style="text-align: right;">Page 258</p> <p>1 seeing the plant and seeing the facility and just,</p> <p>2 you know, saying there is no way that what they are</p> <p>3 claiming could be technically true.</p> <p>4 BY MR. CHAIKEN:</p> <p>5 Q. Did you ever ask Dr. Rossi to work with Joe</p> <p>6 Murray?</p> <p>7 A. Yes. When I said, Joe and I are going to come</p> <p>8 visit you in July, I believe it was, of '15, June or July.</p> <p>9 And he said, you know, No. Joe is not welcome.</p> <p>10 Q. After that, did you make any requests that he</p> <p>11 work with Joe Murray?</p> <p>12 A. I don't remember if we did or not.</p> <p>13 MR. CHAIKEN: Okay. Off the record.</p> <p>14 THE VIDEOGRAPHER: Off the record. The time is</p> <p>15 4:18 p m.</p> <p>16 (Thereupon, a recess was taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the record.</p> <p>18 The time is 4:25 p m.</p> <p>19 BY MR. CHAIKEN:</p> <p>20 Q. Mr. Vaughn, in front of you is Exhibit 39,</p> <p>21 which is the interrogatory responses. I am going to refer</p> <p>22 you to page 31 of that document. It is interrogatory 16.</p> <p>23 Interrogatory 16 states: Did you or did you not have</p> <p>24 access to \$89 million as of February 15, 2016? If you had</p> <p>25 less than \$89 million, then identify the amount of money</p>	<p style="text-align: right;">Page 260</p> <p>1 Leonardo could not achieve guaranteed performance under</p> <p>2 the license agreement?</p> <p>3 A. My answer would be the same as before. That</p> <p>4 after -- excuse me, Joe Murray and his team had thoroughly</p> <p>5 assessed the technology, as well, that around about that</p> <p>6 time, we begin kind of thinking, all right, it seems that</p> <p>7 there is no way that this technology performs as</p> <p>8 advertised.</p> <p>9 Q. Well, I am looking for a specific date.</p> <p>10 Because it seems, based on your answer here, that you knew</p> <p>11 a specific date and it was well before February 15, 2016.</p> <p>12 MR. BELL: Objection to form.</p> <p>13 THE WITNESS: As I said before, there wasn't a</p> <p>14 specific date. There was a lot of data points</p> <p>15 combined with our analysis of the situation, which</p> <p>16 was a developing analysis, based on the events that</p> <p>17 were occurring.</p> <p>18 BY MR. CHAIKEN:</p> <p>19 Q. How long would it have taken Industrial Heat to</p> <p>20 raise the additional money to pay the \$89 million?</p> <p>21 A. If it worked, it would be very quick. Woodford</p> <p>22 would have been very eager to fund that, as would have</p> <p>23 others.</p> <p>24 Q. 30 days? 60 days?</p> <p>25 A. It likely could have been much quicker than</p>
<p style="text-align: right;">Page 259</p> <p>1 you did have. And the answer states: Yes, Industrial</p> <p>2 Heat did have access to 89 million as of February 15, 2016</p> <p>3 through fundraising from investors.</p> <p>4 Did you have a binding commitment for</p> <p>5 \$89 million as of that date?</p> <p>6 A. Binding commitment, yes, in that Woodford had</p> <p>7 options that it could exercise up to 150 million. But to</p> <p>8 answer your question more specifically, maybe they were</p> <p>9 not required to exercise those options. So outside of</p> <p>10 that, did we have a binding commitment for 89 million?</p> <p>11 No.</p> <p>12 Q. Okay. So that additional investment on</p> <p>13 Woodford's behalf was optional on their part, right?</p> <p>14 A. It was.</p> <p>15 Q. Okay. Then you state: Industrial Heat had</p> <p>16 available cash balance of 16 million and change in its</p> <p>17 accounts on February 15, 2016.</p> <p>18 Is that true?</p> <p>19 A. I suppose it was.</p> <p>20 Q. And then you state: Industrial Heat has not</p> <p>21 called upon investors to fund any other capital as of that</p> <p>22 date because it already knew well before February 15,</p> <p>23 2016, that Rossi and Leonardo could not guarantee</p> <p>24 performance under the license agreement.</p> <p>25 When did Industrial Heat know that Rossi and</p>	<p style="text-align: right;">Page 261</p> <p>1 that if, you know, if it worked.</p> <p>2 Q. And you know this because you talked to</p> <p>3 Woodford about it?</p> <p>4 A. Woodford from the earliest days was always</p> <p>5 asking, Well, if it works, notwithstanding the fact that</p> <p>6 he's not met the obligations of the contract, if it works</p> <p>7 and you guys can prove the technology has been</p> <p>8 transferred, our response is sure. And so, I mean, this</p> <p>9 would not have been a big issue, if the technology worked</p> <p>10 as advertised.</p> <p>11 MR. CHAIKEN: Okay. I am going to end my</p> <p>12 questioning and turn it over to --</p> <p>13 MR. NUNEZ: Let's go off the record, so I can</p> <p>14 get situated.</p> <p>15 THE VIDEOGRAPHER: We are off the record. The</p> <p>16 time is 4:29 p.m.</p> <p>17 (Thereupon, a recess was taken.)</p> <p>18 THE VIDEOGRAPHER: We are back on the record.</p> <p>19 The time is 4:31 p m.</p> <p>20 CROSS-EXAMINATION</p> <p>21 BY MR. NUNEZ:</p> <p>22 Q. Good afternoon, Mr. Vaughn my name is Rudy</p> <p>23 Nunez. We met before. I represent Fulvio Fabiani and</p> <p>24 USQL, LLC, United States Quantum Leap, LLC.</p> <p>25 I know you touched upon it earlier, but can you</p>

<p style="text-align: right;">Page 266</p> <p>1 September 2013; is that correct?</p> <p>2 A. That sounds right.</p> <p>3 Q. I think it is on the first page.</p> <p>4 A. I see it back at the back. 9-9-13. Yes. It</p> <p>5 is effective as of September 1, '13. And it looks like he</p> <p>6 signed it, there is a joinder signed on 9-9-13.</p> <p>7 Q. And does that date seem, to your recollection,</p> <p>8 when he actually did start working --</p> <p>9 A. I believe so.</p> <p>10 Q. -- for you guys?</p> <p>11 A. Yeah. I believe so.</p> <p>12 Q. And where was that work taking place at that</p> <p>13 time?</p> <p>14 A. At that time it was in Raleigh.</p> <p>15 Q. Do you recall at that time, did Mr. Fabiani,</p> <p>16 were any of his duties related to collection of data for</p> <p>17 Industrial Heat?</p> <p>18 A. At that time, I am trying to recall if he</p> <p>19 collected data at that time. I think he did help Andrea</p> <p>20 with some of that. Meaning we didn't, you know, Fulvio</p> <p>21 wasn't our data capturing expert. To the de gree that</p> <p>22 Andrea directed him to record data and capture data, he</p> <p>23 may have done that. But I don't recall specifically.</p> <p>24 You know, I remember him more during that</p> <p>25 period of time kind of helping build things and do</p>	<p style="text-align: right;">Page 268</p> <p>1 affiliates?</p> <p>2 A. Yeah, any results, yeah.</p> <p>3 Q. You weren't seeing any results. You weren't</p> <p>4 using Mr. Fabiani's data for those conclusions, were you?</p> <p>5 A. It was a -- again, I guess I will go back to</p> <p>6 kind of the stuff that he provided in Doral. It would be</p> <p>7 of interest to us if we could have all of his data sets,</p> <p>8 to compare those against anything that Andrea may have</p> <p>9 provided or Fabiani.</p> <p>10 Q. Well, let me stop you. Because I understand</p> <p>11 your claims and I understand that is part of your claims</p> <p>12 today.</p> <p>13 A. Right.</p> <p>14 Q. I am ask asking you back in Raleigh, when you</p> <p>15 are making --</p> <p>16 A. Okay. So you are back in Raleigh?</p> <p>17 Q. Yeah, back to Raleigh, when you are making the</p> <p>18 decisions that you are not seeing the result, any result,</p> <p>19 you weren't relying on anything Mr. Fabiani was doing? Or</p> <p>20 you weren't relying on any data that Mr. Fabiani was</p> <p>21 providing you?</p> <p>22 A. To a degree that it was -- I would say that it</p> <p>23 could be some data that we would rely on. For example,</p> <p>24 Fabiani was collecting and reporting input power data that</p> <p>25 would have been of interest to us. Right? So it is hard</p>
<p style="text-align: right;">Page 267</p> <p>1 electrical -- modify electrical input power, things like</p> <p>2 that, at Andrea's direction.</p> <p>3 Q. So your company wasn't relying on him for any</p> <p>4 data collection that you can recall to date?</p> <p>5 MR. BELL: Objection to form.</p> <p>6 THE WITNESS: At that period of time, if he did</p> <p>7 supply us data, you know, we were definitely looking</p> <p>8 at it and it is a data point that is relevant.</p> <p>9 Later, he was providing us some data from the test in</p> <p>10 Doral and then stopped doing that.</p> <p>11 BY MR. NUNEZ:</p> <p>12 Q. Okay. Well, we will get to that.</p> <p>13 A. Okay.</p> <p>14 Q. But in his time in Raleigh, that wasn't his --</p> <p>15 that wasn't part of his duties?</p> <p>16 A. It may have been something that he did, but it</p> <p>17 wasn't our -- it wasn't the primary thing that jumps out</p> <p>18 that he was doing, you know, providing us data.</p> <p>19 Q. And I think you testified a lot today about the</p> <p>20 performance and the measurement of performance of</p> <p>21 Mr. Rossi's invention.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. And I think your testimony was that it wasn't</p> <p>24 reaching -- you weren't seeing the results that you needed</p> <p>25 to under the agreements between Industrial Heat and your</p>	<p style="text-align: right;">Page 269</p> <p>1 to say that he didn't provide us any data that we relied</p> <p>2 on. He may have.</p> <p>3 What -- again, the primary role or</p> <p>4 responsibility that I recollect Fulvio having is modifying</p> <p>5 power supplies and working on designs that Andrea would</p> <p>6 instruct him to work on.</p> <p>7 Q. Do you recall if that technical consulting</p> <p>8 agreement, was it ever extended or did you enter into an</p> <p>9 extension? Because I believe that contract's for one</p> <p>10 year, correct?</p> <p>11 A. I would have to review. But I don't know. I</p> <p>12 would have to review whether or not we extended.</p> <p>13 Is this only a one-year contract or is this a</p> <p>14 two-year contract?</p> <p>15 Q. I think if you go to paragraph eight, duration</p> <p>16 of the agreement.</p> <p>17 A. Mm-hmm. Okay. So I don't recall if we -- if</p> <p>18 this contract was extended and we assigned it -- if there</p> <p>19 was another fully executed contract after this or if we</p> <p>20 just began paying Fulvio month to month after that and he</p> <p>21 was operating in effectively the same capacity.</p> <p>22 I know at one point his contract had lapsed and</p> <p>23 we were just paying him month to month. But I don't</p> <p>24 remember if the initial ones extended and then that</p> <p>25 happened or if that happened after the initial contract.</p>

<p style="text-align: right;">Page 270</p> <p>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.</p>	<p style="text-align: right;">Page 272</p> <p>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</p>
<p style="text-align: right;">Page 271</p> <p>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</p>	<p style="text-align: right;">Page 273</p> <p>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.</p>

<p style="text-align: right;">Page 278</p> <p>1 don't have it?</p> <p>2 A. He may have been manipulating stuff. We don't</p> <p>3 know. Just because we don't have the data doesn't mean he</p> <p>4 wasn't manipulating anything.</p> <p>5 Q. Okay. So we are -- you are basically acting</p> <p>6 on -- I mean, we are talking about you are speculating.</p> <p>7 Let me strike that.</p> <p>8 We are sitting here in your depo, we are</p> <p>9 getting ready for trial. You are the corporate rep for</p> <p>10 Industrial Heat. Do you have any facts that you could</p> <p>11 state on the record that show that either Mr. Fabiani or</p> <p>12 his company or somebody on behalf of his company</p> <p>13 manipulated the validation and testing of the E-Cat?</p> <p>14 A. We don't have complete discovery from him or</p> <p>15 his data sets.</p> <p>16 Q. And so the answer would be no?</p> <p>17 A. I wouldn't say the answer is no. I would say</p> <p>18 we don't have discovery from him, so we can't answer that</p> <p>19 question.</p> <p>20 Q. Let me try to put it this way. Can you tell us</p> <p>21 here today any facts that support that allegation?</p> <p>22 Leaving aside your caveat you haven't looked at all the</p> <p>23 discovery.</p> <p>24 A. But also he didn't provide us the data. Right?</p> <p>25 Q. I understand he didn't. But the allegation in</p>	<p style="text-align: right;">Page 280</p> <p>1 Q. Did Mr. Fabiani have any involvement in</p> <p>2 convincing Industrial Heat to move the plant?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Okay. Does Industrial Heat have any facts to</p> <p>5 support the allegation that Fabiani helped or was part of</p> <p>6 a scheme to restrict Industrial Heat's access to the JM</p> <p>7 portion of the Doral facility?</p> <p>8 A. I'm not sure.</p> <p>9 Q. Last question, with regard to determining COP</p> <p>10 results, were you using any of Fabiani's data for that in</p> <p>11 North Carolina or in Doral?</p> <p>12 A. I would say the answer to that is probably so.</p> <p>13 And because he was -- if he provided us data from Doral,</p> <p>14 for example, we would want to check that data against data</p> <p>15 provided by either Andrea or Penon. So you would want to</p> <p>16 calculate results with each data set.</p> <p>17 In North Carolina, to the degree that he</p> <p>18 collected data, I am sure we would have also, you know,</p> <p>19 used that data, right, to analyze performance. So yes, I</p> <p>20 am sure that, to the extent that he provided data, we used</p> <p>21 it to analyze performance.</p> <p>22 MR. NUNEZ: All right. That is all I have.</p> <p>23 MR. ARAN: Okay. Let the record reflect -- how</p> <p>24 much time do I have?</p> <p>25 THE VIDEOGRAPHER: 15 minutes.</p>
<p style="text-align: right;">Page 279</p> <p>1 the complaint is he manipulated the validation</p> <p>2 guaranteeing performance testing. So do you have any</p> <p>3 facts as we sit here today, and keeping in mind your</p> <p>4 caveat that you haven't looked through all the discovery?</p> <p>5 A. The fact that he did not provide us the data,</p> <p>6 which he said he would provide us. Right? And then for</p> <p>7 whatever reason --</p> <p>8 Q. Mr. Vaughn I don't want to get -- again, I</p> <p>9 understand you saying he didn't give you the data.</p> <p>10 Do you have any facts that he manipulated</p> <p>11 anything?</p> <p>12 A. We may, if we could get ahold of the data.</p> <p>13 Q. So you are not going to give me a yes or no?</p> <p>14 Do you have any facts?</p> <p>15 A. I am answering the question.</p> <p>16 Q. Are you?</p> <p>17 A. Yeah.</p> <p>18 Q. Tell me again one more time. Do you have any</p> <p>19 facts that he manipulated any data for the testing of the</p> <p>20 E-Cat?</p> <p>21 A. We may, if we had the data to review.</p> <p>22 Q. Now, Industrial Heat also claims that they were</p> <p>23 manipulated into moving the plant from North Carolina to</p> <p>24 Doral, Florida, right?</p> <p>25 A. Mm-hmm.</p>	<p style="text-align: right;">Page 281</p> <p>1 MR. ARAN: I have been given about 15 minutes.</p> <p>2 I did cross-notice this deposition. I know there</p> <p>3 were a lot of discussions. We asked if we could go</p> <p>4 over, so we can have about an hour and a half</p> <p>5 additional time, and that was not agreed to. I'll</p> <p>6 try to do my best in 15 minutes, but obviously I</p> <p>7 cannot, by any means, do a full examination of the</p> <p>8 witness.</p> <p>9 MR. NUNEZ: And I join in that objection.</p> <p>10 MR. ARAN: We will see where that goes, where</p> <p>11 those chips lay on a later date. I am going to go as</p> <p>12 fast as I can.</p> <p>13 Let me ask you if you can pass this on as</p> <p>14 Exhibit 42.</p> <p>15 (Exhibit 42, Term Sheet, was marked for</p> <p>16 Identification.)</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. ARAN:</p> <p>19 Q. And Exhibit 42, even though it says Exhibit 17</p> <p>20 in front, is what we have commonly referred to as the term</p> <p>21 sheet, sir?</p> <p>22 A. Yes.</p> <p>23 Q. Are you familiar with this document?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Did you sign this document on behalf of</p>

<p style="text-align: right;">Page 282</p> <p>1 Industrial Heat?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. May I ask you to look at number 19,</p> <p>4 which is on page two of the document?</p> <p>5 A. Okay.</p> <p>6 Q. It says: "JMC will keep records of the</p> <p>7 operation of the one megawatt plant as reasonably</p> <p>8 requested by Leonardo or IH and will provide copies of</p> <p>9 such records to Leonardo and IH upon request."</p> <p>10 To your knowledge, did you make -- did you or</p> <p>11 anyone at IH make any specific requests of JMC for</p> <p>12 records?</p> <p>13 A. I'm not sure.</p> <p>14 Q. If in fact you had, would I be correct in</p> <p>15 stating that they would have been produced in response</p> <p>16 to --</p> <p>17 A. Correct.</p> <p>18 Q. -- all the discovery that has been ongoing?</p> <p>19 A. Correct.</p> <p>20 Q. And if none was produced, there were no</p> <p>21 specific records made, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Let me now refer you to what is part of</p> <p>24 Exhibit 13, last page, it says "compliance with OFAC."</p> <p>25 A. Go ahead and ask your question.</p>	<p style="text-align: right;">Page 284</p> <p>1 item number two, the visit of February 9, 2015?</p> <p>2 A. I believe that is correct. Can I review it</p> <p>3 just quickly, to see if he was present at others? I</p> <p>4 believe that is correct.</p> <p>5 Q. And you were present at this meeting also,</p> <p>6 correct?</p> <p>7 A. I was.</p> <p>8 Q. And the other people were Thomas Darden, Andrea</p> <p>9 Rossi, Fulvio Fabiani and Barry West, correct?</p> <p>10 A. February 9th?</p> <p>11 Q. February 9, 2015.</p> <p>12 A. Yes. Yes. I'm sorry, I see that. I didn't</p> <p>13 see that. And Paul Lamacraft.</p> <p>14 Q. Correct. Who is Barry West?</p> <p>15 A. Barry West is an electrical technician that we</p> <p>16 contracted to assist Andrea.</p> <p>17 Q. And he worked at the --</p> <p>18 A. At the Doral.</p> <p>19 Q. At the E-Cat side of the plant?</p> <p>20 A. Right.</p> <p>21 Q. And he was present in this meeting?</p> <p>22 A. Well, not the meeting with -- he was present</p> <p>23 there, but when we met with Bass, it was Tom, Paul</p> <p>24 Lamacraft, Andrea and myself.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 283</p> <p>1 Q. Is there any mention of Johnson Matthey as a</p> <p>2 company or entity in that document?</p> <p>3 A. No, with the explanation that I provided</p> <p>4 earlier.</p> <p>5 Q. There is none, correct?</p> <p>6 A. The explanation that I provided earlier, which</p> <p>7 is --</p> <p>8 Q. We know the explanation, sir, but I only have</p> <p>9 ten minutes.</p> <p>10 A. Keep going.</p> <p>11 Q. Your explanation is on the record.</p> <p>12 A. Okay.</p> <p>13 Q. Now, let me ask you to take a look at</p> <p>14 Exhibit -- I missed one, the response to the</p> <p>15 interrogatories.</p> <p>16 MR. CHAIKEN: Exhibit 39, I think.</p> <p>17 BY MR. ARAN:</p> <p>18 Q. I think you were referred before to the bottom</p> <p>19 of page 13.</p> <p>20 A. Okay.</p> <p>21 Q. And that deals with the number of visits to the</p> <p>22 Doral location.</p> <p>23 A. Okay.</p> <p>24 Q. Am I correct that the only visit to the Doral</p> <p>25 location involving Mr. Bass would be that described in</p>	<p style="text-align: right;">Page 285</p> <p>1 A. So he was present at the facility, but not in</p> <p>2 the meeting. He was on the other side.</p> <p>3 Q. So during that meeting, so the meeting</p> <p>4 described here did not include Mr. West, nor Mr. Fabiani?</p> <p>5 A. Correct.</p> <p>6 Q. What specifically -- so of the two hours that</p> <p>7 the visit took, how much time did you spend speaking or</p> <p>8 meeting specifically with Mr. Bass?</p> <p>9 A. I would guess probably about 45 minutes.</p> <p>10 Q. And of those 45 minutes, what did Mr. Bass --</p> <p>11 what did you ask Mr. Bass, if anything, and what did he</p> <p>12 respond?</p> <p>13 A. I recall Bass running the meeting initially</p> <p>14 and asking Andrea a lot of questions. You know, how is it</p> <p>15 going? When is it going to start up? Blah, blah, blah.</p> <p>16 And then Andrea responding and then Bass asked Tom</p> <p>17 questions. I am trying to remember the specifics. It may</p> <p>18 have been about Tom's background or something like that.</p> <p>19 I am trying to remember if either I or Paul</p> <p>20 Lamacraft had questions of Bass or Andrea. I'm not sure</p> <p>21 that we did. I think mainly we listened while Bass talked</p> <p>22 about what they were doing there and looking forward to</p> <p>23 having the plant online and --</p> <p>24 Q. You mentioned he was asking questions. Were</p> <p>25 those questions being responded to by those persons that</p>

<p style="text-align: right;">Page 286</p> <p>1 he asked?</p> <p>2 A. Yes.</p> <p>3 Q. Did he get answers?</p> <p>4 A. Yes.</p> <p>5 Q. What specifically do you recall him actually</p> <p>6 saying?</p> <p>7 A. Well, he said, for example, to Andrea, you</p> <p>8 know, When is this going to be online? When is it going</p> <p>9 to be ready? And Andrea was saying, Well, we have had a</p> <p>10 little setback, but it will be -- it should be in the next</p> <p>11 week or so. Questions like that.</p> <p>12 Q. Questions of that nature?</p> <p>13 A. Yes.</p> <p>14 Q. Did he make any representations at that meeting</p> <p>15 that the plant was operating correctly? I would assume</p> <p>16 not, correct? Because it wasn't.</p> <p>17 A. Yeah. He was asking, if I recall correctly,</p> <p>18 kind of when is it going to be ready? When is it going to</p> <p>19 be online?</p> <p>20 Q. So were you at any point in time involved or</p> <p>21 present in any conversation with Bass where he was</p> <p>22 actually stating that the amount of steam received by the</p> <p>23 JMC side was sufficient or good or enough?</p> <p>24 A. I was not in a meeting with Bass that he stated</p> <p>25 that.</p>	<p style="text-align: right;">Page 288</p> <p>1 you know, a representative of IH in a meeting with Bass,</p> <p>2 Joe Murray or T. Barker Dameron or others. So it wouldn't</p> <p>3 have had to be Tom or me.</p> <p>4 Q. Did any of those people report to you that they</p> <p>5 had, in fact, met with Mr. Bass?</p> <p>6 A. I don't recall. You know, at one point I think</p> <p>7 Barry reported that he had met Bass on occasion. But not</p> <p>8 had a meeting with him, but just kind of met him. I don't</p> <p>9 recall if others met with him.</p> <p>10 Q. Am I correct in summing up your testimony, and</p> <p>11 I hate to do that, but time is limited, that at least from</p> <p>12 your perspective, you never heard of any conversation or</p> <p>13 representation by Mr. Bass concerning the adequacy or</p> <p>14 sufficiency of the power being received by JMC from the</p> <p>15 E-Cat side of the plant?</p> <p>16 A. What we received in that regard was mainly from</p> <p>17 Hank Johnson, the quarterly, like a request to bill him</p> <p>18 effectively. I don't recall Bass sending</p> <p>19 representations --</p> <p>20 Q. Okay.</p> <p>21 A. -- regarding the performance of the technology.</p> <p>22 Q. And now that you mentioned that, in that</p> <p>23 request by Mr. Johnson to send the invoice, based upon the</p> <p>24 steam received, do you recall whether IH ever sent him an</p> <p>25 invoice?</p>
<p style="text-align: right;">Page 287</p> <p>1 Q. Do you know anybody that was in a meeting with</p> <p>2 Bass when he may have stated that?</p> <p>3 A. Not to my knowledge. We didn't meet with Bass</p> <p>4 frequently. I think -- I think that this was the only</p> <p>5 time that we met with Bass.</p> <p>6 Q. And when you met with Mr. Bass, Mr. Darden was</p> <p>7 also present, correct?</p> <p>8 A. Correct.</p> <p>9 Q. So let me ask you, other than in a meeting, in</p> <p>10 this meeting, did you have any other conversations with</p> <p>11 Mr. Bass? On the phone?</p> <p>12 A. On the phone or e-mail? I don't recall talking</p> <p>13 to him on the phone.</p> <p>14 Q. Okay.</p> <p>15 A. And I am trying to recall if we ever e-mailed</p> <p>16 with him. I'm not sure.</p> <p>17 Q. Okay. Was this the only meeting that IH would</p> <p>18 have had with Mr. Bass as a company?</p> <p>19 A. I'm not sure. But it is the only one that</p> <p>20 comes to mind.</p> <p>21 Q. Okay. And if there would have been another</p> <p>22 meeting with Mr. Bass where the other party present was</p> <p>23 IH, it in all likelihood would have been you or</p> <p>24 Mr. Darden, correct, at that point?</p> <p>25 A. There were other people that could have been,</p>	<p style="text-align: right;">Page 289</p> <p>1 A. I don't believe that we did.</p> <p>2 Q. They did not, correct? No other</p> <p>3 representations that you recall at all from Bass to you or</p> <p>4 to another IH individual?</p> <p>5 A. Aside from those made in the meetings? I mean,</p> <p>6 he did represent to be the engineering manager, plant</p> <p>7 manager for JM Chemical Products. Aside from anything</p> <p>8 made in the meeting of February 9th, I'm not sure if</p> <p>9 anything comes to mind. I am trying to recall if we met</p> <p>10 with -- if anybody else met with him at another time, and</p> <p>11 nothing is coming to mind.</p> <p>12 Q. Okay. And have you since learned whether</p> <p>13 Mr. Bass is, in fact, a licensed engineer with a degree</p> <p>14 from Rutgers University?</p> <p>15 A. I don't know if he is or not.</p> <p>16 Q. Did you do any research to find out if he was?</p> <p>17 A. I, myself, have not. Others may have looked</p> <p>18 into it.</p> <p>19 Q. Did you know that he worked -- he has worked in</p> <p>20 the Armed Forces and dealt with matters that dealt with</p> <p>21 nuclear power?</p> <p>22 A. I did not know that.</p> <p>23 Q. And controls for nuclear power?</p> <p>24 A. I did not know that.</p> <p>25 Q. Any reason to believe that he was not an</p>

<p style="text-align: right;">Page 290</p> <p>1 engineer?</p> <p>2 A. At this point in time or at the time of --</p> <p>3 Q. Even then.</p> <p>4 A. You know, we came out of the meeting and Paul</p> <p>5 Lamacraft's statement to me was, Well, that really felt</p> <p>6 like a contrived meeting, yeah.</p> <p>7 Q. So it felt contrived, so all the less perhaps</p> <p>8 to accept whatever Bass had to say, or question? What do</p> <p>9 you mean by "contrived"?</p> <p>10 A. Well, it felt contrived. Meaning it felt like</p> <p>11 his questions were prepared.</p> <p>12 Q. Okay.</p> <p>13 A. And Andrea's answers were prepared. And I</p> <p>14 said, Yeah, I agree, it felt very contrived.</p> <p>15 Q. And being contrived, does it suggest to you</p> <p>16 that the question was not properly answered? Or any basis</p> <p>17 to believe that what was being answered was not --</p> <p>18 A. It felt like they went in there with a game</p> <p>19 plan, right? Of here is a question, here is the answer,</p> <p>20 here is a question, here is the answer.</p> <p>21 Q. At that point in time the E-Cat plant had not</p> <p>22 commenced operation, correct?</p> <p>23 A. Andrea was still working on it, I believe.</p> <p>24 Q. So Bass himself couldn't have made any</p> <p>25 representations concerning the plant or its efficiency?</p>	<p style="text-align: right;">Page 292</p> <p>1 manager for JM. And I can't recall if he said he was</p> <p>2 affiliated with Johnson Matthey or not.</p> <p>3 Q. You don't remember one way or the other, do</p> <p>4 you?</p> <p>5 A. I don't remember if he said he was affiliated</p> <p>6 with Johnson Matthey, no.</p> <p>7 Q. What are the damages that you believe were</p> <p>8 caused by whatever it is Mr. Bass may or may not have</p> <p>9 said?</p> <p>10 A. A prolonged -- a deception, which cost us time</p> <p>11 and money following the process when --</p> <p>12 Q. How much?</p> <p>13 A. 20 million.</p> <p>14 Q. \$20 million?</p> <p>15 A. That is what I provided earlier.</p> <p>16 Q. Were caused by him being in a meeting where he</p> <p>17 asked some questions?</p> <p>18 A. Caused by the compounding of factors, of which</p> <p>19 he was one, that led to us expensing the money we have</p> <p>20 expensed associated with Rossi and E-Cat.</p> <p>21 Q. What information do you have to suggest that</p> <p>22 Mr. Bass knew or -- knew that it was represented that</p> <p>23 Johnson Matthey was, in fact, the company behind it?</p> <p>24 A. I know that there are e-mails where Andrea is</p> <p>25 telling Bass exactly what to say to us when we visit.</p>
<p style="text-align: right;">Page 291</p> <p>1 A. He was there to represent JM.</p> <p>2 Q. Or anything else, correct? Could he have done</p> <p>3 any work at that point in time, if the plant had not been</p> <p>4 delivered?</p> <p>5 A. I don't know. You would have to ask Bass.</p> <p>6 Q. From your perspective. If a plant hadn't</p> <p>7 arrived --</p> <p>8 A. It was there, but --</p> <p>9 Q. Not operational yet?</p> <p>10 A. Yeah. Bass was an engineering representative</p> <p>11 and supposedly he could be doing other stuff. I don't</p> <p>12 know.</p> <p>13 Q. Okay. Is it IH's position today as you sit</p> <p>14 here that Mr. Bass committed a fraud by any statements</p> <p>15 that he may have made to you at that meeting or to IH?</p> <p>16 A. He participated in one. So he was -- he was</p> <p>17 participating with Dr. Rossi in a fraudulent</p> <p>18 representation of this company being, you know, a Johnson</p> <p>19 Matthey affiliate.</p> <p>20 Q. Was Mr. Bass there when Mr. Rossi made any of</p> <p>21 those representations to you or anyone else?</p> <p>22 A. As I said, I only met Bass in that meeting.</p> <p>23 Q. And did he make any of those representations in</p> <p>24 that meeting?</p> <p>25 A. He represented that he was an engineering plant</p>	<p style="text-align: right;">Page 293</p> <p>1 Q. Okay. So Andrea was telling him what to say?</p> <p>2 A. Yes. So -- and also Andrea was paying him,</p> <p>3 right? And directing him. So, you know, to the extent</p> <p>4 that he was a puppet of Andrea's, he was involved in the</p> <p>5 scheme.</p> <p>6 Q. But any of those representations that Andrea --</p> <p>7 that you have seen indicate that Bass knew that Johnson</p> <p>8 Matthey was representing to be, if that is the case, the</p> <p>9 owner of JMC?</p> <p>10 A. I don't know the extent of Bass's knowledge in</p> <p>11 that regard.</p> <p>12 Q. But the communications you are relating to, do</p> <p>13 not have Johnson Matthey as the subject of it, do they?</p> <p>14 A. Which communications?</p> <p>15 Q. The communications that you are saying. You</p> <p>16 are saying that Mr. Bass was told by Mr. -- that you have</p> <p>17 seen e-mails or whatever, that back and forth?</p> <p>18 A. Right.</p> <p>19 Q. That Bass was looking to?</p> <p>20 A. I don't recall seeing Johnson Matthey</p> <p>21 explicitly referenced in the communication.</p> <p>22 Q. So he may have represented to Bass, that,</p> <p>23 Listen, I want you to talk about A and B or C and B, if,</p> <p>24 you know, if there is steam, the steam is good. But you</p> <p>25 never saw anything to say, And by the way, let him know or</p>

<p style="text-align: right;">Page 298</p> <p>1 CERTIFICATE OF OATH OF WITNESS</p> <p>2</p> <p>3</p> <p>4 STATE OF FLORIDA)</p> <p>5) SS:</p> <p>6 COUNTY OF MIAMI-DADE)</p> <p>7</p> <p>8 I, ELIZABETH CORDOBA, RMR, CRR, FPR, Notary</p> <p>9 Public in and for the State of Florida at Large, certify</p> <p>10 that the witness, JOHN THOMAS VAUGHN, personally appeared</p> <p>11 before me on February 13, 2017 and was duly sworn by me.</p> <p>12 WITNESS my hand and official seal this</p> <p>13 February 26, 2017.</p> <p>14</p> <p>15 <i>E Cordoba</i></p> <p>16 ELIZABETH CORDOBA, RMR, CRR, FPR</p> <p>17 Notary Public, State of Florida</p> <p>18 at Large</p> <p>19</p> <p>20 Notary #EE075383</p> <p>21 My commission expires: 3/17/2019</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 300</p> <p>1 VERITEXT FLORIDA REPORTING CO</p> <p>2 2 South Biscayne Blvd., Suite 2250</p> <p>3 Miami, Florida 33131</p> <p>4 (305) 371-1884</p> <p>5</p> <p>6 February 27, 2017</p> <p>7</p> <p>8 JOHN THOMAS VAUGHN</p> <p>9 c/o BERNARD P. BELL, ESQ</p> <p>10 MILLER FRIEL, PLLC</p> <p>11 1200 NEW HAMPSHIRE AVE, NW</p> <p>12 SUITE 800</p> <p>13 WASHINGTON DC 20036</p> <p>14 RE: ANDREA ROSSI, ET AL v THOMAS DARDEN, ET AL</p> <p>15 DEPO OF: JOHN THOMAS VAUGHN</p> <p>16 TAKEN : February 13, 2017</p> <p>17 READ & SIGN BY: Within 30 Days</p> <p>18</p> <p>19 Dear JOHN THOMAS VAUGHN:</p> <p>20 This letter is to advise you that the transcript of the</p> <p>21 deposition listed above is completed and is awaiting</p> <p>22 reading and signing</p> <p>23 Please arrange to stop by our office in Suite 2250, 2</p> <p>24 South Biscayne Blvd., Miami, Florida to read and sign the</p> <p>25 transcript. Our office hours are from 8:00 a.m. to 4:00</p> <p>1 p.m. Monday through Friday. Depending on the length of</p> <p>2 the transcript, you should allow yourself sufficient</p> <p>3 time</p> <p>4</p> <p>5 If the reading and signing has not been completed prior</p> <p>6 to the referenced date, we shall conclude that you have</p> <p>7 waived the reading and signing of the deposition</p> <p>8 transcript. Your prompt attention to this matter is</p> <p>9 appreciated</p> <p>10</p> <p>11 Sincerely,</p> <p>12</p> <p>13 ELIZABETH CORDOBA, RMR, CRR, FPR</p> <p>14</p> <p>15 cc: All counsel on appearance page</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 299</p> <p>1 REPORTER'S DEPOSITION CERTIFICATE</p> <p>2</p> <p>3 I, ELIZABETH CORDOBA, RMR, CRR, FPR,</p> <p>4 certify that I was authorized to and did stenographically</p> <p>5 report the deposition of JOHN THOMAS VAUGHN, the witness</p> <p>6 herein on February 13, 2017; that a review of the</p> <p>7 transcript was requested; that the foregoing pages</p> <p>8 numbered from 1 to 301 inclusive is a true and complete</p> <p>9 record of my stenographic notes of the deposition by said</p> <p>10 witness; and that this computer-assisted transcript was</p> <p>11 prepared under my supervision.</p> <p>12 I further certify that I am not a relative,</p> <p>13 employee, attorney or counsel of any of the parties, nor</p> <p>14 am I a relative or employee of any of the parties'</p> <p>15 attorney or counsel connected with the action.</p> <p>16 DATED this February 26, 2017.</p> <p>17</p> <p>18</p> <p>19 <i>E Cordoba</i></p> <p>20 ELIZABETH CORDOBA, RMR, CRR,</p> <p>21 FPR</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 301</p> <p>1 VERITEXT FLORIDA REPORTING CO</p> <p>2 2 South Biscayne Blvd., Suite 2250</p> <p>3 Miami, Florida 33131</p> <p>4 (305) 371-1884</p> <p>5</p> <p>6 February 27, 2017</p> <p>7</p> <p>8 BRIAN CHAIKEN, ESQ</p> <p>9 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P L</p> <p>10 283 CATALONIA AVENUE</p> <p>11 SUITE 200</p> <p>12 CORAL GABLES FL 33134</p> <p>13</p> <p>14 RE: ANDREA ROSSI, ET AL v THOMAS DARDEN, ET AL</p> <p>15 DEPO OF: JOHN THOMAS VAUGHN</p> <p>16 TAKEN: February 13, 2017</p> <p>17 READ & SIGN BY: Within 30 Days</p> <p>18</p> <p>19 Dear Counsel:</p> <p>20</p> <p>21 The original transcript of the deposition listed above is</p> <p>22 enclosed for your file. The witness did not waive</p> <p>23 reading and signing and has been sent a letter notifying</p> <p>24 them to come in and read and sign their deposition</p> <p>25 transcript</p> <p>1 The witness will be provided a copy of their deposition</p> <p>2 transcript for reading in our office should they come in</p> <p>3 to review the transcript, and we will forward to you any</p> <p>4 corrections made by the witness at that time, along with</p> <p>5 an original signature page which should be attached to</p> <p>6 the original transcript which is in your possession</p> <p>7</p> <p>8</p> <p>9 Sincerely,</p> <p>10</p> <p>11 ELIZABETH CORDOBA, RMR, CRR, FPR</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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