

# Exhibit A

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA )  
3 ANDREA ROSSI and LEONARDO )  
4 CORPORATION, )  
5 Plaintiffs, )  
6 VS. )  
7 THOMAS DARDEN; JOHN T. VAUGHN; ) No. 1:16-cv-2119-CMA  
8 INDUSTRIAL HEAT, LLC; IPH )  
9 INTERNATIONAL B.V.; and )  
10 CHEROKEE INVESTMENT PARTNERS, )  
11 LLC, )  
12 Defendants. )  
13 INDUSTRIAL HEAT, LLC and IPH )  
14 INTERNATIONAL B.V., )  
15 Counter-Plaintiffs, )  
16 Vs. )  
17 ANDREA ROSSI and LEONARDO )  
18 CORPORATION, )  
19 Counter-Defendants, )  
20 And )  
21 J.M. PRODUCTS, INC.; HENRY )  
22 JOHNSON; FABIO PENON; UNITED )  
23 STATES QUANTUM LEAP, LLC; )  
24 FULVIO FABIANI; and JAMES )  
25 BASS, )  
Third-Party Defendants. )  
  
Videotaped Deposition of  
THOMAS DARDEN  
(Taken by Plaintiff)  
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina  
  
February 16, 2017  
Reported in Stenotype By  
Leslie Christian  
Transcript produced by computer-aided transcription

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1 had successful evidence after the technology worked,  
2 that we approved devices that we built, we would be  
3 happy to discuss paying you more money.

4 (Whereupon Exhibit 17 was marked for  
5 identification as of this date.)

6 Q. I'm going to show you what's been marked as  
7 Exhibit 17. Now, your counsel is going to object to  
8 this document.

9 MR. BELL: Yeah, I am. So why are you  
10 going to do it?

11 MR. CHAIKEN: Because I'm going  
12 to make you object to it.

13 MR. BELL: Here's the problem that I  
14 have with it -- and we can do it however you choose to  
15 see fit. But our view is that this is clearly in  
16 violation of the protective order. You're violating  
17 court order by using -- attempting to use this at a  
18 deposition when it's been clawed back under the  
19 protective order and you're potentially subject to  
20 sanctions for that.

21 MR. CHAIKEN: Okay.

22 MR. BELL: With that, do you still  
23 want to mark it?

24 MR. CHAIKEN: Yes. And what I would  
25 like to do is if you want to move for a protective

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1 order as it relates to this document we could go off  
2 the record, we could call the judge now or I could ask  
3 my questions and you can mark it highly confidential.

4 And if we -- that way I don't have to  
5 call him back. If I get -- I'm right in my argument  
6 then I don't have to call him back and we don't have to  
7 have this deposition again. So we can do that either  
8 way.

9 MR. BELL: Well, I already have a  
10 protective order. The flaw in the reasoning is I have  
11 a protective order --

12 MR. CHAIKEN: Right.

13 MR. BELL: -- in place, and what it  
14 says is if we call the document back, you send it back.  
15 You destroy all notes. It doesn't say you challenge  
16 it. It doesn't give you the right to challenge it. If  
17 you want to challenge the plaintiff codes you can do  
18 that in the motion to compel. But I don't need to move  
19 for a protective order because I have a protective  
20 order.

21 MR. CHAIKEN: Let's go off the record  
22 and take a look at that order and then maybe we can  
23 reach an agreement.

24 MR. BELL: That's fine.

25 THE VIDEOGRAPHER: We're going off the

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1 record at 11:54 a.m.

2 (Whereupon a break was taken.)

3 THE VIDEOGRAPHER: We are back on the  
4 record at 12:03 p.m.

5 (BY MR. CHAIKEN)

6 Q. Mr. Darden, I was about to ask you some  
7 questions about what had been marked as Exhibit  
8 Number 17. Counsel -- your counsel and I have been  
9 discussion it off the record.

10 MR. CHAIKEN: I believe, Mr. Bell,  
11 you're going to instruct your witness not to answer any  
12 questions regarding this document.

13 MR. BELL: That's correct. My  
14 position, as I stated before we went off the record, is  
15 under paragraphs -- whatever that was we just looked  
16 at. 21 or 22 or 20 and 21 of the protective order.

17 MR. CHAIKEN: Right. Our position is  
18 that that document -- any privileges that have been  
19 waived as to that document I guess we'll have that  
20 issue before the court. So I'm not going to ask any  
21 further questions on that document.

22 (BY MR. CHAIKEN)

23 Q. So my question now is as of January -- and  
24 I guess your position isn't going to change. But as of  
25 January 2014 it was your opinion that the guaranteed



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1 Mr. Darden consulted in November of 2015.

2 MR. CHAIKEN: All right. Let me ask  
3 -- I'm going to ask not about this e-mail but about  
4 Mr. Zali.

5 MR. BELL: That's fair.

6 (BY MR. CHAIKEN)

7 Q. Who is Zali?

8 A. It's Jaffee actually. So his name is Zali  
9 Jaffee. And he's an attorney in Israel, and he works  
10 with a -- someone that I know who invested in some  
11 energy plants that were in Europe and ended up hiring  
12 Zali to represent him. And I'm an investor in that  
13 transaction. That's how I came to know Zali.

14 Q. And you're telling me that Industrial Heat  
15 retained him for legal services?

16 A. Yes, we did.

17 Q. What type of legal services did you retain  
18 him to do?

19 A. We wanted advice about -- oh, international  
20 fraud.

21 Q. What type of international fraud?

22 A. Whether we might be a victim of an  
23 international fraud.

24 Q. And what jurisdictions or what territories  
25 was Mr. Zali licensed to practice law in?

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1 A. I don't know.

2 Q. Do you know if he was licensed to practice  
3 law in the United States?

4 A. I don't know.

5 Q. Did you ask him that question?

6 A. I don't remember.

7 Q. Is there a retention agreement between  
8 Industrial Heat and Mr. Zali?

9 A. I don't know if he sent us an engagement  
10 agreement or not. We definitely worked with him  
11 regularly in this other transaction.

12 Q. Did you ask for legal advice with respect  
13 to the license agreement at issue in this case?

14 A. Say it again.

15 Q. Did you ask for him to provide you with  
16 legal services with respect to the license agreement in  
17 this case?

18 A. Yes, we did.

19 Q. What type of legal service did you ask him  
20 to perform?

21 MR. BELL: I think that's privileged.

22 MR. CHAIKEN: I don't think this is a  
23 privileged document.

24 MR. BELL: Well, I think we're back to  
25 the point where under the -- under the protective order

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1 the remedy is to rip it up, throw away all your notes  
2 and make a motion to compel. I'm happy to, you know,  
3 add this to the list and put this in camera with the  
4 judge if he wants to see it. I think this is an  
5 appropriate procedure.

6                   It's not really -- the way a  
7 protective order works isn't that you scrutinize the  
8 document and make your own determination whether it's  
9 privileged.

10                   MR. CHAIKEN: Well, we can agree to  
11 disagree or not. Maybe -- can we go off the record for  
12 a second.

13                   THE VIDEOGRAPHER: We are off the  
14 record at 1:35 p.m.

15                   (Whereupon a break was taken.)

16                   THE VIDEOGRAPHER: We are back on the  
17 record at 1:46 p.m.

18                   MR. CHAIKEN: We have made an attempt  
19 to reach out to Judge O'Sullivan to see if we can get a  
20 quick ruling on this document. While we wait to see if  
21 we can get him on the line we're going to proceed with  
22 the deposition.

23 (BY MR. CHAIKEN)

24                   Q. At some point in time, Mr. Darden, did  
25 Industrial Heat agree to allow the one megawatt plant