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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-cv-21199-CMA/O'SULLIVAN

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

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Casa de Campo  
Resort & Villas  
La Romana, D.R.  
Wednesday, February 22, 2017  
9:06 a.m. - 7:42 p.m.

VIDEOTAPED DEPOSITION OF FABIO PENON

Taken on behalf of the Plaintiffs before  
Diana Santos, Shorthand Reporter and Notary Public  
in and for the State of Florida at Large, pursuant  
to Notice of Taking Deposition filed in the above  
cause.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOHN W ANNESSER, ESQUIRE PERLMAN, BAJANDAS, YEVOLI &amp; ALBRIGHT, P L</p> <p>4 283 Catalonia Avenue Suite 200</p> <p>5 Coral Gables, Florida 33134 Telephone: (305)377-0086</p> <p>6 E-mail: jannessers@pbylaw.com Attorney for Plaintiffs</p> <p>7</p> <p>8 CHRISTOPHER R J PACE, ESQUIRE</p> <p>9 JONES DAY</p> <p>10 600 Brickell Avenue Suite 3300</p> <p>11 Miami, Florida 33131 Telephone: (305)714-9799</p> <p>12 E-mail: crjpace@jonesday.com Attorney for Defendants</p> <p>13</p> <p>14 JOHN CHARLES LUKACS, ESQUIRE</p> <p>15 HINSHAW &amp; CULBERTSON LLP</p> <p>16 2525 Ponce de Leon Boulevard Coral Gables, Florida 33134</p> <p>17 Telephone: (305)358-7747 E-mail: jlukacs@hinshawlaw.com Attorney for Fabio Penon</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 Rick A Smith, P E , Applied Thermal Engineering, Inc</p> <p>22 Ugo V Chiarato, Interpreter</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 DEFENDANT'S EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3</p> <p>4 Exhibit 24 First Amendment to License .....151 Agreement</p> <p>5</p> <p>6 Exhibit 25 February 20, 2015 E-mail .....159</p> <p>7 Exhibit 26 ROSSI00009285 .....194</p> <p>8</p> <p>9 Exhibit 27 Assorbimento Elettrico 2015 .....194</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>
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 2 NUMBER DESCRIPTION PAGE  
 3  
 4 Exhibit 16 BATES NO. PENON0000292 .....101  
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 13 Exhibit 22 BATES NO. PENON0000333 .....120  
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 Exhibit 23 BATES NO. PENON 0000153 .....122  
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1 THE VIDEOGRAPHER: All right. Good  
 2 morning. We are now on the video record. This  
 3 is the videotape deposition of Fabio Penon in  
 4 the matter of the case Andrea Rossi and  
 5 Leonardo Corporation, et al. versus Thomas  
 6 Darden, et al.  
 7 Today is Wednesday, February the 22nd of  
 8 2017, and the local time in La Romana,  
 9 Dominican Republic is 9:06 a m.  
 10 At this time, counsel, please introduce  
 11 themselves for the record and after this the  
 12 court reporter will swear in the witness.  
 13 MR. ANNESSER: John Annesser on behalf of  
 14 the plaintiffs.  
 15 MR. PACE: Chris Pace on behalf of the  
 16 defendants, and along with me is Rick Smith.  
 17 MR. LUKACS: Also in attendance is John  
 18 Lukacs. I am here as attorney for the witness.  
 19 (Thereupon, UGO V. CHIARATO was duly  
 20 sworn, responding "I do," to translate from English  
 21 to Italian and from Italian to English.)  
 22 Thereupon:  
 23 FABIO PENON  
 24 Was called as a witness and, having been first duly  
 25 sworn and responding, "I do," was examined

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1 and testified as follows:  
 2 DIRECT EXAMINATION  
 3 BY MR. ANNESSER:  
 4 Q Good morning, Dr. Penon.  
 5 A Good morning.  
 6 Q Thank you for coming here today. I want  
 7 to first ask a couple of questions regarding your  
 8 experience with depositions. Have you ever had your  
 9 deposition taken before?  
 10 A No.  
 11 Q The purpose of this deposition is to learn  
 12 the facts in this case. Unless I specifically  
 13 instruct you, I am not asking you for an opinion,  
 14 I'm asking you -- I'm asking you, sir, for the facts  
 15 that you know. If you don't know an answer, that is  
 16 okay, just tell us that. My questions are not meant  
 17 to harass or embarrass you in any way. If you do  
 18 not understand any of my questions, please let me  
 19 know that. If you do not say anything, I will  
 20 assume that you understood. Is that okay?  
 21 A Okay.  
 22 Q If at any time you need a break, or need  
 23 to speak with your attorney, just let me know and we  
 24 will -- we will accommodate you.  
 25 May I ask you to state your full name for

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1 the record?  
 2 A Fabio Penon; F A-B-I-O P-E-N-O-N.  
 3 Q And what is your business address?  
 4 A V-I-A; Settefratelli,  
 5 S-E-T-T-E-F-R-A-T-E-L-L-I Cervi; C-E-R-V-I; Number  
 6 one; Abano Terme, A-B-A-N-O T-E-R-M-E.  
 7 Q What is your home address, sir?  
 8 A The same. Via Settefratalli,  
 9 S-E-T-T-E-F-R-A-T-A-L-L-I.  
 10 Q Are you currently employed, sir?  
 11 A I am a free professional, self-employed  
 12 and owner of the company, Poesis, P-O-E-S-I-S.  
 13 MR. ANNESSER: Madam Court Reporter, do  
 14 you have exhibit labels?  
 15 THE COURT REPORTER: (Nods head.)  
 16 MR. ANNESSER: Thank you.  
 17 BY MR. ANNESSER:  
 18 Q I will show you a document we will mark as  
 19 Exhibit 1 and ask you is this a current copy of your  
 20 resume.  
 21 (Thereupon, Plaintiff's Exhibit 1 was  
 22 marked for identification.)  
 23 THE WITNESS: Yes, sir, it is.  
 24 BY MR. ANNESSER:  
 25 Q Is the information contained in this

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1 A Yes, one certain unit and then a second  
2 unit. The first report is referred to the first  
3 unit and the second is referred to the second unit.  
4 Q On this document PENON174, the date on  
5 this document appears to be after the beginning of  
6 the test at the Doral location; do you know why that  
7 would be?  
8 A Because I realized that the entity of the  
9 flow --  
10 Q That the what, sir?  
11 A The entity -- of the power, the electric  
12 power could reach to the point of saturation of the  
13 first instrument.  
14 Q What do you mean "the point of  
15 saturation"?  
16 A The value of the magnitude of electrical  
17 magnitude when they reach certain limits, they could  
18 result into different conclusions.  
19 Q I'm sorry. I don't understand.  
20 MR. ANNESSER: Actually, I am going to ask  
21 to go off the record here for just a moment.  
22 We will take a short break and we will leave  
23 that question pending, and you can think about  
24 it and we will come right back to it. I am  
25 going to use the restroom.

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1 MR. PACE: Got it. I was going to say it  
2 was a weird break.  
3 THE VIDEOGRAPHER: All right. Let's go  
4 off the record. The time is 2:48.  
5 (Thereupon, a recess was taken from 2:48  
6 p.m. - 2:58 p.m., after which the following  
7 proceedings were had:)  
8 THE VIDEOGRAPHER: All right. The time is  
9 2:58. Media No. 4. Back on the record.  
10 BY MR. ANNESSER:  
11 Q Sir, before we took a short break I think  
12 you were going to explain to me why there were two  
13 PC 830 power analyzers?  
14 MR. PACE: I'm sorry. Just for reference.  
15 Can we get back to page -- can you help me with  
16 this?  
17 MR. ANNESSER: 174.  
18 MR. PACE: Got it. Sorry.  
19 THE WITNESS: It was not two analyzers; it  
20 was one analyzer, which during the working of  
21 the equipment, seeing the evolution of the  
22 flows and the tensions, I realized could have  
23 the potential of not reaching the measurement  
24 of the certain values that the current power  
25 could reach. This is why I acquired and I

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1 calibrated an analyzer more important.  
2 BY MR. ANNESSER:  
3 Q Was it a different type of analyzer?  
4 A Yes, but it was able to measure currents  
5 more elevated level.  
6 Q And was that -- was this analyzer  
7 referenced on PENON174 used during the guaranteed  
8 performance test or -- I'm sorry -- during the test  
9 at the Doral location?  
10 A Can you rephrase the question, repeat it?  
11 Q Was the power analyzer referenced in the  
12 document with 174 used for the test at the Doral?  
13 THE INTERPRETER: 164 document?  
14 MR. ANNESSER: 174.  
15 BY MR. ANNESSER:  
16 Q Was that used for the test at the Doral  
17 location?  
18 A After an initial use of the PEN169 then it  
19 has been used 174.  
20 Q Looking, sir, to the last document in this  
21 last packet, PENON178. The document refers to a  
22 pressure transducer.  
23 THE INTERPRETER: Translated.  
24 BY MR. ANNESSER:  
25 Q Was this a pressure transducer used during

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1 the test at the Doral location?  
2 A Yes, sir.  
3 Q Based on your review of all of these  
4 documents, were you satisfied that the equipment  
5 would accurately measure according to the test plan?  
6 A Yes, absolutely, yes.  
7 Q Sir, I will show you a document we'll mark  
8 as Exhibit 16.  
9 (Thereupon, Plaintiff's Exhibit 16 was  
10 marked for identification.)  
11 BY MR. ANNESSER:  
12 Q The first page of this document appears to  
13 be an e-mail from you to Thomas Darden.  
14 A Yes, it is.  
15 Q Can you tell me what the purpose -- did  
16 you send this e-mail?  
17 A Yes, sir.  
18 Q What was the purpose of this e-mail?  
19 A Corresponding to my -- only each of my  
20 visits to the place -- to the plant at the Doral  
21 after concluding the verification progress of the  
22 entire status of the instruments, and after having  
23 acquired all the data I processed a report -- a  
24 synthetical report where the describing --  
25 describing the size -- describing the development of

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1 each measurement of interest and the calculation of  
 2 the related COP. Each of these documents  
 3 constituted the basis of the final report.

4 Q When --  
 5 MR. PACE: Objection as nonresponsive.  
 6 BY MR. ANNESSER:  
 7 Q When you sent this e-mail, sir, did  
 8 Mr. Darden or anyone from Industrial Heat respond to  
 9 you or have any questions regarding this document?  
 10 A The reference is up to 12th of  
 11 January 2016 up to the -- up to the point of  
 12 January 2016, no reaction that I can remember.  
 13 Q Did you receive any response to any of the  
 14 incremental tests reports that you -- reports that  
 15 you submitted?  
 16 A Can you repeat it?  
 17 Q During the tests at the Doral facility,  
 18 did you receive any response to your e-mails  
 19 containing measurements such as this one?  
 20 A Not that I can remember.  
 21 Q Looking, sir, to the first page, can you  
 22 tell me what this is?  
 23 A This is a part of a synthetic document  
 24 structured as follows: The first column refers to  
 25 the date and time of the beginning of the reporting.

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1 The second column the date and the time of the  
 2 conclusion. The third column indicates the average  
 3 power given. The fourth column the energy supplied.  
 4 The fifth column, the water temperature. The sixth  
 5 column, the flow of the water actually transited  
 6 around the door (phonetic) at the thousand -- at the  
 7 lower thousands. The seventh column reports the  
 8 water flows reduced by seven percent, according to  
 9 the concept that we expressed shortly now. The  
 10 eighth column, minimal temperature of the steam.  
 11 The third of the last column -- of the right end  
 12 column, the pressure of the steam. The column  
 13 before the last the energy produced VAT per hour.  
 14 The last column COP calculated to be specified now.  
 15 In the column T max we refer to always in compliance  
 16 with the conservative criteria to the maximum  
 17 temperature of the water as explained in the latest  
 18 24-hours. In the column steam T min the reference  
 19 is to always for the same criteria to the minimum  
 20 temperature of the steam that is being experienced  
 21 in the last 24 hours.  
 22 MR. PACE: Objection. Move to strike as  
 23 almost entirely not responsive other than his  
 24 last sentence.  
 25 MR. ANNESSER: Actually, I thought it was

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1 very responsive. I have asked him to explain  
 2 what we were looking at.  
 3 BY MR. ANNESSER:  
 4 Q Looking, sir, at the fourth column the  
 5 supplied energy, how did you make that measurement?  
 6 A The chain of measurements started from the  
 7 initial power -- the initial power from the  
 8 measurement of this was loaded into my computer and  
 9 has been added to for the last 24 hours. At that  
 10 point it is rounded off in lowering it to the 100th,  
 11 to the lower 100th. Just to explain. If the  
 12 measurer indicates 240,900, it was noted as 246,000.  
 13 Q I'm sorry. Can you repeat it?  
 14 A No, no. It is not correct. It was  
 15 rounded out to the highest -- to the highest  
 16 thousands; not the lowest.  
 17 Q What device did you use to measure?  
 18 A CA 30 (sic).  
 19 Q I'm sorry. What device?  
 20 MR. PACE: Objection. Only because I  
 21 don't think you ever finished the question.  
 22 What did he use to -- and he answers, because  
 23 he understand English well, but why don't we  
 24 get the whole question out, get it translated  
 25 and then we will answer.

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1 BY MR. ANNESSER:  
 2 Q Sir, what device was used to measure the  
 3 supplied energy as reflected in the fourth column?  
 4 A The PC860 what is called net analyzer --  
 5 network analyzer.  
 6 Q How often was that data transmitted to  
 7 you?  
 8 A There was not a regular frequency of  
 9 transmittal, but taking into account the fact that  
 10 each four months I was physically at Doral frequents  
 11 of two months -- each two months, every two months.  
 12 Q Did the equipment store the data on a  
 13 daily basis?  
 14 A Yes, certainly. Yes, certainly. Yes, it  
 15 was stored.  
 16 Q Did you collect that data on your visits  
 17 to the plant?  
 18 A I checked the data and when I deemed  
 19 convenient at least twice -- every two months I had  
 20 to get them to transmit me the data up to that  
 21 point.  
 22 Q Is it possible that that data was  
 23 manipulated?  
 24 A No, because the system -- if this had  
 25 happened it would have shown an echo continuity of

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1 consistency of the data.  
 2 Q Would that machine or that device record  
 3 any changes made to the data?  
 4 A Yes.  
 5 MR. PACE: Objection to the question, but  
 6 go ahead.  
 7 THE WITNESS: Definitely, yes.  
 8 BY MR. ANNESSER:  
 9 Q Looking at the fifth column, tank water  
 10 T-max. How was that measured?  
 11 A With the temperature sensor.  
 12 Q Where?  
 13 THE INTERPRETER: Where?  
 14 BY MR. ANNESSER:  
 15 Q Where was the sensor located?  
 16 A Indicated in the diagram, if I remember  
 17 well, in the reference to --  
 18 Q Are you referencing Exhibit 9?  
 19 A Yes, Exhibit 9. No, it is not.  
 20 MR. PACE: You are covering up the mic.  
 21 BY MR. ANNESSER:  
 22 Q Let me ask you, sir, not to waste time on  
 23 that.  
 24 How was that data recorded?  
 25 A With the same principle, the analogical

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1 signal reached to a certain -- that realized the  
 2 conversion, digital analogical to reverse to  
 3 download to my computer.  
 4 Q Did you have a computer at the Doral  
 5 facility?  
 6 A It was that one which had to be -- to  
 7 gather all data.  
 8 Q Was that data transmitted to you in Italy?  
 9 A These are the data that I said them to  
 10 transfer regularly to Italy.  
 11 Q Did anyone have access to your computer at  
 12 the Doral facility? Let me finish. Was it password  
 13 protected?  
 14 MR. PACE: Objection to the question.  
 15 MR. ANNESSER: Let me restate.  
 16 BY MR. ANNESSER:  
 17 Q Your computer at the Doral facility, was  
 18 it password protected?  
 19 A Yes, it was protected if I don't -- if I  
 20 remember well by a password technology.  
 21 Q Did anyone at the Doral facility have  
 22 access that they can alter the data recorded in that  
 23 computer?  
 24 MR. PACE: Objection to the question.  
 25 Objection to the question.

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1 THE WITNESS: Not that I can imagine.  
 2 BY MR. ANNESSER:  
 3 Q How often would you monitor the tank water  
 4 temperature from Italy? How often would you  
 5 monitor...?  
 6 A Each two months they were transmitted to  
 7 me and every two months, approximately, I was  
 8 checking this data.  
 9 Q How were they transmitted to you?  
 10 A E-mail.  
 11 Q Who would send it to you via e-mail?  
 12 A Fabiani.  
 13 Q Did he also receive the temperature data  
 14 to his computer?  
 15 A Can you repeat it?  
 16 Q Did Mr. Fabiani also receive the  
 17 temperature data to his computer?  
 18 A No. I think Fabiani had his own system of  
 19 recovering this data.  
 20 Q Okay. Okay. Column six, "effective  
 21 flowed water". How was that measured?  
 22 A Through the measure of the water power.  
 23 Q Was that the flowmeter?  
 24 A The flow meter, yes.  
 25 Q How did you retrieve the data from the

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1 flowmeter?  
 2 A Datas were read every night by Dr. Rossi  
 3 and Rossi had to report them in the -- in the log --  
 4 in the logbook and every night it was transmitted in  
 5 this data.  
 6 Q Did you have any way to verify the data  
 7 that Dr. Rossi was providing you?  
 8 A The correctness of the data?  
 9 Q Yes.  
 10 A When I visited to the Doral plant one of  
 11 the controls that I wanted to make is the  
 12 reconciliation between the data transmitted by Rossi  
 13 and the data relieved in the -- in the meter.  
 14 Q So you would reconcile the data provided  
 15 by Dr. Rossi with the change from your last visit,  
 16 the change in water flow?  
 17 A With the relevant data in the opportunity  
 18 of my business.  
 19 Q Sir, some people have said that it is  
 20 impossible to have the same amount of water flow  
 21 every -- multiple days in a row. I'm sorry. Can  
 22 you explain why -- why the measurements are all to  
 23 the -- to the thousandth, I believe they are  
 24 thousand kilogram per day?  
 25 A Can you repeat?

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1 A This was the report relating the visit,  
 2 the surprise visit of October. It was -- this was a  
 3 control of the various units constitute (sic) in  
 4 the -- making -- being part of E-Cat that I  
 5 requested to perform in order to be able to assess  
 6 the anomalia (sic) in the system.  
 7 Q The what in the system?  
 8 A What is not normal, abnormality, okay.  
 9 Q An anom --  
 10 THE INTERPRETER: Yes  
 11 BY MR. ANNESSER:  
 12 Q Any anomalies in the system; is that...?  
 13 A No, but they wanted to make sure that it  
 14 was uniform and homogenous the process.  
 15 Q Looking at the document attached as  
 16 PENON0000271, did you prepare this report?  
 17 A Yes, I did.  
 18 Q Do you maintain this report as part of  
 19 your business records?  
 20 MR. PACE: Objection to the form.  
 21 THE WITNESS: I don't understand the  
 22 question.  
 23 MR. ANNESSER: Sure.  
 24 BY MR. ANNESSER:  
 25 Q Have you -- okay. Let me strike the

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1 question.  
 2 Is the information contained in this  
 3 report true and correct to the best of your  
 4 knowledge?  
 5 A Absolutely, yes.  
 6 Q And you transmitted this report to  
 7 Mr. Darden?  
 8 A Yes and Rossi.  
 9 Q Did Mr. Darden or anyone at Industrial  
 10 Heat ever contact you regarding this report?  
 11 A No.  
 12 Q Let me show you a document we will mark as  
 13 Exhibit 19.  
 14 (Thereupon, Plaintiff's Exhibit 19 was  
 15 marked for identification.)  
 16 BY MR. ANNESSER:  
 17 Q This document has the Bates No.  
 18 PENON0000354. It purports to be an e-mail dated  
 19 March 29th, 2016 from you to Mr. Darden to  
 20 Mr. Rossi. Do you recall sending this e-mail?  
 21 A Yes.  
 22 Q Attached to this e-mail, sir, was an  
 23 energy multiple valuation from December 1st, 2015 to  
 24 February 15, 2016. Did you prepare this report,  
 25 sir?

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1 A Yes.  
 2 Q To the best of your knowledge are the  
 3 facts contained within this report true and correct?  
 4 A Yes.  
 5 Q Was this report transmitted to Mr. Darden?  
 6 A Yes.  
 7 Q Has Mr. Darden ever contacted you  
 8 regarding this report?  
 9 A No.  
 10 Q Has anyone at Industrial Heat contacted  
 11 you regarding this report?  
 12 A No.  
 13 Q I will show you a document we will mark as  
 14 Exhibit 20 as -- as Bates stamped PENON0000295.  
 15 (Thereupon, Plaintiff's Exhibit 20 was  
 16 marked for identification.)  
 17 BY MR. ANNESSER:  
 18 Q This document purports to be a letter  
 19 dated February 4th, 2016 from you to Tom Darden and  
 20 Andrea Rossi. Did you send this e-mail to  
 21 Mr. Darden and Mr. Rossi?  
 22 A Yes.  
 23 Q What was the purpose of this e-mail?  
 24 A As per contractual agreement it was the  
 25 report on the visit by myself.

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1 Q Did Mr. Darden respond to this e-mail?  
 2 A No.  
 3 Q Did anyone from Industrial Heat respond to  
 4 this e-mail?  
 5 A To the best of my recollection, no.  
 6 (Thereupon, Plaintiff's Exhibit 21 was  
 7 marked for identification.)  
 8 BY MR. ANNESSER:  
 9 Q I will show you a composite document that  
 10 we'll mark as Exhibit 21. This document has  
 11 beginning Bates No. PENON0000180. Can you tell me  
 12 what this document is, sir?  
 13 MR. PACE: Objection. Are you identifying  
 14 it as a composite exhibit and you are calling  
 15 it one document. Are you saying -- one or the  
 16 other, but it can't be a composite exhibit and  
 17 a document.  
 18 MR. ANNESSER: Okay. Fair enough.  
 19 BY MR. ANNESSER:  
 20 Q Can you tell me what this first document  
 21 is, sir?  
 22 A Client conclusion document after the test  
 23 plan agreement that summarizes the working of the  
 24 plant for a total of 352 actual days reporting for  
 25 every day the COP actually calculated, and proving

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1 the compliance with the contractual agreement.

2 Q Did you prepare this document, sir?

3 A Yes.

4 Q Does this document contain your

5 observations and your measurements?

6 A Yes.

7 MR. PACE: Objection. Go ahead.

8 BY MR. ANNESSER:

9 Q Does this first document and the documents

10 attached to the back contain your measurements and

11 calculations, sir?

12 MR. PACE: Objection.

13 THE INTERPRETER: You said the first or

14 the last page?

15 MR. ANNESSER: The whole document.

16 MR. PACE: Same objection.

17 MR. ANNESSER: The whole exhibit.

18 THE WITNESS: Yes.

19 BY MR. ANNESSER:

20 Q To the best of your knowledge, sir, is the

21 information and measurements contained within

22 Exhibit 21 true correct and accurate?

23 A Yes, they do.

24 Q Do you have any reason to believe that any

25 of the measurements contained in this exhibit are

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1 not correct or accurate?

2 A No.

3 Q Were you paid for your services as the ERV

4 for performing the tests at the Doral facility?

5 THE INTERPRETER: Service in Doral?

6 MR. ANNESSER: Yes, for the Doral test.

7 THE WITNESS: Are we talking about the

8 payment of both parties?

9 BY MR. ANNESSER:

10 Q Were you paid at all?

11 A Yes, I have been paid.

12 Q Who was to pay you?

13 A If I remember correctly, 50 percent --

14 50 percent was due by the Leonardo Corporation and

15 50 percent by Industrial Heat.

16 Q Were you ultimately paid for your services

17 as the ERV?

18 A Yes, in conclusion I have been finally

19 paid.

20 Q By both parties?

21 A Leonardo Corporation paid also a portion

22 of Industrial Heat, the company.

23 Q Do you know if Industrial Heat ever

24 reimbursed Leonardo for those fees?

25 A I don't know.

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1 Q I'd like to ask you about the last couple

2 of days of the test.

3 At the conclusion of the test did you come

4 to Florida to shut down the plant?

5 A I ordered to turn off equipment which has

6 been affected by -- carried out by Dr. Rossi.

7 Q Do you recall meeting a gentleman there

8 named Joe Murray? Joe Murray.

9 A Yes.

10 Q Now, did you speak with Mr. Murray while

11 you were at the plant?

12 A Yes, I did pay.

13 Q I'm sorry. Yes?

14 A I did pay -- I did talk to him.

15 Q Did he have questions for you at that

16 time?

17 A Yes, he raised questions.

18 Q Did he ask you to send him any documents?

19 A Yes, he did.

20 (Thereupon, Plaintiff's Exhibit 22 was

21 marked for identification.)

22 BY MR. ANNESSER:

23 Q I will show you a document we will mark as

24 Exhibit 22 with Bates No. PENON0000333. This

25 document purports to be an e-mail dated

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1 February 23rd, 2016. And it appears to be from you

2 to Mr. Murray, Mr. Darden and Dr. Rossi.

3 THE INTERPRETER: Sorry. Can you repeat

4 the three names?

5 MR. ANNESSER: Murray, Darden and Rossi.

6 THE WITNESS: Yes, I did send it.

7 BY MR. ANNESSER:

8 Q Was this sent in response to a request to

9 Mr. Murray?

10 A Yes.

11 Q Did you answer all of Mr. Murray's

12 questions when you spoke to him at the conclusion of

13 the test?

14 A Yes.

15 Q Has Mr. Murray since posed additional

16 questions?

17 A Can you repeat again?

18 Q Has Mr. Murray, since that time, requested

19 you answer any additional questions?

20 A Yes, he did.

21 Q Did you answer those questions?

22 A No.

23 Q Why not?

24 A Because it was a repetition of the same

25 question raised at Doral.



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1 problems of the -- to verify the contract agreement.

2 Q Did you follow all of the test protocols

3 as they had been drafted?

4 A Yes, I did.

5 Q Were there any deviations from the

6 protocol that could have affected the COP

7 measurement?

8 MR. PACE: Objection.

9 THE WITNESS: Can you repeat it again to

10 make sure?

11 BY MR. ANNESSER:

12 Q Were there any deviations from the test

13 protocol that could have affected your calculation

14 of the COP?

15 MR. PACE: Objection. Can I have an

16 objection ahead of time so he can answer it

17 because I'm afraid when I object it's

18 distracting him. So I'll have a standing

19 objection on this one.

20 MR. ANNESSER: Sure. What is your

21 objection?

22 MR. PACE: I think this is kind of a

23 strange hypothetical, because you were asking

24 him could there have been anything that could

25 have affected it beyond what he knows about.

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1 Are you just saying are you aware of anything,

2 just so you know my objection.

3 BY MR. ANNESSER:

4 Q Are you aware -- I will do it that way --

5 are you aware of any deviations from the test

6 protocol that could have affected your calculation

7 of the COP?

8 A What do you intend deviation?

9 Q Anything other than what was in the test

10 protocol?

11 A As far as I can imagine, no.

12 Q The defendants in this case have argued

13 that the amount of steam generated by the E-Cat

14 would have caused the factory or the -- I'm sorry --

15 the warehouse to be in excess of 200 degrees

16 Fahrenheit.

17 A How much centigrades?

18 Q I believe they have said over 100 degrees

19 centigrade.

20 A Can you repeat again?

21 Q The defendants have argued -- you know

22 what, I'm going to strike that.

23 Do you know what was done with the heat

24 generated by the E-Cat?

25 A I only know that it was used on the other

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1 side of the wall, that's it.

2 Q Do you know if it was vented, the heat was

3 vented to an external source?

4 MR. PACE: Objection.

5 THE INTERPRETER: Excuse me. I have a

6 problem with "vented".

7 MR. LUKACS: Ventilate.

8 BY MR. ANNESSER:

9 Q Dumped outside?

10 MR. PACE: You got to make do.

11 THE INTERPRETER: Can you repeat the

12 question?

13 BY MR. ANNESSER:

14 Q Do you know if the heat was -- from the

15 E-Cat plant was dumped outside?

16 MR. PACE: Objection.

17 MR. ANNESSER: Released.

18 THE INTERPRETER: I understand. I know he

19 was answering.

20 THE WITNESS: The question is do I know if

21 the steam was sent to the other part of the

22 wall?

23 MR. ANNESSER: No.

24 BY MR. ANNESSER:

25 Q When the heat was sent to the other side,

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1 do you know what happened to it after that?

2 A Absolutely, I did not know.

3 Q I'm sorry. Absolutely?

4 THE INTERPRETER: I did not know.

5 BY MR. ANNESSER:

6 Q Did anyone assist you in preparing your

7 final report which we -- which we have marked as

8 Exhibit 21?

9 A Yes. What does it mean which other

10 people -- other people taking part in doing it?

11 Q Did anyone else help him create this

12 report?

13 A I did it personally.

14 Q Have you reviewed any of the expert

15 reports that have been served in this case?

16 A Which report?

17 Q I believe there have been reports by

18 Mr. Murray, Mr. Wong and Mr. Smith. Mr. Murray and

19 Smith?

20 A I remember the one sent by Mr. Murray

21 immediately after the closing, the validation.

22 MR. ANNESSER: If we can go off the record

23 for a couple of minutes.

24 THE VIDEOGRAPHER: Off the record. The

25 time is 4:44.

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1 (Thereupon, a recess was taken from 4:44  
 2 p.m. - 4:53 p.m., after which the following  
 3 proceedings were had:)  
 4 THE VIDEOGRAPHER: We are now back on the  
 5 record. The time is 4:53.  
 6 BY MR. ANNESSER:  
 7 Q Sir, have you ever heard of a company  
 8 called JM Products?  
 9 THE INTERPRETER: GM products?  
 10 MR. ANNESSER: JM Products.  
 11 THE WITNESS: Yes, I heard about it.  
 12 BY MR. ANNESSER:  
 13 Q Do you know Mr. Henry Johnson?  
 14 A No.  
 15 Q Have you ever spoken with him?  
 16 A Never.  
 17 Q What do you know of JM products?  
 18 A Nothing practically.  
 19 Q Have you had any communication with  
 20 Mr. Johnson whatsoever?  
 21 A No.  
 22 Q Do you or have you met a gentleman by the  
 23 name of James or Jim Bass?  
 24 THE INTERPRETER: B-A-S-S.  
 25 MR. ANNESSER: Yes.

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1 THE WITNESS: Which company?  
 2 BY MR. ANNESSER:  
 3 Q I believe he was with JM Products.  
 4 A No.  
 5 Q Did you ever request from Mr. Bass, or  
 6 Mr. Johnson, or anyone at JM products to take any  
 7 measurements of the amount of steam received from  
 8 the E-Cat plant?  
 9 A No.  
 10 Q Did anything in your test protocol require  
 11 measurements be taken on the JM Product side of the  
 12 warehouse?  
 13 A No.  
 14 Q Did the operation of the JM plant have any  
 15 effect whatsoever on your evaluations and  
 16 calculation of the COP for the E-Cat?  
 17 MR. PACE: Objection.  
 18 THE WITNESS: Can we formulate the  
 19 question?  
 20 BY MR. ANNESSER:  
 21 Q Did the operation on the JM side of the  
 22 warehouse have any effect whatsoever on his  
 23 calculation of the COP -- I'm sorry. On your  
 24 calculation of the COP?  
 25 MR. PACE: Objection.

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1 THE WITNESS: I don't understand the kind  
 2 of question.  
 3 BY MR. ANNESSER:  
 4 Q Did the -- did the operation where the  
 5 steam was used have any effect on your ability to  
 6 measure the COP of the E-Cat plant?  
 7 A No, no effect whatsoever.  
 8 MR. PACE: Objection. I couldn't get in  
 9 there, but objection.  
 10 THE WITNESS: No, no effect whatsoever.  
 11 BY MR. ANNESSER:  
 12 Q Did you ever go -- I'm sorry.  
 13 Did you ever see anyone go between the JM  
 14 side and the side where the E-Cat plant was?  
 15 MR. PACE: Objection. And you can  
 16 completely clear it up by telling him what the  
 17 JM side was, because I don't know if he said he  
 18 actually knows it.  
 19 BY MR. ANNESSER:  
 20 Q The JM side is the side on the other side  
 21 of the wall in the E-Cat plant. Did you ever see  
 22 anyone go between the two sides?  
 23 A Not to the best of my knowledge.  
 24 Q Do you know Mr. Fulvio Fabiani?  
 25 A Yes, I do.

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1 Q Did he take any of the measurements that  
 2 you relied upon in creating your report?  
 3 A To the calculation of COP?  
 4 Q Yes.  
 5 A So the question is?  
 6 Q Did he provide any of the measurements to  
 7 you?  
 8 A No.  
 9 MR. ANNESSER: Sir, that is all the  
 10 questions that I have for you. I thank you  
 11 very much for your time. Mr. Pace, who  
 12 represents the defendants, may have some  
 13 questions for you.  
 14 MR. LUKACS: Mr. Videographer, may I have  
 15 a time, please?  
 16 THE VIDEOGRAPHER: Five hours and 29  
 17 minutes. Could you please put your microphone  
 18 on?  
 19 MR. PACE: Oh, my apologies.  
 20 CROSS-EXAMINATION  
 21 BY MR. PACE:  
 22 Q Let me start by asking what title do you  
 23 prefer? Do you prefer Dr. Penon; do you prefer  
 24 Engineer Penon; do you prefer Mr. Penon?  
 25 A Dr. Penon.

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1 law of thermodynamics.  
 2 Q Dr. Penon, I am not saying that you were  
 3 required in writing your reports to do so, but I'm  
 4 asking you a question. You've -- you've worked with  
 5 this E-Cat plant or measuring this E-Cat plant for a  
 6 couple of years now; correct?  
 7 MR. ANNESSER: Object to the form.  
 8 THE WITNESS: For one year, he says.  
 9 BY MR. PACE:  
 10 Q For one year. So how would you measure --  
 11 I'm sorry.  
 12 You worked in the validation test in 2013;  
 13 correct?  
 14 MR. ANNESSER: Object to the form.  
 15 THE WITNESS: One week.  
 16 BY MR. PACE:  
 17 Q So at least since 2013 you've been aware  
 18 of E-Cat and the E-Cat technology?  
 19 MR. ANNESSER: Object to the form.  
 20 THE WITNESS: I do not know the principle  
 21 or function of E-Cat because it is an  
 22 industrial secret.  
 23 BY MR. PACE:  
 24 Q I can wrap this up pretty easily. You  
 25 have no opinion on whether the functioning of the

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1 E-Cat is consistent or inconsistent with any laws of  
 2 thermodynamics?  
 3 MR. ANNESSER: Object to form.  
 4 THE WITNESS: I have my opinion, but it is  
 5 not within the jurisdiction of my work.  
 6 BY MR. PACE:  
 7 Q I understand that. I actually asked for  
 8 your opinion.  
 9 A I see I have an opinion, but I don't see  
 10 how relevant it is in this situation.  
 11 Q Dr. Penon, understand you can take the  
 12 position that you are not going to answer my  
 13 questions and you can walk out of this examination.  
 14 That's your right, but --  
 15 A It is not my intention not to respond.  
 16 Simply what I appreciate to get questions related to  
 17 the main, you know, our meeting.  
 18 Q Dr. Penon, I am allowed to make, and you  
 19 can speak with your lawyer. I am allowed to  
 20 approach issues in maybe manners other than you  
 21 would normally approach them or want them to be  
 22 approached.  
 23 MR. ANNESSER: Chris, why don't we go off  
 24 the record?  
 25 MR. PACE: Let's go off the record and let

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1 him talk to his counsel for a second.  
 2 THE VIDEOGRAPHER: Off the record. The  
 3 time is 5:11 p m.  
 4 (Thereupon, a recess was taken from 5:11  
 5 p m. - 5:23 p m., after which the following  
 6 proceedings were had:)  
 7 THE VIDEOGRAPHER: Okay. We are now back  
 8 on the record. The time is 5:23.  
 9 BY MR. PACE:  
 10 Q Dr. Penon, before we broke I was asking  
 11 you your opinion in terms of whether the E-Cat  
 12 violated the law of thermodynamics. I believe,  
 13 without getting into what the opinion is, you said  
 14 you had an opinion and you didn't want to express  
 15 it; is that fair?  
 16 A I thought that my opinion on the E-Cat was  
 17 not relevant to the object of the conversation  
 18 today, of this -- of this session but...  
 19 Q I didn't hear the very end of what he  
 20 said. Not relevant to the session?  
 21 A And this is why.  
 22 MR. LUKACS: May I interject? This is  
 23 John Lukacs for the record. We have been here  
 24 for over five and a half hours now. Dr. Penon  
 25 is here to testify to facts and circumstances

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1 surrounding the process in question, as opposed  
 2 to express opinions. So if I can simply have  
 3 interrogation continue on that basis it would  
 4 be time well served.  
 5 MR. PACE: I understand the position. I  
 6 just want to be clear that he is not willing to  
 7 provide the opinion. So let me circle it to  
 8 this way.  
 9 BY MR. PACE:  
 10 Q Whatever your opinion is it did not  
 11 influence any of the testing or measurements you did  
 12 on the E-Cat?  
 13 A No.  
 14 Q Let me take you back to the validation  
 15 test in 2013. Do you recall that?  
 16 A (Nods head.)  
 17 Q Do you recall that there was a change to  
 18 what was going to be tested --  
 19 MR. ANNESSER: Objection.  
 20 BY MR. PACE:  
 21 Q -- shortly before the test occurred?  
 22 MR. ANNESSER: Object to the form.  
 23 THE WITNESS: A change related to what?  
 24 BY MR. PACE:  
 25 Q Do you remember there being a change to

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1 the number of units, E-Cat units that were going to  
 2 be tested?  
 3 MR. ANNESSER: Object to the form.  
 4 THE WITNESS: You are referring to the  
 5 problem generated by -- by the relation with  
 6 the Italian requirements?  
 7 BY MR. PACE:  
 8 Q The Italian requirements, did you say  
 9 Ferrara in there?  
 10 THE INTERPRETER: Sorry?  
 11 BY MR. PACE:  
 12 Q I was listening to his answer. I thought  
 13 he said Ferrara in there so ...  
 14 A Ferrara.  
 15 Q Let me ask you. What was the Italian law  
 16 limitation or requirement?  
 17 MR. ANNESSER: Object to the form.  
 18 THE WITNESS: I was trying to remember.  
 19 Whatever the generated power could have been  
 20 higher than, if I remember 35 kilobytes because  
 21 it was necessary to obtain all sorts of  
 22 authorizations long -- requiring a long time  
 23 and complication in order to have. And if you  
 24 are referring to this, it appears that for  
 25 these reasons there has been a change.

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1 BY MR. PACE:  
 2 Q Who told you what the Italian law was?  
 3 MR. ANNESSER: Object to the form.  
 4 THE WITNESS: Dr. Rossi preparing the  
 5 environment to affect the signal -- he weighed  
 6 this problem. He suggested that this was a  
 7 problem to be solved.  
 8 BY MR. PACE:  
 9 Q I understand. So Dr. Rossi explained the  
 10 problem to you and came up with the solution?  
 11 MR. ANNESSER: Object to the form.  
 12 THE WITNESS: Yes.  
 13 BY MR. PACE:  
 14 Q Let me see if I can...  
 15 MR. PACE: Do we have -- number 24.  
 16 (Thereupon, Defendant's Exhibit 24 was  
 17 marked for identification.)  
 18 BY MR. PACE:  
 19 Q I am going to hand you what is marked as  
 20 Exhibit 20...  
 21 MR. PACE: That's very strange.  
 22 BY MR. PACE:  
 23 Q I am going to hand you what's been marked  
 24 as Exhibit 24.  
 25 MR. PACE: Sorry. My left is not my

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1 pitching arm.  
 2 BY MR. PACE:  
 3 Q My first question really is simple,  
 4 Dr. Penon, have you ever seen this document before?  
 5 A No.  
 6 Q Did Dr. Rossi or anyone else tell you  
 7 that -- actually. I'm sorry. If you will do me a  
 8 favor. If you look at the last page of this  
 9 document. Did you have any involvement in creating  
 10 this what's called E-Cat validation protocol?  
 11 MR. PACE: Object to the form.  
 12 BY MR. PACE:  
 13 Q Let me ask you a question, Dr. Penon. You  
 14 have been looking at that exhibit for a while. Is  
 15 there some familiarity to that exhibit to you?  
 16 A I do not remember getting involved at this  
 17 level on the processing of the protocol.  
 18 Q Okay. Just to be clear, you don't -- what  
 19 you are testifying is that you didn't have any  
 20 involvement in preparing Exhibit A?  
 21 MR. ANNESSER: Object to the form.  
 22 MR. LUKACS: Objection. Misstatement of  
 23 the witness's testimony.  
 24 MR. PACE: Then rather than misstate, let  
 25 me just do it this way. I will ask the

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1 question again because you might have said  
 2 something different.  
 3 BY MR. PACE:  
 4 Q Did you have any involvement in preparing  
 5 Exhibit A, the last page of what I've marked as  
 6 Exhibit 24?  
 7 A I don't think so. I don't think I  
 8 remember.  
 9 Q If you can turn back to me to Exhibit 8.  
 10 Exhibit 8 would be -- it is an e-mail from you and  
 11 it has your -- if you can turn to the third page of  
 12 that exhibit. The bottom has the numbers 74 in the  
 13 corner.  
 14 A Yes.  
 15 Q I want to just walk through some parts of  
 16 this report. One is you have under for Leonardo  
 17 Corporation Mr. F. Fabiani and Mr. A. Rossi. F.  
 18 Fabiani is Fulvio Fabiani?  
 19 A Fulvio; F-U-L-V-I-O.  
 20 MR. PACE: Excellent.  
 21 BY MR. PACE:  
 22 Q And he was working for Leonardo  
 23 Corporation?  
 24 MR. ANNESSER: Object to the form.  
 25 THE WITNESS: Yes, I think so.

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1 BY MR. PACE:  
 2 Q If you turn to -- it is actually page 3 of  
 3 6 of this report. I'm sorry. The corner Bates No.  
 4 76. I will do that. That is probably easier to  
 5 find your way around the document.  
 6 If you can look up there under history of  
 7 the test. "In order to comply with the Italian law  
 8 the trial was conducted by activating only 18 E-Cat  
 9 units." Was it Dr. Rossi who communicated that  
 10 limitation to you that the right number of E-Cats to  
 11 use was 18?  
 12 MR. ANNESSER: Object to the form.  
 13 THE WITNESS: Yes, he did.  
 14 BY MR. PACE:  
 15 Q Did you discuss that -- that limitation or  
 16 that number with anyone else prior to the test being  
 17 run?  
 18 A I don't remember.  
 19 Q All right. Going down underneath that I  
 20 see at the beginning of the test is at 1330 or 1:30  
 21 on April 30th.  
 22 A 11:30? 1330.  
 23 Q 1330?  
 24 A 1:30 p m., yes.  
 25 Q So let me try this again. Am I reading

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1 this correctly that the test that was done on these  
 2 E-Cat units, the test began at 1330 on April 30th?  
 3 A Correct.  
 4 Q And it ended at 1300 on the first of May?  
 5 A Thirteen o'clock.  
 6 Q So it ran for 23 and a half hours;  
 7 correct?  
 8 A Correct.  
 9 Q Do you recall why it wasn't run for the  
 10 full 24 hours?  
 11 A No, I don't remember.  
 12 Q Is there -- what is the difference between  
 13 steam -- steam flow and steam quality?  
 14 MR. ANNESSER: Object to the form.  
 15 THE WITNESS: Steam?  
 16 BY MR. PACE:  
 17 Q Steam flow versus steam quality?  
 18 A Normally when you mention about the  
 19 quality of the steam, you refer to the percentage of  
 20 the humidity which is present in the steam. This  
 21 means that the -- the steam is a condition of  
 22 saturated steam where there is a flux of steam, yes.  
 23 We are on the right track?  
 24 Q Yes.  
 25 A The flux is the maximum -- is the

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1 entire -- the entire -- the quantity of the steam  
 2 gone -- flowing in the unity of time.  
 3 Q So a -- is there a different equipment  
 4 that's used to measure steam flow versus steam  
 5 quality?  
 6 MR. ANNESSER: Object to the form.  
 7 THE WITNESS: I do not have elements for a  
 8 precise answer.  
 9 BY MR. PACE:  
 10 Q Well, what -- what would be used to  
 11 measure the -- the flow of -- of steam or heated  
 12 fluid?  
 13 MR. ANNESSER: Object to the form.  
 14 THE WITNESS: I never proved this question  
 15 in my mind because -- because the level did  
 16 not -- did not state that it was necessary. It  
 17 was not necessary to know the flux of the --  
 18 the flow of the steam, but the conservation of  
 19 the mass of the water inflow and the steam  
 20 out -- steam out flowing.  
 21 BY MR. PACE:  
 22 Q The -- did the -- you mean the temperature  
 23 of the -- when you say "the steam out flow" --  
 24 A No. The water goes in -- goes into the  
 25 black box. After verification there is no change of

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1 loss. The mass does not disappear for a principle  
 2 of conservation or mass conservation and this mass  
 3 it is becoming steam.  
 4 Q Okay. So just let me go back to my  
 5 original question and then come back to what you've  
 6 been saying now.  
 7 You -- you don't -- you are not aware of  
 8 what equipment would be used to measure the flow of  
 9 steam or heated fluid because you didn't need to  
 10 know that for the work you were doing with  
 11 Dr. Rossi?  
 12 MR. ANNESSER: Object to the form.  
 13 THE WITNESS: No, I -- I didn't need  
 14 the -- to measure the flow of measurement of  
 15 the steam.  
 16 BY MR. PACE:  
 17 Q Steam quality, is there a -- is there --  
 18 do you know whether there is equipment that can be  
 19 used to measure steam quality?  
 20 MR. ANNESSER: Object to the form.  
 21 THE WITNESS: Certainly, yes.  
 22 BY MR. PACE:  
 23 Q Was that equipment -- did you use any of  
 24 that equipment in connection with your -- the  
 25 validation testing?

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1 Q If you go for me two paragraphs down do  
 2 you see the one starting with "following my  
 3 request"? Do you see that paragraph?  
 4 A Uh-huh.  
 5 Q Am I understanding this correctly, that  
 6 you had discussed with Dr. Rossi and Dr. Rossi had  
 7 agreed to include a condensed steam collector at the  
 8 bottom of the -- at the bottom of the steam pipe?  
 9 MR. ANNESSER: Object to the form.  
 10 THE WITNESS: Okay.  
 11 BY MR. PACE:  
 12 Q Do you recall having that conversation  
 13 with Dr. Rossi?  
 14 A In this very moment I don't remember, but  
 15 I think having written that...  
 16 Q You would not have written that in the  
 17 e-mail, if the conversation didn't occur; is that  
 18 correct?  
 19 THE INTERPRETER: Correct. Exactly what  
 20 he was saying.  
 21 MR. ANNESSER: Object to the form.  
 22 BY MR. PACE:  
 23 Q If we could just ask him the question.  
 24 A He must apply. He has to apply.  
 25 Q I understand. I am just -- if you wrote

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1 in the e-mail that you had made a request to  
 2 Dr. Rossi and Dr. Rossi had agreed with your request  
 3 to apply a condensed steam collector, you believe  
 4 your e-mail is accurate?  
 5 A I did the request and Rossi accepted to  
 6 apply.  
 7 Q The next paragraph says "during the visit  
 8 I will check the amount of the water present". Is  
 9 that a reference to the condensed steam collector?  
 10 A Can you quote again which sentence?  
 11 Q Yes. Dr. Penon, the very next paragraph  
 12 says "During my visit I will check the amount of the  
 13 water present." Do you see that paragraph? That's  
 14 a reference to checking the amount of water in the  
 15 condensed steam collector; correct?  
 16 A The demand is if I verify the  
 17 installation, right, the question is?  
 18 Q No. My question is because it has visits  
 19 as plural, I'm understanding this to say that -- are  
 20 you saying that during your visits -- your later  
 21 visits to the Doral warehouse you would check the  
 22 amount of water in the condensed steam collector?  
 23 MR. ANNESSER: Object to the form.  
 24 THE WITNESS: Yes. During my visits,  
 25 during my visits I intended to verify the

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1 steam -- the water present, if any.  
 2 MR. PACE: Understood.  
 3 BY MR. PACE:  
 4 Q If I can, we only have a couple of more  
 5 minutes in this tape, but let me see if I can ask  
 6 this: If you can turn to the prior page, page 27.  
 7 Right above your typed name do you see --  
 8 A On the top of the page?  
 9 Q No, it is more towards the bottom. Do you  
 10 see a paragraph that starts with "If we move away  
 11 from the exit point"?  
 12 THE INTERPRETER: Yes.  
 13 BY MR. PACE:  
 14 Q "If we move away from the exit point it is  
 15 possible the formation of small amounts of water  
 16 which will be collected in the collector." Am I  
 17 understanding correctly, that's the same condensed  
 18 steam collector that you -- that we were just  
 19 talking about on the prior page?  
 20 MR. ANNESSER: Object to the form.  
 21 THE WITNESS: Yes.  
 22 BY MR. PACE:  
 23 Q Are you aware of whether there was any  
 24 steam collect -- any such condensed steam collector  
 25 actually installed at the plant in Doral?

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1 A Another collector?  
 2 Q Any collector? Was there a steam -- was  
 3 there a condensed steam collector on the exit pipe  
 4 from the E-Cat heading over to the customer side?  
 5 A In this moment I don't remember.  
 6 Q All right.  
 7 MR. PACE: Let's take a break, because  
 8 he's got to change the tape and I think you  
 9 have to hop to a phone call because it is  
 10 exactly 6:00 o'clock.  
 11 MR. LUKACS: It is 5:00 o'clock in Miami  
 12 right now.  
 13 MR. PACE: Oh, 6 o'clock. I'm sorry. I'm  
 14 sorry.  
 15 THE VIDEOGRAPHER: Going off the record.  
 16 The same is 6 o'clock p.m.  
 17 (Thereupon, a recess was taken from 6:00  
 18 p.m. - 6:05 p.m., after which the following  
 19 proceedings were had:)  
 20 THE VIDEOGRAPHER: All right. We are now  
 21 back on the record. The time is 6:05. Media  
 22 number six.  
 23 BY MR. PACE:  
 24 Q Dr. Penon, if I can keep you on the same  
 25 page that we were looking at for number -- we were

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1 looking at page 27 of what I have marked as Exhibit  
 2 25. At the top of that page you see an e-mail from  
 3 Tom Darden. The very top, it starts with "Let's  
 4 make sure". Do you see "Let's make sure that there  
 5 is more than one way to measure the temperature in  
 6 that pipe." I want to use it really to transition  
 7 to page 26, because we have a response from  
 8 Dr. Rossi to the issue. If you look at his e-mail  
 9 there at the bottom. Do you see the paragraph that  
 10 starts with the -- several lines down. "The  
 11 temperature in the steam pipe, as you correctly  
 12 remember, is taken in two positions by means of two  
 13 thermocouples that have been brought in position  
 14 today by Engineer Penon." He also says, "Also the  
 15 temperature of the water in the tank inside the  
 16 container to feed the pumps is measured by two  
 17 thermocouples brought and installed under the  
 18 direction of Engineer Penon. And then he says, and  
 19 the pressure of the steam is measured with two  
 20 instruments brought by Engineer Penon."  
 21 Is -- did you bring two measuring devices,  
 22 whether for temperature or for pressure, and then  
 23 you used one and you had Fabio -- you allowed Rossi  
 24 or Fabiani to use the other?  
 25 MR. ANNESSER: Object to the form.

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1 THE WITNESS: I brought two technical  
 2 probes. Yes, I brought two probes, technical  
 3 probes. One of those was going directly on the  
 4 document which was transforming from analogical  
 5 to digital and then it was stuck in his  
 6 computer.  
 7 The other one was to verify when I was  
 8 visiting the plant the consistency collected to  
 9 verify the thermometer connected with the  
 10 second -- with the second.  
 11 THE INTERPRETER: I got lost.  
 12 THE WITNESS: The second probe was  
 13 connected to the thermometer to verify the --  
 14 the relationship -- the correspondence of the  
 15 data from the relevance of the thermometer and  
 16 how much it was revealed by the first probe.  
 17 MR. PACE: Okay.  
 18 BY MR. PACE:  
 19 Q Is the same applied for the pressure  
 20 probes?  
 21 MR. ANNESSER: Object to the form.  
 22 THE WITNESS: Can you repeat?  
 23 MR. PACE: Yes.  
 24 BY MR. PACE:  
 25 Q Was there also the steam pressure measured

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1 by two different instruments?  
 2 A The steam pressure was measured by -- by  
 3 the probe, and as far as I can remember from the  
 4 manometer which had a symbol reading -- manual  
 5 reading.  
 6 Q The manometer was read manually every day?  
 7 THE INTERPRETER: Yes.  
 8 THE WITNESS: He was checking the  
 9 manometer during my visits to verify the  
 10 consistency of the probe with the pressure.  
 11 MR. ANNESSER: Object to the form. Move  
 12 to strike.  
 13 BY MR. PACE:  
 14 Q Were there two -- did you bring --  
 15 according to this e-mail it says, "Also the pressure  
 16 of the steam is measured with two instruments  
 17 brought by Engineer Penon." Is that accurate?  
 18 A I don't remember at this very time.  
 19 Q Okay. If you can go down for me a few  
 20 lines, there is -- let me just read it and then we  
 21 can talk about it.  
 22 "All those instruments for the measurement  
 23 of temperature of the steam, of the pressure of the  
 24 steam, and of temperature of the water in the water  
 25 tank inside the container are connected with the

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1 computer of property of Engineer Penon." Do you see  
 2 where I'm reading in the document?  
 3 A Yes. Yes, I see it.  
 4 Q Sir, it follows that -- it says shortly  
 5 after "Obviously, Penon will consider for his  
 6 calculations only the data registered by the  
 7 computer."  
 8 MR. ANNESSER: Objection.  
 9 MR. PACE: -- "And we can compare the data  
 10 that he will find with the data that we will  
 11 find."  
 12 MR. ANNESSER: Object to the form.  
 13 BY MR. PACE:  
 14 Q Do you see that?  
 15 A I do not understand it. Can you repeat  
 16 it?  
 17 MR. PACE: Yes.  
 18 BY MR. PACE:  
 19 Q Do you see the sentence in the e-mail that  
 20 starts with, "Obviously Penon will consider for his  
 21 calculations only the data registered by his  
 22 computer, but we can compare the data." You can  
 23 compare the data.  
 24 Is that -- did that occur during the  
 25 course of the test that you compared the data that

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1 you were -- that you were storing in your computer  
 2 with the data that was being collected by Rossi and  
 3 Fabiani?  
 4 MR. ANNESSER: Object to the form.  
 5 THE WITNESS: It happened in some visits  
 6 that we compared the data -- the data recovered  
 7 on the spot, at the very same time, with the  
 8 ones of Fabiani.  
 9 BY MR. PACE:  
 10 Q And did you ever find any inconsistencies?  
 11 A I was not really interested very frankly  
 12 in the data of Fabiani, because with the system of  
 13 comparison between different -- I was in a condition  
 14 of feeling sure about my collection of data.  
 15 Q And that collection of data, you said  
 16 that -- they sent it to you every couple of weeks?  
 17 MR. ANNESSER: Object to the form.  
 18 THE WITNESS: No. If you refer to the  
 19 data gathered in my computer at Doral I was  
 20 real -- I was requesting them to transfer the  
 21 data every two months.  
 22 BY MR. PACE:  
 23 Q And how were they doing that?  
 24 A They sent me the file with the entire data  
 25 of the period -- of the period in which I was

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1 interested.  
 2 Q And who is the "they"?  
 3 THE INTERPRETER: Sorry.  
 4 BY MR. PACE:  
 5 Q Who would send you this data?  
 6 A Fabiani.  
 7 Q So Fulvio Fabiani would send you the data  
 8 from your computer every couple of months?  
 9 MR. ANNESSER: Object to the form.  
 10 THE WITNESS: According to my request.  
 11 BY MR. PACE:  
 12 Q Okay. So you made the request -- let me  
 13 rephrase it then.  
 14 Roughly every couple of months you made  
 15 the request for Fabiani to send you your data and  
 16 when you made such a request he would send it to  
 17 you?  
 18 MR. ANNESSER: Object to the form.  
 19 THE WITNESS: Correct. He was sending the  
 20 data in the computer.  
 21 BY MR. PACE:  
 22 Q So he had the ability to access your  
 23 computer to make at least a copy of the data to send  
 24 you?  
 25 MR. ANNESSER: Object to the form.

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1 THE WITNESS: He could access, but for  
 2 some limited tasks.  
 3 BY MR. PACE:  
 4 Q And does that -- does that -- where is  
 5 that computer today?  
 6 A I think it is in the container at the  
 7 Doral.  
 8 Q So you -- you did not take that with you  
 9 when you returned to Italy in February of 2016?  
 10 A No, because I had already all the data.  
 11 Q When you -- when you took any of the data  
 12 from the computer that you had at Doral, would you  
 13 erase it from the computer?  
 14 THE INTERPRETER: Excuse me?  
 15 BY MR. PACE:  
 16 Q After you had reviewed the data that was  
 17 on the computer in Doral, would it get erased?  
 18 Would it get erased?  
 19 MR. ANNESSER: Object to the form.  
 20 THE WITNESS: I don't remember honestly.  
 21 I took them for sure, but I don't know if I  
 22 deleted it.  
 23 BY MR. PACE:  
 24 Q So it may be on the computer that's in  
 25 Doral. You don't know?

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1 A It could be in the computer.  
 2 Q Have you maintained a copy of this, this  
 3 data?  
 4 A My personal data -- my personal data on my  
 5 computer. No additional -- no other copies exist.  
 6 Q But just so I understand. These data --  
 7 these devices for collecting information are  
 8 collecting temperature and pressure readings on a  
 9 very regular basis, very consistent basis; correct?  
 10 MR. ANNESSER: Object to the form.  
 11 THE WITNESS: Correct, yes.  
 12 BY MR. PACE:  
 13 Q And you testified that your report largely  
 14 uses average numbers for a day usually rounded up or  
 15 down?  
 16 MR. ANNESSER: Object to the form.  
 17 THE WITNESS: Can you repeat again?  
 18 MR. PACE: Sure.  
 19 BY MR. PACE:  
 20 Q You were looking with Mr. Annesser at some  
 21 of your reports and the annexes to the reports, and  
 22 you were talking about how those numbers -- you  
 23 don't report several hundred numbers for a given  
 24 day. You report one number for a day.  
 25 A The reports were related to 24 hours



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1 BY MR. PACE:  
 2 Q I believe you said that daily Dr. Rossi  
 3 sent you a measurement?  
 4 MR. ANNESSER: Object to the form.  
 5 THE WITNESS: Yes.  
 6 BY MR. PACE:  
 7 Q How did he send that to you?  
 8 A Compiling the log of the implant and there  
 9 was sending the log updated.  
 10 Q But was it a daily e-mail you would get  
 11 from Dr. Rossi?  
 12 A Correct. Daily.  
 13 Q Okay. So you have over 350 -- at some  
 14 point you have almost -- let me start over again.  
 15 Were there roughly 350 or 360 of these  
 16 e-mails?  
 17 A Approximately, yes.  
 18 Q Okay. And these e-mails, when it has the  
 19 flow meter data, it is the exact reading, he is  
 20 supposed to provide you the exact reading, not a  
 21 rounded off reading?  
 22 A Yes.  
 23 Q And then the other data that was being  
 24 sent to you when you would request from Fabio --  
 25 from Fulvio Fabiani, that would also be sent to you

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1 by e-mail?  
 2 MR. ANNESSER: Object to the form.  
 3 THE WITNESS: Correct.  
 4 BY MR. PACE:  
 5 Q Now, I understand these -- I understand  
 6 this temperature data would record temperature every  
 7 few seconds.  
 8 MR. ANNESSER: Object to the form.  
 9 BY MR. PACE:  
 10 Q Is that correct?  
 11 A There the frequency -- I don't remember  
 12 exactly, after the certain number of seconds there  
 13 was a new -- a new.  
 14 Q Measurement?  
 15 THE INTERPRETER: Output, measurement.  
 16 BY MR. PACE:  
 17 Q And these are the large files that would  
 18 be sent by Fulvio Fabiani to you?  
 19 MR. ANNESSER: Object to the form.  
 20 MR. LUKACS: Okay. Let me just stay on  
 21 the record for a moment. We started at  
 22 9:00 o'clock this morning Dominican Republic  
 23 time. It is now 6:58 here in the Dominican  
 24 Republic. I have a 6:00 o'clock call Eastern  
 25 Standard Time that I am going to make right

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1 now. We are off the record.  
 2 THE VIDEOGRAPHER: Off the record. The  
 3 time is 6:58.  
 4 (Thereupon, a recess was taken from 6:58  
 5 p.m. - 7:14 p.m., after which the following  
 6 proceedings were had.)  
 7 THE VIDEOGRAPHER: We are now back on the  
 8 record. The time is 7:14.  
 9 BY MR. PACE:  
 10 Q Dr. Penon, I have been advised that I have  
 11 got 15 more minutes to ask you questions so I'm  
 12 going to try to -- to move a little quickly now, if  
 13 I can.  
 14 Can you look at Exhibit 18 for me?  
 15 A Page number?  
 16 Q Exhibit 18, the first two pages. Do you  
 17 have 18 with you?  
 18 THE INTERPRETER: Is it the big one?  
 19 BY MR. PACE:  
 20 Q Did you find it? If you could turn to the  
 21 second page of that exhibit. This is the picture  
 22 of -- it says in reactors -- you see how it refers  
 23 to electrical measures and reactors BF1, BF2 and  
 24 BF3; correct? BF1 -- do you know what BF is short  
 25 for or stands for?

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1 A The grouping of -- the E-Cat unit. The  
 2 unit BF1 unit BF2 unit.  
 3 Q So this is what they call the Big Frankie  
 4 units?  
 5 A I did not go deeply into the matter.  
 6 Q Is it true that there is also a BF4?  
 7 A No, I don't know.  
 8 Q So --  
 9 A I do not know.  
 10 Q So at the plant you do not recall there  
 11 being four units of this type, only three?  
 12 MR. ANNESSER: Object to the form.  
 13 THE WITNESS: These were -- we perform it  
 14 on these three units because they were working.  
 15 I ignore how many other units were not working.  
 16 It was not of my interest, so I didn't need it.  
 17 BY MR. PACE:  
 18 Q So when you went there on this date  
 19 October 13th, if you look at the actual signature it  
 20 has October 13 at the very top if you look date  
 21 October 13th, 2016. Let me just be quick if I can.  
 22 There were three of these collections of  
 23 E-Cats working?  
 24 MR. ANNESSER: Object to the form.  
 25 THE WITNESS: We verified the function of

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1 MR. LUKACS: 9:00 o'clock this morning and  
 2 it is now 20 minutes until 8:00.  
 3 MR. PACE: And it is now 20 minutes until  
 4 8:00 a.m.  
 5 MR. LUKACS: 8:00 p.m.  
 6 MR. PACE: And at this point -- 8:00 p.m  
 7 you are calling it into the deposition.  
 8 MR. LUKACS: Most respectfully, I might  
 9 add.  
 10 THE VIDEOGRAPHER: All right. Going off  
 11 the video record. The time is 7:42 p.m. in the  
 12 Dominican Republic.  
 13 MR. LUKACS: Reporter, thank you so much.  
 14 No waive. We'll have an opportunity to read.  
 15 (Thereupon, the taking of the deposition  
 16 was concluded at 7:42 p.m.)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25


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1 ERRATA SHEET  
 2 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.  
 DEPO OF: FABIO PENON  
 3 TAKEN: February 22, 2017  
 JOB# 2547735  
 4 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE  
 5 Page #| Line #| Change | Reason  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20 \_\_\_\_\_  
 21 State of Florida)  
 County of )  
 22  
 Under penalties of perjury, I declare that I have  
 23 read by deposition transcript, and it is true and  
 correct subject to any changes in form or  
 24 substance entered here.  
 \_\_\_\_\_  
 25 Date FABIO PENON


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1 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.  
 DEPO OF: FABIO PENON  
 2 TAKEN: February 22, 2017  
 3  
 4 EXCEPT FOR ANY CORRECTIONS  
 MADE ON THE ERRATA SHEET BY  
 5 ME, I CERTIFY THIS IS A TRUE  
 AND ACCURATE TRANSCRIPT.  
 6 FURTHER DEPONENT SAYETH NOT.  
 7  
 8 \_\_\_\_\_  
 FABIO PENON  
 9  
 STATE OF FLORIDA )  
 ) SS:  
 COUNTY OF MIAMI-DADE)  
 10  
 11 Sworn and subscribed to before me this  
 12 \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
 13 PERSONALLY KNOWN \_\_\_\_\_ OR I.D. \_\_\_\_\_  
 14  
 15 \_\_\_\_\_  
 Notary Public in and for  
 the State of Florida at  
 Large.  
 16  
 My commission expires:  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25


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1 CERTIFICATE OF OATH OF INTERPRETER  
 2  
 3 STATE OF FLORIDA )  
 ) SS:  
 4 COUNTY OF MIAMI-DADE)  
 5  
 6 I, DIANA SANTOS, Notary Public in and for  
 7 the State of Florida at Large, certify that the  
 8 Interpreter, UGO V. CHIARATO personally appeared  
 9 before me on February 22, 2017 and was duly sworn by  
 10 me.  
 11 WITNESS my hand and official seal this  
 12 22nd day of February, 2017.  
 13  
 14  
 15   
 16 \_\_\_\_\_  
 DIANA SANTOS  
 Notary Public, State of Florida  
 at Large  
 17  
 18 Notary #FF030013  
 19 My commission expires: 7/7/17  
 20  
 21  
 22  
 23  
 24  
 25

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1 CERTIFICATE OF OATH OF WITNESS  
 2  
 3 STATE OF FLORIDA )  
 ) SS:  
 4 COUNTY OF MIAMI-DADE)  
 5  
 6 I, DIANA SANTOS, Notary Public in and for  
 7 the State of Florida at Large, certify that the  
 8 witness, FABIO PENON, personally appeared before me  
 9 on February 22, 2017 and was duly sworn by me.  
 10 WITNESS my hand and official seal this  
 11 22nd day of February, 2017.  
 12  
 13  
 14   
 15 \_\_\_\_\_  
 DIANA SANTOS  
 Notary Public, State of Florida  
 at Large  
 Notary #FF030013  
 My commission expires: 7/7/17  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 REPORTER'S DEPOSITION CERTIFICATE  
 2  
 3 I, DIANA SANTOS, certify that I was  
 4 authorized to and did stenographically report the  
 5 deposition of FABIO PENON, the witness herein on  
 6 February 22, 2017; that a review of the transcript  
 7 was requested; that the foregoing pages numbered  
 8 from 1 to 206 inclusive is a true and complete  
 9 record of my stenographic notes of the deposition by  
 10 said witness; and that this computer-assisted  
 11 transcript was prepared under my supervision.  
 12 I further certify that I am not a  
 13 relative, employee, attorney or counsel of any of  
 14 the parties, nor am I a relative or employee of any  
 15 of the parties' attorney or counsel connected with  
 16 the action.  
 17 DATED this 22nd day of February, 2017.  
 18  
 19  
 20  
 21   
 22 \_\_\_\_\_  
 DIANA SANTOS  
 23  
 24  
 25

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1 VERITEXT FLORIDA CO.  
 ONE BISCAYNE TOWER  
 2 2 S. Biscayne Tower, Suite 2250  
 Miami, Florida 33131  
 3 (305) 371-1884  
 4 March \_\_\_\_\_, 2017  
 5 FABIO PENON  
 c/o JOHN CHARLES LUKACS, ESQUIRE  
 6 HINSHAW & CULBERTSON LLP  
 2525 Ponce de Leon Boulevard  
 7 Coral Gables, Florida 33134  
 Telephone: (305)358-7747  
 8 E-mail:jlukacs@hinshawlaw.com  
 9 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.  
 DEPO OF: FABIO PENON  
 10 TAKEN : February 22, 2017  
 READ & SIGN BY: April \_\_\_\_\_, 2017  
 11  
 Dear FABIO PENON:  
 12  
 This letter is to advise you that the transcript  
 13 of the deposition listed above is completed and  
 is awaiting reading and signing.  
 14  
 Please arrange to stop by our office in Suite 1020,  
 15 19 West Flagler Street, Miami, Florida to read and  
 sign the transcript. Our office hours are from  
 16 8:00 a.m. to 4:00 p.m. Monday through Friday.  
 Depending on the length of the transcript, you  
 17 should allow yourself sufficient time.  
 18 If the reading and signing has not been completed  
 prior to the referenced date, we shall conclude  
 19 that you have waived the reading and signing of the  
 deposition transcript.  
 20  
 Your prompt attention to this matter is appreciated.  
 21  
 Sincerely,  
 22  
 23 DIANA SANTOS  
 24 cc: JOHN W. ANNESSER, ESQUIRE  
 CHRISTOPHER R.J. PACE, ESQUIRE  
 25

Page 213

1 VERITEXT FLORIDA CO.  
 ONE BISCAYNE TOWER  
 2 2 S. Biscayne Boulevard, Suite 2250  
 Miami, Florida 33131  
 3 (305) 371-1884  
 4  
 March \_\_\_\_\_, 2017  
 5  
 6 JOHN W. ANNESSER, ESQUIRE  
 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.  
 7 283 Catalonia Avenue  
 Suite 200  
 8 Coral Gables, Florida 33134  
 Telephone: (305)377-0086  
 9 E-mail: jannesser@pbylaw.com  
 10 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.  
 DEPO OF: FABIO PENON  
 11 TAKEN : February 22, 2017  
 READ & SIGN BY: April \_\_\_\_\_, 2017  
 12  
 Dear JOHN W. ANNESSER, ESQUIRE:  
 13 The original transcript of the deposition listed  
 above was previously provided to your office. The  
 14 witness did not waive reading and signing and was  
 15 duly notified to come in and read the transcript.  
 16  
 Attached to this letter you will find a copy  
 17 of the corrections made by the witness.  
 PLEASE ATTACH THEM TO YOUR COPY OF THE  
 18 DEPOSITION SO IT WILL BE COMPLETE.  
 19 The witness made no corrections to transcript.  
 20 As of the above date, the witness has not come  
 in to read and sign the transcript which has  
 21 been noted on the original transcript.  
 22 Sincerely,  
 23  
 24 DIANA SANTOS  
 cc: JOHN CHARLES LUKACS, ESQUIRE  
 25 CHRISTOPHER R.J. PACE, ESQUIRE