

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

ONH AFC CS INVESTORS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

**NOTICE OF SERVICE OF SUBPOENA**

PLEASE TAKE NOTICE that on August 13, 2024, a true and correct copy of the attached *Subpoena for Rule 2004 Examination* was served via electronic mail on the following:

**Nakash Holdings, LLC  
c/o Loeb & Loeb LLP  
Bethany Simmons, Esq.  
345 Park Avenue  
New York, New York 10154  
bsimmons@loeb.com**

**Nakash Holdings, LLC  
c/o Morris James LLP  
Eric J. Monzo, Esq.  
Ryan E. Carreon, Esq.  
500 Delaware Avenue, Suite 1500  
Wilmington, Delaware 19801  
emonzo@morrisjames.com  
rcarreon@morrisjames.com**

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<sup>1</sup> The last four digits of the Debtors' federal tax identification numbers are 1199 (ONH AFC CS Investors LLC) and 6326 (ONH CS Investors LLC). The Debtors' mailing address is 3445 Peachtree Road, Suite 1225, Atlanta, GA 30326.

Dated: August 13, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Matthew R. Pierce

Adam G. Landis (No. 3407)  
Matthew B. McGuire (No. 4366)  
Matthew R. Pierce (No. 5946)  
919 Market Street, Suite 1800  
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- and -

**BAKER & HOSTETLER LLP**

Jorian L. Rose (*admitted pro hac vice*)  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
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Email: jrose@bakerlaw.com

*Counsel for the ONH Liquidating Trust*

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re ONH AFC CS Investors, LLC et al. Debtor

Case No. 23-10931 (CTG)

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Nakash Holdings, LLC (Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

Table with 2 columns: PLACE (To be determined at a later date) and DATE AND TIME

The examination will be recorded by this method:

Production: You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See attached Schedule A

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 8/13/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Matthew R. Pierce Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) ONH Liquidating Trust, who issues or requests this subpoena, are:

Jorian L. Rose, Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111 (jrose@bakerlaw.com) (Telephone: 212-589-4200)

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day’s attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server’s signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server’s address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## DEFINITIONS

The following definitions of terms apply to all of the requests for production of documents or categories of documents (the “Requests”). Unless otherwise defined herein, all words and phrases used herein shall be accorded their usual meaning and shall be interpreted in their common, ordinary sense.

1. Any references to a corporation, partnership, proprietorship, association, organization, or any other business or legal entity (including any of the Debtors) shall be deemed to include the corporation’s, partnership’s, proprietorship’s, association’s, organization’s, or other business or legal entities’ agents, accountants, advisors, employees, attorneys, officers, directors, direct or indirect shareholders, members, representatives, affiliates, subsidiaries, predecessors, successors, assigns, or any other person acting or purporting to act on behalf of the corporation, partnership, proprietorship, association, organization, or other business or legal entity.

2. The use of any singular noun shall be construed to include the plural, and vice versa, and a verb in any tense shall be construed as the use of the verb in all other tenses.

3. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.

4. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

5. ONH AFC CS Investors LLC (“ONH AFC CS”) means each of their predecessors, successors, subsidiaries, partners, principals, officers, directors, attorneys, managers, professionals, and other advisors, agents, employees, representatives, and persons acting or purporting to act on their behalf.

6. ONH 1601 CS Investors LLC (“ONH 1601 CS”) means each of their predecessors, successors, subsidiaries, partners, principals, officers, directors, attorneys, managers, professionals, and other advisors, agents, employees, representatives, and persons acting or purporting to act on their behalf.

7. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise). For the avoidance of doubt, this may encompass any oral, written, or electronic transmission of information without limitation, including meetings, discussions, conversations, telephone calls, e-mail messages, text messages, chats, iMessages, Bloomberg, Telegram, WhatsApp, Groupme, WeWork, Signal, Dust, Slack, Proton, memoranda, letters, analyst reports, telecopies, telefaxes, telexes, conferences, seminars, messages, notes, videotapes, photographs, microfilm, microfiche, magnetic disks, or other media of any kind.

8. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

9. “Debtors” shall mean ONH AFC CS and ONH 1601 CS.

10. “Documents” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). For the avoidance of doubt, this may encompass all written, graphic, or printed matter of any kind, however produced or reproduced, including all originals, drafts, working papers, and non-identical copies, whether different from the originals by reason of any

notation made on such copies or otherwise, and all electronic, mechanical, or optical records or representations of any kind or other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term “Documents” includes, but is not limited to:

(a) correspondence, applications, memoranda, notes, calendar or diary entries, statistics, letters, electronic mail, notebooks, telegrams, journals, minutes, agendas, notices, announcements, instructions, charts, schedules, requests, contracts, prospective contracts, agreements, know your customer/anti-money laundering related documents, prospective agreements, licenses, prospective licenses, order forms, books, accounts, records, records reflecting transactions, reports, studies, surveys, experiments, analyses, checks (front and back), cancelled checks, wire transfers, wire confirmations, statements, receipts, returns, vouchers, credit memoranda, sales slips, promissory notes, summaries, pamphlets, prospectuses, manuals, tax documents and filings, brochures, announcements, certificates, drawings, plans, certificates of foreign status of beneficial owners, custodian agreements, trustee agreements, beneficiary agreements, forms and/or related documents and communications, and all other documents concerning the owners, signatories, beneficial owners, trustees, and all other persons associated with an account in any way, and any other documents, communications, bank records, inter-office and intraoffice communications, pitchbooks, marketing materials, or offers;

(b) any written, or electronic transmission of information without limitation, including meetings, discussions, conversations, telephone calls, e-mail messages, text messages, chats, iMessages, Bloomberg, Telegram, WhatsApp, Groupme, WeWork, Signal, Dust, Slack, Proton, memoranda, letters, analyst reports, telecopies, telefaxes, telexes, conferences, seminars, messages, notes, videotapes, photographs, microfilm, microfiche, magnetic disks, or other media of any kind;

(c) notations in any form made of conversations, telephone calls, meetings, negotiations, or other communications;

(d) bulletins, circulars, schedules, lists, guides, printed matter (including newspapers, magazines and other publications, articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, telexes, invoices, ledgers, balance sheets, financial statements, or worksheets;

(e) electronic, mechanical, or optical records or representations of any kind (including tapes, cassettes, discs, hard drives, recordings, voice mail, electronic mail, and computer-stored data or material), or transcriptions thereof; and

(f) all drafts, alterations, modifications, changes and amendments of any of the foregoing, and any material underlying, supporting, or used in the preparation of any document.

(g) a draft or non-identical copy is a separate document within the meaning of this term.

11. “Entity” or “Entities” refers to corporation, proprietorship, association, joint venture, trust, company, partnership, LLC, or other business or legal entity, whether foreign or domestic, including governmental bodies and agencies.

12. “Including,” “includes,” “such as,” and similar terms are used herein in an open-ended and unrestricting sense.

13. “Liquidating Trust” means the ONH Liquidating Trust.

14. “Mr. Schwartz” means Elchonon Schwartz including, as applicable, principals, trustees, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or ever under the control of the foregoing or acting or purporting to act on his behalf.

15. “Nakash” or “You” means Nakash Holdings, LLC and all affiliated entities, including, as applicable, predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or ever under the control of the foregoing or acting or purporting to act on its behalf.

16. “Person” refers to any natural persons, individuals, corporation, proprietorship, association, joint venture, company, partnership, or other business or legal entity, including governmental bodies or agencies.

17. “Schwartz Nightingale Parties” means Elchonon Schwartz, One Night Holdings LLC, Nightingale Properties LLC, One Night Properties LLC, ES28 Investments LLC, Nightingale Property Group LLC, The Nightingale Group, LLC, Five Park 3003 LLC, 1 Westend PH-A LLC, 320 Mountain Rd. LLC, Midnight Capital Partners LLC, ES 1 Westend Residence Trust, The Elchonon Schwartz Family Trust, ES28 Investments Trust, ES ONH Trust, ES Family Life Insurance Trust, Nightingale Realty, LLC, Nitesky Management LLC, ONH Promote LLC, , 1500 Spring Garden Investors LLC, ONH 2226 Third Ave LLC, NG 1601 Washington Ave LLC, and all affiliated and associated entities, including, as applicable, predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or ever under the control of the foregoing or acting or purporting to act on his or its behalf.



## **INSTRUCTIONS**

1. Except where otherwise specified, the Document Requests seek documents dated, created, or otherwise obtained on or between January 1, 2020, to the date of these discovery requests.
2. The Liquidating Trust reserves the right to supplement these discovery requests at any time based on further investigation and discovery; provided, however, that any further requests must be pursuant to an agreement of the parties or a motion for production of documents under Federal Rule of Bankruptcy Procedure 2004.
3. Unless specified in a particular request, the requests are not limited geographically. Specifically, the requests encompass and include documents in the United States and any other country, and documents communicated to or from the United States or any other country.
4. If you claim attorney-client privilege, work product protection, or any other privilege with respect to a document for which identification or production is sought herein, you shall identify all such withheld documents by a separate list of all such documents that shall be served with responses hereto. Such list shall identify each document by: date, nature (e.g., memo, letter, report, e-mail message); length (in pages); author (including titles, employer, and whether the author is an attorney); recipient (including within the term “recipient” all direct, copy, and blind carbon copy recipients, and identifying recipients by title, employer, and whether recipient is an attorney); a short summary of the subject matter of the document; and a statement of the grounds for the privilege claimed.
5. To the extent you cannot answer a question and/or refuse to do so on a claim of privilege, you shall answer the portion you can answer and/or the non-objectionable portion.

## **FURTHER PRODUCTION FORMAT INSTRUCTIONS ATTACHED AS EXHIBIT 1**

**REQUESTS**

1. All Documents concerning the Debtors.
2. All transactional Documents between the Schwartz Nightingale Parties, on the one hand, and Nakash, on the other.
3. All transactional Documents between any entity in which Mr. Schwartz has an interest, on the one hand, and Nakash, on the other.
4. Contact information for all co-investors, partners, and lenders in any transaction between the Schwartz Nightingale Parties or any entity in which Mr. Schwartz has an interest, on the one hand, and Nakash, on the other.

**EXHIBIT 1 – PRODUCTION INSTRUCTIONS**

1. Additional special processing of certain electronically stored information shall be as follows: Microsoft Excel spreadsheet fields shall not be converted to TIFF files and shall be produced in native format. A placeholder TIFF image shall be created, Bates numbered, and the produced Excel file shall be renamed to match the Bates number on its corresponding placeholder page. The exception shall be for redacted spreadsheets which shall be produced in TIFF format. Images for the redacted spreadsheets shall display the content in the same manner as if it were printed. The extractable metadata and text shall be provided for native files, and OCR will be provided for the un-redacted portions of the documents and shall be produced with Relativity compatible load files.

2. All TIFF formatted Documents will be single page, Group 4 TIFF at 300 X 300 dpi resolution and 8½ X 11 inch page size, except for Documents requiring different resolution or page size.

3. An image load file, in standard Opticon format, showing the Bates number of each page and the appropriate unitization of the Documents, will accompany all Document images.

4. Each imaged version of an electronic Document will be created directly from the original electronic Document.

5. Each produced page will include a unique Bates number stamped on the bottom right corner of the page and the appropriate Confidentiality Designation stamped on the bottom left corner of the page.

6. TIFFs may be produced as black & white, single-page TIFF images in accordance with the technical specifications set out above, unless agreed with the opposing party or ordered by this Court. Upon written request that identifies a reasonable number of individual Documents at issue by Bates number, a party shall produce color JPEG images for those Documents, where the color is necessary to understand the context or meaning of the Document. To the extent reasonably feasible, production images shall provide all comments, tracked changes, speaker's notes, and text from hidden worksheets, slides, columns and rows.

7. All TIFF files are to be provided with an accompanying searchable text (.TXT) file extracted from the native, electronic file (not generated as an OCR file from the TIFF image(s)), and such text files shall contain the full text extraction. To the extent reasonably feasible, extracted text shall provide all comments, tracked changes, speaker's notes, and text from hidden worksheets, slides, columns and rows. In the case of files with redacted text (or other native file types where extracted text is unavailable), OCR'ed text of the redacted Documents may be provided in lieu of extracted text. OCR software should be set to the highest quality setting during processing.

(a) Each text file shall be named according to the Bates number of the first page of the corresponding image files (e.g., BATES000001.TXT).

(b) In the case of email, the corresponding text file shall include, where reasonably available: (1) the individual(s) to whom the communication was directed ("To"); (2) the author(s) of the email communication ("From"); (3) who was copied and blind copied on such email ("CC" and "BCC"); (4) the subject line of the email ("RE" or "Subject"); (5) the names of any attachments; and (6) the text (body) of the email.

8. Files that should be produced in Native Format are files not easily converted to image format, such as animations, audio/video files, PowerPoint, Excel, and Access files.

9. Any Document produced in Native Format, will be produced according to the following specifications:

(a) A unique Bates number and Confidentiality Designation shall be used as the file name and the original file name and file extension shall be preserved in the corresponding load file. An example of this convention would be: “[BATES PREFIX]\_000001\_Confidential.xls”

(b) The Native Format Documents shall be accompanied by reference information that sets forth for each Document, sufficient information to allow the Parties to track and authenticate the Native Format Documents produced, including: (i) the name of the custodian from whose files the electronic file is produced; (ii) an appropriately calculated “MD-5 Hash Value”; (iii) the original name of the file; and (iv) a Bates number.

(c) Any file produced in Native Format need not be imaged. Instead, a single page placeholder image shall be provided that indicates the file was produced in Native Format and contains the Bates number and Confidentiality Designation of the corresponding file.

10. For non-email Documents, embedded Documents within these Documents, such as spreadsheets within a PowerPoint, will be extracted as separate Documents and, for production purposes, treated like attachments to the Document in which they were embedded.

11. Responsive and non-privileged Encrypted or password-protected files shall be produced in decrypted or unprotected form where the decryption key or password can be determined. The Parties shall make reasonable efforts to identify decryption keys and passwords for encrypted or password protected Documents and must preserve decryption keys and passwords throughout the litigation.

12. Parent-child relationships must be preserved by assigning sequential Bates numbers to all items within the parent-child group and identifying those Bates numbers in the relevant objective coding fields. If a parent email or one of its attachments is responsive, or an electronic file or one of its embedded objects is responsive, all members in the parent-child family must be produced, except for privileged Documents.

13. Compression file types (e.g., CAB, GZ, TAR, Z, ZIP) shall be decompressed in a manner that ensures a container within a container is decompressed into the lowest uncompressed element resulting in individual files. The container file itself need not be produced.

14. Extracted text will *not* be provided for electronic Documents that have been redacted—e.g., for privilege—because the extracted text would reveal the redacted information. Instead, these files should be run through an OCR process to capture the visible text only and the results exchanged in lieu of the original extracted text. Documents that do not render in a readable format to TIFF, such as Excel spreadsheets, may be redacted in native form as long as the

producing party keeps a pristine, unredacted copy of the native file and identifies the natively redacted Documents to the receiving party in the production cover letter or by way of a native redaction field.

15. Fielded data should be exchanged via a document-level-database load file in Concordance (DAT) format. All image data should be delivered with a corresponding image load file in Opticon (OPT) format. The total number of image files referenced in the image load file should match the total number of images in the production delivery.

16. To the extent that information produced pursuant to these protocols cannot be rendered or viewed without the use of proprietary or third-party software, the Parties shall meet and confer to minimize any expense or burden associated with the production of such information in an acceptable format.

17. The Parties shall produce Documents electronically via a secure File Transfer Protocol (“FTP”) rather than through physical media (e.g., CD, DVD, or hard drive), unless such electronic transmission is impracticable, or the Parties otherwise agree on a different method of transmission.

18. To the extent it is necessary to deviate from the protocols set forth herein in order to produce Documents and data quickly to comply with a court ordered or agreed upon deadline, the parties shall meet and confer to determine the appropriate production protocols given the circumstances.

19. If any document called for by these Requests has been destroyed or discarded, You must Identify that document in writing by providing the following information: (a) any sender/author and any addressee; (b) any indicated or blind copies; (c) the document’s date, subject matter, number of pages, and attachments or appendices; (d) all persons to whom the document was distributed, shown, or explained; (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (f) the persons who authorized and carried out such destruction or discard; and (g) whether any copies of the document presently exist and, if so, the name of the custodian of each copy.

20. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason or any handwritten mark or other notation or any omission, is a separate document and must be produced, whether or not the original of such a document is within your possession, custody, or control. A request for any document includes a request for all drafts thereof, and all revisions and modifications thereto, including any red-lined versions or document comparisons, in addition to the document itself. Each document is to be produced in its entirety, without abbreviation or expurgation.

21. In producing documents, Documents that are physically attached to each other, or segregated or separated from other documents, when originally located, should be produced as is. If no document exists that is responsive to a particular request, You must state so in writing.