IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Noble Supply & Logistics, LLC, *et al.*,	Case No. 26-11369 (CTG)
Debtors.[1]	(Jointly Administered)

DEBTORS' OBJECTION TO UNITED STATES' MOTION FOR ENTRY OF AN ORDER (I) GRANTING ADEQUATE PROTECTION UNDER SECTIONS 361, 363(e), AND 553 OF THE BANKRUPTCY CODE AND (II) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this objection (the "Objection") to the *United States' Motion for Entry of an Order (I) Granting Adequate Protection Under Sections 361, 363(e), and 553 of the Bankruptcy Code and (II) Granting Related Relief* [Docket No. 327] (the "Adequate Protection Motion").[2] In support of this Objection, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. The Adequate Protection Motion is a direct collateral attack on the Court's September 18 Order and should be denied.[3] Through that order the Court ruled, consistent with *Citizens Bank of Md. v. Strumpf*, 516 U.S. 16 (1995) ("*Strumpf*"), that the DLA's freeze on the Debtors' accounts untethered to a prompt motion for relief and an estimation hearing to establish

[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.

[2] Capitalized terms used but not defined herein shall have meanings ascribed to such terms in the Adequate Protection Motion.

[3] *See* Docket No. 151 (the "September 18 Order").

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setoff rights violated the automatic stay.[4] The Court further rejected the Government's post-hearing request for additional adequate protection without first establishing setoff rights as a further violation of *Strumpf*.[5]

2. The Government dismisses the Court's prior ruling and posits, once again, that it can sidestep the burden of establishing disputed setoff rights through an estimation proceeding merely by identifying potential claims against the Debtors and requesting adequate protection. Here, the Government has lobbed in an unsupported proffer of a purported $266 million claim against the Debtors under the False Claims Act.[6] The Government's purported claim is supported by nothing more than a three-page attorney declaration, which does not contain a single piece of admissible evidence to establish the claim's validity. In other words, the Government seeks adequate protection in the form of a $266 million superpriority administrative claim and indefinite freeze on sale proceeds for an alleged setoff claim supported by no factual evidence.[7] Because the Court has already ruled the Government is not entitled to this relief absent a proper showing of its right to setoff, the Adequate Protection Motion should be denied.

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4 *See* H'rg Tr. 74:8-75:6 (Sep. 16, 2026); *see also* September 18 Order, ¶ 6.

5 *Compare* September 18 Order, ¶ 9 ("To the extent the DLA contends, at any point, that amounts due to it are not adequately protected by future payables due to the debtors, the DLA may seek relief from the automatic stay. On a hearing for stay relief, the Court is prepared to conduct an estimation proceeding pursuant to § 502(c) to determine the amount subject to setoff. The DLA may not, however, otherwise impose an administrative freeze or exercise setoff or replacement rights without seeking and obtaining relief from this Court.") *with* Docket No. 142 (Government's proposed form of order) ("To the extent payments made by the DLA on account of any invoice for services and supplies provided by the Debtors prior to the Petition Date, and such payments diminish any valid setoff right of the United States, the United States shall have replacement setoff rights, including claim(s) under section 506(a) of the Bankruptcy Code for any diminution. Nothing herein determines the validity or amount of any claim or setoff right asserted by the United States.").

6 The Government insinuates that the Debtors concealed this claim from the Court at the September 16 hearing, but the Debtors did no such thing. The Government's ongoing investigations into the Debtors were disclosed in the First Day Declaration (*see* Docket No. 15, ¶ 21), and any claim arising out of such investigations is purely speculative at this point in Debtors' cases, as the Government's own filings demonstrate.

7 After filing the Adequate Protection Motion, the Government confirmed that it does not intend to proceed on October 28 as an evidentiary hearing because it is not seeking to establish setoff, and does not intend to rely on evidence outside of that contained in the Adequate Protection Motion itself.

BACKGROUND

A. The Motion to Compel

3. On September 11, 2026, the Debtors filed a motion [Docket No. 102] (the "Motion to Compel") seeking an order compelling the DLA to remove a payment block it instituted on the Debtors' account in the DLA's electronic invoicing and payment system. The DLA filed an objection to the Motion to Compel on September 16, 2026 arguing, among other things, that (i) the DLA's payment block constituted an appropriate administrative freeze consistent with the Supreme Court's decision in *Strumpf* and (ii) the Debtors owe undisputed prepetition debts to the Government that are subject to setoff for which the Debtors have not provided adequate protection. *See* Docket No. 124. A hearing on the Motion to Compel was also held on September 16, 2026.

4. At the hearing, the DLA, through its counsel at the Department of Justice (the "DOJ"), reiterated its request for adequate protection of its purported setoff rights based on claims the DLA anticipated filing in the future.[8] The Court ruled that *Strumpf* prohibits an indefinite administrative freeze to the detriment of the estate while a creditor's disputed setoff rights are adjudicated.[9] The Court encouraged the parties to negotiate a consensual dispute resolution mechanism that would provide the Debtors with sufficient liquidity to administer these cases while affording the Government an opportunity to promptly obtain an estimation of any claims against the Debtors for the purpose of establishing the Government's setoff rights and obtaining protection thereof.[10]

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[8] Hr'g Tr. 69:19-70:10 (Sep. 16, 2026).

[9] *See id*. at 74:10-75:2.

[10] *Id.* at 78:15-79:1.

5. Following the hearing, the parties submitted competing orders memorializing the Court's rulings. The Government's proposed form of order contained an express grant of adequate protection of the Government's purported setoff rights:

> To the extent payments made by the DLA on account of any invoice for services and supplies provided by the Debtors prior to the Petition Date, and such payments diminish any valid setoff right of the United States, ***the United States shall have replacement setoff rights, including claim(s) under section 506(a) of the Bankruptcy Code for any diminution***. Nothing herein determines the validity or amount of any claim or setoff right asserted by the United States.[11]

6. The Government's proposed form of order also struck language in the Debtors' proposed form of Order establishing a briefing schedule for estimation of the Government's claims against the Debtors, which contemplated an estimation hearing on October 16, 2026.[12]

7. The Court determined the parties' submissions differed significantly on a number of issues and prepared its own form of order granting the Motion to Compel (which would become the September 18 Order) that was discussed at a further hearing held on September 18, 2026.[13] In response to the Government's request for clarification of the Court's prior ruling that the DLA may only place an administrative hold to preserve fixed, undisputed, and non-contingent setoff claims, the Court reaffirmed its position that an estimation proceeding is the appropriate mechanism to resolve disputes concerning the Government's setoff rights.[14] The Court entered the September 18 Order shortly after the hearing.

8. The September 18 Order rejects the Government's request for adequate protection in finding that adequate protection is not an alternative solution for a party unwilling to substantiate

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[11] Docket No. 142, Ex. A at ¶ 5 (emphasis supplied).

[12] *See* Docket No. 141-2 (blackline of Debtors' proposed form of order marked against DLA's).

[13] Hr'g Tr. 3:2-17 (Sep. 18, 2026).

[14] *Id.* at 9:13-10:8.

its alleged setoff rights. While the Court did not incorporate the Debtors' briefing schedule for an October 16, 2026 estimation proceeding into the September 18 Order, the order conditions any administrative freeze or additional protection of the Government's setoff rights on a motion for stay relief and an estimation proceeding to determine the amount subject to setoff:

> To the extent the DLA contends, at any point, that amounts due to it are not adequately protected by future payables due to the debtors, the DLA may seek relief from the automatic stay. *On a hearing for stay relief, the Court is prepared to conduct an estimation proceeding pursuant to § 502(c) to determine the amount subject to setoff*. *The DLA may not, however, otherwise impose an administrative freeze or exercise setoff or replacement rights without seeking and obtaining relief from this Court*.
>
> The parties are directed to meet and confer with respect to future rights of setoff and the setting of hearing on, and briefing with respect to, any motion for relief from stay to conduct an estimation and/or to effect setoff. The Court reserves jurisdiction to resolve any dispute over such matters.[15]

9. The Government appealed the September 18 Order to the United States District Court for the District of Delaware on October 6, 2026. *See* Docket No. 263. The appeal remains pending as of the date hereof, and the September 18 Order has not been reversed, modified, vacated, or stayed.

B. The Adversary Proceeding and the Adequate Protection Motion

10. On October 6, 2026, Debtor Noble Supply & Logistics, LLC ("Noble Supply") filed a complaint against the DLA [Adv. Docket No. 1] (the "Complaint"), thereby commencing an adversary proceeding (the "Adversary Proceeding") seeking turnover of not less than $18,960,176.31 on account of unpaid goods delivered and services provided to the Government.[16]

[15] *Id.* at ¶¶ 9-10.

[16] The Adversary Proceeding is styled *Noble Supply & Logistics, LLC v. Defense Logistics Agency*, 26-50885-CTG (Bankr. D. Del.).

Contemporaneously with the Complaint, Noble Supply filed a motion for partial summary judgment [Adv. Docket No. 3] (the "Summary Judgment Motion") on its claims against the DLA for $14,566,268.02 for unpaid goods delivered and services provided to the Government prior to the DLA's termination of certain delivery orders on August 27, 2026.

11. Noble Supply filed a motion to expedite consideration of the Summary Judgment Motion, which the Court granted by Order dated October 9, 2026. *See* Adv. Docket Nos. 6, 15. A hearing to consider the Summary Judgment Motion is scheduled for October 28, 2026.

12. On October 13, 2026, the Government filed the Adequate Protection Motion to be heard in conjunction with the Summary Judgment Motion. By the motion, the Government seeks adequate protection of its purported setoff rights in the form of a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code and an escrow of sale proceeds until the Government's setoff rights are liquidated at some indiscriminate time in the future. The Government expressly does not seek to establish its disputed setoff rights or estimate any claims against the Debtors as required by the September 18 Order.

13. The Government's sole alleged basis for setoff is two pending *qui tam* actions, through which the Government claims it is entitled to no less than $266 million in damages and penalties under the False Claims Act. As of the date hereof, the Government's involvement in the *qui tam* actions is investigatory in nature, and the Government has not intervened on behalf of the relator in those actions. The only evidence provided to support the Government's alleged claims is a three-page declaration submitted by a DOJ trial attorney assigned to investigate the Debtors.

14. Prior to filing this Objection, the Debtors conferred with the DOJ to obtain the Government's position on whether the hearing on the Adequate Protection Motion would be an evidentiary hearing. The DOJ confirmed that the hearing would not be an evidentiary hearing

because, in the Government's view, it is not seeking to exercise any setoff rights through the Adequate Protection Motion.

15. In light of the Government's confirmation that the hearing on the Adequate Protection Motion would be non-evidentiary, the Debtors agreed not to object to the admissibility of the *Declaration of Samson Asiyanbi* submitted with the Adequate Protection Motion (the "Asiyanbi Declaration") on grounds that Mr. Asiyanbi will be unavailable for cross-examination at the hearing; *provided that* all other objections to the admissibility of the Asiyanbi Declaration are fully preserved, including, without limitation, certain statements proffered in violation of Rule 408 of the Federal Rules of Evidence. The Debtors further agreed not to seek a deposition of Mr. Asiyanbi in advance of the hearing.

OBJECTION

I. The Adequate Protection Motion is an Impermissible Collateral Attack on the September 18 Order in Direct Violation of the Established Law of These Cases

16. The doctrine of law of the case "requires that matters previously ruled upon by the same court should be put to rest." *Eugenia VI Venture Holdings, Ltd. v. MapleWood Holdings LLC (In re AMC Invs., LLC)*, 637 B.R. 43, 66-67 (Bankr. D. Del. 2022), *aff'd*, 656 B.R. 95 (D. Del. 2024). In other words, "[u]nder the law of the case doctrine, once an issue has been decided, parties may not relitigate that issue in the same case." *Id.* at 67; *LNV Corp. v. Ad Hoc Grp. of Second Lien Creditors (In re La Paloma Generating Co., LLC)*, No. 16-12700 (JTD), 2020 WL 224569, at *3 (Bankr. D. Del. Jan. 13, 2020). The doctrine is intended to promote finality, consistency, and judicial economy. *See Winstar Holdings, LLC v. Blackstone Grp., LP (In re Winstar Commc'ns, Inc.)*, 435 B.R. 33, 39 (Bankr. D. Del. 2010), *aff'd*, No. AP 08-50296-KJC, 2013 WL 6053838 (D. Del. Nov. 15, 2013), *aff'd*, 591 F. App'x 58 (3d Cir. 2015); *see also James Cable, LLC v. Millennium Digit. Media Sys., L.L.C. (In re Broadstripe, LLC)*, 435 B.R. 245, 255

(Bankr. D. Del. 2010) ("[O]nce a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that court unless compelling reason to do so appears.").

17. Courts will depart from a prior ruling only in extraordinary circumstances, such as where there is newly available evidence, an intervening change in controlling law, or a need to correct clear error or prevent manifest injustice. *See In re Pharmacy Benefit Managers Antitrust Litig.*, 582 F.3d 432, 439 (3d Cir. 2009). The Government has not even attempted to demonstrate extraordinary circumstances warranting a departure from the established law of these cases regarding the Government's setoff rights.

18. The Court has already ruled that the Government is not entitled to an administrative freeze or adequate protection as an alternative to establishing its disputed setoff rights through an estimation proceeding. The Adequate Protection Motion is a direct violation of the September 18 Order because the Government seeks indiscriminate and indefinite adequate protection to protect purported setoff rights that it has neither established nor sought to establish. The Court has already rejected this argument, and the Government should not be permitted to relitigate issues already decided by this Court and which are now pending appeal.

II. The Government has Failed to Establish a Claim Against the Debtors

19. The Government would not be entitled to the relief sought even if the Adequate Protection Motion were to be construed as the Government's attempt to comply with the September 18 Order and establish its disputed setoff rights through estimation. That is because the evidentiary record put forth by the Government is wholly insufficient to establish a claim against the Debtors for setoff purposes or otherwise. *See In re Garden Ridge Corp.*, 338 B.R. 627, 632 (Bankr. D. Del. 2006), *aff'd*, 399 B.R. 135 (D. Del. 2008), *aff'd*, 386 F. App'x 41 (3d Cir. 2010) ("The burden of proof is on the party asserting the right to set-off") (internal citations

omitted). Under section 502(c) of the Bankruptcy Code, the Court is empowered to estimate "any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case[.]" 11 U.S.C. § 502(c).

20. "The estimation process is merely a microcosm of the ordinary claims-determination process." *In re FRG, Inc.*, 121 B.R. 451, 456 (Bankr. E.D. Pa. 1990); *see also In re Thgh Liquidating LLC*, No. 19-11689 (JTD), 2020 WL 5409002, at *5 (D. Del. Sept. 9, 2020) (noting that claimant has the burden of proof in an estimation proceeding). In satisfying the claimant's initial burden of production, the claimant must allege sufficient facts to support a legal liability—which in turn creates a *prima facie* valid claim. *See In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992) ("[T]he claimant must allege facts sufficient to support the claim") (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)).

21. Here, the Government bases its right to setoff on a purported $266 million claim under the False Claims Act and submits the Asiyanbi Declaration as the sole evidentiary support for such claim. The declaration does not identify a single transaction involving the Debtors alleged to be fraudulent under the False Claims Act or identify a single factual allegation supporting a claim against the Debtors. It is almost entirely devoid of facts, and the few facts it does allege (notably in paragraphs 6 through 11) are inadmissible under Rule 408 of the Federal Rules of Evidence.

22. Rule 408 prohibits a party from using "conduct or a statement made during compromise negotiations about [a] claim" to prove either the validity or amount of a disputed claim. Fed. R. Evid. 408. Rule 408 reflects a strong federal policy favoring candid settlement negotiations by prohibiting parties from using compromise discussions as evidence of the validity or amount of a disputed claim. *See Affiliated Mfrs., Inc. v. Aluminum Co. of Am.*, 56 F.3d 521,

527-28 (3d Cir. 1995) (explaining that Rule 408 is intended "to encourage freedom of discussion with regard to compromise"); *Cavi v. Evolving Sys. NC, Inc.*, No. CV 15-1211-RGA, 2018 WL 3387474, at *1 (D. Del. May 24, 2018) ("The purpose behind Rule 408 is the 'promotion of the public policy favoring the compromise and settlement of disputes that would otherwise be discouraged with the admission of such evidence.'"). The mere fact that settlement discussions occurred sheds no light on the validity or amount of the Government's asserted (but wholly unestablished) claims against the Debtors.

23. Although the Government stops short of disclosing specific statements made during the parties' settlement discussions, the obvious purpose of paragraphs 6-11 of the Asiyanbi Declaration is to invite the Court to infer that the Government's asserted claims against the Debtors are valid. Those are precisely the type of statements Rule 408 prohibits. Accordingly, paragraphs 6-11 should be deemed inadmissible or accorded no weight in establishing a claim against the Debtors for purposes of setoff or adequate protection.

24. Finally, paragraph 12 of the Asiyanbi Declaration provides a range of penalties the Debtors *could be* assessed if the Government were to establish valid claims under the False Claims Act. But critically, to date, the Government's investigation of the Debtors has not led to the assessment of any fine, any adverse judgment, or any settlement that could even be argued as giving rise to a right to payment against the Debtors that could potentially establish the Government's setoff rights.

25. Moreover, even if the Government had established an evidentiary record to support a *prima facie* claim against the Debtors, any such claim would be heavily disputed and therefore could not provide a basis for setoff against the Debtors' undisputed claims for goods delivered and services provided to the Government. *See Zuch v. Comm'r of Internal Revenue*, 97 F.4th 81, 96

(3d Cir. 2024), *rev'd and remanded on other grounds*, 605 U.S. 422 (2025) ("The right to apply mutual debts to offset each other does not apply when the debts are disputed. Accordingly, a creditor cannot set off a disputed debt with an undisputed one. That is a matter of black letter law."); *see also Janvey v. GMAG, L.L.C.*, 98 F.4th 127, 135 (5th Cir. 2024) (discussing the established equitable rule against "allowing a setoff of a liquidated and an unliquidated claim"). *Cf. Tenet Healthcare Corp. v. Steward Health Care Sys. LLC*, No. CV 2022-0774-MTZ, 2023 WL 2778295, at *3 (Del. Ch. Apr. 4, 2023), *aff'd*, 311 A.3d 806 (Del. 2023) ("[T]here is no right to set-off of a possible unliquidated liability against a liquidated claim that is due and payable").

26. For these reasons, the Government has failed to establish any valid right of setoff for which it might be entitled to adequate protection.

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CONCLUSION

WHEREFORE, the Debtors request that the Court enter an Order: (i) denying the Adequate Protection Motion in its entirety; and (ii) granting the Debtors such other and further relief as the Court deems just and proper.

Dated: October 21, 2026
Wilmington, Delaware

/s/ G. David Dean

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