

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

POWERPHASE LLC, a Delaware limited liability
company,

Plaintiff,

v.

DR. MICHAEL NAKHAMKIN, an individual;
ENERGY STORAGE AND POWER LLC, a
Delaware limited liability corporation; and DOES
1-20,

Defendants.

COMPLAINT

Plaintiff PowerPHASE LLC (“PowerPHASE”) hereby asserts the following claims against Defendants Dr. Michael Nakhamkin and Energy Storage and Power LLC (collectively, “Nakhamkin” or the “Nakhamkin Defendants”) and further states as follows:

NATURE OF THE ACTION

1. This is an action brought against the Nakhamkin Defendants for a declaration of non-infringement of United States Patent Nos. 5,934,063 (the “’063 Patent”) and 6,305,158 (the “’158 Patent”), for injunctive relief and damages arising from Nakhamkin’s tortious conduct with respect to PowerPHASE’s business and development of its Aeroboost Injection (“ABI”) and TurboPHASE technologies, and for unfair competition under the Lanham Act.

JURISDICTION AND VENUE

2. The claims in this case arise under the Declaratory Judgment Act, 28 U.S.C. §§2201, 2202 and the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, based on an actual, real, and immediate controversy between the parties as to whether PowerPHASE is free to continue to make, use, market, sell, import, or offer to sell products that incorporate its ABI and TurboPHASE technologies, or whether such technologies infringe Defendants’ patents.

Federal question subject matter jurisdiction is also conferred on this court based on plaintiff's claims arising under the Lanham (Trademark) Act, 15 U.S.C. § 1051 *et seq.* Plaintiff's pendent state law claims arise under Florida law and can be addressed in this Court through principles of supplemental jurisdiction.

3. This Court has personal jurisdiction over the Defendants because the Florida Long Arm Statute, Fla. Stat. § 48.193, explicitly extends to defendants who commit tortious acts in Florida, cause injury to others in Florida, own property in Florida, engage in business activities in Florida, or reside in Florida. Defendants meet all of these provisions of the Florida Long Arm Statute. They sent a cease and desist letter into Florida falsely claiming that Plaintiff infringes their patents, which caused injury to Plaintiff, including the suspension of a speaking engagement and the attendant harm to Plaintiff's reputation. Defendants committed the torts alleged below in Florida. Defendant Nakhamkin, on information and belief, owns real property in Florida and resides in Florida at least part-time. Additionally, Defendants, on information and belief, make, use, sell, or offer to sell in Florida products allegedly falling within one or more claims of their patents, thus engaging in business within Florida. Plaintiff also has its principal place of business in Florida, and Defendants have threatened Plaintiff with litigation there. This Court can validly exercise specific personal jurisdiction over Defendants because Defendants have at least minimum contacts with Florida, have purposefully directed activities there, and it is foreseeable, fair, and reasonable that Defendants' activities in Florida could result in their being sued there. Additionally, Defendants' activities in Florida specifically relate to the claims at issue in this case, thus allowing the Court to exercise specific jurisdiction over Defendants.

4. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the claims and omissions giving rise to this complaint occurred in the Southern District of Florida. Additionally, Defendant Energy Storage and Power may "be found" in this jurisdiction under 28 U.S.C. § 1391(c), and, on information and belief, Defendant Nakhamkin may reside in Florida part-time, making venue proper in this Court on that basis as well.

PARTIES

5. PowerPHASE is a Delaware limited liability company with its principal place of business in West Palm Beach, Florida.

6. Nakhamkin is an individual who, upon information and belief is a resident of New Jersey, with a principal place of business at 40 Woodman Lane, Basking Ridge, New Jersey. 07920. Upon information and belief, Nakhamkin and his wife purchased a home in Sunny Isles Beach, Florida in 2011, where they reside at least part-time. Upon information and belief, Nakhamkin is affiliated with several companies in the power generation industry; holds multiple patents pertaining to power generation technology; and has recently offered his products or technologies for sale or license in Florida.

7. Energy Storage and Power LLC (“ESP”), upon information and belief, is a limited liability company registered in Delaware with its principal place of business in Bridgewater, New Jersey that is wholly-owned by Nakhamkin, who controls all of the affairs of ESP. Upon information and belief, ESP is (or was until recently) the owner of both U.S. Patent Nos. 6,305,158 (the ’158 Patent) and 5,934,063 (the ’063 Patent) (collectively, the “Nakhamkin Patents” or the “asserted patents”). At all times relevant to the allegations in this complaint, Dr. Michael Nakhamkin and ESP have acted as agents and alter egos of one another.

8. Upon information and belief, defendant DOES 1-20 are entities and/or individuals affiliated with Nakhamkin, who have engaged in the unlawful conduct alleged herein, and who may currently own all right, title, and interest in the patents subject to this Complaint. PowerPHASE will amend the Complaint at such time as the true identities of those parties are known.

FACTUAL BACKGROUND

9. PowerPHASE was formed in 2012 to develop and commercialize cost efficient products for increasing gas turbine performance and peak energy production.

The Technology At Issue

10. The principal technologies being brought to market by PowerPHASE are the ABI technology and TurboPHASE modular system, which can be added to existing gas turbine energy plants to improve performance while staying within the capacity of the existing gas turbine energy plant. TurboPHASE is intended to boost gas turbine power performance through more cost-effective and efficient means than other technologies and methods currently available.

11. Installation of the TurboPHASE technology requires only days to complete and is both low-risk and relatively simple. TurboPHASE restores power that is normally lost at elevated ambient temperatures or higher altitudes, and obtains more power from combined cycle gas turbines, while staying within the system's full capacity, as rated by the original equipment manufacturer.

Nakhamkin's Tortious Conduct

12. One of the leading power generation industry events each year is the Power-GEN International conference, which offers comprehensive coverage of the trends, technologies, and issues facing the power generation industry. Power-GEN International is organized and presented by PennWell Corporation, a business-to-business media and information company headquartered in Tulsa, Oklahoma. Upon information and belief, more than 1,200 companies from all over the world exhibit at the conference each year to benefit from meeting up to 20,000 attendees. Participation in and attendance at the Power-GEN conference provides direct access to business opportunities for, and confers prestige on, conference participants.

13. Bob Kraft, founder of PowerPHASE, was previously invited to speak at the Power-GEN International conference in Orlando, Florida on December 11-13, 2012 to present a paper discussing the TurboPHASE technology being developed by PowerPHASE. Kraft accepted the invitation on behalf of PowerPHASE.

14. In connection with PowerPHASE's participation in the Power-GEN conference, PowerPHASE executed a speaker agreement with PennWell memorializing the terms and conditions of that participation and highlighting the "value in such opportunity." In October 2012, PowerPHASE prepared and submitted a paper to be presented, entitled "Affordable,

Efficient Gas Turbine Output Increase and Energy Storage,” to PennWell for formal inclusion in the Power-GEN conference materials. PowerPHASE later changed the title to “TurboPHASE: Cost-Effective and Efficient Peaking Power.”

15. On or about November 1, 2012, Kraft received a phone message from Nakhamkin, stating that Nakhamkin’s lawyer had made Nakhamkin aware that PowerPHASE had a product that allegedly infringed Nakhamkin’s patents. In the message, Nakhamkin also represented that he had sold certain patents to Dresser-Rand, and that if Kraft did not return his call, Nakhamkin would sue PowerPHASE. In response to these messages, Kraft twice tried to speak with Nakhamkin about the alleged infringement, to no avail: each time Kraft reached Nakhamkin by phone, Nakhamkin claimed he was busy and that Kraft should call back at a later time.

16. On November 7, 2012, PowerPHASE received a “cease and desist” letter from attorney Ira M. Starr, on behalf of Nakhamkin “and entities controlled by him which are the long time holder of patents dealing with power augmentation of gas turbine/combined cycle plant processes.” The November 7 letter falsely asserted that PowerPHASE was infringing the ’158 and ’063 Patents. It further demanded that PowerPHASE immediately cease and desist from making “presentations or other form of advertising of any product or process” that infringes the ’063 or ’158 Patents. Without any privilege or justification, Nakhamkin’s counsel also sent the letter to two preeminent industry publications—Gas Turbine World and the Combined Cycle Journal—and to PennWell Corporation. To the extent that Nakhamkin, his counsel, or other agents were acting in the course and scope of their employment with or work for Defendant Energy Storage and Power LLC, that company is liable for those actions under principles of *respondeat superior*.

17. PowerPHASE immediately responded to Mr. Starr’s correspondence the following day, November 8, 2012, requesting that Nakhamkin provide details regarding the claimed infringement. Nakhamkin’s patent counsel, Edward Stemberger, provided a brief response regarding the alleged infringement that day. Significantly, Mr. Stemberger’s November 8 letter (a true and correct copy of which is attached to this Complaint as Exhibit A) only

asserted infringement of the '158 patent and did not assert infringement of the '063 patent—seemingly admitting that PowerPHASE does not infringe the '063 patent.

18. Thereafter, PowerPHASE sent a letter pointing out applicable prior art, in particular U.S. Patent No. 2,535,488 that showed the asserted Nakhamkin Patents were inapplicable to PowerPHASE's operations.

19. Having heard nothing else from Nakhamkin or his counsel, PowerPHASE sent an additional letter on November 19, 2012. In that correspondence, PowerPHASE demanded that Nakhamkin immediately inform any third parties about applicable prior art, and take steps to limit any false or misleading statements regarding infringement of the '158 or '063 Patents.

20. On November 19, 2012, PennWell informed PowerPHASE that it was removing PowerPHASE's presentation from the conference, based on the mistaken belief that Nakhamkin had obtained a "cease and desist order" against PennWell and the perceived threat of litigation against PennWell by Nakhamkin.

21. In an effort to stanch the damage to PowerPHASE, the company's attorneys contacted Nakhamkin's counsel to discuss the erroneous cease and desist letter. In that conversation, Attorney Starr conceded that he knew of no grounds for asserting infringement of the '063 Patent without consulting Nakhamkin. PowerPHASE's counsel then sent a detailed position letter to Mr. Starr on November 27, 2012, (i) enumerating the reasons why the TurboPHASE system does not infringe the '158 Patent, and (ii) requesting that Nakhamkin's counsel join in a short letter to PennWell requesting that Kraft be reinstated on the Power-GEN conference roster. A true and correct copy of the November 27, 2012 letter is attached to this Complaint as Exhibit B.

22. Just hours later, Nakhamkin and his counsel informed PennWell that they had no objection to PennWell's reinstatement of PowerPHASE on the Power-GEN conference roster, and that they would take no legal action against PennWell arising from the PowerPHASE presentation. (A true and correct copy of that confirmation is attached hereto as Exhibit C.) However, Nakhamkin and his counsel continued to assert that PowerPHASE's products or processes infringe at least claim 1 of the '158 patent, either directly or indirectly. Neither did

they agree to give PowerPHASE a covenant-not-to-sue or an explanation as to why they had suddenly withdrawn all claims of infringement respecting the '063 patent.

23. At no time since the above events has Nakhamkin endeavored to correct or clarify the false allegations of infringement contained in his counsel's November 7 "cease and desist" letter. Indeed, the November 7 correspondence was plainly intended to influence the purchasing decisions of potential consumers through the spread of false information to well-regarded, highly-read industry publications.

24. Nakhamkin's rash issuance of the November 7 letter to PowerPHASE and to third-parties, his baseless accusations regarding the '063 Patent, his subsequent refusal to articulate the basis for any purported infringement, and his failure to correct his accusations of infringement to third-parties even after being apprised of PowerPHASE's non-infringement evidence all indicate the absence of "a good faith" infringement analysis.

25. PowerPHASE has expended significant time and resources preparing for its participation in the Power-GEN conference, and has numerous suppliers, investors, partners, and potential customers who planned to attend the conference, at PowerPHASE's invitation. Nakhamkin's intentionally false statements to PennWell disrupted and damaged PowerPHASE's ongoing business relationships with those potential customers, investors, and partners and its existing suppliers and harmed PowerPHASE's reputation. Additionally, PowerPHASE must now attempt to market its new products and process to an industry that may wrongly believe that PowerPHASE infringes one or more claims of the Nakhamkin Patents.

26. Defendants' assertion that PowerPHASE infringes the Nakhamkin Patents (and their implied threat of litigation), and PowerPHASE's denial of any such infringement and insistence that it has the right to make, use, sell, offer to sell, and import its products (and processes) create an actual case or controversy among the parties, who have adverse legal interests, which is real and substantial and of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

27. As a direct and proximate consequence of Nakhamkin's conduct, PowerPHASE's brand, reputation (as well as the reputation of its founder, Bob Kraft), and its ability to sell in the

marketplace and deal with suppliers and others in the market, have been and are being irreparably harmed in ways that cannot be adequately compensated with money damages.

CLAIMS FOR RELIEF

First Cause of Action

(Non-Infringement of Any Valid and Enforceable Claim of the '063 Patent)

28. PowerPHASE repeats and realleges paragraphs 1-27 as if fully set forth herein.

29. PowerPHASE has not infringed, is not infringing, and will not infringe, literally or under the Doctrine of Equivalents, and directly or indirectly, any valid and enforceable claim of the '063 Patent.

30. Because Defendants have asserted that PowerPHASE's commercial manufacture, use, offer for sale, sale within the United States, and/or importation into the United States of the ABI and TurboPHASE technology would directly and/or indirectly infringe the '063 Patent, and because Plaintiff PowerPHASE denies that it infringes any valid and enforceable claim of that patent and insists that it has the right to make, use, sell, offer to sell, and import its products (and processes), an actual case or controversy exists among the parties, who have adverse legal interests, which is real and substantial and of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

31. A declaration of rights between the parties is therefore appropriate and necessary to establish that commercial manufacture, use, offer for sale, sale within the United States, and/or importation into the United States would not directly and/or indirectly infringe any valid and enforceable claim of the '063 Patent. Although Nakhamkin's counsel, Ira Starr, has since attempted to retract his claim that PowerPHASE infringes one or more claims of the '063 Patent, he has offered neither a covenant-not-to-sue, nor an explanation as to why Defendants are no longer asserting infringement of that patent.

32. PowerPHASE does not in fact infringe any claim of the '063 Patent. For example, each independent claim of that patent, and thus all claims, requires feeding compressed air from *air storage* to the combustor feeding the turbine. PowerPHASE's TurboPHASE product or process does not normally include air storage. Accordingly, TurboPHASE technology cannot

infringe the '063 Patent. Moreover, even with an air storage option, the TurboPHASE product or process could not infringe any claim of the '063 Patent unless it met the other limitations of the independent claims.

33. On information and belief, the '063 Patent has been sold or transferred to a third party and Defendants no longer have the power to assert infringement of that patent.

34. PowerPHASE is entitled to a declaration that it does not infringe any claim of the '063 Patent and to an injunction barring Defendants from continuing to falsely claim that PowerPHASE infringes any such claims.

Second Cause of Action

(Declaration of Non-Infringement of Any Valid and Enforceable Claim of the '158 Patent)

35. PowerPHASE repeats and realleges paragraphs 1-34 as if fully set forth herein.

36. PowerPHASE has not infringed, is not infringing, and will not infringe, literally or under the Doctrine of Equivalents, and directly or indirectly, any valid and enforceable claim of the '158 Patent.

37. Because Defendants have asserted that PowerPHASE's commercial manufacture, use, offer for sale, sale within the United States, and/or importation into the United States of the ABI and TurboPHASE technology would directly and/or indirectly infringe the '158 Patent, and because Plaintiff PowerPHASE denies that it infringes any valid and enforceable claim of that patent and insists that it has the right to make, use, sell, offer to sell, and import its products (and processes), an actual case or controversy exists among the parties, who have adverse legal interests, which is real and substantial and of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

38. A declaration of rights between the parties is appropriate and necessary to establish that commercial manufacture, use, offer for sale, sale within the United States, and/or importation into the United States would not directly or indirectly infringe any valid and enforceable claim of the '158 Patent. PowerPHASE does not in fact infringe any valid claim of the '158 patent. For example, the TurboPHASE technology is a modular system to add to an

existing combustion turbine power generation system and therefore is not itself a “combustion turbine power generation system” as required by each of independent claims 1, 6, and 12.

39. Likewise, the TurboPHASE technology does not include an “electric generator having a capacity to provide electric power exceeding the full rated power generated by the combustion turbine assembly,” as required by each of independent claims 1, 6, and 12. Similarly, the TurboPHASE technology does not include “generating electrical power exceeding the full rated power of the combustion turbine assembly,” as required by each of independent claims 1, 6, and 12.

40. Moreover, the TurboPHASE technology does not include “a humidifying structure” or “humidifying means” as required by independent claims 6 and 12. If PowerPHASE's products or processes do not meet the limitations of the independent claims of the '158 Patent, they cannot meet the limitations of the dependent claims of that patent either, since dependent claims incorporate the limitations of the independent claims from which they depend.

41. On information and belief, the '158 Patent has been sold or transferred to a third party and Defendants no longer have the power to assert infringement of that patent.

42. PowerPHASE is entitled to a declaration that it does not infringe any claim of the '158 Patent and to an injunction barring Defendants from continuing to falsely claim that PowerPHASE infringes any such claims.

Third Cause of Action

(Tortious Interference With Contract)

43. PowerPHASE repeats and realleges paragraphs 1- 42 as if fully set forth herein.

44. PowerPHASE entered into a valid contract with PennWell to speak at and participate in the Power-GEN 2012 conference.

45. As evidenced by Nakhamkin's November 1 communication SPand subsequent letters, Defendants knew of the agreement between PowerPHASE and PennWell, under which Kraft would participate at Power-GEN on behalf of PowerPHASE.

46. Without any justification or privilege, Defendants and their agents intentionally caused PennWell to breach its obligations under the speaker agreement with PowerPHASE by (i) falsely and misleadingly implying that PennWell would be subject to liability if it allowed PowerPHASE to speak, present, or otherwise participate in the upcoming Power-GEN conference, and (ii) falsely and misleadingly suggesting that PowerPHASE had infringed, and continues to infringe, patents owned by Nakhamkin.

47. PennWell did, in fact, breach the speaker agreement with PowerPHASE by initially removing Kraft and PowerPHASE from the Power-GEN conference roster.

48. As a direct and proximate consequence of Nakhamkin's tortious conduct, PowerPHASE has been damaged in an amount to be proven at trial of this matter. To the extent that Nakhamkin, his counsel, or other agents were acting in the course and scope of their employment with or work for Defendant Energy Storage and Power LLC, that company is liable for those actions under principles of *respondeat superior*.

Fourth Cause of Action

(Intentional Interference With Advantageous Business Relationships)

49. PowerPHASE repeats and realleges paragraphs 1- 48 as if fully set forth herein.

50. PowerPHASE had a business relationship with PennWell by virtue of PowerPHASE's participation in the Power-GEN 2012 conference and the Speaker Agreement Materials Release Form entered into by PowerPHASE and PennWell. PowerPHASE also has existing business relationships with a finite group of prospective customers for its new TurboPHASE technology, along with ongoing business relationships with suppliers.

51. Defendants knew, and know of, the foregoing business relationships.

52. Without any justification or privilege, Defendants and their agents intentionally interfered with PowerPHASE's business relationships by knowingly and intentionally representing that PowerPHASE had infringed, and continues to infringe Nakhamkin's patents. Nakhamkin and his agents also intentionally interfered with PowerPHASE's business relationships with third-parties by misleadingly informing those third-parties they would be

subject to liability for patent infringement as a result of continuing to do business with PowerPHASE.

53. As a direct and proximate cause of Nakhamkin's tortious conduct, PowerPHASE has been damaged in an amount to be proven at trial. To the extent that Nakhamkin, his counsel, or other agents were acting in the course and scope of their employment with or work for Defendant Energy Storage and Power LLC, that company is liable for those actions under principles of *respondeat superior*.

Fifth Cause of Action

(Injurious Falsehood)

54. PowerPHASE repeats and realleges paragraphs 1- 53 as if fully set forth herein.

55. PowerPHASE has a protectable interest in its intellectual property and pending patent applications.

56. Defendants, acting through one or more of their agents, published false statements of fact to at least three third-parties regarding PowerPHASE and its intellectual property; namely, that PowerPHASE had infringed and was infringing the '063 and '158 Patents.

57. Without justification or privilege, Defendants published these falsehoods through written communications to two industry trade publications and to PennWell Corporation. Upon information and belief, Defendants and their agents have also verbally communicated false information regarding PowerPHASE's supposedly infringing activity to one or more third-parties.

58. Defendants knew the false information would likely influence prospective purchasers of PowerPHASE's products, PowerPHASE's vendors and suppliers, and the Power-GEN conference organizers. Indeed, Defendants deliberately published the false statements of fact to various third-parties for the purpose of injuring PowerPHASE's reputation and business.

59. The false statements made by Defendants caused, and continue to cause others not to do business with PowerPHASE.

60. As a direct and proximate cause of Defendants' unlawful conduct, PowerPHASE has suffered, and continues to suffer special damages in an amount to be proven at trial of this

matter. Such pecuniary losses include, but are not limited to, damages to PowerPHASE's reputation; lost revenues and profits from having been excluded from the Power-GEN conference; damages incurred from preparing for, and planning to attend, the Power-GEN conference; and attorneys' fees to defend the company and mitigate PowerPHASE's damages.

61. PowerPHASE has also suffered, and will continue to suffer irreparable harm as a consequence of Defendants' defamatory conduct. To the extent that Nakhamkin, his counsel, or other agents were acting in the course and scope of their employment with or work for Defendant Energy Storage and Power LLC, that company is liable for those actions under principles of *respondeat superior*.

Sixth Cause of Action

(False Advertising In Violation of the Lanham Act, 15 U.S.C. § 1125)

62. PowerPHASE repeats and realleges paragraphs 1- 61 as if fully set forth herein.

63. Defendants' November 7 cease and desist letter contained material false and misleading statements of fact made in bad faith; namely, that PowerPHASE's TurboPHASE product infringed the '063 and '158 Patents.

64. Defendants' distribution of the November 7 cease and desist letter, and their subsequent false and misleading communications, amount to commercial advertising and promotion under the Lanham Act. Defendants' false accusations of infringement to two power generation industry trade publications and an industry conference organizer constituted commercial speech within the meaning of the Lanham Act. Defendants are in commercial competition with Plaintiff, and made the false and misleading statements of fact to PennWell and the two trade publications for the purpose of dissuading the relatively small number of gas turbine customers for PowerPHASE's TurboPHASE product from purchasing the technology. Furthermore, Defendants' dissemination of the November 7 cease and desist letter to at least three third-parties, coupled with his subsequent refusal to correct factual inaccuracies, amounts to "advertising or promotion" within the meaning of 15 U.S.C. § 1225(a).

65. As a result of Defendants' false accusations, PowerPHASE believes it has been and will continue to be injured. To the extent that Nakhamkin, his counsel, or other agents were

acting in the course and scope of their employment with or work for Defendant Energy Storage and Power LLC, that company is liable for those actions under principles of *respondeat superior*.

66. PowerPHASE seeks injunctive and compensatory damages in accordance with 15 U.S.C. §§ 1116, 1117.

DEMAND FOR JURY TRIAL

PowerPHASE hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PowerPHASE respectfully requests that this Court enter a judgment and order:

- (a) Declaring that PowerPHASE has not infringed and is not infringing any valid and enforceable claim of the '063 or '158 Patents;
- (b) Declaring this to be an exceptional case under 35 U.S.C. §§ 285 and 15 U.S.C. § 1117 and awarding PowerPHASE its attorneys' fees, costs, and expenses;
- (c) Ordering a preliminary and permanent injunction barring Nakhamkin from further tortious conduct with respect to PowerPHASE's business and marketing, manufacturing, use, development, and sale of the ABI or TurboPHASE technology, from contacting PowerPHASE's customers, and from publicly asserting that PowerPHASE infringes any claims of the asserted patents.
- (d) Awarding judgment in favor of PowerPHASE, in an amount to be proven at trial, on PowerPHASE's causes of action, including applicable statutory attorneys' fees and penalties;
- (e) Awarding PowerPHASE pre and post judgment interest;
- (f) Ordering Defendants to publish a letter retracting their claims and acknowledging that PowerPHASE does not infringe any valid or enforceable claim of the asserted patents; and

- (g) Granting PowerPHASE such other and further relief as this Court deems just and proper.

Dated: December 11, 2012

Respectfully Submitted,

By: /s/ Antonio C. Castro
Florida Bar No.: 997080
Robert H. Fernandez, Esq. (Of Counsel)
Florida Bar No.: 091080
Infante Zumpano, LLC.
500 South Dixie Highway, Suite 302
Coral Gables, FL 33146
Antonio.Castro@InfanteZumpano.com
Robert.Fernandez@InfanteZumpano.com
Telephone: 305.503.2990
Facsimile: 305.774.5908

Scott R. Raber, Esq. *pro hac vice pending*
Rimon, P.C.
One Embarcadero Center, Suite 400
San Francisco, California 94111
scott.raber@rimonlaw.com
Telephone: 415.683.5472
Facsimile: 800.930.7271

Paul Beattie, Esq., *pro hac vice pending*
Rimon, P.C.
7920 SE Steller Way
Snoqualmie, Washington 98065
paul.beattie@rimonlaw.com
Telephone: 206.971.9763 ext. 236
Mobile: 206.696.9095
Facsimile: 800.930.7271

Attorneys for Plaintiff,
PowerPHASE LLC