

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Additional Counterclaim Defendants. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

FATHI YUSUF and )  
UNITED CORPORATION, )

Plaintiffs, )

v. )

THE ESTATE OF MOHAMMAD HAMED, )  
Waleed Hamed as Executor of the Estate of )  
Mohammad Hamed, and )  
THE MOHAMMAD A. HAMED LIVING TRUST, )

Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE  
FRAUDULENT TRANSFERS

DUDLEY, TOPPER  
AND FEUERZEIG, LLP

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**RESPONSE TO HAMED'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS  
NOS. 8-18 OF 50 PURSUANT TO THE CLAIMS DISCOVERY PLAN**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Hamed's Third Request for Production of Documents Pursuant to the Claims Discovery Plan H-20: KAC357, Inc. Payment of Tropical Shipping Invoices, H-26: Inventory Moved from Plaza West to East, H-27: BJ's Wholesale Club Vendor Credit, H-36: Unclear UVI Payment, H-141: General Ledger Entry "Due T/FR Settlement" H-142: Half Acre in Estate Tutu, H-148: Excessive Travel and Entertainment Expenses, H-157: General Ledger Entry Regarding "Fathi Yusuf Refund of Overpayment," H-159: General Ledger Entries Indicating Accounts Payable Trade Payments to United Corporation in 2015, H-166: Entry For Tutu Park Ltd for \$30,359.38, and H-167: "Checks to Daytona Beach Market & Deli.

**GENERAL OBJECTIONS**

Defendants make the following general objections to the Requests for Production. These general objections apply to all or many of the Requests for Production, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Requests for Production. The assertion of the same, similar, or additional objections in the individual responses to the Requests for Production, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

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(1) Defendants object to these Requests for Production to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Requests for Production to the extent that they use the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Defendants object to these Requests for Production to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of Defendants or relating to mental impressions, conclusions, opinions, or legal theories of their attorneys or representatives, or any other applicable privilege or doctrine under federal or territorial statutory, constitutional or common law. Defendants' answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Defendants of such privilege or doctrine.

(4) Defendants object to these Requests for Production to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Defendants object to these Requests for Production to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Defendants' response to such request will be based upon their understanding of the request.

(6) Defendants object to these Requests for Production to the extent they seek documents or information not in the possession, custody or control of Defendants, on the grounds that it would subject them to undue burden, oppression and expense, and impose obligations not required by the Virgin Islands Rules of Civil Procedure.

(7) Defendants have not completed either their discovery or preparation for trial of this matter. Accordingly, Defendants' responses to these Requests for Production are made without prejudice to their right to make any use of, or proffer at any hearing or at trial evidence later discovered, and are based only upon information presently available. If any additional, non-privileged, responsive information is discovered, these Requests for Production will be supplemented to the extent that supplementation may be required by the Virgin Islands Rules of Civil Procedure.

(8) Defendants object to these Requests for Production to the extent that they are compound and not a single Request. Hence, these Requests for Production should be counted as more than a single Request such that when all of the subparts are included together with other Requests for Production they exceed the 50 Requests for Production established in the Joint Discovery and Scheduling Plan.

**RESPONSES TO REQUESTS FOR PRODUCTION**

**RFPDs 8 of 50:**

Request for the Production of Documents, 8 of 50, relates to H-20 (old Clam No. 279):  
“KAC357, Inc. payment of Tropical Shipping invoices.”

With respect to H-20, please provide all documents which relate to this transaction and entry in the accounting – the invoice(s), proof of reimbursement to KAC357, Inc., bank statements, etc. and particularly all underlying documents relating to any refusal to pay these invoices.

**Response:**

Defendants object to this Request for Production since KAC357, Inc. is not a party to this case and its “claims” are not part of the accounting claims referred to the Master for his report and recommendation.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at

or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

**RFPDs 9 of 50:**

Request for the Production of Documents, relates to H-26 (old Claim No. 316):  
“Inventory moved from Plaza West to East after official inventory.”

Please provide all documents which relate to H-26 – particularly all underlying documents relating to any sales or transfers from West to East after the date of the inventory amount being set.

**Response:**

This Request for Production relates to an accounting allocation made by the accountant to the Partnership under the supervision of the Master. Yusuf, as a partner, is without sufficient knowledge to respond to this inquiry as the information is not with in his care, custody or control. Yusuf has made reasonable inquiry into this Interrogatory and the information he knows or can readily obtain is insufficient to enable him to respond to same.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John

Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

**RFPDs 10 of 50:**

Request for the Production of Documents, 10 of 50, relates to H-27 (old Claim No. 319): "BJ's Wholesale Club vendor credit."

With respect to H-27, please provide all documents, including, but not limited to, bank statements, credit card statements, canceled checks, and/or invoices, that demonstrates that the 2015 credit of \$5,632.57 from BJ Wholesale placed on Mike Yusuf's personal credit card was properly reimbursed to the Partnership, or documents relating to the refusal to reimburse the Partnership.

**Response:**

Defendants further object to this Interrogatory on the grounds set forth in the Motion to Strike Hamed's Amended Claim Nos. H-41 through H-141 and Additional "Maybe" Claims ("Motion to Strike") seeking to strike Hamed Claim H-27. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a

pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

**RFPDs 11 of 50:**

Request for the Production of Documents, 11 of 50, relates to H-36 (old Claim No. 345): "Unclear UVI payment."

With respect to H-36, please provide all documents, including, but not limited to, bank statements, credit card statements, canceled checks, and/or invoices, that demonstrate that the UVI payments that were erroneously deposited in the Plaza Extra East bank account after the transfer of the stores was reimbursed to KAC357, Inc. or documents relating to the refusal to reimburse KAC357, Inc.

**Response:**

Defendants further object to this Interrogatory on the grounds set forth in the Motion to Strike seeking to strike Hamed Claim H-36. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role



as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

**RFPDs 12 of 50:**

Request for the Production of Documents, 12 of 50, relates to H-141 (old Claim No. 488): "Unclear general ledger entry "due t/fr settlement re stmt at 9/30/15."

With respect to H-141, please provide all documents which relate to this entry – particularly all underlying documents relating to the 9/30/15 settlement referenced, the funds involved and their disposition.

**Response:**

Defendants further object to this Interrogatory on the grounds set forth in the Motion to Strike seeking to strike Hamed Claim H-141. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed

attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

**RFPDs 13 of 50:**

Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry – particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores.

**Response:**

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Defendants object to this Request for Production because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

**RFPDs 14 of 50:**

Request for the Production of Documents, 14 of 50, relates to H-148 (old Claim No. 3011): "Excessive travel and entertainment expenses,"

If the answer to the request to admit as to H-148 is "deny," please provide the backup documentation for all travel expenses for the members of the Yusuf family from 2007 to 2014 that exceed \$1000, as it relates to H-148.

**Response:**

Defendants object to this Request for Production as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of Requests for Production.

First, the Request to Admit relating to H-148 addresses travel expenses for the period of 2013 through 2015. However, the request seeks information for up to seven years prior to that time, seeking information from 2007 to present. Therefore, the request is overly broad.

Second, John Gaffney has provided Hamed's counsel and CPA's ledgers with details of those expenses to the Hamed when the initial inquiry was made of him on May 17, 2016. Defendants incorporates that response as if fully set forth herein verbatim.

Third, this Request seeks documentation prior to John Gaffney's efforts as accountant and his institution of the computerized accounting systems. To determine specific travel expenditures for each individual would require a full physical review of the historical paper files for the various Plaza Extra stores. As Hamed is well aware, two the stores are now under the control of the Hameds. Consequently, Yusuf no longer has access to such documents as they are not within his care, custody or control. Therefore, the burden of securing such information is equally borne by the Hamed and should not be imposed upon Yusuf.

Fourth, before the period as to this Request, all checks written on the accounts for the Plaza Extra stores were to be signed by members of both families and thus, would already have been approved with the appropriate support so as to have justified the payment.

**RFPDs 15 of 50:**

Request for the Production of Documents, 15 of 50, relates to H-157 (old Claim No. 402/418): "Unclear general ledger entry regarding "Fathi Yusuf refund of overpayment."

With respect to H-157, please provide all documents which relate to this transaction and accounting entry – particularly (but not limited to) all underlying documents relating to the general ledger entry "West 7/14/15, JE14, GENJ, YUSUF REFUND OF OVERPMNT, \$77,335.62."

**Response:**

Defendants object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

Without waiving any objection, Defendants show that the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report. Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally born by Hamed. Further, Defendants submit that as to any payments made on or about July 14, 2015, they would have been submitted to the Master for review and approval.

**RFPDs 16 of 50:**

Request for the Production of Documents, 16 of 50, relates to H-159 (old Claim No. 442/407): "Unclear general ledger entries indicating Accounts Payable-trade payment to United Corporation in 2015."

With respect to H-159, please provide all documents which relate to, support, and explain all of the accounts payable-trade payments made to the United Corporation in 2015, including, but not limited to invoices, bank statements, credit card statements, and canceled checks.

**Response:**

Defendants object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he

undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

Without waiving any objection, Defendants show that the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report. Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally borne by Hamed. Further, Defendants submit that as to any payments made on or about July 14, 2015, they would have been submitted to the Master for review and approval.

**RFPDs 17 of 50:**

Request for the Production of Documents, 17 of 50, as described in Hamed's February 15, 2016 Request to John Gaffney re GL by Item Number and the September 28, 2016 JVZ Engagement Report and Exhibits, relates to H-166 (old Claim No. 218): "Entry of Tutu Park Ltd for \$30,359.38."

With respect to H-166, please provide all documents which relate to, support and explain the transaction and accounting entry for Tutu Park Ltd for \$30,359.38, including, but not limited to invoices, bank statements, credit card statements, and canceled checks.

**Response:**

Defendants object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

Without waiving any objection, Defendants show that the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report. Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally borne by Hamed. Further, Defendants submit that as to any payments made on or about July 14, 2015, they would have been submitted to the Master for review and approval.



**RFPDs 18 of 50:**

Request for the Production of Documents, 18 of 50, as described in Hamed's February 15, 2016 Request to John Gaffney re GL by Item Number and the September 28, 2016 JVZ Engagement Report and Exhibits, relates to H-167 (old Claim No. 220): "Checks to Daytona Beach Market & Deli."

With respect to H-167, please provide all documents which relate to, support and explain all of the 2013 general ledger entries "checks to Daytona Beach Market & Deli," including, but not limited to documents identifying that entity, invoices, bank statements, credit card statements, and canceled checks. This is an unfamiliar vendor to the Hameds.

**Response:**

Defendants object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years

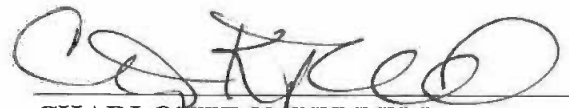
ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

Without waiving any objection, Defendants show that the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report. Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally borne by Hamed.

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** May 15<sup>th</sup>, 2018

By:



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**CERTIFICATE OF SERVICE**

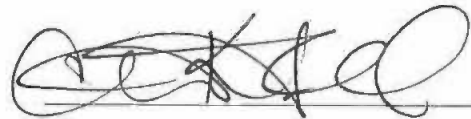
It is hereby certified that on this 15<sup>th</sup> day of May, 2018, I caused the foregoing a true and exact copy of the foregoing **RESPONSE TO HAMED'S THIRD REQUESTS FOR THE PRODUCTION OF DOCUMENTS NOS. 8-18 OF 50 PURSUANT TO CLAIMS DISCOVERY PLAN** to be served upon the following via Case Anywhere docketing system:

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