IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: NOBLE SUPPLY & LOGISTICS, LLC, *et al.*, Debtors.[1]	Chapter 11 Case No. 26-11369 (CTG) (Jointly Administered)
NOBLE SUPPLY & LOGISTICS, LLC, Plaintiff, v. DEFENSE LOGISTICS AGENCY, Defendant.	Adv. Proc. No. 26-50885 (CTG)

NOBLE SUPPLY & LOGISTICS, LLC'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO GOVERNMENT'S MOTION TO DISMISS AND CROSS-MOTION FOR SUMMARY JUDGMENT

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Noble Supply & Logistics, LLC (7926); COTS Solutions, LLC (4477); Federal Resources Supply Company, LLC (3636); FRS Holdings, LLC (2327); K.D. Analytical Consulting, LLC (6637); KDA Acquisition, LLC (5870); Noble Defense Corporation (N/A); Noble Equity Holdings, LLC (0851); Noble.com, LLC (4712); Noble Mission Support, LLC (7908); and Tactical & Survival Specialties, LLC (2266). The location of the Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is 1 Marina Park Drive, Suite 220, Boston, MA 02210.

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October 27, 2026

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Noble Supply & Logistics, LLC ("Noble" and, together with its affiliated debtors and debtors in possession, the "Debtors"), a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases") and plaintiff in the above-captioned adversary proceeding (this "Adversary Proceeding"), by and through its undersigned counsel, hereby submits this brief (i) in further support of the *Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment* [Adv. Proc. Docket No. 3] (the "Summary Judgment Motion")[2] and response to the *United States' Brief in Opposition to Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment and in Support of Its Motion to Dismiss and Its Cross-Motion for Summary Judgment* [Adv. Proc. Docket No. 19] (the "Opposition"); and (ii) in opposition to the *United States Motion to Dismiss the Complaint* [Adv. Proc. Docket No. 17] (the "Motion to Dismiss") and *United States' Cross-Motion for Summary Judgment* [Adv. Proc. Docket No. 23] (the "Government MSJ" and, together with the Motion to Dismiss, the "Government Motions"). Noble submits herewith the *Supplemental Transmittal Declaration of Robert Albergotti, Chief Transformation Officer of Noble Equity Holdings, LLC, in Further Support of Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment* (the "Transmittal Declaration").

PRELIMINARY STATEMENT

1. The question before the Court is simple: Can the DLA withhold payment for goods and services Noble provided to the Government—and which the Government failed to reject—based on its own refusal to execute a form validating delivery? That question can only be answered in the negative, and the Summary Judgment Motion should be granted.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Summary Judgment Motion or the Opposition, as applicable.

2. Since the outset of these cases, and for reasons that remain unknown to the Debtors, the DLA has adamantly refused to pay Noble what it is rightfully owed and needed to administer these Chapter 11 Cases and fund the Debtors' value-maximizing sale process. This Court previously ordered the DLA to remove a payment block it instituted on Noble's account in the DLA's electronic invoicing system.[3] The DLA thereafter employed a slightly different strategy resulting in the commencement of this Adversary Proceeding and filing of the Summary Judgment Motion, this time blocking Noble from invoicing the DLA altogether by refusing to validate Noble's proofs of delivery for the Pre-Termination Delivery Orders delivered to and accepted by the Government. And now the DLA has filed a "renewed" motion for adequate protection (premised on a "claim" for $266 million for which the Government neither offers evidentiary support nor seeks to establish through setoff/estimation) and a motion to lift the stay to terminate hundreds of orders that Noble has already delivered to the Government (which, if granted, would set the stage for another turnover action by Noble), both of which are scheduled to be heard in tandem with the Summary Judgment Motion on October 28th.

3. The Pre-Termination Delivery Orders subject to the Summary Judgment Motion were delivered by Noble more than 60 days ago (and in many cases, much longer) and have not been validated by the Government despite both an internal policy and a prepetition course of conduct establishing that Noble's deliveries would be, and, in fact, were, validated or rejected by the DLA within five to seven business days. The DLA makes no effort to address these inconvenient truths. Rather, it boldly asserts that it has not "accepted" the goods and services Noble provided merely because it has not executed a form validating delivery. The DLA's view of acceptance cannot be reconciled with the FAR, which expressly provides that acceptance may

[3] *See* Docket No. 151.

be implied by the failure to timely reject goods upon delivery, or the case law confirming the FAR's incorporation of the uncontroversial commercial law principle of implied acceptance. There can be no reasonable debate that the DLA's non-rejection of the Pre-Termination Delivery Orders delivered more than 60 days ago amounts to implied acceptance for which payment to Noble is indisputably due and owing.

4. The DLA's other arguments are equally unpersuasive. The DLA would recast Noble's turnover claim as one for breach of contract in an effort to strip this Court of jurisdiction by manufacturing artificial or immaterial disputes over Noble's deliveries. But the most the DLA can muster here is a handful of inconsistencies within the approximately 1,000 transaction documents Noble provided the DLA, none of which give rise to a *bona fide* dispute as to whether Noble in fact provided the goods and services to the Government or Noble's resulting right to payment. And even if the DLA were to have raised a *bona fide* dispute as to certain of Noble's deliveries (which it has not), this Court would still have concurrent jurisdiction with the Court of Federal Claims over any such dispute.

5. The DLA's request to deny or defer the Summary Judgment Motion pending further discovery under Rule 56(d) is a solution in search of a problem. As a threshold matter, discovery is fundamentally unnecessary because the DLA's acceptance of the Pre-Termination Delivery Orders must be implied based on the record before the Court. As such, no amount of discovery would change the outcome. Moreover, Noble provided the DLA with all documentation needed to validate the Pre-Termination Delivery Orders *months ago*. Any suggestion that the DLA—which manages the supply chain for the entire United States military—requires third-party discovery and depositions to validate deliveries it received over 60 days ago and did not reject,

should be dismissed out of hand. The DLA's request to conduct a needless fishing expedition should be denied.

6. The DLA's motion to dismiss and its cross-motion for summary judgment are predicated on the same jurisdictional and turnover-related arguments made in opposition to the Summary Judgment Motion. These should be dismissed on the same basis.

7. In sum, the DLA should not be permitted to withhold payment from Noble and deprive these estates of much needed liquidity based on a strategic manipulation of its own payment processing system and unsupported legal arguments. For the reasons set forth herein, the Summary Judgment Motion should be granted and the Government Motions should be denied.

ARGUMENT

I. The Court has Subject Matter Jurisdiction to Order Turnover Against the Government.

8. The bankruptcy court has subject matter jurisdiction over all proceedings "arising under" the Bankruptcy Code and "arising in" a bankruptcy case.[4] These matters are "core" proceedings for which the bankruptcy court is empowered to enter final judgments.[5] "A case 'arises under' title 11 'if it invokes a substantive right provided by title 11.'"[6] "Proceedings 'arise in' a bankruptcy case, 'if they have no existence outside of the bankruptcy.'"[7] The Court has "core" jurisdiction over Count I of the Complaint (seeking turnover of amounts due and owing on

[4] 28 U.S.C. § 1334(b); *see also In re Combustion Eng'g, Inc.*, 391 F.3d 190, 225 (3d Cir. 2004), as amended (Feb. 23, 2005).

[5] *Combustion Eng'g*, 391 F.3d at 225; *see also In re Roggio*, 612 B.R. 655, 659-60 (Bankr. M.D. Pa. 2020) (citing *Halper v. Halper*, 164 F.3d 830, 836 (3d Cir. 1999)).

[6] *Stoe v. Flaherty*, 436 F.3d 209, 216 (3d Cir. 2006), as amended (Mar. 17, 2006).

[7] *Id.*

account of the Accepted Delivery Orders) because the turnover power arises under section 542 of the Bankruptcy Code, and a turnover action can only exist in the context of a bankruptcy case.[8]

9. The Government argues the Court lacks subject matter jurisdiction over Count I because Noble's right to payment for the Accepted Delivery Orders arises under its Contracts with the DLA and contract claims against the Government are purportedly subject to the exclusive jurisdiction of the Court of Federal Claims.[9] By extension, the Government contends that Count I for turnover is barred by sovereign immunity.[10] These arguments ignore well-settled law on turnover.

10. It is black letter law that where a debtor fully performs its contractual obligations—as Noble did here—the counterparty's performance is an asset of the debtor's estate.[11] For that reason, the case law is replete with examples of bankruptcy courts ordering turnover of contractual debts.[12] That Noble's right to payment is rooted in contract does not preclude it from seeking

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[8] *See* 28 U.S.C. § 157(b)(2)(E); *see also In re PRS Ins. Grp., Inc.*, No. 00-4070 (MFW), 2003 WL 21262446, at *1 (Bankr. D. Del. May 30, 2003) (holding that turnover proceeding is a core proceeding).

[9] *See* Opposition, ¶ 24.

[10] *See id.* at ¶¶ 36-37, 40.

[11] *In re Safety-Kleen Corp.*, 410 B.R. 164, 167 (Bankr. D. Del. 2009) ("If one party has fully performed its obligations, the contract should not be thought of as executory: if the nonbankrupt party has fully performed, it simply holds a claim against the debtor's estate; *if the bankrupt party has fully performed, the performance owed it by the nonbankrupt party is an asset of the estate*.") (emphasis supplied).

[12] *See, e.g., In re: Polished.com Inc.*, No. 24-10353 (TMH), 2026 WL 2547238, at *5 (Bankr. D. Del. Aug. 27, 2026) ("[T]urnover is available where 'all acts necessary to create the debt have occurred, such as delivery of goods or performance of services,' even if the defendant disputes that anything is ultimately owed."); *In re Kids World of Am., Inc.*, 349 B.R. 152, 164 (Bankr. W.D. Ky. 2006) ("The Plaintiff provided the services and expected monthly payments in return for those services. There is no future event or act that it needed to make this money due and owing; the Plaintiff has provided its consideration. This case, therefore, presents a valid claim for turnover as contemplated under 11 U.S.C. § 542."); *In re CIL Ltd.*, No. 13-11272-JLG, 2024 WL 1693626, at *49 (Bankr. S.D.N.Y. Apr. 18, 2024) (ordering turnover of amounts due and owing under reimbursement agreements); *In re Arcapita Bank B.S.C.(c)*, 628 B.R. 414, 478 (Bankr. S.D.N.Y. 2021), *aff'd sub nom. In re Arcapita Bank B.S.C.(c)*, 640 B.R. 604 (S.D.N.Y. 2022) (ordering turnover of transaction proceeds due and owing under investment contracts).

turnover against the DLA. Indeed, section 106(a) of the Bankruptcy Code expressly waives the Government's sovereign immunity in the context of turnover actions.[13]

11. Courts have held that turnover is inappropriate where the debtor seeks to liquidate contract *disputes*.[14] But a contract counterparty may not defeat a turnover claim merely by *alleging* a dispute, as the Government does here.[15] Rather, the burden rests on the counterparty to establish the existence of a *bona fide* dispute.[16]

12. The Government has wholly failed to establish the *bona fides* of any material dispute as to the Pre-Termination Delivery Orders for the reasons set forth in Section II *infra*, and its attempt to evade the jurisdiction of this Court fails accordingly. Count I asserts a proper turnover claim over which the Court has "core" jurisdiction.

II. The Government has Failed to Raise a *Bona Fide* Dispute

13. "The Third Circuit has held that a *bona fide* dispute exists '[i]f there is a genuine issue of a material fact that bears upon the debtor's liability, or a meritorious contention as to the

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[13] *See* 11 U.S.C. § 106(a)(1) ("Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following: (1) Section[] … 524 … of this title."); *see also In re Lykes Bros. Steamship Co. Inc.*, 399 B.R. 555, 562 (Bankr. M.D. Fla. 2009) ("By its terms, [] it appears that § 106(a) abrogates sovereign immunity with respect to 'any issue' involving turnover of property to the estate … . Such a result is consistent with Congress' intent to abrogate sovereign immunity from bankruptcy causes of action as to both monetary and non-monetary judgments, except punitive damages.").

[14] *See In re Conex Holdings, LLC*, 518 B.R. 792, 803 n.58 (Bankr. D. Del. 2014).

[15] *See In re Home Easy, Ltd.*, 672 B.R. 595, 627–28 (Bankr. D.N.J. 2025) ("Merely stating that there is a dispute is not enough. Otherwise, every party subject to a turnover action would be able to defeat that action simply by claiming there is a dispute."); *In re Platinum Partners Value Arbitrage Fund L.P.*, No. 16-12925, 2026 WL 2198783, at *24 (S.D.N.Y. July 30, 2026) (finding defendant's contention that any dispute as to ownership of property precludes turnover, if accepted, would establish "a unilateral veto exercisable by any person who refused to surrender the debtor's property. Neither § 542 nor the cases construing it support that result.").

[16] *Platinum Partners*, 2026 WL 2198783 ("Read in context, however, these formulations [that turnover is unavailable when there is a legitimate dispute over ownership of property] refer to a bona fide and unresolved dispute. They do not mean that a defendant can defeat turnover simply by asserting ownership, no matter how insubstantial the asserted interest or how conclusively it is defeated by the governing law and undisputed record."); *Finkel v. Parzych (In re Midnight Madness Distilling, LLC)*, No. 21-11750-MDC, Adv. No. 23-00047-MDC, 2024 WL 3517620, at *30 (Bankr. E.D. Pa. July 23, 2024) ("The dispute to title must be bona fide in order for a turnover action to be considered premature."); *see also Reed v. Nathan*, 558 B.R. 800, 816 (E.D. Mich. 2016) ("But not every 'dispute' over title converts what would otherwise be a core turnover proceeding into a noncore one. Only a *legitimate* or *bona fide* dispute over title does.") (emphasis supplied).

application of law to undisputed facts.'"[17] A *bona fide* dispute exists only where the counterparty identifies an *objective basis* for a dispute as to the validity of the debt.[18] Courts will grant turnover notwithstanding an alleged dispute where the counterparty's factual assertions are unsupported by the evidentiary record or its legal contentions are contrary to governing law.[19]

14. As set forth below, the Government has failed to raise a *bona fide* dispute with respect to Noble's right to payment for the Pre-Termination Delivery Orders. Accordingly, Noble is entitled to summary judgment on Count I.

A. The Government's Position on What Constitutes Acceptance is Meritless

15. The Government's failure to pay Noble rests on the argument that the DLA never "accepted" the goods and services underlying 99 of the 108 Pre-Termination Delivery Orders because it did not post a goods receipt validating Noble's proofs of delivery prior to the DLA's termination on August 27, 2026.[20] In other words, the Government argues it is entitled to retain the benefit of approximately $14.5 million in goods and services without paying Noble because of the DLA's *own* failure to complete a form prior to its *own* termination of the orders. Such an absurd result cannot be reconciled with the FAR and applicable case law.

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[17] *In re IPC Int'l Corp.*, No. 13-12050, 2014 WL 5544692, at *3 (Bankr. D. Del. Nov. 3, 2014) (quoting *B.D.W. Assoc's, Inc. v. Busy Beaver Bldg. Centers, Inc.*, 865 F.2d 65, 66 (3d Cir.1989)); *see also In re Lexington Healthcare Grp., Inc.*, 363 B.R. 713, 716 (Bankr. D. Del. 2007) (applying *Busy Beaver* in the turnover context).

[18] *See IPC Int'l Corp.*, 2014 WL 5544692, at *3.

[19] *See, e.g.*, *Newman v. Tyberg (In re Steel Wheels Transp., LLC)*, No. 10-62061 (RTL), 2011 WL 5900958, at *7 (Bankr. D.N.J. Oct. 28, 2011) (no *bona fide* dispute over ownership of sale proceeds where turnover defendant's claim to funds was not supported by the evidentiary record); *Platinum Partners*, 2026 WL 2198783, at *24 (turnover defendant's claim to disputed funds was not *bona fide* when it rested on an erroneous interpretation of the contract between defendant and the debtor); *In re Pali Holdings, Inc.*, 488 B.R. 841, 846-47 (Bankr. S.D.N.Y. 2013) (granting summary judgment in favor of trustee in action for turnover of promissory note proceeds where defendant's contention that note was non-recourse was contrary to contract language).

[20] Opposition, ¶ 50 (citing Cuorato Decl. ¶¶ 4, 13).

16. As the Government notes, upon a termination for cause under FAR 52.212-4(m), "the Government shall not be liable to the Contractor for any amount for supplies or services not accepted."[21] The Government argues the DLA did not accept the Pre-Termination Delivery Orders because the FAR "tie[s] [acceptance] to an affirmative act" and no affirmative act occurred because the DLA failed to post a goods receipt validating the order.[22]

17. The Government's extraordinarily narrow and self-serving definition of acceptance is wholly unsupported by the FAR. The Government cites FAR 46.501 in support of its contention that acceptance *requires* an affirmative act by the Government.[23] But that provision simply notes that acceptance is "ordinarily" (but not exclusively) evidenced by execution of an acceptance certificate or receiving report.[24] More relevant here is FAR 46.407(g), which roundly rejects the Government's contention through direct reference to *implied* acceptance: "[p]romptness in giving this notice is essential because, *if timely nature of rejection is not furnished, acceptance may in certain cases be implied* as a matter of law.[25] The Government's contention that "no rule of law supports" the concept of implied acceptance through failure to timely reject is thus contrary to the FAR itself, as well as decisions of both the Court of Federal Claims and multiple contract review boards holding the Government to this elementary commercial law principle.[26]

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[21] 48 C.F.R. § 52.212-4(m).

[22] Opposition, ¶ 52.

[23] *Id.*

[24] 48 C.F.R. § 46.501.

[25] 48 C.F.R. § 46.407(g) (emphasis supplied).

[26] *Appeal of Ateron Corp.*, ASBCA No. 46867, 96-1 B.C.A. (CCH) ¶ 28165 (Feb. 5, 1996) ("Implied acceptance arises from a Government act inconsistent with the contractor's ownership of such items."); *see also John C. Kohler Co. v. United States*, 498 F.2d 1360 (Ct. Cl. 1974) (Government use and custody of a boiler for three months resulted in its implied acceptance); *In Re Fischer Imaging Corp.*, VABCA No. 6343, 02-2 B.C.A. (CCH) ¶ 32048 (Oct. 22, 2002) (drawing on UCC § 2-606 and holding that government's extended retention and use of goods constituted constructive acceptance); *Silent Hoist & Crane Co., Inc.*, ASBCA No. 9872, 1964 BCA ¶ 4488 (holding that the Government accepted the contractor's performance by receiving and using the requested data).

18. The Government's position that acceptance can only occur through the DLA's affirmative posting of a goods receipt is plainly contrary to the FAR, established law of implied acceptance, and pure common sense. Accordingly, there is no *bona fide* dispute that acceptance can be implied through the Government's failure to timely reject goods and services.

B. There is no *Bona Fide* Dispute that the Government Accepted the Goods and Services Underlying the Pre-Termination Delivery Orders

19. Applying the foregoing legal framework here, the record before the Court clearly establishes the DLA's implied acceptance of the Pre-Termination Delivery Orders for which the DLA has refused to post a goods receipt. The Government has presented no evidence of rejection of the goods and services underlying these Pre-Termination Delivery Orders, which were, in fact, delivered or provided by Noble on or before August 27, 2026 (more than 60 days ago and in many cases, much longer than that). This 60+ day timeline is inconsistent with both the DLA's own internal policy (requiring validation or rejection within five business days)[27] and its established prepetition course of conduct with Noble (by which it processed Noble's deliveries within seven days on average).[28] The Government does not contest these internal policy and course of conduct in the Opposition or supporting Cuorato Declaration.[29]

20. Moreover, while the Government claims it did not have enough time to validate delivery of certain orders fulfilled in the days prior to the August 27, 2026 termination date, it offers no explanation for its failure to validate delivery in the 60+ days that have transpired since,

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[27] *See* Table C10.T1 of the DLA's Defense Logistics Management Standards available at: https://www.dla.mil/Portals/104/Documents/DLMS/Manuals/DLM/V2/Volume2.pdf.

[28] *See* Albergotti Decl. ¶ 13.

[29] In fact, when addressing the timeline to validate proof of delivery, the Government does not offer a competing view. *See* Opposition, ¶ 14 ("Noble says that DLA typically takes about a week to validate a POD. Br. ¶ 40; Albergotti Decl. ¶ 13. Thus, even on Noble's account, DLA had no time to review those 32 Disputed Deliveries before it terminated the orders.").

other than the termination itself.[30] The Government expressly acknowledged in the Termination Notices that it would process orders fulfilled prior to termination.[31] Yet throughout the Opposition, the Government claims it is only required to pay for deliveries *validated* prior to termination.[32] The Government's refusal to validate orders over the past 60+ days for deliveries made prior to termination contradicts its own Termination Notices, and leaves no *bona fide* dispute as to the Government's implied acceptance of the Pre-Termination Delivery Orders.

21. The Government has not offered any contrary evidence demonstrating a *bona fide* dispute as to whether the goods and services underlying the Pre-Termination Delivery Orders were delivered to the agreed upon destinations or provided to the appropriate parties, despite having been provided an additional two weeks to identify any such disputes in its Opposition following the commencement of this Adversary Proceeding and filing of the Summary Judgment Motion. The decidedly immaterial issues raised by the Government in the Cuorato Declaration do not give rise to a *bona fide* dispute as to Noble's right to payment.

22. The Government claims Noble's proofs of delivery are insufficient because they do not establish that the end customer received the goods in question.[33] Noble's right to payment under the Contracts is conditioned upon delivery to the agreed upon destination and acceptance by the Government, not receipt by the end customer.[34] This alone renders the Government's alleged

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[30] Opposition, ¶ 14 ("Noble says that DLA typically takes about a week to validate a POD. Thus, even on Noble's account, DLA had no time to review those 32 Disputed Deliveries before it terminated the orders.").

[31] Termination Notices at p. 2 ("Delivery of material *after the date of this notice* will not be considered for Goods Receipt posting and Proof of Delivery's indicating delivery of material *after the date of this notice* will not be accepted or reviewed by DLA.") (emphasis supplied); *see also* Opposition, ¶ 19 ("The date of delivery is critical because the Termination Notices are explicit that a delivery after the termination date 'will not be considered for Goods Receipt posting'").

[32] *See* Opposition, ¶¶ 14, 16, 24, 52-54.

[33] Cuorato Decl. ¶ 9.

[34] F&ESE Contract, § 16(i) ("Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in the contract."); SOE Contract, § 17(i) (same).

dispute immaterial to Noble's right to payment. Moreover, the Government does not even allege that the end customers did not receive the goods in question, only that Noble's proofs of delivery do not demonstrate so. If there were any substantive dispute in this regard, the DLA—not Noble—would possess the evidence to support it. The absence of any such evidence in the Cuorato Declaration speaks volumes.

23. The Government further contends that a receiving report was signed by a Government official for only 21 of the 108 Pre-Termination Delivery Orders[35] and argues that the DLA found Noble's proofs of delivery insufficient for 71 of the remaining 87 orders. But the Government provides no evidence or explanation why.[36] Nor does it allege that the goods were not delivered or that there were any material issues with Noble's performance. The Government's unexplained and unsubstantiated allegations concerning Noble's proofs of delivery are not a *bona fide* dispute of Noble's right to payment.

24. The Government also argues that Noble sent its proofs of delivery to the DLA for certain Pre-Termination Delivery Orders after the August 27, 2026 termination date.[37] But the date by which Noble provided proof of delivery to the DLA is immaterial to Noble's right to payment under the Contracts. Indeed, the Government does not contend that the Pre-Termination Delivery Orders were delivered after termination. Noble's right to payment was triggered when it delivered the goods prior to termination and thereby completed performance of its contractual obligations.

25. The Government also alleges that Noble delivered the goods underlying *eight* Pre-Termination Delivery Orders to destinations the DLA did not approve. The Government bases its

[35] Cuorato Decl. ¶ 10.

[36] *Id.*

[37] *Id.* at ¶ 11.

claim on discrepancies between the shipping destination listed in the order form and the delivery destination identified in the proof of delivery for these eight orders.[38] But the DLA regularly approves address changes through email correspondence with no corresponding contract amendment. In fact, one such email is annexed to the Cuorato Declaration filed by the Government.[39] The DLA has provided no evidence that Noble failed to deliver the goods underlying the Pre-Termination Delivery Orders to unapproved destinations. In reality, these orders were delivered to approved destinations, they were accepted by the DLA, and the mere fact that the order form and proofs of delivery do not contain matching addresses for eight out of 108 orders does not give rise to a *bona fide* dispute of Noble's right to payment.

26. In addition, the Government claims that the DLA has not posted a goods receipt for certain Pre-Termination Delivery Orders.[40] As explained *supra*, acceptance under the FAR does not depend upon the Government's execution of a form and may be implied through the Government's failure to timely reject and retention of goods. The DLA's refusal to post a goods receipt is immaterial to its acceptance of Noble's performance and cannot extinguish Noble's right to payment.

27. The Government identifies certain discrepancies between the delivery date listed in Noble's proofs of delivery and the DLA's records.[41] However, the DLA attaches none of its own records to the Cuorato Declaration and relies solely on the approximately 1,000 transaction

[38] *Id.* at ¶ 12. The Government claims that the Pre-Termination Delivery Order listed on Line 48 of the schedule attached to the Cuorato Declaration was ordered for Cannon Air Force Base, New Mexico, but delivered to Suitland, Maryland because Noble inadvertently included the wrong proof of delivery in its document production to the Government. The correct proof of delivery showing that the order was in fact delivered to Cannon Air Force Base, New Mexico is attached to the Transmittal Declaration as Exhibit A.

[39] *Id.* at Ex. A-6 at p. 91.

[40] *Id.* at ¶ 13.

[41] *Id.* at ¶ 15.

documents Noble produced to the Government on October 7, 2026 (the "October 7 Production"). The Government suggests that two of these delivery orders were fulfilled on September 4, 2026 (and therefore post-date the August 27, 2026 termination date) based on an email from Noble to the DLA. But the proof of delivery and packing slip for these orders, which Noble provided to the Government on October 7, 2026, show that Noble completed delivery on August 24, 2026.[42] For certain other delivery orders, the Government merely identifies a discrepancy in delivery date without suggesting any impact on Noble's right to payment.[43] And for the remaining orders, the Government does not identify any discrepancy but merely notes that the transaction documents were placed in a production folder titled "Delivery Aug 28 + After." These issues are wholly immaterial to Noble's right to payment.

28. The Government purports to identify certain *de minimis* billing discrepancies with certain Pre-Termination Delivery Orders.[44] First, the Government alleges Noble double-billed the Government for the same $20,000 training course. But, in fact, the proofs of service, which were produced to the Government, show that these were two separate training courses (one was held on August 13 and 14, 2026 and the other was held on August 17 and 18, 2026).[45] Second, the Government alleges a discrepancy between the quantity delivered in the Schedule and the quantity identified on the packing slip for a $12,000 delivery order. This is because this particular delivery order contained a mix of physical products and training services, and the Schedule only lists the physical product, while the packing slip lists both. Third, the Government alleges a $1,200 pricing discrepancy between the Schedule and a transaction document for one delivery order. While Noble

[42] The proof of delivery and packing slip are attached to the Transmittal Declaration as Exhibits B-1 and B-2, respectively.

[43] *Id.*

[44] *Id.* at ¶ 16.

[45] The proofs of service for these orders are attached to the Transmittal Declaration as Exhibits C-1 and C-2.

believes the higher amount listed in the Schedule is correct, Noble will accept the lower amount on account of this delivery order given the *de minimis* amount at issue.

29. Finally, the Government states that the DLA questioned or rejected Noble's proof of delivery for three Pre-Termination Delivery Orders in email exchanges attached to the Cuorato Declaration as Exhibits A-1, A-2, and A-3.[46] However, these emails merely show that the DLA inquired as to certain discrepancies or omissions in the original proofs of delivery. In each case, a Noble representative provided additional documentation, and the DLA did not raise any further inquiries or otherwise respond to Noble. The DLA did not reject any delivery or indicate that the goods in question were not in fact delivered. At best, these emails advance the same immaterial document discrepancies discussed above, which Noble subsequently corrected.

30. In sum, the hyper-technical arguments and immaterial issues raised in the Opposition and Cuorato Declaration do not give rise to a *bona fide* dispute regarding the Government's acceptance of the goods and services underlying the Pre-Termination Delivery Orders or Noble's resulting right to payment. Accordingly, Noble is entitled to summary judgment on its claim for turnover.

III. The Government's Rule 56 Arguments are Unavailing

A. The Albergotti Declaration Satisfies Rule 56(c)(4)

31. Rule 56(c)(4) of the Federal Rules of Civil Procedure requires a declaration to be "made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). The Government argues that the testimony set forth in paragraphs 17 and 19 of the Albergotti Declaration, and the Schedule attached thereto, are not based on Mr. Albergotti's personal

[46] *Id.* at ¶ 20.

knowledge and are therefore inadmissible to prove delivery, acceptance, or amount of the Pre-Termination Delivery Orders.[47] The Government erroneously conflates firsthand observation with the personal knowledge requirement of Rule 56(c)(4).

32. Courts, including those in the Third Circuit, have consistently held that the personal knowledge requirement of Rule 56(c)(4) is satisfied where a declarant acquires knowledge through a review of business records maintained in the ordinary course.[48] As set forth in the Albergotti Declaration, Mr. Albergotti's statements regarding the Pre-Termination Delivery Orders are based on his review of Noble's business records maintained in the ordinary course on Noble's NetSuite platform.[49]

33. The Government argues the Albergotti Declaration is insufficient because it does not attach the voluminous documents contained in the October 7 Production to the Government. As Noble noted in the Summary Judgment Motion, the records were used to compile the Schedule attached to the Albergotti Declaration as Exhibit E and, pursuant to Rule 1006 of the Federal Rules of Evidence, Noble produced those documents to the Government.[50] The Government has not challenged their authenticity.

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[47] Opposition, ¶ 49.

[48] *See Beenick v. Lefebvre*, No. 4:14-CV-01562, 2016 WL 5402249, at *6 (M.D. Pa. July 29, 2016) (overruling objection where declarant's personal knowledge was based on a review of the records); *In re Sia*, Adv. No. 11-1436, 2015 WL 9462089, at *7 (D.N.J. Dec. 28, 2015) ("The court did not abuse its discretion in holding that 'personal knowledge' may be gained through review of the relevant records relating to the case"); *Byrd v. Merrill Lynch*, No. 10-0247, 2011 WL 2680572, at *6 (D.N.J. July 8, 2011), *aff'd*, 479 F. App'x 444 (3d Cir. 2012) (permitting declaration of employee who was not personally present due to his review of relevant records); *see also Washington Cent. R.R. Co. v. Nat'l Mediation Bd.*, 830 F. Supp. 1343, 1353 (E.D. Wash. 1993) ("Based on personal knowledge of the files and records, a declarant may testify to the acts that she or he did not personally observe but which are described in the record, including requests or statements by third persons made to someone other than the declarant.").

[49] *Id.*

[50] The Transmittal Declaration attaches certain documents from the October 7 Production the DLA took issue with in its Opposition, along with one corrected delivery document.

34. The relevant question for purposes of Rule 56(c)(4) is not whether Mr. Albergotti personally witnessed each delivery, but whether he possesses personal knowledge of the facts to which he testified. Mr. Albergotti's testimony concerning the Pre-Termination Delivery Orders was based on his personal review of Noble's business records maintained in the ordinary course as set forth in his declaration, and is therefore squarely permissible under Rule 56(c)(4).

B. The Government is Not Entitled to Relief Under Rule 56(d)

35. Rule 56(d) of the Federal Rules of Civil Procedure provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order."[51] "Under Rule 56(d), [the party seeking discovery has] the burden to identify with specificity the information sought, and how it would preclude summary judgment."[52]

36. A Federal Rule 56(d) affidavit must specify: "[1] what particular information is sought; [2] how, if uncovered, it would preclude summary judgment; and [3] why it has not previously been obtained."[53] "The information sought through further discovery must include 'specific facts' that will be revealed through discovery; '[v]ague or general statements of what a party hopes to gain through a delay for discovery under Rule 56(d) are insufficient.'"[54]

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[51] Fed. R. Civ. P. 56(d) (emphasis supplied).

[52] *Jones Lang Lasalle Americas, Inc. v. PK Welding LLC*, No. CV1602804WHWCLW, 2017 WL 2712941, at *5 (D.N.J. June 22, 2017).

[53] *Tobing v. Parker McCay, P.A.*, Case No. 3:17-cv-00474, 2020 WL 7768410, at *5 (D.N.J. Dec. 30, 2020).

[54] *Id.* (quoting *Malouf v. Turner*, 814 F. Supp. 2d 454, 460 (D.N.J. 2011)); *In re Jersey City Cmty. Hous. Corp.*, Case No. 21-15863, 2023 WL 5156364, at *9-12 (Bankr. D.N.J. Aug. 10, 2023) (denying Federal Rule 56(d) relief where movant failed to explain "with specificity 'what particular information is sought; how, if uncovered, it would preclude [the relief sought by the moving party]; and why it has not previously been obtained'") (quoting *St. Surin v. Virgin Islands Daily News, Inc.*, 21 F.3d 1309, 1314 (3d Cir. 1994) (quoting *Lunderstadt v. Colafella*, 885 F.2d 66, 71 (3d Cir. 1989)).

Accordingly, Federal Rule 56(d) motions are routinely denied where the discovery sought does not pertain to the material facts or legal claims at issue on summary judgment.[55]

37. The Government claims it needs additional delivery records to verify the information contained in the Schedule of Pre-Termination Delivery Orders attached to the Albergotti Declaration in the hope that a proposed fishing expedition would somehow uncover evidence that Noble did not in fact deliver the goods or provide the services underlying such orders, or that the Government did not in fact accept them.[56] The Government's theory is entirely speculative and cannot support Rule 56(d) relief.[57] Indeed, to date, and despite having received a production of over a thousand relevant documents from Noble to supplement those already in its own possession, custody or control, the Government has not presented a scintilla of evidence that Noble did not deliver any of the goods and services at issue, that the Government rejected any of them, or that there were any material issues with Noble's performance.[58]

38. The Government's request for discovery is particularly futile here because it accepted the goods and services underlying the Pre-Termination Delivery Orders by failing to reject—and retaining the benefit of—such goods and services for more than 60 days after delivery.

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[55] *See, e.g.*, *Muhammad v. Sills Cummis & Gross P.C.*, 621 F. App'x 96, 99 (3d Cir. 2015) (district court did not abuse its discretion in denying plaintiff's motion for additional discovery because plaintiff "failed to demonstrate that the financial records he sought were relevant to any claims or defenses in this action"); *Lasko v. Watts*, 373 F. App'x 196, 203 (3d Cir. 2010) ("Lasko has not identified any outstanding discovery that would be relevant to the summary judgment motion. Given these circumstances, the District Court did not abuse its discretion in granting defendants' motion for summary judgment."); *Hancock Indus. v. Schaeffer*, 811 F.2d 225, 230 (3d Cir. 1987) (denying Federal Rule 56(d) relief where plaintiff failed to explain what material facts might be discovered given that the claims in question could be properly resolved as a matter of law based on the facts already before the court); *Jersey City Cmty. Hous. Corp.*, 2023 WL 5156364 at *3-4 (debtor not entitled to Federal Rule 56(d) relief for failure to demonstrate that additional discovery would aid opposition to summary judgment).

[56] *See* Cuorato Decl., ¶¶ 21-27.

[57] *See Paddington Partners v. Bouchard*, 34 F.3d 1132, 1138 (2d Cir. 1994) (denying Rule 56(d) relief where the request rested on speculation that further discovery might uncover evidence creating a triable issue).

[58] *See Paddington Partners v. Bouchard*, 34 F.3d 1132, 1138 (2d Cir. 1994) (denying Rule 56(d) relief where the request rested on speculation that further discovery might uncover evidence creating a triable issue).

There is simply no discovery the Government could hope to uncover that could undo its implied acceptance of the Pre-Termination Delivery Orders.

39. Moreover, the information the Government purportedly seeks is already in its possession, custody, or control. Indeed, most if not all the documents referenced in the Cuorato Declaration, such as bills of lading, proof of delivery, and packing slips, were already provided to the Government through Noble's production of more than 1,000 delivery documents utilized in preparing the Schedule. The Government has provided no explanation as to why it has been unable to obtain any additional documents supposedly needed to validate Noble's deliveries in the more than 60 days since the Pre-Termination Delivery Orders were fulfilled or that it made any effort to do so.[59]

40. In short, the Government has failed to satisfy Rule 56(d)'s required showing that additional discovery would aid the Government in opposing summary judgment or that it acted diligently in pursuing its purported discovery needs. Accordingly, the Government's Rule 56(d) request should be denied.

IV. The Court has Concurrent Jurisdiction Over Noble's Breach of Contract Claim

41. The bankruptcy court has "non-core" subject matter jurisdiction over all proceedings "related to" a bankruptcy case.[60] A proceeding is "related to" a bankruptcy case if "the outcome … could conceivably have any effect on the estate being administered in

[59] *See McGoveran v. Amazon Web Servs., Inc.*, 175 F.4th 434, 441 n.2 (3d Cir. 2026) ("The District Court's refusal to postpone summary judgment under Federal Rule of Civil Procedure 56(d) was not an abuse of discretion, given Plaintiffs' failure to conduct diligent discovery."); *see also Koplove v. Ford Motor Co.*, 795 F.2d 15, 18 (3d Cir. 1986) ("Movant[s] under Rule 56[ ] must have used discovery mechanisms in timely fashion ... a request for relief under Rule 56[ ] is extremely unlikely to succeed when the party seeking the delay has failed to take advantage of discovery" (cleaned up)).

[60] 28 U.S.C. § 1334(b).

bankruptcy."[61] Here, Noble's breach of contract claim is clearly related to Noble's chapter 11 cases because Noble's contractual right to payment is property of its bankruptcy estate.[62]

42. The Government argues this Court lacks subject matter jurisdiction over Noble's breach of contract claim against the DLA because the Tucker Act vests exclusive jurisdiction over contract claims against the United States in the Court of Federal Claims.[63] The Government further contends that sovereign immunity shields the DLA from liability because the Government has not consented to suit for contract claims in this Court.[64] The United States Court of Appeals for the Federal Circuit—which is the appellate court principally responsible for adjudicating government claims—has considered and rejected the Government's argument. This Court should do the same.

43. In *Quality Tooling v. United States*, the Federal Circuit held that a district court sitting in bankruptcy has concurrent jurisdiction with the Court of Federal Claims over government contract claims within the bankruptcy court's "related to" jurisdiction.[65] The Federal Circuit also held that the Government's waiver of sovereign immunity for contract claims in the Tucker Act is not specific to the Court of Federal Claims, and thus authorizes "any court to which Congress grants jurisdiction to hear the claim."[66] Accordingly, this Court has concurrent subject matter jurisdiction over Noble's breach of contract claim against the DLA, and the Government cannot wield sovereign immunity to shield itself from liability in this Court.

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[61] *Stoe*, 436 F.3d at 216 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984)).

[62] *See, e.g., In re MF Glob., Inc.*, 531 B.R. 424, 437–38 (Bankr. S.D.N.Y. 2015) (finding debt owing to debtor pursuant to contract constituted property of estate for purpose of Section 542(b) where trustee established that contracting party was "unconditionally liable" under contract's terms).

[63] *See* Opposition, ¶ 29.

[64] *See* Opposition, ¶ 38.

[65] 47 F.3d 1569 (Fed. Cir. 1995).

[66] *Id.* at 1575.

44. The Government argues that the Ninth Circuit's decision in *McGuire v. U.S.*, 550 F.3d 903 (9th Cir. 2008) casts doubt on *Quality Tooling*. The Ninth Circuit's decision is not binding on this Court. Nor is it persuasive.

45. The *McGuire* court *agreed* with the Federal Circuit in *Quality Tooling* that the bankruptcy court has concurrent jurisdiction over government contract claims under 28 U.S.C. § 1334(b) but *rejected* the logical conclusion that the Government's waiver of sovereign immunity for contract claims in the Tucker Act authorized the bankruptcy court to hear such claims.[67] The Ninth Circuit's half-measured approach is non-sensical, as it deprives the bankruptcy court of the same concurrent jurisdiction it acknowledges Congress conferred upon it.

46. Accordingly, the Court should adopt the Federal Circuit's reasoning and hold this Court has subject matter jurisdiction over Noble's breach of contract claim against the DLA, and sovereign immunity does not bar Noble from pursuing its claim in this Court.

V. The Court Should Enter Final Judgment

47. The Government argues that any Order granting summary judgment in favor of Noble would be interlocutory.[68] To the extent the Government argues that the interlocutory nature of any such Order would preclude the Government from paying Noble the outstanding amount of the Pre-Termination Delivery Orders within three business days of entry, Noble submits the Court should enter a final judgment under Rule 54(b), as there is no just reason for delay in view of the undisputed nature of the DLA's debt to Noble and Noble's liquidity constraints. Alternatively,

[67] 550 F.3d at 912-14 (holding that 28 U.S.C. § 1334(b) provides a statutory basis for the district court's jurisdiction over Fifth Amendment takings claim against the United States, but district court was barred by sovereign immunity from entertaining the merits of such claim).

[68] Opposition, ¶ 59.

Noble would stipulate to a dismissal without prejudice of the remaining Counts and claims in the Adversary Proceeding, which would render the summary judgment order final.

VI. The Government's Motion to Dismiss and Cross-Motion for Summary Judgment Should be Denied

48. The Government moves to dismiss the Complaint and cross-moves for summary judgment based on the same jurisdictional and turnover-related arguments that form the basis of its opposition to the Summary Judgment Motion. The Court should deny the Government Motions for the same reasons it should grant Noble's Summary Judgment Motion.

49. The Government argues this Court lacks subject matter jurisdiction over Counts I and II of the Complaint because the Tucker Act vests exclusive jurisdiction for contract claims against the United States in the Court of Federal Claims. As explained in Sections I and IV, *supra*, this Court has "core" jurisdiction over the turnover claim asserted in Count I and concurrent jurisdiction over the breach of contract claim asserted in Count II.

50. The Government's sovereign immunity defense fails for substantially the same reasons. The Government expressly waived sovereign immunity for turnover actions in section 106(a) of the Bankruptcy Code, and the Government's waiver of sovereign immunity for contract claims in the Tucker Act is not limited to the Court of Federal Claims for the reasons set forth in the Federal Circuit's opinion in *Quality Tooling*, discussed in Section IV, *supra*.

51. The Government seeks dismissal or, alternatively, summary judgment on Counts I and II of the Complaint based on Noble's failure to submit a claim to the applicable DLA contracting officer prior to commencing the instant Adversary Proceeding. The Government's argument should be rejected out of hand for Count I, as a turnover action arises under section 542 of the Bankruptcy Code and cannot be adjudicated by a contracting officer.

52. The Government's argument with respect to Count II is rooted in a misreading of *Quality Tooling* and should also be rejected. The Government places significant weight on the fact that the contractor in *Quality Tooling* brought suit in the Court of Federal Claims before seeking to transfer the claim to the bankruptcy court following its commencement of a chapter 11 case.[69] This has no impact on the analysis. Indeed, conspicuously absent from the Federal Circuit's opinion is any mention of the contractor having submitted a claim to a contracting officer at any stage in its dispute with the United States. Moreover, there is no indication that the Federal Circuit placed any weight on the fact that the contractor initially filed its contract action in the Court of Federal Claims in determining that the district court sitting in bankruptcy had concurrent jurisdiction over the contract claim. Accordingly, *Quality Tooling* does not support dismissal or summary judgment based on Noble's failure to submit a claim to the applicable contracting officer.

53. Finally, the Government seeks dismissal or summary judgment on Noble's turnover claim on grounds that the DLA's debt to Noble is disputed and unmatured. Noble's turnover claim easily satisfies the pleading standards of Rule 12(b)(6), as the Complaint alleges that the DLA owes Noble a matured debt on account of the Accepted Delivery Orders.[70] And with respect to summary judgment, as discussed in Section II, *supra*, the Government has failed to produce any evidence of a *bona fide* dispute with respect to Noble's right to payment on account of the Pre-Termination Delivery Orders subject to the Summary Judgment Motion. Further, the Government

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[69] 47 F.3d at 1571.

[70] Compl. ¶¶ 37, 42, 44; *see In re Home Easy, Ltd.*, 672 B.R. 595, 646 (Bankr. D.N.J. 2025) (holding that chapter 7 trustee stated a plausible claim for turnover based on allegations that the funds in question constituted a loan to debtor and debtor exercised sufficient control to render them property of the estate); *Cloud I Q LLC v. RADAR_APPS, Inc. (In re Cloud I Q LLC)*, No. 19-23680-gmh, Adv. No. 19-02110-gmh, 2020 WL 2617036, at *6 (Bankr. E.D. Wis. May 22, 2020) (holding that plaintiff stated a turnover claim by alleging plaintiff owed a mature debt); *In re Am. Home Mortg. Holding*, 458 B.R. 161, 169 (Bankr. D. Del. 2011) (holding that debtor stated a plausible claim for turnover by alleging that non-debtor had no right to debtor's funds held in its account and complaint failed to indicate or imply any ownership dispute involving such funds).

has failed to produce *any evidence whatsoever* regarding the Post-Termination Delivery Orders that are not subject to the Summary Judgment Motion. Accordingly, there is no basis to grant summary judgment in favor of the Government here in any respect.

54. Based on the foregoing, the Government Motions should each be denied.

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CONCLUSION

For the reasons discussed above, the Court should enter an Order (i) granting the Summary Judgment Motion; (ii) denying the Government Motions; and (iii) granting Noble such other and further relief as the Court deems just and proper.

Dated: October 27, 2026
Wilmington, Delaware

/s/ G. David Dean

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