

Composite Exhibit 61

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:16-cv-21199-CMA/O'Sullivan

ANDREA ROSSI and LEONARDO)
CORPORATION,)
)
)
Plaintiffs,)
)
)
v.)
)
THOMAS DARDEN; JOHN T.)
VAUGHN; INDUSTRIAL HEAT,)
LLC; IPH INTERNATIONAL,)
B.V. and CHEROKEE)
INVESTMENT PARTNERS, LLC,)
)
Defendants.)

C O N F I D E N T I A L

Video Deposition of BARRY WEST
(Taken by the Plaintiffs)
Raleigh, North Carolina
Friday, December 2, 2016

Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCE OF COUNSEL: 2 For the Plaintiffs: 3 BRIAN W. CHAIKEN, ESQ. 4 JOHN W. ANNESSER, ESQ. 5 Perlman, Bajandas, Yevoli & Albright, P.L. 6 283 Catalonia Avenue, Suite 200 7 Coral Gables, FL 33134 8 305-377-0086 9 bchaiken@pbyalaw.com 10 jannesser@pbyalaw.com 11 12 For the Defendants: 13 CHRISTOPHER LOMAX, ESQ. 14 Jones Day 15 Brickell World Plaza 16 600 Brickell Avenue, Suite 3300 17 Miami, FL 33131 18 305-714-9700 19 crjpace@jonesday.com 20 clomax@jonesday.com 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 Video Deposition of BARRY WEST, taken by the 3 Plaintiffs, at Regus Business Center, 9121 Anson Way, 4 Suite 200, Raleigh, North Carolina, on the 2nd day of 5 December, 2016 at 9:01 a m., before Marisa Munoz-Vourakis, 6 Registered Merit Reporter, Certified Realtime Reporter and 7 Notary Public. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (Continued) 2 For the Deponent: 3 JEREMY M. FALCONE, ESQ. 4 Ellis & Winters LLP 5 4131 Parklake Avenue, Suite 400 6 Raleigh, NC 27612 7 919-865-7000 8 jeremy.falcone@elliswinters.com 9 Also Present: THOMAS DARDEN 10 For the Third-Party Defendants JM Products, Inc., Henry Johnson, Esq. and James Bass: 11 FERNANDO S. ARAN, ESQ. (By Telephone) 12 Aran, Correa & Guarch, P.A. 13 255 University Drive 14 Coral Gables, FL 33134-6732 15 305-665-3400 16 faran@acg-law.com 17 For the Third-Party Defendants Fulvio Fabiani and United 18 States Quantum Leap, LLC: 19 RUDOLFO NUNEZ, ESQ.(By Telephone) 20 Rudolfo Nunez, P.A 21 255 University Drive 22 Coral Gables, FL 33134-6732 23 305-665-3400 24 rnunez@acg-law.com 25 Also Present - DONALD GRAVES, Videographer</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX 2 Examination of: Page 3 BARRY WEST 4 EXAMINATION BY MR. CHAIKEN 7 5 EXAMINATION BY MR. ARAN 174 6 EXAMINATION BY MR. NUNEZ 182 7 FURTHER EXAMINATION BY MR. CHAIKEN . . . 227 8 PLAINTIFF EXHIBITS 9 EXHIBIT NUMBER DESCRIPTION PAGE 10 Exhibit 1 Notice of Deposition 9 11 Exhibit 2 Twelve pages of documents 10 12 Exhibit 3 Bates stamped IH0006742 119 13 Exhibit 4 Bates number IH00006741 151 14 Exhibit 5 Bates number IH00006740 152 15 Exhibit 6 Bates number IH00006670 154 16 17 18 19 20 21 22 23 24 25</p>

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1 records of all that stuff. I want to say it was in
2 like September.

3 Q. Do you know what company you were working
4 for at that time, or let me rephrase that question,
5 since it's poorly phrased.

6 You were working as an independent
7 contractor for Mr. Darden's company at that time?

8 A. Yeah, I've never had an actual paper thing.
9 It's always just been damn, Barry, we got this work,
10 come help us, and they always paid me. So, you know,
11 there was never any paper thing, other than my check,
12 and I didn't even get a check many times. I mean, a
13 lot of it after a while I told them, I'm tired of this
14 check, I got to go cash it. I said just do ACH, you
15 know, direct deposit. Let's work out something like
16 that, and that's what they did after that.

17 Q. And you don't know what entity was paying
18 you at that time?

19 A. Industrial Heat.

20 Q. Industrial Heat?

21 A. All my checks have always been Industrial
22 Heat, LLC on them.

23 Q. Got it. So what was the nature of the
24 first type of work you did for Industrial Heat?

25 A. That panel.

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1 Q. What's his last name?

2 A. I don't know, just Drew. He drives a
3 forklift, yeah, he works for Southern Industrial. He's
4 in the click. He stays there all the time. So he
5 knows what's going on, all the office gossip and so on
6 and so forth, so. Plus he supported me any time I
7 needed something moved down there on our end or we had
8 parts that shipped into us and they were big or heavy,
9 I would always give him a call, and he'd run over and
10 bring the forklift help us, you know.

11 Q. Do you own any shares in Industrial Heat?

12 A. Yes, I think I do, yeah. I mean, I say I
13 think I do. I don't know if it's Industrial Heat or
14 what it is. It's some little thing that they give me
15 towards the end of the project.

16 Q. Was it a stock certificate that they gave
17 you?

18 A. No, it's shares. It's shares of something.
19 It's a stock. I mean, I don't know nothing about that
20 stuff, I really don't. I was told not to never sell it
21 though, unless it gets to \$500 a share, then I might
22 sell it.

23 Q. Do you know how many shares you were given?

24 A. Yes, 5,000.

25 Q. And did they tell you why they gave you

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<p style="text-align: right;">Page 78</p> <p>1 back, and then we did a basic floor layout of how the 2 plant should sit and the way things should be 3 orientated so that everything fit and worked properly 4 based on T. Barker's -- the way we'd lay things out, me 5 and him working together, and, of course, none of that 6 happened like that.</p> <p>7 Q. Okay. We'll get to that in a second.</p> <p>8 So when was the first trip you made to 9 Florida for the purposes of seeing the plant?</p> <p>10 A. Oh, God, I'm trying to think here. I'm 11 going to guess late November, early December. It was a 12 couple, three weeks. I can't remember exactly. It may 13 have been a month before we actually shipped the unit 14 down there. I mean, they decided for me to fly down 15 there, take a look at this place and see what we're up 16 against, because we knew we got to have water, we knew 17 we got to have power this, that and the other.</p> <p>18 Q. Do you recall visiting the plant, actually 19 the plant facility in Doral, Florida in November 2014?</p> <p>20 A. Yeah, like I said, about a month before we 21 shipped.</p> <p>22 Q. Okay. Do you know how long before, and I'm 23 talking like months or weeks in November 2014, did 24 Rossi go down to prepare the plant?</p> <p>25 A. Andrea was down there a lot. I mean, he</p>	<p style="text-align: right;">Page 80</p> <p>1 having having(sic) there. The air kind of really 2 didn't happen. We didn't need it. We had air there 3 that we used from the other side sometimes, but, no, 4 mostly just the water supply, which turned out not to 5 exist as well. We ended up bringing a hose from the 6 bathroom up there for what water needs, but then they 7 wanted to use distilled water. Andrea said water from 8 the tap was unacceptable. So he actually bought water 9 from a company down there that we had to shuck all 10 these darn five gallon jugs of water and fill the 11 vessel up which provided water for the unit.</p> <p>12 Q. So, but getting back to the design of the 13 layout of the facility, that's something that you and 14 T. Barker worked on, is that correct?</p> <p>15 A. Right. Right.</p> <p>16 Q. When in time did you work on that?</p> <p>17 A. Oh, prior to it leaving, when we were near 18 completion. I'd say this would have happened 19 November-ish.</p> <p>20 Q. 2014?</p> <p>21 A. Yeah.</p> <p>22 Q. Was it your understanding at that time that 23 the facility in Doral, Florida was already operating or 24 had operations in it, or did you understand that it 25 have being developed or built out for purposes of this</p>
<p style="text-align: right;">Page 79</p> <p>1 was home every weekend, most of the time. He'd come up 2 a lot of times in the week, Wednesday or Thursdays a 3 lot of times. Sometimes on a Monday, but he would 4 never stay but a couple of days. He just was 5 monitoring progress on the rebuild.</p> <p>6 Q. Do you recall ever traveling to Miami in 7 about April of 2014 to see the facility?</p> <p>8 A. No. No.</p> <p>9 Q. No. Yesterday, we had the deposition of 10 Mr. T. Barker Dameron, and one of the exhibits was 11 Exhibit number 14. I'm going to show you the exhibit 12 right now.</p> <p>13 Oh, strike that. I'm not going to show you 14 that document. I have a date wrong, I apologize.</p> <p>15 So you said just earlier that T. Barker and 16 yourself had worked on a design of the facility in 17 Florida, is that correct?</p> <p>18 A. A layout plan, a basic layout, how the two 19 different, because you got to understand that all the 20 units were in one large container, the 40-foot 21 container. And all the power and control that operated 22 these things was in a separate container. And how that 23 needed to be for things to work out electrically as 24 well as the plumbing and the air there was, you know, 25 plumbing and air that we would -- were planning on</p>	<p style="text-align: right;">Page 81</p> <p>1 test?</p> <p>2 A. I understood that the customer up front 3 needed -- was going to utilize the steam source and 4 give us our water back. I mean, this was just, you 5 know, whatever this customer was, whatever he done, you 6 know, I don't -- I don't really know. I heard a couple 7 of different stories, but I don't really know, because 8 I wasn't allowed up there. I didn't get to see 9 anything on the other side of the wall. In fact, the 10 work I had to do on the roof of the Conex they didn't 11 even like that, because I could see over there, so.</p> <p>12 Q. What stories did you hear?</p> <p>13 A. First, I heard they were curing some kind 14 of a circuit board for an aircraft, it was a military 15 type contract, and then I heard they are treating some 16 kind of metal.</p> <p>17 Q. Let me stop you there.</p> <p>18 Who did you hear the military comments 19 from?</p> <p>20 A. From Fulvio.</p> <p>21 Q. And what was the second thing you heard?</p> <p>22 A. Then the second thing I heard they were 23 heating some kind of metal and the story kind of 24 changed though.</p> <p>25 Q. Who did you hear that from?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. Fulvio again and Reynoldo. 2 Q. Who's Reynoldo? 3 A. Reynoldo is the worker there. 4 Q. Who did he work for? 5 A. He worked for Mr. Jim Bass. 6 Q. Did you ever meet Jim Bass? 7 A. Yeah, couple, three times. 8 Q. Who is Jim Bass? 9 A. He was the guy that took care of everything 10 across the wall. 11 Q. Who worked for JM Products? 12 A. Yeah. Well, he is JM Products. He was JM 13 Products. 14 Q. Do you know what JM Products is or was? 15 A. No, I really don't know. That was a 16 secret. It was all, I was told, top secret military 17 something going on over there. 18 Q. Did you ever have a discussion with anyone 19 from Industrial Heat where they told you there were 20 subject matters or topics that you were not to discuss 21 with Dr. Rossi? 22 A. No. Andrea was -- Andrea was driving the 23 ship, man. He was at the helm of this thing. 24 Q. Were you aware that T. Barker Dameron was 25 told that there were subject matters or things that he</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Right. But did you understand that he had 2 a specific role with respect to what was going on in 3 North Carolina? 4 A. Yeah, he was Andrea's right hand. 5 Q. Okay. Did you understand that Fulvio 6 Fabiani and Dr. Rossi had a relationship prior to doing 7 the work for Industrial Heat? 8 A. Oh, yeah, I met a lot of the family members 9 and I understood that. 10 Q. Did the people at Industrial Heat 11 understand that Fulvio Fabiani had a relationship with 12 Dr. Rossi prior to the work performed at Industrial 13 Heat? 14 A. Yeah, they knew. 15 Q. Did they have a concern about that? 16 A. No. Fulvio was Andrea's electrician, man. 17 You know, I mean, that had been going on for some time. 18 Q. Did they ever express to you that they were 19 concerned about this prior relationship? 20 A. No. 21 Q. Now, when you're talking the design layout 22 for the Florida plant that you and T. Barker worked on 23 in November, approximately, November 2014, when did you 24 first communicate or did you communicate that layout 25 design to Dr. Rossi?</p>
<p style="text-align: right;">Page 83</p> <p>1 was not to talk to Dr. Rossi about? 2 A. No, sir. 3 Q. Never had that conversation with T. Barker? 4 A. No, sir. 5 Q. Now, you talked a little bit about Fulvio 6 Fabiani. What was Fulvio Fabiani's role with respect 7 to the Doral, Florida facility? 8 A. He was electrical design and maintenance 9 kind of supervisor. That's who I worked with, worked 10 for him actually, him and Andrea, you know. I mean, 11 but once again -- and Fulvio was assisting in a lot of 12 tests. Him and Andrea would come up with pretty much 13 the plan. 14 Q. Now, you first met Fulvio Fabiani while you 15 were working in North Carolina, is that right? 16 A. Right. Right. 17 Q. And he was working in the North Carolina 18 facility as well, Fabiani? 19 A. Oh, yeah. 20 Q. And what was his role in North Carolina? 21 A. Once again, this all started with my 22 meeting with Fulvio and making modifications to this 23 one panel. And this was, like I said, a week's worth 24 of work, and the thing went on for, you know, over 25 three years.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes. 2 Q. When did you do that? 3 A. When it arrived. 4 Q. When it arrived in Doral? 5 A. In Doral. We had talked about it earlier 6 though. I had mentioned it on the phone with Andrea 7 when I was coming in. Andrea, actually, he met me at 8 the airport one time and picked me up. I think it was 9 Andrea that came and got me the very first day. The 10 first time I flew up there, Andrea came and got me. 11 Maybe Fulvio took me back, but for the first -- my 12 initial look and get measurements, see how this stuff 13 is going to layout. 14 Q. So was this in December of 2014 you're 15 talking about? 16 A. No, I'm thinking this was in November. I'd 17 have to go back and try to pull -- find the plane 18 ticket. I don't know, man. I forget. They got all 19 that information there. 20 Q. So the first trip to the plant in November 21 of 2014, you brought along your design layout plan and 22 the design layout plan that you and T. Barker put 23 together? 24 A. No, no, couldn't have, because my purpose 25 for going down there was to measure the place so we</p>

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<p style="text-align: right;">Page 86</p> <p>1 could determine how things -- how the different 2 components needed to sit in place. 3 Q. So then when you -- when the E-CAT was 4 shipped and you arrived after the E-CAT was shipped, 5 was that when you provided your layout plan to 6 Dr. Rossi? 7 A. Yeah, but Andrea and T. Barker had 8 coordinated. I mean they knew, and I remember one time 9 Andrea got a little disappointed when he came down 10 there, because things didn't get done exactly like he 11 thought they should have been done, but. 12 Q. How do you know that Dr. Rossi received 13 your layout or plan? 14 A. I don't know, you know. I'm pretty sure 15 that T. Barker, I mean, I'm assuming here, but I know 16 the man did. I mean, they coordinated regularly. 17 Q. Do you think it was communicated via email? 18 A. Probably so. 19 Q. Do you have any reason to believe it was 20 communicated via hand delivery? 21 A. I don't know. I wouldn't think that. This 22 was something, you know, they could have communicated 23 over the phone for all I know. I mean, they talked 24 regularly. Sometimes Andrea would call and, you know, 25 ask for me when I was working on this or that, how long</p>	<p style="text-align: right;">Page 88</p> <p>1 up the Doral facility for IH? 2 A. Right. 3 Q. And you had helped prepare the design 4 layout, correct? 5 A. True. It was mostly T. Barker. He knew 6 how things had to be. I just went there and gathered 7 footages and measurements, and then we determined where 8 exactly in there things need to be placed. Of course, 9 all that was in vain. 10 Q. Okay. Now, you say it was in vain. Why 11 was it in vain? 12 A. Because when I got there and had my little 13 layout there and showing basically where the condensate 14 return take, which was going to sit over on one side 15 had to be, Andrea informed me that he was the director 16 on this site, and we're not using that frigging tank, 17 and then we revived it. He said it was like Lazareth, 18 we're going to revive this. We're all going to use 19 this tank, but it's going to be over here now. 20 Q. Okay. So other than the condensate reserve 21 tank -- 22 A. Yeah, well, everything that came back as 23 condensate needed a vessel to flow into, and that was 24 done away with altogether. Everything came back into a 25 smaller tank that was inside the unit, and the larger</p>
<p style="text-align: right;">Page 87</p> <p>1 do I think. I mean, he'd do that just to, you know, 2 checks and balances between me and T. Barker, because 3 we were both doing different stages, different parts of 4 the thing. 5 Q. Now, who ultimately was responsible or were 6 tasked with the job of setting up the Doral facility on 7 the IH side of the wall? 8 A. That would be me. 9 Q. Okay. 10 A. Me and, of course, Andrea, and I had a 11 couple of guys helping me as well. 12 Q. Couple of guys? 13 A. That was Jose and Marco. They agreed to 14 come down for a couple months to help me get the things 15 up and running, you know, because we couldn't finish 16 all the work. We were missing components. 17 There was some older some components, some 18 parts that were short, and we couldn't complete the 19 electrical to be in an operational mode until these 20 components came in, and we all agreed that this would 21 have to take place in Florida. 22 Q. Was Jose and Marco, were they Industrial 23 Heat employees or -- 24 A. No, they were independent, just like me. 25 Q. Okay. So you were responsible for setting</p>	<p style="text-align: right;">Page 89</p> <p>1 tank, which originally was going to be condensate 2 return tank, and then we were going to pump the water 3 back into the units. That ended up being -- we built a 4 big stand a little taller than this table, really heavy 5 duty stand out of wood to support that large tank full 6 of water, which this thing held, I forget how many 7 gallons, 55-gallon drums, it probably held 6, 800 8 gallons or more, maybe a thousand gallons of water, 9 which is substantially heavy. But it had to be up so 10 gravity could allow it to flow into the system. 11 So Dave Perry come down one time to check 12 us out and then help with the design or that stand, if 13 you will, and then we just attached a rubber hose into 14 the water fill inside and allowed gravity to feed it. 15 This was based on Andrea. 16 Q. Other than that condensate reserve tank, 17 what other things did Andrea demand be changed from 18 your design layout? 19 A. There was -- man, there was so many. The 20 size of the pipe that brought the condensate back, that 21 ended up -- we ended up moving that frigging hole, and 22 that thing ended up leaking, and he hired another 23 company, God, I can't remember the name of them guys. 24 I want to say the one guy was John that come over, but 25 he hired another company to come in and do a lot of the</p>

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<p style="text-align: right;">Page 90</p> <p>1 plumbing, and they made several modifications. 2 Q. Okay. I understand that -- well, did you 3 document these modifications? 4 A. No. 5 Q. Why not? 6 A. It ain't electrical. 7 Q. Did anyone from IH document these 8 modifications? 9 A. No. 10 Q. Why not? 11 A. They were Andrea's. 12 Q. Okay. 13 A. I mean, these are just basic gravity. I 14 mean, water has got to go down. It's got to flow 15 downhill. The way the thing initially was setup and 16 laid out, when the one tank wasn't utilized on the 17 floor over there, you won't use that at all, and then 18 he routed the condensate line directly straight in a 19 the smaller tank inside. Well, that caused some flow 20 issues and some problems, and Andrea made those 21 engineering changes, and we just supported him and made 22 it, you know, and made it work, got to where we made it 23 work. 24 Q. But did you express disagreements with 25 those changes?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Okay. But I'm trying to identify 2 specifically what the issues were. 3 So you mentioned two. You said you think 4 there were many. I'd like you to identify as many as 5 you can. 6 A. Some of the piping in there we had to make 7 changes to that, because the big Frankies as well as 8 the E-CATs were all grounded electrically through the 9 piping, and that presented major issues when we tried 10 to start up, because of the faults of the individual 11 heating elements. Many of them were shorted at some 12 level to ground, and then when they got a good 13 electrical ground, it caused them to burn up. 14 So they had to make plumbing modifications 15 to even allow it to operate, because it was not 16 electrically sound. 17 Q. Were those modifications made? 18 A. Yes, had to make those changes. They 19 wouldn't operate electrically without those changes. I 20 mean the ground system, the ground, you know, the low 21 potential path to earth, to ground was causing major 22 issues. 23 Q. Okay. Anything else that you recall 24 different from your design layout? 25 A. No, most of the rest was pretty</p>
<p style="text-align: right;">Page 91</p> <p>1 A. No, I didn't care. They paid me. I do 2 what I'm told. 3 Q. Okay. Do you know if anyone from 4 Industrial Heat said hey, we don't think these changes 5 are good or hopeful? 6 A. T. Barker pitched a bitch a little bit, 7 because he doesn't follow his plan at all. Well, he 8 followed it, but not exactly, but, you know, it didn't 9 matter. Once again, once it got to Florida, this is 10 Andrea's thing and -- 11 Q. Okay. So we have the condensate reserve 12 tank, we have the size of the pipe to bring the 13 condensate back, was there anything else that you 14 remember specifically, and I'm trying to get a list of 15 things but -- 16 A. As far as issues and problems, the hoses 17 kept coming off. 18 Q. Let's distinguish, I'm not asking you about 19 issues and problems right now. Right now I'm asking 20 about modifications to the design layout plan that you 21 and T. Barker put together. 22 A. That's pretty much the physical locations 23 of everything. I mean, once again, our plan wasn't 24 used at all, really. When it got down there, Andrea 25 took over.</p>	<p style="text-align: right;">Page 93</p> <p>1 straightforward. 2 Q. Okay. Approximately when did you get the 3 equipment in Doral up and running for the first time? 4 A. End of February, somewhere around the end 5 of February, 27th, 26th, somewhere around in there. 6 Q. Was there some agreement amongst the 7 parties -- when I say the parties, I mean T. Barker, 8 Dr. Rossi, J.T. Vaughn, that the tests, the 350-day 9 test had begun? 10 A. Yes, I guess there was, but I don't know, 11 they didn't tell me. 12 Q. They didn't tell you, hey -- 13 A. No, I knew when the plant got on line as 14 far as actual numbers that corresponded between Andrea 15 and, you know, IH. I didn't, you know. 16 Q. You mentioned earlier in our discussion 17 someone named Fabio Penon. Do you know who he is? 18 A. Oh, yeah. 19 Q. Who was he? 20 A. He's the guy that brought the kiss of a 21 lady to me. The smile. He remembers the kiss of a 22 woman, the kiss of the lady. 23 A really cool Italian cookie. I don't know 24 guys. I never -- first time I met Penon he brought the 25 whole box of these really cool cookies, and we sat down</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 98</p> <p>1 many times. In the end that one test you see there is 2 only three units. There's actually a fourth one, but 3 it had such catastrophic failures electrically that we 4 took it off line. It ran at first, but didn't make it. 5 We never changed anything inside those. We didn't 6 rebuild those at all. 7 Q. After you had gotten the facility up and 8 running in February 2015, you said your role turned 9 into one of maintenance? 10 A. Pretty much. 11 Q. So can you maybe describe for me what your 12 day-to-day, day-to-day role was after February 2015? 13 A. Be on site, maintain a close proximity. 14 Andrea didn't want me to be more than a couple of hours 15 away from the plant, even on the weekends. Of course, 16 I was there my normal four or five days, and every 17 week, and if something breaks, fix it. 18 We had several little projects. We set up 19 a controller. We shipped down an extra controller, and 20 Andrea did some auxiliary testing between the main unit 21 and the control house, if you will, the electrical 22 control room. We set up a table and a controller 23 there, and he actually tested some Quar-CATs and some 24 other little smaller units. 25 Q. Did you play a role in any of those tests?</p>	<p style="text-align: right;">Page 100</p> <p>1 other side back to us. I didn't install it. I 2 didn't -- I want to say we did get up there on the 3 steam line and put in some thermocouples and a pressure 4 transmitter and do a little work with one of Fabio's 5 cards, which was kind of like the little brains of each 6 unit. 7 Q. Did you see any rust when you were doing 8 any of that work? 9 A. Yeah, you know, the big Frankies, the site 10 glass on the back the unit. 11 Q. I'm talking the condensate pipe. 12 A. I didn't have anything to do with that. 13 Somebody else installed that, I, you know. 14 Q. During this time, what was T. Barker 15 Dameron's role at the Doral facility? Zero? 16 A. Absolutely zero. 17 Q. He had no role whatsoever? 18 A. None. Glad the thing got down here. 19 Q. Was there anyone from Industrial Heat that 20 wasn't an outside consultant or third party that was 21 monitoring the test in Doral, Florida? 22 A. Not that I'm aware of. I guess I was 23 their, kind of their eyes and ears down there, and we 24 had investors come by all the time, I can't even count 25 the number, probably a dozen or more times. J.T.,</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Oh, yeah, well, I hooked them up. I wired 2 the thing up for him, and then he did all the 3 measurements and so on and so forth. 4 Q. I take you back to something you said just 5 a little bit earlier. So you were talking about the 6 pipes that were rusted, and you said they were part of 7 the big Frankies? 8 A. Well, it really wasn't so much the pipes, 9 it's the actual vessel itself. The piping that went in 10 and out, all that was new. I mean, Newcomb installed 11 all that new. 12 Q. Do you think that the fact that there was 13 some rust on those machines had any impact on the test 14 results? 15 A. I'm sure it should be considered. 16 Q. Why? 17 A. It's a foreign substance. 18 Q. What about the condensate pipe itself? Did 19 that have any rust in it? 20 A. I don't know. We didn't run that. 21 Q. You didn't check it? 22 A. We didn't run it. We didn't install it. 23 Q. You didn't install it? 24 A. You know, I just -- I mean, it was an 25 insulated pipe at an angle, you know, coming from the</p>	<p style="text-align: right;">Page 101</p> <p>1 Mr. Tom or others would come and bring, you know, 2 people that were investors of the project, you know, to 3 me, just to see us. 4 Q. Were you giving reports to anyone in 5 Industrial Heat regarding what you were seeing at the 6 plant in Doral? 7 A. Yeah, weekly, pretty much every week, 8 sometimes, yeah, I might go a month or more and not 9 talk to J.T. I mean, I just did my thing down there. 10 Q. Were your reports oral or in writing? 11 A. Most of them just on the phone. 12 Q. Okay. And give me an example of what that 13 oral report would be like? 14 A. Plant is running good. Got a little 15 hiccups here and there. Most of them plumbing, fix 16 some leaks, but for the most part the plant ran, you 17 know, pretty well, once we got the bugs worked out of 18 it. And, you know, Andrea and Fulvio would come up 19 with a plan to change this or that. Let's try this 20 over here, you know. 21 One of the biggest issues was trying to 22 capture all the water, you know, not having any leaks, 23 which was, you know, a big concern. 24 Q. Do you know the methodology being used to 25 measure the results of the plant?</p>

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<p>1 the times when I came home, maybe in September or so</p> <p>2 Q. September 2015?</p> <p>3 A. Yeah, I came home for my birthday, I think,</p> <p>4 and opening day of dove season, and I think that's when</p> <p>5 I met T. Barker and Joe in Swansboro, I think, because</p> <p>6 I was down that way hunting and fishing there at the</p> <p>7 beach at my mom's place in Topsail, and I think T.</p> <p>8 Barker had a place at Morehead, and so did Joe. So we</p> <p>9 kind of met in the middle at Swansboro in some little</p> <p>10 diner thing there on the waterfront and had a sandwich</p> <p>11 and talked. That's the first time I met Joe.</p> <p>12 Q. So September 2015 --</p> <p>13 A. I think it was September. I mean, I'm not</p> <p>14 positive. Somewhere along in there though. I know I</p> <p>15 was in Florida.</p> <p>16 Q. Was it your understanding that Joe Murray</p> <p>17 is an engineer?</p> <p>18 A. Yeah. Yeah.</p> <p>19 Q. Okay. Was it your understanding that Joe</p> <p>20 Murray was going to be representing IH as part of the</p> <p>21 monitoring of the facility in Doral, Florida?</p> <p>22 A. He was asking questions about it, yes. I</p> <p>23 understand that Joe was going to try to come down there</p> <p>24 and actually do some testings with Andrea, and then</p> <p>25 Andrea said he wouldn't be allowed in there.</p>	<p>1 A. Nobody was allowed in there other than</p> <p>2 myself and Fulvio, without him knowing about it or</p> <p>3 being there.</p> <p>4 Q. Was there a specific employee from</p> <p>5 Industrial Heat that said I'd like to come in the</p> <p>6 plant, and Dr. Rossi said I'm not letting you in?</p> <p>7 A. I don't, don't know. I don't remember</p> <p>8 anybody -- he, you know, other than Joe.</p> <p>9 Q. Did Dr. Rossi ever tell Thomas Darden, you</p> <p>10 can't come do the plant?</p> <p>11 A. Probably not. If Tom scheduled a meeting</p> <p>12 to come down there and bring investors and do, then</p> <p>13 yeah, Andrea would try to accommodate as best he could.</p> <p>14 Q. Did Dr. Rossi ever tell J.T. Vaughn hey,</p> <p>15 can't come?</p> <p>16 A. I don't think so. Not that I'm aware of.</p> <p>17 Q. Did Dr. Rossi ever tell T. Barker Dameron</p> <p>18 hey, you cannot come --</p> <p>19 A. They didn't like each other. That wouldn't</p> <p>20 happen, no way.</p> <p>21 Q. You don't think Dr. Rossi didn't like,</p> <p>22 Dr. Rossi did not like T. Barker Dameron?</p> <p>23 A. I think they had -- they banged heads and</p> <p>24 locked horns a few times, you know.</p> <p>25 Q. Do you think that T. Barker Dameron and</p>
Page 107	Page 109
<p>1 Q. Do you know when Joe -- when Andrea Rossi</p> <p>2 was first notified that Joe Murray was working for</p> <p>3 Industrial Heat?</p> <p>4 A. Oh, I don't know.</p> <p>5 Q. Do you know how he was first notified?</p> <p>6 A. No.</p> <p>7 Q. Do you know when Joe Murray first made a</p> <p>8 visit to the Doral facility?</p> <p>9 A. It seems like he did go down there one</p> <p>10 time. I don't think I was there. It seems like I</p> <p>11 heard some conversation about this -- I wasn't there,</p> <p>12 and I don't think he was allowed in. They wouldn't let</p> <p>13 him in or something, I don't know.</p> <p>14 Q. Do you know why he wasn't allowed in?</p> <p>15 A. No.</p> <p>16 Q. Did you have a discussion with Dr. Rossi</p> <p>17 and say hey, why didn't you let Joe in the plant?</p> <p>18 A. It seemed like me and Andrea did talk about</p> <p>19 that one time, and Andrea said he wouldn't be allowed</p> <p>20 to come in there doing the testing or checking.</p> <p>21 Q. Did he explain why?</p> <p>22 A. No, not -- he didn't have to.</p> <p>23 Q. Were there any other Industrial Heat</p> <p>24 employees that Dr. Rossi would not allow into the</p> <p>25 plant?</p>	<p>1 Dr. Rossi had a cordial relationship or an unfriendly</p> <p>2 one?</p> <p>3 A. I think T. Barker done exactly what he was</p> <p>4 told to do, and that was do his best to support Andrea.</p> <p>5 Q. That doesn't answer my question.</p> <p>6 A. And it became difficult, so their</p> <p>7 relationship suffered because of that.</p> <p>8 Q. Okay. Do you specifically know of an</p> <p>9 instance in which Dr. Rossi said or denied T. Barker</p> <p>10 Dameron access to the Doral facility?</p> <p>11 A. It wouldn't surprise me. I understand what</p> <p>12 you're saying. I don't know. I don't know. I don't</p> <p>13 know. Probably, like I said, it wouldn't surprise me.</p> <p>14 I can't answer that, because I'm not -- you know, I</p> <p>15 wasn't privy to emails and whatever correspondence they</p> <p>16 had.</p> <p>17 Q. I'm not asking what you don't know. I'm</p> <p>18 asking are you aware of a specific instance in which T.</p> <p>19 Barker Dameron said I would like to visit the Doral</p> <p>20 facility, and Dr. Rossi said you are not allowed in?</p> <p>21 A. It seems like I did hear this. It seems</p> <p>22 like T. Barker told me that he wanted to come down</p> <p>23 there one time.</p> <p>24 Q. When was this?</p> <p>25 A. I don't know. Toward -- probably after the</p>

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1 thing was up and running, I guess.
 2 Q. Are you speculating?
 3 A. Yeah, I don't know. I don't know when. I
 4 don't know when. I don't remember when. I do recall,
 5 yeah, I do recall the conversation I had with T. Barker
 6 that Andrea didn't want him there, but.
 7 Q. Was that a conversation you had over the
 8 phone?
 9 A. Yeah, probably over the phone.
 10 Q. But you don't remember when?
 11 A. No, I don't remember exactly when.
 12 Q. Did you ever talk to --
 13 A. Probably in the beginning. It was possible
 14 in the beginning, because T. Barker did want to come
 15 down and see how the thing was setup, how it's going.
 16 It seems like he did come once. He did come once. It
 17 seems like T. Barker was there. He actually came a
 18 time or two, or at least once, you know, he did come,
 19 but it was way towards -- it was way after things had
 20 been ruined man, you know, I mean. I was sent down
 21 there with specific instructions trying to set this
 22 thing up, and when I got down there, all that went out
 23 the door. Andrea, you know, is the director on this
 24 site.
 25 Q. Did you ever have a conversation with

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1 Dr. Rossi where he told you T. Barker Dameron is not
 2 allowed in the plant?
 3 A. Possibly, yes, I guess. I don't know. I
 4 don't know. Possibly. I can't answer. I can't
 5 remember all the different conversations we had.
 6 Q. Did you ever ask Dr. Rossi hey, is T.
 7 Barker Dameron allowed in the plant?
 8 A. Yeah, possibly. I probably did.
 9 Q. Okay. And what did he say?
 10 A. I don't remember. I don't know.
 11 Q. Okay. Was anyone else present when you
 12 asked him that question?
 13 A. Fulvio was probably sitting there.
 14 Q. Do you know approximately when you had that
 15 conversation?
 16 A. Oh, God, no. No way. I don't remember
 17 that.
 18 Q. You talked a little bit about Industrial
 19 Heat bringing investors to the Doral facility.
 20 Approximately how many times did that happen?
 21 A. Oh, God, eight to twelve maybe. I think at
 22 least seven or eight times, different folks came to
 23 view.
 24 Q. Did Dr. Rossi ever say no investors are
 25 allowed in the plant?

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1 A. No, not that I'm aware of. As long as they
 2 coordinated with Andrea and let him know, he made
 3 arrangements for people to come see.
 4 Q. Did you have an understanding why investors
 5 were coming to this facility?
 6 A. Yeah.
 7 Q. Why?
 8 A. They wanted to see what their money was
 9 doing.
 10 Q. Okay. Do you know if the people who
 11 visited the plant were investors or potential
 12 investors?
 13 A. Probably a mix, probably a good happy mix
 14 of the both. I mean, Mr. Tom is a good salesman.
 15 Q. Did you ever have any conversations with
 16 investors who were brought into the Doral facility?
 17 A. Yeah.
 18 Q. And what were those conversations?
 19 A. It's running, you know, basically most --
 20 Andrea did most of the -- did most of the greeting and
 21 most of the -- he would always give an informative and
 22 then maintain -- people had to maintain a certain
 23 distance, because you couldn't touch this stuff, it was
 24 energized, it was shocking, man. You had to be careful
 25 in the plant. You had to know, you know. So I would

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1 set up chains and different barricades where people
 2 could come and look, but not be allowed access in there
 3 so they could touch anything and nobody could get hurt.
 4 Q. I don't want to know right now what
 5 Dr. Rossi told them. I want to know what you told
 6 them.
 7 A. I just fix it, man. I work on it. I help
 8 the design and the build of it. I didn't do a whole
 9 lot of talking with these folks.
 10 Q. You told me you did, and that's why I want
 11 to know what the substance of those conversations are?
 12 MR. FALCONE: Objection.
 13 A. No, I didn't do a lot of talking. These
 14 folks, most of my conversation with them I had with
 15 them were about fishing or something.
 16 Q. Did you ever tell anybody, the investors or
 17 potential investors, that the plant was showing results
 18 of producing excess energy?
 19 A. Yeah, based on what Andrea and Fulvio were
 20 telling me, yeah, we were doing good, you know. But
 21 once again they are the ones that -- you know, I don't
 22 make those calculations. I just base on what they're
 23 telling me.
 24 Q. When those investors came in, were they all
 25 accompanied by Thomas Darden or J.T. Vaughn?

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<p style="text-align: right;">Page 138</p> <p>1 A. Oh, yeah.</p> <p>2 Q. And did you participate in the unpacking of</p> <p>3 the materials on the Doral side?</p> <p>4 A. Absolutely.</p> <p>5 Q. Were there any pieces of equipment that</p> <p>6 were packed in North Carolina that were not utilized</p> <p>7 once you got to Doral?</p> <p>8 A. Yes.</p> <p>9 Q. Which pieces were those?</p> <p>10 A. Originally the condensate return tank and</p> <p>11 then we modified that and made it in a supply vessel of</p> <p>12 water for the unit.</p> <p>13 Q. Was there anything else?</p> <p>14 A. Yes, T. Barker had engineered the steam</p> <p>15 lines and the system components and shipped all those</p> <p>16 with the unit to be installed, but Andrea said no. He</p> <p>17 said no.</p> <p>18 Q. So what happened to those steam lines,</p> <p>19 system components?</p> <p>20 A. The last time I seen them they were under</p> <p>21 the unit. They were 5, 600 bucks a piece, man, never</p> <p>22 even used them.</p> <p>23 Q. Okay. Was there anything else?</p> <p>24 A. There was several miscellaneous things,</p> <p>25 wow, all the electrical stuff that I thought I might</p>	<p style="text-align: right;">Page 140</p> <p>1 Doral that wasn't utilized? And you had mentioned now</p> <p>2 three things; the condensate, return tank, steam line,</p> <p>3 system components and some miscellaneous electrical and</p> <p>4 miscellaneous pipes?</p> <p>5 A. Yeah, all those pipes were part of the</p> <p>6 original design to pipe in the condensate tank, which</p> <p>7 was going to sit on the ground.</p> <p>8 Q. And what happened to those pipes?</p> <p>9 A. They all left up under there. We used a</p> <p>10 bunch of them fixing and repairing and carrying on. I</p> <p>11 mean, we used what pieces we could to make changes as</p> <p>12 issues arose.</p> <p>13 Q. Was there any other equipment that was</p> <p>14 shipped that was not used?</p> <p>15 A. I'm trying to think. All the chairs, desks</p> <p>16 all that stuff went in. Fulvio's furniture, all that</p> <p>17 went to his apartment. We had a bunch of furniture</p> <p>18 from his apartment up in Raleigh, you know, that we</p> <p>19 shipped down there in the Conex because it was a free</p> <p>20 ride, so, of course, that wasn't used.</p> <p>21 There was some Quar-CATs, a few other units</p> <p>22 that I had built that was shipped for Andrea. That was</p> <p>23 part of another deal.</p> <p>24 I'm trying to think of other things that we</p> <p>25 didn't use there. No, that's pretty much it. Most of</p>
<p style="text-align: right;">Page 139</p> <p>1 need we shipped, some miscellaneous pieces of pipe, the</p> <p>2 water lines. Most of this stuff we made an attempt to</p> <p>3 prefab and setup and marked, match and marked all these</p> <p>4 different piping components, and almost none of that</p> <p>5 got used once it got down there. The basic plan and</p> <p>6 design, particularly return, condensate return and the</p> <p>7 steam piping supply over to -- over the wall to the JM</p> <p>8 Products' side, that stuff was all, you know, it was</p> <p>9 changed. They had already stubbed a couple of pipes,</p> <p>10 and we had to modify those through. And some of this</p> <p>11 work went on on the weekends when I wasn't there.</p> <p>12 Andrea hired for guys to come in on the weekends and do</p> <p>13 a lot of this plumbing stuff, which when we had issues</p> <p>14 with leakage and stuff, that's how I met these guys,</p> <p>15 that we were going to go do this blue herring fishing</p> <p>16 trip. I was going to go with one of these guys, and it</p> <p>17 never transpired because Andrea had problems, and he</p> <p>18 called the man ten times, and he showed up about two</p> <p>19 weeks later wanting his check, wanting his check for</p> <p>20 the work he had done. And Andrea told him I'm not</p> <p>21 giving you no damn check.</p> <p>22 Q. All right. Let me stop you there. I will</p> <p>23 keep you on track with the question I had asked.</p> <p>24 So the question I had asked was, was there</p> <p>25 any equipment that was shipping from North Carolina to</p>	<p style="text-align: right;">Page 141</p> <p>1 it was plumbing stuff and tanks associated.</p> <p>2 Q. I'm going to go back to something we talked</p> <p>3 about earlier as well, which was the condensate pipe</p> <p>4 that went to the JMP side as well as the return that</p> <p>5 came back.</p> <p>6 A. Well, it was two pipes, the steam.</p> <p>7 Q. Right, there's two pipes?</p> <p>8 A. Right.</p> <p>9 Q. One coming -- one going, one coming, right?</p> <p>10 A. One delivering and one returning, yes, sir.</p> <p>11 Q. We talked a little bit about rust in the</p> <p>12 pipes. I think your testimony, correct me if I'm</p> <p>13 wrong, was that you didn't notice any rust on those</p> <p>14 pipes? That wasn't something that you inspected, is</p> <p>15 that true?</p> <p>16 A. No, sir, that's right, that's true.</p> <p>17 Q. Did anyone ever tell that you they saw rust</p> <p>18 on either of those pipes?</p> <p>19 A. My experience with separating some of the</p> <p>20 pipes and moving the one pipe down, I mean, they had</p> <p>21 rust and stuff in them. You can see it, but it was</p> <p>22 obvious in the sight glasses on the big Frankies,</p> <p>23 because in the very beginning, they stayed rusty. We</p> <p>24 actually had to remove those and clean them and stuff,</p> <p>25 because it got so bad, you couldn't see the water</p>

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<p>1 level, where the water level was actually in the unit 2 in the reactor.</p> <p>3 Q. Let me stop right there. We're only 4 focusing on the condensate pipes now, the going and 5 coming, those two pipes, not the ones that are in the 6 big Frankies. Do you recognize there's a difference?</p> <p>7 A. I recognize the difference, but you got to 8 realize that the source of what was in those two pipes 9 originated from in the big Frankies' units.</p> <p>10 Q. You think some of the rust from the big 11 Frankies could have gone through into --</p> <p>12 A. Oh, absolutely, yeah, you know it did.</p> <p>13 Q. Did you see it happen or --</p> <p>14 A. Well, the leaks shown, showed that the 15 stuff was -- now, once again, I don't know where it 16 went to on the other side. You know, if you make the 17 assumption that the water that was over there was 18 clean, whatever that equipment was, it could have been, 19 you know, part of the culprit as well. So I don't 20 know.</p> <p>21 Q. Do you recall seeing rust on the return 22 pipe?</p> <p>23 A. Yes, that's the condensate return.</p> <p>24 Q. Right. When did you see that?</p> <p>25 A. We moved it. We had level issues in that</p>	<p>1 Q. Did you ever tell Fulvio?</p> <p>2 A. Yeah.</p> <p>3 Q. And what was his response?</p> <p>4 A. It's coming from the big Frankies. It's 5 coming from inside the units. It was an issue we had 6 to deal with. They had a trap. They had a trap set 7 there, but I don't know that they ever serviced it or 8 worked on it. And once again, I don't know what the 9 plumbing team did, you know, I mean, I wasn't, you 10 know, responsible.</p> <p>11 Q. Where was that trap that you're talking 12 about?</p> <p>13 A. I want to say it was right there before 14 where the line dumped in, or maybe they uninstalled it. 15 Maybe they removed that. I know there was a trap sent. 16 It seemed like T. Barker sent a trap down there. Maybe 17 it never got installed or the plumbing guys removed it. 18 It seemed like maybe it was there, and then when Andrea 19 had the plumbing team made the changes and stuff that 20 got removed or something, you know, but, you know, the 21 rust was prevalent inside those units, and that's where 22 most of it -- because all that piping was new. I mean, 23 that piping that they installed was new piping.</p> <p>24 Q. The condensate piping?</p> <p>25 A. And the steam lines, you know, at no</p>
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<p>1 one condensate tank that were used. That level 2 needed -- we had to make adjustments to that, because 3 they would get too full, and the pumps that removed 4 that material and sent them up to the units when Andrea 5 finally got his system dialed in there on what rates to 6 pump the material at to keep things balanced, and we 7 lost a lot too, you know, so we had this big tank up 8 there with a valve in there or a little foot pedal and 9 a float that would try to maintain that level.</p> <p>10 Sometimes when you turn things up really high and 11 things really got to cooking hot, we would have issues. 12 We would have problems.</p> <p>13 Q. Let's keep focusing on the rust in the 14 pipes.</p> <p>15 So you said you saw the rust in the pipe 16 when you disassembled the return condensation pipes, 17 right?</p> <p>18 A. Right, to move it, yeah.</p> <p>19 Q. Did you ever tell Dr. Rossi hey --</p> <p>20 MR. FALCONE: Let him finish his 21 question before you answer.</p> <p>22 MR. CHAIKEN: Thank you.</p> <p>23 Q. Did you ever tell Dr. Rossi hey, we have an 24 issue. There's rust in this pipe?</p> <p>25 A. No.</p>	<p>1 pressure. That stuff was new, new materials.</p> <p>2 Q. Did you ever have a conversation with T. 3 Barker Dameron about the rust in the pipes?</p> <p>4 A. Oh, yeah.</p> <p>5 Q. And what was his comment on that?</p> <p>6 A. Well, it's just Andrea is going to handle 7 it. Andrea is going to make these choices.</p> <p>8 Q. Do you know if T. Barker ever raised that 9 issue with Dr. Rossi?</p> <p>10 A. No, I don't know. I'm sure maybe he might 11 have, but, you know, once again, once the unit got down 12 to Florida, Andrea, Andrea had hold of the wheel, and 13 he was steering the thing where he thought it needed to 14 go.</p> <p>15 Q. You weren't part of any conversation or 16 email chain in which that issue was raised, were you?</p> <p>17 A. I don't think so, but I don't, you know.</p> <p>18 Q. Were you ever at the Doral facility when 19 Dr. Rossi wasn't present?</p> <p>20 A. Yeah.</p> <p>21 Q. About how much time do you think you were 22 there?</p> <p>23 A. Oh, God --</p> <p>24 Q. When he wasn't there?</p> <p>25 A. Typically Andrea was there in the mornings</p>

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1 on.
 2 Q. Did you take any other measurements that
 3 were used by Mr. Penon in his reports?
 4 A. I don't know, possibly.
 5 Q. If you did, would you have copies of them?
 6 A. No, I wouldn't have copies of them.
 7 Q. Who would have copies of them?
 8 A. I guess they would be gathering that
 9 information.
 10 Q. When you say they, who do you mean?
 11 A. Maybe Andrea and Fulvio. I mean, that's
 12 who we worked with in the office, you know.
 13 Q. Show you what's been marked as Exhibit
 14 number 6.
 15 (The document referred to was marked
 16 Plaintiff's Exhibit Number 6 for
 17 identification.)
 18 Q. I'm going to ask you to review that. When
 19 you're done, let me know.
 20 (Pause.)
 21 MR. CHAIKEN: For the record, Exhibit
 22 number 6 is document Bates stamped on the
 23 first page IH00006670, and it is entitled
 24 E-CAT MW1 Energy Plant Miami Energy Multiple
 25 Evaluation Final Report.

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1 A. Interesting. I've never seen this before.
 2 Q. This is the first time you've seen this
 3 document?
 4 A. First time I've seen it.
 5 Q. No one from Industrial Heat ever asked you
 6 to review it?
 7 A. No, sir.
 8 Q. Okay. Take a look and review it. It may
 9 take you a few minutes, because it's a five-page
 10 document.
 11 (Pause.)
 12 A. I don't know about the numbers, but, I
 13 mean, this all looks -- I see down here that it
 14 mentions that the fourth visit by me, that must have
 15 been the last time that I saw Penon. But every time he
 16 came, I assisted him, and I do remember missing one
 17 time. He came one time while I was home for my
 18 birthday or something in September, something, but they
 19 told me he had been there. But every time he was there
 20 I assisted.
 21 Q. Okay. My first question about this
 22 document is, is there anything in this document that
 23 you believe to be untruthful or inaccurate?
 24 A. I'm trying to think of where the flow
 25 meter -- no, it appears to be -- once again, I don't

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1 know about the numbers, but, I mean, this appears to be
 2 accurate, as to what he, you know, what it's saying
 3 here, the way the plant was setup and all. It was from
 4 the grid, I guess you would call it, the grid, the
 5 plant on that building. We never consumed a whole lot
 6 of energy. It rarely got over a hundred amps even.
 7 And it was about 150, 180 amp capability there that we
 8 supplied to the plant. Fortunately we never tripped
 9 anything at that end.
 10 Q. So there's nothing in this document that
 11 you take issue with?
 12 MR. FALCONE: Objection.
 13 A. Once again, I don't know about the numbers,
 14 but as far as I can see here, everything is, you know,
 15 I mean, every time that Penon came, I assisted him,
 16 whatever they asked me to do, so.
 17 Q. I'm going to ask you a few -- I'm going to
 18 read to you some statements. I am going to ask if you
 19 think they're true or not.
 20 A. Okay.
 21 Q. Do you understand that Mr. Fabiani had a
 22 cop called USQL, that was his business entity?
 23 A. Quantum Leap, yeah, yeah, Fulvio's little
 24 pinball company.
 25 Q. So is this true or false: Fabiani, USQL

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1 and Penon played critical roles in the scheme to hide
 2 the fact that the plant does not perform up to the
 3 standards set forth in the license agreement, the plant
 4 being the Doral facility.
 5 MR. FALCONE: Objection.
 6 A. Okay.
 7 Q. Do you believe that to be a true statement,
 8 that there was a scheme to hide the fact that the plant
 9 did not perform up to standards?
 10 A. You know, my role in this was not to
 11 judge --
 12 Q. I'm not asking you to judge. I'm asking
 13 you whether you believed it?
 14 A. I'm kind of split both ways. I like to
 15 believe that this was an honest, you know, venture. I
 16 mean, I know these folks, certainly believed that they
 17 were, you know, and it appears not to have been an
 18 honest, you know, now that I look back at the way
 19 things were and all the work, it appears more and more
 20 that it was a dishonest, a dishonest venture.
 21 Q. Did you participate in any dishonesty?
 22 A. No, not knowingly.
 23 Q. What information that you know today leads
 24 you to conclude that this was not an honest venture?
 25 A. The deception and the fact that so many

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1 things were hidden from me, deliberately and
 2 intentionally, particularly on JM's side.
 3 My simple question and response to T.
 4 Barker one day on the phone, send me a picture of that
 5 thing and what it's doing, what the plant is doing
 6 right now and the reaction I got from Fulvio.
 7 Q. Are you done with your answer?
 8 A. Yeah.
 9 Q. What things exactly, or what things you
 10 believe were hidden from you?
 11 A. Things that really didn't matter to me,
 12 like the numbers. I really didn't -- I wasn't
 13 concerned with those.
 14 Q. Okay. What else was hidden from you
 15 besides the numbers?
 16 A. I don't know. I don't know what else, you
 17 know.
 18 Q. I thought you said earlier that your job
 19 wasn't to review the numbers?
 20 A. That's right, it wasn't.
 21 Q. Okay. So were the numbers hidden from you,
 22 or were they just not provided?
 23 A. I didn't look for them, and I seen them a
 24 lot. I saw Fulvio over there crunching numbers on his
 25 computer. I saw a lot of these readings. You know, I

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1 helped take some of these numbers and write them down,
 2 you know, but what they did with them, I don't -- I
 3 don't know.
 4 Q. Well, you said that the basis for your
 5 opinion that there was some dishonesty here is that
 6 things were hidden from you. I'm trying to find out
 7 what those things were?
 8 A. Well, just what happened on the other side
 9 of the wall, for example.
 10 Q. Okay. So you asked what was going on on
 11 the other side of the wall, and you weren't given a
 12 response?
 13 A. Well, yeah, but it was vague, and it
 14 changed, that wasn't, you know.
 15 Q. Do you know if there was an agreement
 16 between Leonardo and Industrial Heat that what happened
 17 on the other side of the wall was to stay separate and
 18 apart from what Industrial Heat was doing?
 19 A. Probably, yeah, it seemed like I remember
 20 that.
 21 Q. Okay. So what was then deceptive or
 22 dishonest about keeping that side of the plant
 23 separate, and your knowledge of what's going on in that
 24 part of the plant being --
 25 A. The days and days and no sound over there,

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1 not a single person, not a -- nothing.
 2 Q. And what did you conclude from that?
 3 A. There's nothing over there.
 4 Q. Okay.
 5 A. Certainly nobody working.
 6 Q. Do you think that impacted the test
 7 results?
 8 A. I don't know. I don't know what was over
 9 there.
 10 Q. Okay. Was there anything else that was
 11 withheld from you or hidden from you that you think
 12 should have been made known to you?
 13 A. Not that I'm aware of. I mean, this
 14 document right here I've never seen this before. This
 15 that was generated after I left. You know, once again,
 16 it looks pretty accurate, based on what I'm seeing on
 17 there .
 18 Q. Okay. Well, you just gave me a response
 19 that you think there was some dishonesty and some
 20 scheme, in your opinion, to fabricate test results, is
 21 that accurate?
 22 A. No, I don't know about fabricating,
 23 whatever, you know, I mean, there's just some doubts.
 24 I have doubts.
 25 Q. Do you have any evidence that supports your

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1 doubts?
 2 A. No, not really.
 3 Q. Did anybody tell you that they felt that
 4 there was evidence that supports your doubts with
 5 respect to the workings at the plant at Doral?
 6 A. The testing procedures, you know, alone
 7 indicate that there's evidence there. I mean, the way
 8 they were getting this information, so, you know, I
 9 don't know. I'm not an engineer. I don't know the
 10 best way to obtain temperatures and, you know, steam
 11 flow rates and the measurements and the calculations,
 12 so I can't --
 13 Q. Do you know if the parties, the parties
 14 being Leonardo and Industrial, agreed upon the
 15 protocols for taking those measurements?
 16 A. Their agreement was not disclosed to me. I
 17 don't know what agreements they had.
 18 Q. If they had an agreement for test protocol,
 19 and it was followed, do you think that would be
 20 evidence of dishonesty?
 21 A. Depending on how it was -- you know, if it
 22 wasn't followed correctly, I would think, you know.
 23 Q. Did anyone tell you the test protocol was
 24 not followed correctly in this case?
 25 A. No, not that I remember. But, yeah, I

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1 A. No, I don't -- I don't know if it's false
 2 or not.
 3 Q. If he represented to investors of
 4 Industrial Heat that he was able to replicate E-CAT
 5 technology, would that be contradicting what he's told
 6 you?
 7 A. Based on what I've heard, it's not working.
 8 It doesn't work. So is that contradicting? Yeah, I
 9 guess so.
 10 MR. CHAIKEN: Your counsel has filed
 11 some objections to producing some documents
 12 that I have requested, and subject to that
 13 being resolved, I'll conclude my questions
 14 for the time being.
 15 Gentlemen in Miami, the witness is
 16 yours.
 17 MR. NUNEZ: Fernando, want to go
 18 first?
 19 EXAMINATION BY COUNSEL FOR THIRD-PARTY
 20 DEFENDANTS
 21 BY MR. ARAN:
 22 Q. Mr. West, my name is Fernando Aran. I'm an
 23 attorney in Miami, and I represent Jim Bass. I also
 24 represent Henry Johnson and JM. How are you this
 25 afternoon?

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1 A. Pretty good, and yourself?
 2 Q. Not bad for a short overweight fellow.
 3 A. I understand.
 4 Q. Sir, let me start with a question
 5 concerning the E-CATs that were ultimately sent to
 6 Miami for testing. Was it contemplated at first that
 7 these tests would be done in North Carolina?
 8 A. I'm not sure. I'm not positive. I think
 9 there was some talk of originally doing it there, and
 10 based on our conversation earlier, it ended up moving
 11 to Miami, because I guess the biggest reason was
 12 probably because that's where Andrea lived. He wanted
 13 to do the testing down there, so.
 14 Q. Okay. Do you know whether -- I'm sorry, go
 15 ahead.
 16 A. I mean, I hear a conversation earlier about
 17 some laws or something in North Carolina that may or
 18 may not have prevented a test from happening here in
 19 Carolina anyway. I know Andrea lived in Miami, and
 20 that's where he wanted to do the test at.
 21 Q. And if the tests were going to be conducted
 22 in North Carolina, where -- in what facility would that
 23 have been done?
 24 A. I don't have a clue. I don't know where
 25 they would have done that. It would have been

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1 difficult to have done it there, there where we built
 2 the plant at. We had power problems there. We didn't
 3 have --
 4 Q. Let me ask you this, to the best of your
 5 knowledge, in order to test the plant and to test
 6 whether it had a COP of any amount, was the plant
 7 required to be tied into an operating factory or an
 8 operating business?
 9 A. I was told there was a customer down there
 10 that needed a steam, and that we were going to supply
 11 it for him.
 12 Q. Let me try to state it -- I understand
 13 that. But in order to conduct a test as to whether the
 14 E-CAT in question had a COP of any level, was it
 15 necessary for it to be hooked up into or provide power
 16 to an ongoing business?
 17 A. The way the plant was designed, yes, there
 18 needed to be a load. There needed to be some
 19 consumption, some source for this -- somewhere for this
 20 steam to go and then be returned.
 21 Q. And how would you measure that? In other
 22 words, when you were conducting your tests in Miami,
 23 were you at any time metering or measuring anything on
 24 the side of the JM plant?
 25 A. No, sir.

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1 Q. And isn't it true that you were able to
 2 determine whether steam was being produced by measuring
 3 temperature or anything else on the E-CAT side of the
 4 plant?
 5 A. Yes, sir.
 6 Q. And the same would be true for the return;
 7 the measuring devices were on the E-CAT side of the
 8 plant?
 9 A. Yes, sir.
 10 Q. So, in essence, the entire time that the
 11 people were there, yourself included, for almost a year
 12 there was really no measurements that needed to be
 13 taken on the other side of the plant, correct?
 14 A. Yes, sir. I don't know whether or not it
 15 needed --
 16 Q. And all of the -- all of the validation and
 17 all the measurements that were being inputted and that
 18 resulted in various reports, were all conducted on the
 19 E-CAT side of the plant, correct?
 20 A. As far as I'm aware of, yes, sir.
 21 Q. Now, let me ask you this, you indicated
 22 that you had -- I don't know remember if it was seen,
 23 met or spoken to Mr. Bass two or three times?
 24 A. Yeah, over the entire course of the year.
 25 Q. Okay. And what were the circumstances

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1 under which you had the opportunity to, and please tell
 2 me whether it was speak or see? What do you recall
 3 were your communications with Mr. Bass?
 4 A. When I first got down to Florida, I'm
 5 pretty sure it was on the day of the arrival of the
 6 plant, of the two plants, the control room and the
 7 E-CAT plant, I was introduced to Mr. Jim Bass. He was
 8 at the back door, and I met him, shook his hand, and
 9 then I went many months and didn't see Mr. Bass. One
 10 day he -- or weeks there, I forget how long, but he
 11 came back down to talk to Fulvio one day, and I saw him
 12 again and spoke. And then a couple other times when we
 13 were going to lunch, he would need a conversation with
 14 Fulvio or Andrea and usually it's Fulvio, and we would
 15 stop in his office up front, and I saw him up front in
 16 his office. But once again, that's all -- you can't
 17 see anything behind three offices as to the work area
 18 back there. I mean, I was never exposed to the actual
 19 working area back there for JM products.
 20 Q. In the times that you saw and spoke to
 21 Mr. Bass, did he make any representations to you about
 22 anything in particular?
 23 A. No, sir. No, sir.
 24 Q. He never told you what they were or were
 25 not manufacturing at the JM site, correct?

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1 A. He never disclosed any information to me
 2 about what they done there.
 3 Q. And he never provided to you any
 4 information of any kind or nature whatsoever, did he?
 5 A. No, sir.
 6 Q. And did you need to know anything from
 7 Mr. Bass in order to do the work that you were doing?
 8 A. No, sir.
 9 Q. And Mr. Bass never made any representations
 10 to you of anything or nature, correct?
 11 A. No, sir.
 12 Q. So then when you were read the statement
 13 before that Mr. Bass was part of a scheme to defraud,
 14 you really don't have any information of any facts that
 15 Mr. Bass had conducted a fraud, do you?
 16 A. No, sir.
 17 Q. So if we took his name out of that
 18 statement that you were asked to say true or false to,
 19 would it be appropriate?
 20 A. Yes, sir.
 21 Q. And let me ask you this, did you ever meet
 22 Mr. Henry Johnson?
 23 A. I don't know him. I don't remember meeting
 24 him.
 25 Q. Now, you indicated when you were advised --

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1 you indicated when asked if you thought there was
 2 anything going on that was underhanded, that you
 3 thought that that was happening on the other side of
 4 the wall was part of it, correct?
 5 A. Yes, sir.
 6 Q. Now, why would what was going on on the
 7 other side of the wall have any bearing on what you
 8 were doing, if none of your measurements or any of the
 9 information gathering that you were doing had anything
 10 to do with the other side of the wall?
 11 A. The reaction from Andrea when I had the
 12 ability to see on the other side of the wall, i.e.,
 13 being on top of the unit. I mean, when I was up on top
 14 of the unit doing the work, we actually stored stuff up
 15 there at first and then we removed them. But when
 16 you're up on top of the unit, the wall is only eight
 17 foot, seven, eight foot tall, and the ceilings in the
 18 place were 30 feet, probably. The unit was up a couple
 19 of feet, and it's eight feet tall. So when you're on
 20 top, you can come through look over there and see
 21 what's on the other side. That generated -- he didn't
 22 want anybody up there on top of the building, not only
 23 myself, Jose or Marco either.
 24 Q. What did it matter to you what was on the
 25 other side if all of the measurements you needed to

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1 take and all of the work that was being done occurred
 2 on the E-CAT side of the plant?
 3 A. It doesn't matter to me.
 4 Q. So then how can whatever was going on the
 5 other side of the plant have been fraudulent, from your
 6 perspective?
 7 A. I don't know that it was fraudulent. I
 8 just know that when the ability -- when I had the
 9 ability to look over there, that got a reaction.
 10 Q. And what if the technology or the processes
 11 that were going on on the other side of the plant were
 12 the type that you want to keep secret and confidential
 13 for competitive reasons? Would that make it
 14 fraudulent?
 15 A. No, sir.
 16 Q. And wouldn't I be correct in stating that
 17 perhaps the reason why Mr. Rossi, when some investors
 18 came, wanted certain things to be perhaps not easily
 19 seen, was to protect the technology?
 20 A. That may very well be true.
 21 Q. That's as likely as your conclusion that it
 22 may have been something not on the up and up, correct?
 23 A. Repeat your question. I didn't understand
 24 what you just said.
 25 Q. In other words, that would be a reason for

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1 Q. Who did you consider as your immediate
2 supervisor while you were working at Triangle Drive?

3 A. T. Barker or J.T. or Fulvio, either one of
4 them. A lot of the ideas and a lot of the work I was
5 doing I was helping Fulvio.

6 Q. Well then, why don't we move then on, can
7 you tell me what was Fulvio's Fabiani's role in the
8 work that was going on on Triangle Drive?

9 A. Fulvio was Andrea's electrical guy, if you
10 will. He took care of the electrical components and
11 assisted with the building and designing of any of the
12 electrical -- the necessary electrical parts, parts of
13 the puzzle, if you will.

14 Q. And how was your working relationship with
15 Mr. Fabiani on Triangle Drive?

16 A. Excellent.

17 Q. You ever have any issue or -- strike that.
18 Did you have any -- ever while at Triangle
19 Drive have any suspicions that Mr. Fabiani was somehow
20 trying to undermine the results that were trying to be
21 achieved at the Triangle Drive facility?

22 A. No, sir, I didn't. I wasn't aware.

23 Q. How would you describe his work? If you
24 were to evaluate him as a supervisor, how would you
25 evaluate his work while at Triangle Drive?

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1 there and attempt some little projects of his own and
2 help myself and T. Barker with little ongoing projects
3 that we had going, most of them that Andrea wanted us
4 to do, things that Andrea was requesting of us.

5 Q. Was Mr. Dameron supervising Mr. Fabiani's
6 work?

7 A. Not really. Yeah, T. Barker would input,
8 you know, he would help. We'd all get together and
9 have kind of little roundtable meetings and, yeah,
10 yeah, T. Barker's input was, you know, was important.

11 Q. Now, focusing on that time at Triangle
12 Drive, and you talked to me about the conversations you
13 had with Mr. Vaughn regarding Mr. Fabiani's pay, do you
14 recall any other conversations with Vaughn or Darden
15 with regard to Fabiani?

16 A. No, sir.

17 Q. Now, you testified about the plant being
18 moved from North Carolina down to Miami, the Doral
19 facility, correct?

20 A. Yes, sir.

21 Q. Do you know whether Mr. Fabiani had any
22 role in convincing Industrial Heat to allow the plant
23 to be moved to Doral?

24 A. No, I'm not aware. As far as what I'm
25 aware of is this was Andrea's deal. I don't think

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1 Fulvio even had a clue where the place was going to be
2 at until Andrea showed him the first time. I think
3 Andrea picked a site and handled, handled that, the
4 location area.

5 Q. As we sit here today, you don't think
6 Fulvio had anything to do with that Doral facility?

7 A. No. No.

8 Q. You say that you don't even think he knew
9 where that Doral facility was --

10 A. Until Andrea showed him.

11 Q. I'm sorry, say that again?

12 A. Until Andrea showed him for the first time.
13 Fulvio didn't know. This was Andrea's choice. I don't
14 think Fulvio had anything to do with it. However, he
15 may have helped Andrea find it, I don't know.

16 Q. I think you had mentioned, I'm going
17 backward here, I guess you stay in touch with
18 Mr. Fabiani through Facebook, I think you said?

19 A. Yeah, and I haven't spoken with him or seen
20 a response from him in probably a couple of months now,
21 but I've seen some stuff he's posted on there recently.
22 Fulvio's pretty good at the Facebook thing. I'm not.
23 I'm not too swift myself. Damn thing keeps changing.

24 Q. It's confusing. Me neither, me neither.
25 Let me back up on -- I asked you some questions about

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1 issues that you had on this, you know, had some
2 concerns, I'll say that, that there might have been a
3 dishonest venture. And one of the things that you said
4 was what was happening on the other side of the wall,
5 and I take that the other side of the wall means the JM
6 Products, correct?

7 A. Yes, sir.

8 Q. While you were working down in Miami with
9 Mr. Fabiani, how much interaction did Mr. Fabiani have
10 with the JM Products' side of the warehouse?

11 A. It was limited, but Fulvio was over there,
12 over there a lot, or at least up front in the office.
13 I mean, once again, what was in behind the wooden box,
14 the wooden wall was pretty much forbidden. So I don't
15 know how much interaction Fulvio had back there. I
16 know he was back there some, because I heard his voice
17 over there, but I think most of Fulvio's interaction
18 with Mr. Bass and Reynoldo and all was up front in the
19 office.

20 Q. Do you know whether Mr. Fabiani had -- do
21 you know whether Mr. Fabiani had permission to go back
22 there into the JM side into the, I guess the closed off
23 area?

24 A. I'm assuming he did, if Andrea or Jim or
25 Reynoldo was there, yeah, I think maybe so. I know I

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1 wasn't allowed in there, and I never seen Fulvio use
2 the one door back there but like once, and that's when
3 Reynoldo let him pass one time for something. But once
4 again, Mr. Jim was having computer problems all the
5 time, and Fulvio is the computer fix it man. So he'd
6 go up there and fix it. I think that's what --
7 according to what Fulvio tells me, that's what a lot of
8 the issues were. Jim would have problems with his
9 computer, and Fulvio would go help him.

10 Q. Okay. But you said that -- and you talked
11 about this -- a door. Is that the door that leads to
12 the JM Products' side?

13 A. Yes, sir, there was one personnel door
14 there that remained shut and locked at all times.

15 Q. And you saw Mr. Fabiani go through that
16 door one time, you said?

17 A. Yeah, I think one time in the very
18 beginning, Reynoldo, he followed Reynoldo after
19 something up there, went up front to work on Jim's
20 computer or something. So, but then he showed up at
21 the back door, because I had to let him in, because
22 they didn't let him come back through that door.
23 Andrea didn't want anybody passing through that door.

24 Q. So they even made Mr. Fabiani go around the
25 building to come back into the back?

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1 You arrived in the Doral facility pretty
 2 much at the same time that the plant did, right?
 3 A. Yes, sir.
 4 Q. Remind me again that was the --
 5 A. That was my purpose for being down there,
 6 was to get that plant setup and operational.
 7 Q. Perfect. So did Mr. Fabiani come down with
 8 you also to set it up and get it operational?
 9 A. No, sir, he came earlier. Fulvio actually
 10 had an apartment there that he had rented over there
 11 somewhere near Andrea, from what I was told, over at
 12 Miami Beach, out on the beach or near the beach, and I
 13 was out there when Fulvio first rented the place,
 14 helped him deliver some furniture and several things
 15 out there and get set up and, of course, I stayed in a
 16 motel over there not far from the plant, probably just
 17 a few -- eight or ten blocks away.
 18 Q. All right. So when you came down to set it
 19 up, when was it, is that December or January 2014?
 20 A. That was December 8, 9, somewhere right
 21 along in there. We went home after the initial setup
 22 and took a couple, three weeks off there for Christmas
 23 and New Year's, and then I forget the exact date we got
 24 back up around the first of January, but not New
 25 Year's, maybe the fourth or fifth or something, myself

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1 and Jose and Marco, the two guys that were helping me
 2 and had helped me with the project during the
 3 construction aspect of it back in Raleigh, they stayed
 4 with me all the way until we got up and running, which
 5 was somewhere around the end of February.
 6 Q. Okay. Was Mr. Fabiani, was he helping you
 7 all in that setup between January and February when it
 8 got --
 9 A. Some, but mostly Fulvio was doing his part
 10 with the computer, getting all the software and
 11 programming ready and setup while we were making all
 12 the wiring and, of course, the plant left and went down
 13 there unfinished.
 14 A key component, which was Fulvio's cards
 15 that were the actual little mini brains for each unit,
 16 they had not arrived. We didn't get those until we got
 17 down to Florida, and that was critical component wiring
 18 wise for the operation of the plant.
 19 So all that work transpired after the plant
 20 was moved down there. We got main power and
 21 everything, which was the first hurdle, got all that
 22 stuff turned on, so we had lights, air conditioning and
 23 could light up the -- light up the place for the rest
 24 of the work that happened, which was installing all the
 25 control cards in each one of the junction boxes

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1 associated with each unit, each heater, each E-CAT, if
 2 you will, and or big Frankie.
 3 Q. And my understanding, you left around
 4 October before the one year operation was complete, is
 5 that correct?
 6 A. I left in April. I left, again, I think at
 7 the end of September, and I might have come home one
 8 time for a few weeks in the middle there. Then I left
 9 again for the road, which is right there in Halloween,
 10 first of November, took about a month. And then I left
 11 and got me another month right there at Christmas and
 12 New Year's. And then I went back about the 10th of
 13 January after deer season and stayed two weeks, two
 14 final weeks, the last two weeks of the month of January
 15 this year. And then I left there, I want to say the
 16 27th, 28th of January, I forget that Friday, I forget
 17 exactly, I have to look at the calendar, but I came
 18 home, and that concluded my tour of duty in Miami.
 19 Q. All right. Now, in all that time that you
 20 spent there, and you have the same -- pretty much the
 21 same hours as Mr. Fabiani, could you recall any acts or
 22 anything that he did that would have made you believe
 23 that he was somehow deceitful or dishonest with
 24 Industrial Heat?
 25 A. No, sir, I don't recall any.

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1 Q. Did anyone from Industrial Heat call you
 2 into their offices and sit you down and get you to give
 3 them a run down of things that Fabiani did that were
 4 improper or anything like that?
 5 A. No, sir. No, sir.
 6 Q. Did Industrial Heat contact you at any time
 7 prior to this, I don't want to say this deposition,
 8 before this lawsuit, back and forth between the
 9 parties, did Industrial Heat ever bring you in to
 10 discuss your understanding of the facts?
 11 A. No, sir. No, sir. I didn't even know very
 12 many of the details about the contract until -- until
 13 all this began. I mean, I was not, you know, a
 14 party --I had no contract of any kind with Industrial
 15 Heat. I mean, I was just, you know, I was just an
 16 electrician guy they kind of found along the road and
 17 ended up going in there to work for about a week on a
 18 panel and stayed about three years, man.
 19 Q. That's a good story. I like --
 20 A. It's the truth.
 21 Q. I will have to meet up with you in North
 22 Carolina one of these days.
 23 So now, and I understand, Mr. West, you're
 24 not a party to this case, you know, you didn't draft
 25 anything, and you're not accusing anybody of anything,

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1 at least not to my knowledge, you can let me know if
 2 I'm wrong, but, you know, Industrial Heat, one of the
 3 big arguments, you know, is manipulating data,
 4 manipulating results, big fraud, big scheme, right? So
 5 I just want to make a hundred percent sure that before
 6 they made these allegations in this lawsuit, that they
 7 either did or did not sit down with you, the person who
 8 was down there in Doral the whole time that that one
 9 year project was going on, did they ever sit down with
 10 you and get your story of what happened in Doral?
 11 MR. FALCONE: Objection.
 12 A. You know, they asked, they asked questions.
 13 I reported, and I felt like it was my job to kind of
 14 keep T. Barker and J.T. somewhat abreast of what was
 15 going on down there. And they were aware when Penon
 16 and some of the investors would come, either being led
 17 by Mr. Tom or maybe J.T. or some of Andrea's friends,
 18 would come by to take a look at the plant and see
 19 things, I mean, I kind of, you know, it was -- they
 20 were paying me, so it was my duty, it was my job to
 21 kind of keep up with what was going on down there.
 22 Now, we might not talk every week. I mean,
 23 sometimes we might go several weeks and not hearing
 24 anything from any of them and them not hearing from me.
 25 But they paid me every week, and I went down there and

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1 done my job.
 2 Q. No, listen, I appreciate that. I'm not
 3 trying to say anything to that effect.
 4 My point is, you know, they've got this
 5 complaint, and they're suing my client, Fulvio Fabiani.
 6 So I understand that you had conversations with them
 7 while you were working at Doral, and when they were
 8 coming to visit, and you guys would have conversations.
 9 But my question is more direct. It is after the
 10 project finished, I think you said you left sometime at
 11 the end of January, right, and then this litigation
 12 starts let's say between June of this year, right, June
 13 of '16 through, you know, I think you told me, I think
 14 you said you talked to Mr. Vaughn a couple of weeks
 15 ago. Did they ever sit down with you and say we're
 16 suing these folks, and we want to know what you know?
 17 MR. FALCONE: Objection.
 18 BY MR. NUNEZ:
 19 Q. Has that ever happened?
 20 A. Not exactly like that, but, yeah, somewhat,
 21 I mean, J.T. asked questions. I don't have a whole lot
 22 of correspondence with T. Barker anymore, but some. I
 23 call him and speak with him occasionally. And, yeah,
 24 there were concerns. They told me that this was
 25 coming. I mean, I knew that, you know, that they were

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1 after the money, and they thought it was, you know,
 2 wrongfully taken from them, and that I was going to be
 3 asked to tell my side of the story or my interaction
 4 with the project. So, yeah, I was aware.
 5 Q. And did they ever sit you down to tell your
 6 side of the story?
 7 A. No, not really per se, other than casual
 8 conversation on the phone here and there about what's
 9 coming. This has been the actual, the first real
 10 account.
 11 Now, bear in mind that I met their
 12 attorneys sometime in the past here, I forget when I
 13 met Mr. Lomax and that team, and then I met Andrea's
 14 attorney one time for about 30 minutes down at the
 15 plant before I left. And basically I told him the same
 16 thing that, you know, that I've said in this
 17 deposition, and in fact, most of our conversation
 18 turned to Key West and fishing, man. You know, we had
 19 a better conversation talking about fishing and Key
 20 West really than did the plant, so.
 21 MR. CHAIKEN: Rudolfo, this is Brian
 22 talking, sorry to interrupt. The
 23 videographer just instructed me there's
 24 about five minutes left on this tape, maybe
 25 less than that at this point.

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1 MR. NUNEZ: You want to stop now and
 2 change the tape?
 3 THE VIDEOGRAPHER: Please. We're off
 4 the record at 2:52.
 5 (Recess.)
 6 THE VIDEOGRAPHER: Video number four,
 7 we're on the record at 2:58.
 8 BY MR. NUNEZ:
 9 Q. All right, thank you.
 10 Mr. West, you know the dangerous thing of
 11 taking a break is that I know there's a question I
 12 forgot to ask you.
 13 I think you testified that you knew that
 14 Mr. Fabiani and Mr. Rossi or Dr. Rossi had a prior
 15 relationship, is that correct?
 16 A. Oh, yes.
 17 Q. And how did you find that out?
 18 A. I met Andrea's wife, Maddalena. I've met
 19 his mother-in-law. I've met members of Andrea's family
 20 and Fulvio's talked with me many times about the
 21 relationship he had growing up with Maddalena, because
 22 they've known each other a lot longer than Andrea and
 23 Maddalena maybe have known each other. But I know
 24 Fulvio and Maddalena had a long relationship since
 25 Fulvio was very little, you know, he has known

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1 Maddalena, so, and now Andrea and her are married. I
 2 mean, I seen them. They come to the plant pretty
 3 regularly. I got to see them and, so yeah, so I knew.
 4 Q. Is this something you found out when you
 5 were working in Doral, or did you know this up at
 6 Triangle Drive?
 7 A. No, I knew this at Triangle Drive.
 8 Maddalena made several visits up there. We all got
 9 introduced and met Andrea's wife.
 10 Q. Do you know whether Mr. Vaughn or
 11 Mr. Darden also knew of this prior relationship between
 12 Dr. Rossi and Mr. Fabiani?
 13 A. I'm sure they did, yeah. I'm sure they
 14 did.
 15 Q. Did they ever make any comments to you
 16 about that?
 17 A. No, sir.
 18 Q. Or have any discussions with regard to that
 19 prior relationship?
 20 A. No, sir.
 21 Q. Now, I think you had -- I don't know if
 22 this is just my notes or something I put down or
 23 something you said, but I have here that you were the
 24 eyes and ears for Industrial Heat down here in Doral,
 25 Florida, is that correct?

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1 A. Yes, sir.
 2 Q. How often would you report to Industrial
 3 Heat of what was going on?
 4 A. Sometimes weekly and sometimes monthly. I
 5 mean, there were a lot of times that there wasn't a
 6 whole lot going on, other than general maintenance
 7 while the plant was running. So they wouldn't contact
 8 me and other than my, you know, my time that I sent in
 9 every week, I wouldn't, you know, I wouldn't hear back
 10 from them, so.
 11 Q. And who would be -- who was your primary
 12 contact person?
 13 A. J.T. or T. Barker.
 14 Q. Would you like, let's say on your time
 15 sheets, would you send it to both of them? Would you
 16 sen it to one of them?
 17 A. Just generally the payroll girl, I want to
 18 say her name was Tricia and J.T. I'd always copy J.T.
 19 Q. And how about if you were going to -- you
 20 know, aside from payroll issues or your time sheets,
 21 how about if you were just communicating with regard to
 22 the operations of the plant, how and who would you
 23 communicate with?
 24 A. Typically J.T. or T. Barker, both. A lot
 25 of times I would send a text or something to both of

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1 them, letting them know or they would text me about,
 2 particularly J.T. about investors or people coming by
 3 to see the plant. Usually Andrea a lot of times would
 4 let me know as well, just to keep me informed of what
 5 was going on. And if we had any issues at the plant,
 6 any major problems or this, that and the other, I'd
 7 call him and let him know. But once again, after the
 8 first few months when we got it up and going and got
 9 most of the bugs worked out, the thing ran amazingly
 10 well; plumbing issues, leaks. Plumbing issues were
 11 more of a problem than anything else.
 12 Q. And you said it was hot, right? I think
 13 you like reiterated that a couple of times?
 14 A. Damn hot.
 15 Q. A lot of heat. And did it get hotter when
 16 they made you close the doors?
 17 A. Yeah, well, that wasn't really towards the
 18 end there. Of course, I like the doors open all year
 19 round down there. Everybody else is wearing coats and
 20 freezing. I wore shorts all year round down there. It
 21 felt good to me. I didn't mind 60-degree weather,
 22 that's fine.
 23 Q. Especially when you are working in that hot
 24 warehouse, right?
 25 A. Yes, sir.

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1 Q. Do you recall ever sending an email or a
 2 text to J.T. or T. Barker expressing concerns that you
 3 had with Fulvio Fabiani's work?
 4 A. No, I don't know. Maybe. Maybe I did.
 5 It's possible.
 6 Q. Well, I mean, we're kind of here. This is
 7 the time to know or not know --
 8 MR. FALCONE: Objection.
 9 A. I'm not sure.
 10 Q. You're not sure. But right now, as you sit
 11 here today, you can't remember a single time you wrote
 12 something to T. Barker or J.T. Vaughn, and that's T.
 13 Barker Dameron with any concerns about Mr. Fabiani's
 14 work?
 15 A. No, sir, I don't, I don't recall that, but
 16 I may have mentioned something Fulvio was working on or
 17 doing that I may have disapproved of or didn't know
 18 about. But no, I don't -- it's possible, I don't know.
 19 Q. Now, you mentioned it's possible you might
 20 have been working, did you say doohickey?
 21 A. No, sir.
 22 Q. What did you say, that he might have been
 23 working on something?
 24 A. Something Fulvio may have been working on
 25 that I didn't approve of or something, but, yeah, I

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1 were accurate?

2 A. Well, mostly Andrea did that. I mean, he
3 walked around every hour or two during his stays,
4 during his time there and took measurements. I mean,
5 he used a little laser, little laser temperature probe
6 to verify, just to check and keep an eye. And then, of
7 course, he corresponded with Fulvio as to what he was
8 reading and recording versus what Fulvio's system was
9 telling him.

10 Q. And Mr. West, during this time when these
11 measurements are going on and this work is happening
12 and you're their -- you're their eyes and ears for
13 Industrial Heat, did you notice anything going on that
14 you would describe as deceptive or dishonest in taking
15 these measurements?

16 A. Not knowingly, not, you know, not -- no,
17 sir. No, sir.

18 Q. All right. Let me move to another subject
19 here.

20 And one of the issues is this denial of
21 access, and I think you testified earlier that Joe
22 Murray was at some point denied access, is that
23 correct?

24 A. Yes, sir.

25 Q. Do you know did Mr. Fabiani play any role

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1 or have any part in that denial of access to
2 Mr. Murray?

3 A. No, sir, I don't think Fulvio had anything
4 to do with that.

5 Q. Did Mr. Fabiani have any role or duties at
6 the Doral facility regulating who came in or who was
7 allowed in or who was not allowed in?

8 A. No, sir. No, sir. Andrea controlled that.

9 Q. I'm sorry?

10 A. Andrea, Andrea controlled that.

11 Q. Andrea Rossi controlled who got in and who
12 got out?

13 A. Yes, sir.

14 Q. Do you recall Mr. Fabiani making any
15 written or verbal statements to anyone with regard to
16 whether access to the plant or access to the warehouse?

17 A. No, sir. No, sir.

18 Q. Now, one of the things I think the
19 contractual issue or -- strike that.

20 One of Mr. Fabiani's duties, and correct me
21 if I'm wrong, is to give and provide data to Industrial
22 Heat, is that correct?

23 A. Yes, sir, as far as I know.

24 Q. Do you recall Mr. Fabiani sending data to
25 Industrial Heat or reports or any written information

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<p style="text-align: right;">Page 222</p> <p>1 needed to get -- he needed to get this information to 2 him. 3 Q. Do you know whether he was preparing, and 4 this is part of your answer, I'm sorry if I'm treading 5 over the stuff you just answered. I want to be clear. 6 Was he sending monthly reports to somebody at 7 Industrial Heat? 8 A. My understanding is that's what he was 9 supposed to supply, I think weekly at one time. I 10 heard weekly, but then I heard monthly, but I'm not 11 sure whether he did it or not. I have no way of 12 verifying that. 13 Q. Fair enough. Give me one second. I'm just 14 looking through my notes. I'm almost done here, I 15 promise. 16 (Pause.) 17 Q. I know a couple of times you threw out or 18 you mentioned, and I'm listening through the speaker 19 phone, so I might have heard it wrong, something about 20 a Cadillac incident? 21 A. Yes, sir. 22 Q. And that had something to do with 23 Mr. Fabiani? 24 A. Yeah, Fulvio was going to alter one of 25 the -- one of the E-CAT cards to just give me a close</p>	<p style="text-align: right;">Page 224</p> <p>1 he had some concerns. 2 A lot of times I'd go out and check things 3 or put my meter across certain things and see what they 4 were doing, and, you know, sometimes I would even get 5 out there and listen, just listen to things and hear 6 what they're doing. So, but, yeah. 7 Q. Okay. And I don't want to put words in 8 your mouth, but it sounds to me when you're saying 9 Fulvio had some concerns that he wouldn't always agree 10 with Dr. Rossi, he would sometimes disagree with 11 Dr. Rossi? 12 A. Yep. I think -- I think Penon had some 13 disagreements with Andrea too. Every once in a while 14 we had a disagreement, but for the most part, we tried 15 to be civil. 16 Q. Now, again, towards the end of that direct 17 examination, you talked about, you know, I guess at the 18 beginning, you believed these folks were honest, but 19 then you went on and you said, but it appears not, and 20 that it was a dishonest venture, right? And you gave a 21 couple of examples. One of the things was what was 22 happening on the other side, right, on the JM side? 23 One of the things, I don't know if I heard you 24 correctly, you said you saw Fulvio crunching numbers on 25 his computer. What do you mean -- is that what you</p>
<p style="text-align: right;">Page 223</p> <p>1 contact that he can control and put a timer on it, and 2 we were going to get a couple of lights. Andrea wanted 3 to just get a couple of lights and put them in there 4 and make them blink or something, to give that portion 5 of the plant a little visual effect. 6 Q. Okay. And why do you call that an 7 incident? I mean, what was that? I don't get it. Is 8 that a problem? 9 A. No, no, it's kind of like a Christmas tree 10 with lights on it. 11 Q. Okay. One of the things that you testified 12 earlier, one of the comments, I believe, that you made 13 was that Fulvio sometimes had concerns with the 14 information, I guess, the data that was coming from the 15 plant, is that correct? 16 A. Yeah, we had some issues with some of the 17 components early on, and some of the dirt in the plant, 18 but, you know, that stuff cleared up given enough time. 19 I mean, it ended up running pretty clean there towards 20 the end. But, yeah, he had some concerns with some of 21 the measurements and stuff that was going on, and he 22 advised Andrea as he needed to. 23 Q. I'm sorry, I missed that last part of the 24 answer. 25 A. He would advise Andrea, if he, you know, if</p>	<p style="text-align: right;">Page 225</p> <p>1 said, and if it was what you said, what did you mean by 2 it? 3 MR. FALCONE: Objection. 4 A. You know, the numbers Fulvio was crunching, 5 that he was working on over there may not have had 6 anything to do with the plant at all. You know, I'm 7 not, I'm not, you know, I don't know that that was 8 exactly what he was doing. 9 Q. Okay. So just to make clear, that earlier 10 testimony of yours, it's not to suggest that whatever 11 he was doing that day on the computer was somehow 12 dishonest, correct? 13 A. No, sir, no, sir. I have no way of knowing 14 that. 15 Q. So then on this whole, you know, and now 16 you feel it's a dishonest venture, and, you know, so 17 what -- I mean, whatever he was or wasn't doing on the 18 computer, you don't know what it was. You don't know 19 that that had anything to do with the allegations being 20 brought by Industrial Heat. You testified about the 21 stuff going on on the other side at JM. I'll leave 22 that alone. My client didn't really have much to do 23 with that. Well, you know, what else has happened 24 since you left this project, stopped working with these 25 folks that now you have some, you know, suspicion that</p>

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1 there was a dishonest venture?
 2 MR. FALCONE: Objection.
 3 A. It seems to me that there's some --
 4 something shady going on here, okay. I mean, I was
 5 asked to do and help, and much of the information, the
 6 important stuff, if you will, you know, I wasn't
 7 allowed, I didn't have any knowledge about that. I
 8 wasn't allowed. I never knew or even seen the fuel
 9 itself but like once, maybe. And, you know, I was
 10 denied. They kept me out of, you know, most of the
 11 secrets of this project. And I got no way of knowing,
 12 you know, what really, what really has happened here.
 13 So, I mean, my job basically was to go down
 14 there and keep the thing running, and I did that, to
 15 the best, to the best of my ability, so.
 16 Q. So really aside from your concerns of what
 17 was going on on the other side of the wall at the JM
 18 side, and this general feeling that something is fishy,
 19 you don't really have any facts to testify in this
 20 proceeding to prove that there was some type of scheme
 21 involving Mr. Fabiani?
 22 A. No, sir. No, sir, I don't know. I
 23 can't -- I can't imagine, you know, Andrea and Fulvio
 24 not knowing what's going on. I mean, I would think if
 25 something was going on, they were both -- they would

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1 have both been a part of it
 2 Q Well, I mean, that's the whole question is
 3 the if, if something is going on And so, again, just
 4 to clarify my question, is that while you were working
 5 with, you know, Mr Fabiani for almost I think you said
 6 it was almost three years, you can't testify to one
 7 thing that you think you saw him do that was dishonest
 8 or inappropriate or deceitful to Industrial Heat, is
 9 that correct?
 10 MR FALCONE: Objection
 11 A That I'm aware of, you know, once again
 12 Q That's what I'm just looking at, what you
 13 know, what you know
 14 A I don't know anything I don't know if the
 15 information that Fulvio passed to him was accurate or
 16 not
 17 MR NUNEZ: Thank you very much,
 18 Mr West I will stop there No more
 19 questions
 20 MR CHAIKEN: You gentlemen have any
 21 questions?
 22 MR FALCONE: No questions
 23 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS
 24 BY MR CHAIKEN:
 25 Q This is Brian Chaiken, I have a few

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1 follow-up questions based on some of the questions you
 2 received from counsel.
 3 Mr. West, you testified that you had
 4 conversations previously with counsel for Industrial
 5 Heat, is that correct?
 6 A. That I had conversations previously?
 7 Q. Yes, previously.
 8 A. For counsel. I knew that this was coming,
 9 yeah. I mean, they made me aware that this was going
 10 to happen.
 11 Q. And when did you have those conversations?
 12 A. Oh, I don't have the first clue.
 13 Q. Do you know what you talked about?
 14 A. Yeah, this was going to happen. There
 15 would be a deposition, that I'd be notified sometime in
 16 the future, is what they told me.
 17 Q. Was that over the phone or in person?
 18 A. Yeah, over the phone.
 19 Q. That was the sum and substance of the
 20 conversation?
 21 A. Pretty much, and then they let me know
 22 dates.
 23 Q. Who did you talk to?
 24 A. J.T., and then when I found it was actually
 25 going to happen, I actually called T. Barker myself and

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1 asked him what's this about, what's going to happen
 2 here, what are they going to do, and he didn't really
 3 know either. He said they were just going to have some
 4 questions and --
 5 Q. Did you ever have a conversation with
 6 Mr. Pace or Mr. Lomax about this case?
 7 A. They interviewed me. We had a topic
 8 sometime back when I first met them. I mean, they just
 9 asked me some questions about what I had done down in
 10 Florida, you know, basically the same things that you
 11 asked when you came out to the plant that day.
 12 Q. When did that conversation take place?
 13 A. Oh, I don't know. I don't know. They
 14 could tell you. I don't remember.
 15 Q. Was it before --
 16 A. I think it was after I came back.
 17 Q. After you came back from Doral?
 18 A. No, we met -- did we meet in Florida? I
 19 don't remember. I forget the first time I met them. I
 20 remember I was out there. I know I saw them at
 21 Industrial Heat's new office one time, I went over
 22 there after I came back, and we had a meeting. I can't
 23 remember if we met out in Florida or not. I remember
 24 you coming to the plant that one day, that one morning
 25 about ten o'clock.

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<p style="text-align: right;">Page 234</p> <p>1 ERRATA PAGE 2 MMV 3 4 CASE NAME: Rossi vs. Darden 5 6 WITNESS NAME: BARRY WEST 7 DATE: December 2, 2016 8 9 PAGE LINE READS SHOULD READ REASON FOR CHANGE 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>	
<p style="text-align: right;">Page 235</p> <p>1 CERTIFICATE 2 I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public, 3 the officer before whom the foregoing proceeding was 4 conducted, do hereby certify that the witness(es) whose 5 testimony appears in the foregoing proceeding were duly 6 sworn by me; that the testimony of said witness(es) were 7 taken by me to the best of my ability and thereafter 8 transcribed under my supervision; and that the foregoing 9 pages, inclusive, constitute a true and accurate 10 transcription of the testimony of the witness(es). 11 I do further certify that I am neither counsel for, 12 related to, nor employed by any of the parties to this 13 action in which this proceeding was conducted, and 14 further, that I am not a relative or employee of any 15 attorney or counsel employed by the parties thereof, nor 16 financially or otherwise interested in the outcome of the 17 action. 18 IN WITNESS WHEREOF, I have hereunto subscribed my name 19 this of , 2016. 20 MARISA MUNOZ-VOURAKIS 21 Notary #20032900127 22 23 24 25</p>	

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