IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	
Noble Supply & Logistics, LLC, *et al.*,	)	Chapter 11
	)	Case No. 26-11369 (CTG)
	)	
Debtors.[1]	)	(Jointly Administered)
	)	
Noble Supply & Logistics, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 26-50885 (CTG)
	)	
	)	
Defense Logistics Agency,	)	**Related Docket Nos: Adv. 48, 50, 51, 55**
	)	
Defendant.	)	

APPELLANT'S DESIGNATION OF THE ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND LOCAL RULE 8009-1 INDEX

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Appellant United States of America, on behalf of the Defense Logistics Agency ("DLA"), hereby submits its designation ("Designation") of items to be included in the record of appeal from the *Order (I) Granting in Part and Denying in Part Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment, (II) Granting in Part and Denying in Part the United States' Motion to*

[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).

Dismiss, and (III) Denying the United States' Cross-Motion for Summary Judgment [D.I. 50], entered by the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"), Honorable Craig T. Goldblatt, on November 6, 2026, in the above-captioned adversary proceeding, and related index.

DESIGNATION AND LOCAL RULE 8009-1 INDEX

1. Listing of the adversary proceeding docket entries kept by the bankruptcy clerk in the Bankruptcy Court, attached hereto as **Exhibit A**.

2. All documents designated by any other party.

3. Transcript of hearing before the Bankruptcy Court on October 28, 2026, at 10:00 a.m., attached hereto as **Exhibit B**.

4. Noble Supply & Logistics, LLC ("Noble") Exhibit 7, received in evidence during hearing on October 28, 2026, attached hereto as **Exhibit C**.

5. DLA Exhibit US-8, received in evidence during hearing on October 28, 2026, attached hereto as **Exhibit D**.

6. The items listed below from the above referenced docket or attached hereto:

Noble Supply & Logistics, LLC v. Defense Logistics Agency,
Adv. Proc. No. 26-50885 (CTG) (Bankr. D. Del.)

No.	Description	Date	Adv. D.I.
1.	Adversary Complaint	10/06/2026	1
2.	Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment	10/06/2026	3
3.	Brief in Support of Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment	10/06/2026	4
4.	Declaration of Robert Albergotti, Chief Transformation Officer of Noble Equity Holdings, LLC, in Support of Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment	10/06/2026	5
5.	Debtors' Emergency Motion to Expedite Motion for Partial Summary Judgment	10/06/2026	6

6.	United States' Opposition to Debtors' Emergency Motion to Expedite Motion for Partial Summary Judgment	10/07/2026	8
7.	Notice of Hearing re Debtors' Emergency Motion to Expedite Motion for Partial Summary Judgment	10/07/2026	9
8.	PDF File with Audio File Attachment, Hearing Before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge, on October 8, 2026, at 4:00 p.m.	10/08/2026	13
9.	Certificate of Counsel Regarding Revised Proposed Order Expediting Summary Judgment Schedule	10/08/2026	14
10.	Order Expediting Summary Judgment Schedule	10/09/2026	15
11.	United States' Motion to Dismiss the Complaint	10/20/2026	17
12.	Cross Motion for Summary Judgment on Counts I and II, in the Alternative to the Motion to Dismiss ** WITHDRAWN	10/20/2026	18
13.	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	10/20/2026	19
14.	United States' Motion for an Order (I) Shortening Time for Plaintiff to Respond to Motion to Dismiss and Cross-Motion for Summary Judgment and (II) Scheduling a Hearing on the Same for October 28, 2026	10/20/2026	20
15.	United States' Notice of Withdrawal of Documents Filed at Adv. D.I. 18	10/21/2026	22
16.	United States Cross-Motion for Summary Judgment	10/21/2026	23
17.	[Court Docket Entry] The Court Has Reviewed the United States' Motion to Shorten Time [D.I. 20]. Any party that intends to oppose the motion to shorten should advise the Court of that intention (via an email to the courtroom deputy, copied to all parties) by noon today. Any such opposition would be due by 10:00 am on October 22, 2026. In the absence of any party informing the Court of its intention to oppose the motion to shorten, the Court would expect to enter the order shortening notice, in the form proposed, following the expiration of the deadline to respond at noon today. (NAB)	10/21/2026	25
18.	Certification of Counsel Regarding Revised Proposed Order on the United States' Motion to Shorten	10/21/2026	26
19.	Order Shortening Time to Respond to the United States' Motion to Dismiss and Cross-Motion for Summary Judgment and Setting Them for Hearing on October 28, 2026	10/21/2026	28
20.	Notice of Rescheduled Omnibus Hearing Time	10/22/2026	29
21.	Debtors' Witness and Exhibit List for Hearing Scheduled for October 28, 2026, at 10:00 a.m. (Eastern Time)	10/26/2026	31

22.	Reservation of Rights of the Official Committee of Unsecured Creditors to (I) the Motion of the Debtors for Summary Judgment, (II) the Motion of the United States to Dismiss the Complaint, and (III) Cross-Motion of the United States for Summary Judgment	10/26/2026	32
23.	Notice of Agenda of Matters Scheduled for Hearing on October 28, 2026, at 10:00 a.m. (Eastern Time) before the Honorable Craig T. Goldblatt	10/26/2026	33
24.	[Court Docket Entry] The Parties Should be Prepared to Address, at the Hearing Scheduled for October 28, 2026, the Question Whether, in the Event the Court Were to Conclude that it Lacks Jurisdiction to Hear the Claim for Breach of Contract on Account of the United States' Sovereign Immunity, Such Claim Should be Transferred to the Court of Federal Claims Under Section 1631 of Title 28. (NAB)	10/26/2026	34
25.	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	10/27/2026	35
26.	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	10/27/2026	36
27.	Notice of Completion of Briefing Regarding (I) Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment, (II) United States' Motion to Dismiss the Complaint and (III) United States' Cross-Motion for Summary Judgment	10/27/2026	37
28.	Notice of Amended Agenda of Matters Scheduled for Hearing on October 28, 2026, at 10:00 a.m. (Eastern Time) before the Honorable Craig T. Goldblatt	10/27/2026	38
29.	Transcript of Hearing Before the Honorable Craig T. Goldblatt United States Bankruptcy Judge on October 28, 2026, at 10:00 a.m.	10/28/2026	Ex. B
30.	Debtors' Exhibit 1 from hearing on October 28, 2026: Declaration of Amanda Parker in Support of Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights with Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I. 325-2][2]

[2] Entries identified as "D.I." refer to docket entries in the above-captioned lead bankruptcy proceeding *In re Noble Supply & Logistics, et. al.*, Case No. 26-11369 (CTG) (Bankr. D. Del.).

31.	Debtors' Exhibit 2 from hearing on October 28, 2026: Declaration of John S. Cuorato, Jr. in Support of Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights with Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I. 325-3]
32.	Debtors' Exhibit 3 from hearing on October 28, 2026: Declaration of Lauren E. Vendetti in Support of Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights with Respect to Certain DLA Contracts and Delivery Orders [D.I. 325-4]	10/28/2026	[D.I. 325-4]
33.	Debtors' Exhibit 4 from hearing on October 28, 2026: Declaration of Robert Albergotti, Chief Transformation Officer of Noble Equity Holdings, LLC, in Support of Debtors' Limited Objection to Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights with Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I 365]
34.	Debtors' Exhibit 7 from hearing on October 28, 2026: Statement of Work for Contract No. SPE4AX-21-D-9407	10/28/2026	Ex. C
35.	Debtors' Exhibit 8 from hearing on October 28, 2026: Declaration of Samson Asiyanbi re: 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	10/28/2026	[D.I. 327-2]
36.	Debtors' Exhibit 9 from hearing on October 28, 2026: Declaration of Alastair Gesmundo re: 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	10/28/2026	[D.I. 327-3]
37.	DLA Exhibit US-1 from hearing on October 28, 2026: Declaration of Amanda Parker in Support of Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights With Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I. 325-2]
38.	DLA Exhibit US-2 from hearing on October 28, 2026: Declaration of John S. Cuorato, Jr. in Support of Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights With Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I. 325-3]
39.	DLA Exhibit US-3 from hearing on October 28, 2026: Declaration of Lauren E. Vendetti in Support of Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights With Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I. 325-4]

40.	DLA Exhibit US-4 from hearing on October 28, 2026: Declaration of Robert Albergotti, Chief Transformation Office of Noble Equity Holdings, LLC, in Support of the Debtors' Chapter 11 Petitions and First Day Motions	10/28/2026	[D.I. 15]
41.	DLA Exhibit US-5 from hearing on October 28, 2026: Adversary Complaint	10/28/2026	[1]
42.	DLA Exhibit US-6 from hearing on October 28, 2026: Declaration of Robert Albergotti, Chief Transformation Officer of Noble Equity Holdings, LLC, in Support of Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment	10/28/2026	[5]
43.	DLA Exhibit US-7 from hearing on October 28, 2026: Exhibit B (Blackline of Debtors' Proposed Order) to Debtors' Limited Objection to Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights With Respect to Certain DLA Contracts and Delivery Orders	10/28/2026	[D.I. 363-2]
44.	DLA Exhibit US-8 from hearing on October 28, 2026: Transcript of Hearing Before the Honorable Craig T. Goldblatt United States Bankruptcy Judge on September 16, 2026, at 10:00 a.m.	10/28/2026	Ex. D
45.	DLA Exhibit US-9 from hearing on October 28, 2026: Declaration of Samson Asiyanbi	10/28/2026	[D.I. 327-2]
46.	DLA Exhibit US-10 from hearing on October 28, 2026: Exhibit C (Declaration of Alastair M. Gesmundo) 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	10/28/2026	[D.I. 327-3]
47.	DLA Exhibit US-11 from hearing on October 28, 2026: Declaration of Sean Cunniff in Support of United States' Objection to Debtors' Emergency Motion for Entry of an Order (I) Compelling the Defense Logistics Agency to Perform Under Executory Contracts, (II) Enforcing the Automatic Stay, (III) Ordering the Defense Logistics Agency to Cease All Violations of the Automatic Stay, and (IV) Granting Related Relief	10/28/2026	[D.I. 125]
48.	Letter to the Honorable Craig T. Goldblatt Regarding October 28 Issues Filed by Noble	10/30/2026	41
49.	Letter to the Honorable Craig T. Goldblatt Regarding October 28 Issues Filed by DLA	10/30/2026	42
50.	Memorandum Opinion	11/02/2026	43
51.	Corrective Entry – replaced document because of typographical error. (related document 43)	11/03/2026	45
52.	Certification of Counsel Regarding Order (I) Granting in Part and Denying in Part Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment, (II) Granting in Party and Denying in Part the United States' Motion to Dismiss, and (III) Denying the United States' Cross-Motion for Summary Judgment	11/4/2026	47

53.	Notice of Appeal	11/05/2026	48
54.	Order (I) Granting in Part and Denying in Part Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment, (II) Granting in Party and Denying in Part the United States' Motion to Dismiss, and (III) Denying the United States' Cross-Motion for Summary Judgment	11/06/2026	50
55.	Amended Notice of Appeal	11/06/2026	51
56.	[Order from District Court] Order Granting A Temporary Stay and Setting a Response Deadline	11/09/2026	54
57.	Amended Memorandum Opinion	11/09/2026	55
58.	[Order from District Court] Order	11/16/2026	57

RESERVATION OF RIGHTS

The Appellant reserves and does not waive its right to supplement the foregoing Designation and index and/or to incorporate by reference, object to, or otherwise supplement, counter-designate, or move to strike or modify, any additional items designated for inclusion in the record on appeal by other parties. This filing is made subject to, and without waiver of, any rights, remedies, challenges, and objections.

Dated: November 20, 2026

Respectfully submitted,

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Acting Assistant Attorney General

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EXHIBIT A

APPEAL

U.S. Bankruptcy Court
District of Delaware (Delaware)
Adversary Proceeding #: 26-50885-CTG

Assigned to: Bankruptcy Judge Craig T Goldblatt
Lead BK Case: 26-11369
Lead BK Title: Noble Supply & Logistics, LLC
Lead BK Chapter: 11
Demand: $18960000

Date Filed: 10/06/26

Nature[s] of Suit: 11 Recovery of money/property - 542 turnover of property

Plaintiff

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Tax ID / EIN: 04-2767926

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V.

Defendant

Defense Logistics Agency

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Defendant

UNITED STATES OF AMERICA

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Creditor Committee

Committee of Unsecured Creditors

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Filing Date	#	Docket Text
10/06/2026	1 (14 pgs)	Adversary case 26-50885. Complaint by Noble Supply & Logistics, LLC against Defense Logistics Agency. Fee Amount $350 (11 (Recovery of money/property - 542 turnover of property)). AP Summons Served due date: 1/4/2027. (Dean, G.) (Entered: 10/06/2026)
10/06/2026	2 (4 pgs; 3 docs)	Summons and Notice of Pretrial Conference Served on Defendant Defense Logistics Agency. (related document1) (Attachments: # 1 Certificate of Service # 2 Notice of Dispute Resolution Alternatives) (Dean, G.) (Entered: 10/06/2026)
10/06/2026	3 (7 pgs; 2 docs)	Motion For Summary Judgment *(Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment)* (related document(s)1) Filed by Noble Supply & Logistics, LLC (related document(s)1). (Attachments: # 1 Exhibit A - Proposed Order) (Dean, G.) (Entered: 10/06/2026)
10/06/2026	4 (26 pgs)	Brief *in Support of Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment* (related document(s)3) Filed by Noble Supply & Logistics, LLC. (Dean, G.) (Entered: 10/06/2026)
10/06/2026	5 (212 pgs; 2 docs)	Declaration *of Robert Albergotti, Chief Transformation Officer of Noble Equity Holdings, LLC, in Support of Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment* (related document(s)3) Filed by Noble Supply & Logistics, LLC. (Attachments: # 1 Exhibits A - E) (Dean, G.) (Entered: 10/06/2026)
10/06/2026	6 (12 pgs; 2 docs)	Motion to Shorten *(Debtors' Emergency Motion to Expedite Motion for Partial Summary Judgment)* (related document(s)3) Filed by Noble Supply & Logistics, LLC. (Attachments: # 1 Exhibit A - Proposed Order) (Dean, G.) (Entered: 10/06/2026)
10/06/2026	7	Receipt of filing fee for Complaint(26-50885-CTG) [cmp,cmp] (350.00). Receipt Number A12851322, amount $ 350.00. (U.S. Treasury) (Entered: 10/06/2026)
10/07/2026	8 (4 pgs)	Objection *to Motion to Shorten (Debtors' Emergency Motion to Expedite Motion for Partial Summary Judgment)* (related document(s)6) Filed by Defense Logistics Agency (Lamb, Ryan) (Entered: 10/07/2026)

10/07/2026	9 (2 pgs)	Notice of Hearing (related document(s)9) Filed by Noble Supply & Logistics, LLC. Hearing scheduled for 10/8/2026 at 04:00 PM at Virtual Hearing: Refer to Notice of Zoom Hearing. (related document(s)6) (Reilley, Patrick) (Entered: 10/07/2026)
10/07/2026	10 (4 pgs)	Certificate of Service *re: Documents Served on October 6, 2026* (related document(s)1, 2, 3, 4, 5, 6) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 10/07/2026)
10/07/2026	11 (4 pgs)	Certificate of Service *re: Notice of Hearing re: Debtors' Emergency Motion to Expedite Motion for Partial Summary Judgment* (related document(s)9) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 10/07/2026)
10/08/2026	12 (4 pgs)	Notice of Appearance. Filed by Committee of Unsecured Creditors (Waxman, Jeffrey) (Entered: 10/08/2026)
10/08/2026	13 (1 pg)	Court Date & Time [10/08/2026 03:59:57 PM]. File Size [12238 KB]. Run Time [00:25:48]. (admin). (Entered: 10/08/2026)
10/08/2026	14 (9 pgs; 3 docs)	Certification of Counsel *Regarding Revised Proposed Order Expediting Summary Judgment Schedule* (related document(s)3, 6, 8) Filed by Noble Supply & Logistics, LLC. (Attachments: # 1 Exhibit A - Revised Proposed Order # 2 Exhibit B - Blackline) (Dean, G.) (Entered: 10/08/2026)
10/09/2026	15 (2 pgs)	Order Expediting Summary Judgment Schedule (related document(s)6, 14) Signed on 10/9/2026. (NAB) (Entered: 10/09/2026)
10/14/2026	16 (6 pgs)	Certificate of Service *re: Order Expediting Summary Judgment Schedule* (related document(s)15) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 10/14/2026)
10/20/2026	17 (8 pgs; 2 docs)	Motion to Dismiss Adversary Proceeding Filed by Defense Logistics Agency. (Attachments: # 1 Proposed Form of Order) (Lamb, Ryan) (Entered: 10/20/2026)
10/20/2026	18 (8 pgs; 2 docs)	**WITHDRAWN - See Docket No. 22** Cross Motion For Summary Judgment *on Counts I and II, in the Alternative to the Motion to Dismiss* (related document(s)3, 17) Filed by Defense Logistics Agency (related document(s)17, 3). (Attachments: # 1 Exhibit A) (Lamb, Ryan)Modified on 10/21/2026 (ALD). (Entered: 10/20/2026)
10/20/2026	19 (144 pgs; 5 docs)	Response *and Brief in Opposition to Motion for Partial Summary Judgement and in Support of Motion to Dismiss and Cross-Motion for Summary Judgement* (related document(s)3, 17, 18) Filed by Defense Logistics Agency (Attachments: # 1 Exhibit 1 - Summary of DLA's Review of Noble's Schedule # 2 Declaration of John S. Cuorato, Jr. # 3 Exhibit A (Part 1, Exs. A-1 to A-3) to Cuorato Declaration # 4 Exhibit A (Part 2, Exs. A-4 to A-11) to Cuorato Declaration) (Lamb, Ryan) (Entered: 10/20/2026)
10/20/2026	20 (9 pgs; 2 docs)	Motion to Shorten *United States' Motion to Shorten Time for Plaintiff to Respond to Motion to Dismiss and Cross-Motion for Summary Judgement and to Schedule a Hearing on October 28, 2026* (related document(s)17, 18, 19) Filed by Defense Logistics Agency. (Attachments: # 1 Exhibit A - Proposed Order) (Lamb, Ryan) (Entered: 10/20/2026)

10/20/2026	21 (2 pgs)	Certificate of Service (related document(s)17, 18, 19, 20) Filed by Defense Logistics Agency. (Lamb, Ryan) (Entered: 10/20/2026)
10/21/2026	22 (3 pgs)	Notice of Withdrawal of *Documents Filed at Adv. D.I. 18 in Error (Cross-Motion for Summary Judgement Refiled)* (related document(s)18) Filed by Defense Logistics Agency (Lamb, Ryan) (Entered: 10/21/2026)
10/21/2026	23 (8 pgs; 2 docs)	Cross Motion For Summary Judgment *on Counts I and II, in the Alternative to the Motion to Dismiss (Refiled to Correct Adv. D.I. 18)* (related document(s)3, 17, 19, 22) Filed by Defense Logistics Agency (related document(s)3, 19, 17, 22). (Attachments: # 1 Exhibit A - Proposed Order) (Lamb, Ryan) (Entered: 10/21/2026)
10/21/2026	24 (1 pg)	Certificate of Service *re: Notice of Withdrawal of Documents Filed at Adv. D.I. 18 and Refiled Cross Motion for Summary Judgment* (related document(s)22, 23) Filed by Defense Logistics Agency. (Lamb, Ryan) (Entered: 10/21/2026)
10/21/2026	25	The Court has reviewed the United States' motion to shorten time [D.I. 20]. Any party that intends to oppose the motion to shorten should advise the Court of that intention (via an email to the courtroom deputy, copied to all parties) by noon today. Any such opposition would be due by 10:00 am on October 22, 2026. In the absence of any party informing the Court of its intention to oppose the motion to shorten, the Court would expect to enter the order shortening notice, in the form proposed, following the expiration of the deadline to respond at noon today. (NAB) (Entered: 10/21/2026)
10/21/2026	26 (8 pgs; 3 docs)	Certification of Counsel *Regarding Revised Proposed Order on United States' Motion to Shorten* (related document(s)20) Filed by Defense Logistics Agency. (Attachments: # 1 Exhibit A - Revised Proposed Order # 2 Exhibit B - Blackline) (Lamb, Ryan) (Entered: 10/21/2026)
10/21/2026	27 (1 pg)	Certificate of Service *re: Certification of Counsel Regarding Revised Proposed Order on United States' Motion to Shorten* (related document(s)26) Filed by Defense Logistics Agency. (Lamb, Ryan) (Entered: 10/21/2026)
10/21/2026	28 (2 pgs)	Order Shortening Time to Respond to the United States' Motion to Dismiss and Cross-Motion for Summary Judgment and Setting Them for Hearing on October 28, 2026 (related document(s)17, 20, 23, 26) Signed on 10/21/2026. (NAB) (Entered: 10/21/2026)
10/22/2026	29 (2 pgs)	Notice of Rescheduled Hearing *Time.* Hearing Originally Scheduled for October 28, 2026 at 2:00 p.m. has been rescheduled. Filed by Noble Supply & Logistics, LLC. Hearing scheduled for 10/28/2026 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #5, Wilmington, Delaware. (Reilley, Patrick) (Entered: 10/22/2026)
10/23/2026	30 (6 pgs)	Certificate of Service *re: Notice of Rescheduled Omnibus Hearing Time* (related document(s)29) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 10/23/2026)
10/26/2026	31 (3 pgs)	Exhibit(s) *(Debtors' Witness and Exhibit List for Hearing Scheduled for October 28, 2026 at 10:00 a.m. (Eastern Time)).* Filed by Noble Supply & Logistics, LLC. (Dean, G.) (Entered: 10/26/2026)
10/26/2026	32 (4 pgs; 2 docs)	Exhibit(s) *// Reservation of Rights of the Official Committee of Unsecured Creditors to (I) the Motion of the Debtors for Summary Judgment, (II) the Motion of the United States to Dismiss the Complaint, and (III) Cross-Motion of the United States for Summary Judgment* (related document(s)3, 17, 23)

		Filed by Committee of Unsecured Creditors. (Attachments: # 1 Certificate of Service) (Waxman, Jeffrey) (Entered: 10/26/2026)
10/26/2026	33 (8 pgs)	Notice of Agenda of Matters Scheduled for Hearing Filed by Noble Supply & Logistics, LLC. Hearing scheduled for 10/28/2026 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #5, Wilmington, Delaware. (Dougherty, Jack) (Entered: 10/26/2026)
10/26/2026	34	The parties should be prepared to address, at the hearing scheduled for October 28, 2026, the question whether, in the event the Court were to conclude that it lacks jurisdiction to hear the claim for breach of contract on account of the United States' sovereign immunity, such claim should be transferred to the Court of Federal Claims under Section 1631 of Title 28. (NAB) (Entered: 10/26/2026) (NAB) (Entered: 10/26/2026)
10/27/2026	35 (31 pgs)	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* (related document(s)4) Filed by Noble Supply & Logistics, LLC. (Dean, G.) (Entered: 10/27/2026)
10/27/2026	36 (22 pgs; 2 docs)	Supplemental 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* (related document(s)5) Filed by Noble Supply & Logistics, LLC. (Attachments: # 1 Exhibits A - C-2) (Dean, G.) (Entered: 10/27/2026)
10/27/2026	37 (4 pgs)	Notice of Completion of Briefing. (related document(s)3, 4, 5, 6, 15, 17, 19, 20, 23, 28, 32, 35, 36) Filed by Noble Supply & Logistics, LLC (Dougherty, Jack) (Entered: 10/27/2026)
10/27/2026	38 (9 pgs)	Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)33) Filed by Noble Supply & Logistics, LLC Hearing scheduled for 10/28/2026 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #5, Wilmington, Delaware. (Dougherty, Jack) (Entered: 10/27/2026)
10/27/2026	39 (6 pgs)	Certificate of Service *re: 1) Debtors' Witness and Exhibit List for Hearing Scheduled for October 28, 2026 at 10:00 a.m. (Eastern Time); and 2) Notice of Agenda of Matters Scheduled for Hearing on October 28, 2026 at 10:00 a.m. (Eastern Time) Before the Honorable Craig T. Goldblatt* (related document(s)31, 33) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 10/27/2026)
10/27/2026	40 (6 pgs)	Certificate of Service *re: Documents Served on October 27, 2026* (related document(s)35, 36, 37, 38) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 10/27/2026)
10/30/2026	41 (12 pgs)	Letter *to the Honorable Craig T. Goldblatt regarding October 28 Issues* Filed by Noble Supply & Logistics, LLC. (Dean, G.) (Entered: 10/30/2026)
10/30/2026	42 (29 pgs; 2 docs)	Letter *to the Honorable Craig T. Goldblatt regarding October 28 Issues* (related document(s)3, 4, 5, 17, 19, 23) Filed by Defense Logistics Agency. (Attachments: # 1 Exhibit A) (Lamb, Ryan) (Entered: 10/30/2026)
11/02/2026	43 (48 pgs)	Opinion Regarding Motion for Summary Judgement. (related document(s)3, 17, 23) (NWW) (Entered: 11/02/2026)
11/03/2026	44	Transcript regarding Hearing Held 10/28/26 RE: Motion for Limited Relief from the Automatic Stay, Motion for Adequate Protection. Partial Summary

		Judgement.. Remote electronic access to the transcript is restricted until 2/1/2027. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For information about how to obtain a transcript, call the Clerk's Office or Contact the Court Reporter/Transcriber, Reliable, at Telephone number 302-654-8080. Filed by Defense Logistics Agency , Noble Supply & Logistics, LLC . Notice of Intent to Request Redaction Deadline Due By 11/10/2026. Redaction Request Due By 11/24/2026. Redacted Transcript Submission Due By 12/4/2026. Transcript access will be restricted through 2/1/2027. (TMM) (Entered: 11/03/2026)
11/03/2026	45	Corrective Entry - replaced document because of typographical error. (related document(s)43) (Washington, Nikki) (Entered: 11/03/2026)
11/03/2026	46 (6 pgs)	Certificate of Service *re: Letter to the Honorable Craig T. Goldblatt Regarding October 28 Issues* (related document(s)41) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 11/03/2026)
11/04/2026	47 (7 pgs; 2 docs)	Certification of Counsel *Regarding Order (I) Granting in Part and Denying in Part Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment, (II) Granting in Part and Denying in Part the United States' Motion to Dismiss, and (III) Denying the United States' Cross-Motion for Summary Judgment* (related document(s)3, 17, 23, 43) Filed by Noble Supply & Logistics, LLC. (Attachments: # 1 Exhibit A - Proposed Order) (Dean, G.) (Entered: 11/04/2026)
11/05/2026	48 (3 pgs)	[See Doc. 51] Notice of Appeal . Fee Amount $298. (related document(s)43) Appellants listed as: United States of America. Appellees listed as: Noble Supply & Logistics, LLC. Filed by UNITED STATES OF AMERICA. (Curtis, Augustus)Modified on 11/6/2026 (KR). (Entered: 11/05/2026)
11/06/2026	49	Receipt of filing fee for Notice of Appeal (Ap)(26-50885-CTG) [appeal,ntcapl] (298.00). Receipt Number Exempt, amount $ 298.00. (Hollis) (Entered: 11/06/2026)
11/06/2026	50 (3 pgs)	Order (I) Granting in Part and Denying in part Motion of Noble Supply & Logistics, LLC for Partial Summary Judgement, (II) Granting in Part and Denying in Part the United States' Motion to Dismiss, and (III) Denying the United States' Cross-Motion for Summary Judgement. (related document(s)47) Signed on 11/6/2026. (NWW) (Entered: 11/06/2026)
11/06/2026	51 (56 pgs; 2 docs)	Amended Notice of Appeal .[BAP 26-67] (related document(s)50.) Appellants listed as: United States of America. Appellees listed as: Noble Supply & Logistics, LLC. Filed by UNITED STATES OF AMERICA. (Attachments: # 1 Exhibit "A") (Curtis, Augustus). (Entered: 11/06/2026)
11/06/2026	52 (109 pgs; 4 docs)	Transmittal of Record on Appeal to District Court [BAP 26-67] (Attachments: # 1 Amend Notice of Appeal (D.I. 51) (2) Order on Appeal (D.I. 50) (3) Memorandum Opinion on Appeal D.I. 43) (related document(s) 51) (KR) (Entered: 11/06/2026)
11/06/2026	53 (2 pgs; 2 docs)	Clerk's Notice Regarding Filing of Appeal (related document(s)51) [BAP 26-67] (related document(s) 51) (KR) (Entered: 11/06/2026)
11/09/2026	54 (2 pgs)	Order from District Court Granting a Temporary Administrative Stay of Bankruptcy Court's Order at Bankr. D.I. 50 until November 16, 2026 until 5:00pm. (related document(s)50) Judge J. Hall. Signed on 11/6/2026. (KR) (Entered: 11/09/2026)

11/09/2026	55 (50 pgs)	(Amended) Opinion Regarding Noble & Logistics Supply v. Defense Logistics Agency (related document(s)43) (NWW) (Entered: 11/09/2026)
11/13/2026	56 (6 pgs)	Certificate of Service *re Order (I) Granting in Part and Denying in part Motion of Noble Supply & Logistics, LLC for Partial Summary Judgement, (II) Granting in Part and Denying in Part the United States' Motion to Dismiss, and (III) Denying the United States' Cross-Motion for Summary Judgement* (related document(s)50) Filed by Kurtzman Carson Consultants, LLC dba Verita Global. (Kass, Albert) (Entered: 11/13/2026)
11/16/2026	57 (14 pgs; 2 docs)	Order From District Court Extending Stay of Adv. Order at D.I. 50 until 11/23/26. (related document(s)50, 51, 54) Signed on 11/13/2026 by Judge J. Hall. (Attachments: # 1 Memorandum Opinion) (KR) (Entered: 11/16/2026)

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EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 26-11369 (CTG)
NOBLE SUPPLY & LOGISTICS, LLC, *et al.*,	.	(Jointly Administered)
Debtors.	.	
. . . . .	.	
NOBLE SUPPLY & LOGISTICS, LLC,	.	Adversary Proceeding No. 26-50885 (CTG)
Plaintiff,	.	
v.	.	
DEFENSE LOGISTICS AGENCY,	.	Courtroom No. 7 824 Market Street Wilmington, Delaware 19801
Debtors.	.	
	.	Wednesday, October 28, 2026
. . . . .	.	10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

Audio Operator: Alyce Doody, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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Agenda Item 4: Motion of the United States for Limited Relief from the Automatic Stay to Exercise Termination Rights With Respect to Certain DLA Contracts and Delivery Orders (Filed October 13, 2026) [Docket No. 325]

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Agenda Item 5: 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 (Filed October 13, 2026) [Docket No. 327]

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Agenda Item 6: Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment (Filed October 6, 2026) [Noble Supply & Logistics, LLC v. Defense Logistics Agency, Adv. Proc. No. 26-50885] [Adv. Docket No. 3]

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Agenda Item 8: United States' Cross-Motion for Summary Judgment (Filed October 21, 2026) [Noble Supply & Logistics, LLC v. Defense Logistics Agency, Adv. Proc. No. 26-50885] [Adv. Docket No. 23]

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(Proceedings commenced at 10:00 a.m.)

THE CLERK: All rise.

THE COURT: Be seated.

Good morning. We're on the record in In Re: Noble Supply & Logistics, LLC, which is Case Number 26-11369, as well as the adversary. That's Noble Supply & Logistics v. Defense Logistics Agency, which is Adversary Number 26-50885.

Mr. Dean?

MR. DEAN: Good morning, Your Honor.

David Dean, of Cole Schotz, on behalf of the debtors, and with me are my co-counsel and also with us today is Mr. Albergotti, the debtor's Chief Transformation Officer, who you'll hear from later today when we get to the lift stay supplemental direct.

I'd like to start by thanking the Court for starting this hearing a little bit earlier than 2:00, given the important and number of adversary matters that we have scheduled before the Court today.

Before I dive into the agenda and walk the Court through that, I'd like to just give the Court a brief case update.

THE COURT: Yeah, that would be helpful.

MR. DEAN: At the last scheduling conference though, you asked a very fair question, and that was how do

the ongoing disputes with the Government affect the sale process, given that we're in the business of government contracting and the debtor's position from the onset has been that we won't try to assume and assign contracts without the Government's consent.

In other words, is there a real Chapter 11 case here if the debtors and the Government aren't willing -- aren't able to get on the same page, and the answer to that question is yes, Your Honor.

I just want to let the Court know the bid deadline is in two days. It's on Friday and, as of today, we have about a dozen prospective bidders in the data room working with our banking team. We have prospective bidders looking at the Noble IQ business that does not involve the contracts with the DLA. We have bidders considering a full business bid that would not be conditioned on contract novations.

Now, no one, of course, knows how this is going to end, Your Honor, but I think the important point for today is the DLA, Noble's largest customer, made it clear to the world weeks ago in its filings that it would not novate our contracts and, despite that, Your Honor, all of these prospective bidders continue to do their work and, with a successful sale process, Your Honor, with the timely collection of the funds that the DLA has wrongfully withheld from us, we're confident that our primary stakeholders, the

term lenders represented by McDermott, the Creditors' Committee, represented by Brown Rudnick, both of whom have been incredibly supportive of our efforts to date -- we're confident that they'll help us find an appropriate path to confirmation and a sale.

Now, I'd like to also confirm that since our last hearing, we have engaged with settlement discussions with the Government and, as I'm sure is obvious by the pleadings that had been filed recently and the fact that we're here today, we have not yet been able to reach any resolution with the Government on any of the pending matters before the Court.

So, we're hoping that the Court's decisions that we'll seek today will give some clarity on the various issues surrounding the payment obligations of DLA, which will allow us, hopefully, to fund the rest of these cases and get to a successful sale.

Now, with that background, Your Honor, I'd like to just walk through the agenda for today's hearing just to set the stage for a bit, including some of the evidentiary agreements that we've reached with the DLA on the exhibits.

THE COURT: Okay. And I should say before you get too much further, you know, I appreciate that this is a situation where time is of some importance and the issues presented in the papers are quite interesting, but this isn't a circumstance that would -- where I have the luxury of

stewing around interesting issues and writing a long opinion with my thoughts on them.

So I appreciate that this is a circumstance where you're going to need decisions and so I've, therefore, given some thought to the questions that have -- just from what I know in the papers and it probably, at some point before we launch -- I -- look, in a normal world, I would have written something down and sent it out a couple days ago to give you all the benefit of this before you come in and life is imperfect in that regard and so I wasn't able to do that.

I do want to hear sort of where you are and what you've agreed to and give you all a chance to say what I -- what you think I should know before we go too far but I also think it might be helpful to the process just -- again, nothing I'm going to say is a ruling, but I think it might be helpful to all of you -- I used to appreciate understanding what the judge was thinking going in so that I know what the target is at which I'm shooting and so I want to give you that at whatever point it would be helpful.

MR. DEAN: Yeah, and I think where that would be helpful is if -- if I could just set the stage and walk through the agenda and kind of give you an overview of how we see things going today before -- and then I was planning on, after going through all of that and the exhibits, turning it over to the Government to present the main case motions, and

I think at that point, I think that your --

THE COURT: Okay.

MR. DEAN: -- those comments would be most helpful.

Now, as far as order is concerned, we would propose to deal with the adequate protection motion first because that one is not going to result in any evidentiary presentation.

The parties have agreed to stipulate to the admission of the declaration submitted with the motion and to argue that one on the papers, subject to the Court's approval.

So we'd like to have the Government present that first, followed by the lift stay motion and then we would roll into the adversary motion.

THE COURT: Okay.

MR. DEAN: So that's how we propose to deal with it and we would call Mr. Albergotti to the stand in connection with the lift stay motion for supplemental.

Now, today, Your Honor --

THE COURT: Can I ask you this? I don't want to get too far ahead of the parties, but if I understand the universe correctly, the difference between the parties' positions on the lift stay is pretty narrow, right?

MR. DEAN: It's even narrower than it was in the

papers because --

THE COURT: Okay.

MR. DEAN: -- we've actually provided you with an exhibit book and your clerk and there's on the stand and --

THE COURT: Okay.

MR. DEAN: -- it -- and when I get to the exhibits, I'll kind of walk you through it.

THE COURT: All right.

MR. DEAN: But we've narrowed the issues.

THE COURT: Okay.

MR. DEAN: And when I get to that, I'll tell you about that.

THE COURT: All right.

MR. DEAN: So today, Your Honor, the Court, in total, is being asked to decide five motions, starting with the Government's adequate protection motion which it elected to file in lieu of a motion to establish disputed setoff rights through an estimation process and through which the Government seeks an escrow of all sale proceeds of the superpriority claim that would prime our secured lenders. As I noted, the parties are in agreement on that declaration and we would argue that on the paper.

Next is we were just discussing we have the lift stay motion. We filed a limited objection to that motion. Our basis objection is we don't want them terminating on

orders that have already been delivered. They filed a reply contesting the evidentiary declaration of Mr. Albergotti and the sufficiency of it because he basically said in his declaration I went through and -- I went through their schedule, I looked at the company's records, and I run a blackline comparing what we think had been delivered and some of which -- much of which, ironically, have already been paid for.

And over the weekend, we spent -- and Mr. Albergotti's team spent a lot of time trying to narrow that -- those 2,000 lines that we contested down to a few hundred. Some of them were so small and the exercise was so difficult to do over the weekend that we've limited our objections to the larger ones that we can prove at this hearing and we actually gave the Government, on Sunday, a production of documents to underline the voluminous record exhibit that are in the witness binders that we handed up. So we'll go through all of that as we go through the lift stay.

Now, finally, Your Honor, we have the three adversary motions. Our summary judgment motion for turnover and, in the alternative, for breach of contract, but it's primarily for turnover, and the Government's cross motion for summary judgment and a corollary 12(b)(6) motion, and the underlying question, Your Honor, of whether there's a *bona*

fide dispute over the goods and services delivered to and retained by the Government under the foreign applicable law. That will be argued, of course, by the parties on the papers because it's summary judgment and we'll be relying on the submissions provided therein.

Now, each of the motions, Your Honor, we'll hear today all come with a common theme, and that's the Government's nonpayment for goods and services by its own admission. It received, retained, did not reject, but now will not pay for or process.

Every motion today is derivative of that them, Your Honor. We still don't get why. It's never been explained to us by the Government. But, unfortunately, we're out of time for those explanations. Noble needs to be paid what it's rightfully owed and needs the funding the maximize value for the stakeholders.

So with that, as I previewed, I'd like to just talk briefly about the exhibits because I think it's helpful to deal with all of these up front, since we have stipulations. We filed one list of exhibits for the whole hearing and covered everything.

We did not put the summary judgment exhibits in our exhibit binder because our view is it's not an evidentiary hearing so we would just be relying on the record.

Our exhibit list is found at Docket Number 397. We have -- we submitted 12 exhibits, Your Honor. The Government has stipulated to the admissibility of all of the exhibits except for Exhibits 5 and 6, which are the exhibits that are in the witness binder and the witness binder for Mr. Albergotti is tabbed 4, 5, and 6. So it correlates with the numbering of the exhibit list.

4 is his opening declaration in support of the lift stay. There's an agreement that that would come into evidence as his direct. We would then call him for supplemental direct to deal with the evidentiary objections raised in the reply and discuss and then move into evidence during that examination Exhibits 5 and 6.

The Government's exhibit list is found at Docket 400. They submitted 11 exhibits. Some of them are overlapping with the exhibits that we submitted but the debtors have stipulated to the admissibility of all of the Government's exhibits for the purposes of the hearing.

And so at this time, before we move to the various motions, Your Honor -- and I'll just do this globally, just for convenience and brevity, I would move in all of the exhibits on the debtors' list, 1 through 12, other than 5 and 6, and I would also ask, under the stipulation, that the Government's exhibits also be admitted for the purposes of today's hearings.

THE COURT: Okay. Any objection from the Government?

MR. LAMB: No objection, Your Honor.

THE COURT: Okay. So just so I understand it -- so what I've got in front of me are two binders of Government exhibits and they run 1 through 9. And I also have what's labeled Albergotti Exhibit Binder and it's got 4, 5, and 6. I take it -- so help me understand --

MR. DEAN: Yeah, let me --

THE COURT: -- what I've just admitted into evidence.

MR. LAMB: Your Honor, there should only be one binder for the U.S. exhibits.

THE COURT: And for the United States.

MR. LAMB: For the United States.

THE COURT: So I don't have any confusion there.

MR. LAMB: Okay. Okay.

THE COURT: So for the United States, I've got a single binder and its exhibits are labeled U.S. 1 through U.S. 11, and those I understand are all admitted, right?

MR. LAMB: Correct.

(Government Exhibits 1 through 11, received in evidence)

THE COURT: Okay. So that much I understand. With respect --

MR. DEAN: And then our global exhibit binder has 12 exhibits in it.

THE COURT: Okay.

MR. DEAN: 1 through 12.

THE COURT: All right. So I only go through 9 but we'll worry about that when we get there.

MR. DEAN: I -- we have extra copies if you need --

THE COURT: If --

MR. DEAN: -- another one.

THE COURT: Unless I'm missing something.

MR. DEAN: Two --

THE COURT: Is this --

MR. DEAN: Are there two volumes?

THE COURT: The second version I have has X through 9 in it.

MR. DEAN: Okay. I have a Volume 1 that I can hand up with 1 through 5.

THE COURT: All right. So that I seem to have. I've got Volume 1 with 1 through 5. It's Volume 2 that I've got that ends at 9.

MR. DEAN: Volume 1 -- that's right. Volume 1 is 1 through 5 and Volume 2 is 6 through 9.

THE COURT: Okay. So you told me there were 12. So help me.

MR. DEAN: One second, please.

(Pause)

MR. DEAN: Oh, I'm sorry. I misread the exhibit list. The last three are reservations to call extra witnesses and things. So it's 1 through 9. I'm sorry.

THE COURT: Got it. Okay.

MR. DEAN: So 1 through --

THE COURT: All good. No worries.

MR. DEAN: 1 through 9, except for 5 and 6, and everything in all of the exhibits are docketed except for 5, 6, and 7. Exhibit 7 is the FSG work order contract.

THE COURT: Okay.

MR. DEAN: Okay?

THE COURT: All right. Very well.

MR. DEAN: Sorry about that, Your Honor.

THE COURT: I appreciate that.

MR. DEAN: Apologize.

THE COURT: No, no, no. I'm sorry for being the slowest one in the room, though those of you who come here often are used to that.

(Debtors' Exhibits 1 through 4 and 7 through 9, received in evidence)

MR. DEAN: So, Your Honor, with that -- with those opening remarks and the exhibits, I would then turn it over for the Government to present the adequate protection motion

but we'd love to hear your thoughts --

THE COURT: Yeah, why don't --

MR. DEAN: -- as well.

THE COURT: Before I offer my overarching thoughts, why don't I hear -- if the Government wants to respond to any -- what you just said. That seems only fair. And then we can see where we are.

Happy to hear from either or both of you.

MR. LAMB: Thank you, Your Honor.

Ryan Lamb, for the United States. We don't have any disagreement with what was just presented.

THE COURT: Okay. All right. So do the parties agree it makes sense, to the extent I've got thoughts, to share them at this point?

MR. LAMB: Yes, Your Honor.

THE COURT: All right. And, again, let me say none of what I'm about to say is a ruling. It's sort of my best effort to describe to you what I'm thinking after having reviewed the papers and all of your rights to tell me that any and all of what I'm about to say is wrong or totally reserved.

But just because there's, you know, some time sensitivity to getting to a resolution of these matters, I thought it would be efficient so -- for you to know where I am.

So before I talk about the motions themselves, let me just say a couple of words about the -- there's this back and forth in the papers about either -- sort of how things have unfolded in this case until today. The debtor accuses the Government of bringing a collateral attack on a prior order. The Government makes allegations about information that wasn't called to my attention at a prior hearing and argues all of that should have been disclosed sooner.

And at least as I start today, I've got to say my instinct on all of these issues is I remain inclined to believe that all of the lawyers who are appearing in front of me are acting in good faith, that everyone is doing their best in a fast-moving environment, that, you know one could -- you know, with the benefit of hindsight, do lots of things differently.

But under the circumstances where we've got a fast-moving case; there's information that was under seal at the time of a prior hearing, I'm not inclined to start out overly critical of any of the lawyers or their clients with respect to how folks have made real-time decisions to deal with things in a fast-moving environment.

My inclination is to do my best to figure out what the circumstances of the case now and to do my best to get to the right decision based on the information that is now available and not to dwell, for its own sake, on who could or

should or might have told me something sooner that might have been helpful. So, for what it's worth, that's where I start today.

With respect to the sort of -- I understand there are five motions, but I guess the way I think about it is there's the -- let me start with adequate protection, then talk about relief from stay, and then talk about the adversary just to correspond with how the parties have determined to present things.

With respect to adequate protection, I've got to say I'm pretty skeptical of the Government's position there. It asks me for a superpriority claim as a form of adequate protection of its right of setoff and I start out disinclined to grant that relief for a few reasons.

So, first, adequate protection is available under Section 363(e) to a party that has an interest in property of the estate and, generally speaking, unsecured creditors don't have the ability to seek adequate protection.

You know, to be sure, where there is a right of setoff, rights of setoff are tantamount under the Bankruptcy Code to security interests and so a party that has a present right of setoff may well be entitled to adequate protection. That's what Section 506(a)(1) is doing when it talks about a claim being secured by a right of setoff.

But the Government's brief, as I understand it,

doesn't assert that it now holds a right of setoff and, indeed, the general rule is that the holder of a disputed and unliquidated claim cannot exercise setoff rights. And I do understand, from my own digging around, that there is -- there may be some authority that the general rule doesn't apply in exactly the same way to the United States as it does to other creditors but the Government doesn't make that argument in its brief and it says expressly that it's not now seeking to exercise a setoff right.

So, for that reason, at least I start off not really seeing a basis to grant adequate protection.

Relatedly, the granting of a superpriority claim similarly requires that one holds a secured claim. Section 507(b) talks about granting a superpriority claim to a creditor that is entitled to adequate protection in circumstances in which the adequate protection proves to be inadequate and the suggestion that a superpriority claim would come ahead of secured creditors is a puzzling proposition to me.

So -- but in sort of -- in any event, for the reasons described above, it doesn't seem to me that the Government holds a secured claim that would entitle it to adequate protection in the first instance.

So that's -- again, I want to give everyone a chance to be heard, but that's sort of where I start out with

respect to adequate protection.

Turning to the automatic stay -- and, again -- you know, to the extent any of what I say reflects a misunderstanding of your positions -- that's certainly a possibility, you should not be shy about telling me that.

But, here, the dispute between the parties strikes me as pretty narrow. As I understand it, the debtor largely consents to relief from stay but argues that some of the orders that the Government seeks to terminate are ones for which it has already completed performance.

And, here, I'm inclined to think that what the Government is saying in its reply is correct, which is, look, granting relief from the stay simply permits the Government to exercise whatever non-bankruptcy law rights it may have.

The parties' positions about the limits of those rights I don't think are properly before a court that is deciding whether to grant stay relief. So if the debtor is right about having completed performance, that would be a merits defense to an effort to terminate those contracts and the debtors' rights in that regard would be preserved.

But I'm inclined to think that I ought to grant stay relief to permit the Government to exercise whatever non-bankruptcy rights it has without prejudice to the rights of either party about the scope of those rights. Again, that's a preliminary action and if I'm misunderstanding

things, don't be shy about saying so, but that's my reaction upon my review of the papers.

Okay. Then let me offer a few reactions with respect to the adversary proceeding. Here's -- and the -- let me first talk about the sort of jurisdictional/sovereign immunity questions and -- before getting into what I understand to be sort of the merits.

And the adversary -- yeah, right. And with respect to the adversary proceeding, I'm referring both, of course, to the turnover motion, as well as -- or turnover count, as well as the breach of contract count.

And so here's how I see it. Section 106(a) expressly waives sovereign immunity as to a turnover action and so that means that, to the extent the debtor can establish the elements of a claim for turnover under Section 542(b), I believe the Government can be required to turn over to the trustee -- here, the debtor-in-possession, any debt that it owes that satisfies the statutory requirements set forth in 542(b).

I don't believe the fact that the debtors' rights arise under a government contract eliminate the debtors' ability to invoke turnover under Section 542(b) if the debtor can establish its entitlement to payment to the satisfaction of the statutory requirement.

And, as I understand the Government's position, I

think it's saying because the claims -- the source of the obligation is a contract, 542(b) is categorically unavailable. I am disinclined to take that view. I don't think that that's correct.

On the other hand, it is clear that turnover is not available as a means to resolve a real dispute about contractual obligations. As the statute says, the amount due must have matured and be payable on demand.

So what does that mean? On the one hand, if there's a real dispute about the parties' obligation to pay a debtor, it means that turnover is not available as a remedy. On the other hand, I also think it's true that if the requirements of 542(b) are in fact met, a party cannot avoid turnover simply by saying I dispute I owe you the money. There needs to be a real dispute.

So what's the standard that courts should apply to separate what's a real dispute that can't be the subject of turnover from a claim that can be, I spent some time with this and I've twisted my hands.

As far as I can tell, the standard in practice does look a lot like -- I'm not saying it's exactly -- I'm not sure it matters exactly what it is, but I think, in practice, it looks a lot like the standards that courts use under Rule 56 to determine whether the entry of summary judgment is appropriate.

That is, the parties look at what the parties are saying and that the evidence they proffer -- they look at those things objectively and they make a judgment about whether there is or isn't a real dispute here about the debtors' right to payment.

Again, to the extent any of you has additional thoughts or aware of authority that I might have missed on this point, I'm all ears. But, based on my own effort to try to get to the bottom of that, that's the best I could come up with.

Okay. So then what do I do about any claims for breach of contract that would not be effectively resolved by the claim for turnover?

Here, my instinct is that the Government is probably correct that I lack subject matter jurisdiction over those claims because they are the subject -- they are subject to federal sovereign immunity.

The law here is pretty complex so let me take a second to explain my thinking. Right? So, to begin, it's common ground that the United States has sovereign immunity from any suits seeking money damages in the absence of a waiver of that immunity.

It's also common ground that the Tucker Act operates to waive federal sovereign immunity in a breach of contract action.

And -- back up. I skipped over my earlier discussion of turnover that Section 106(a) expressly waives sovereign immunity with respect to claims under 542. So I think -- I don't think there's a serious sovereign immunity argument with respect to turnover.

With respect to breach of contract, however, what we've got is the language of the Tucker Act. I'll talk in a minute about how the language of 106 I think sort of reinforces this.

But the Tucker Act says, "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the constitution or any act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States for liquidated or unliquidated damages in cases not sounding in tort." Period. Full stop. So that's 28 U.S.C. Section 491(a)(1).

So, by its terms -- if we're just reading that language in a vacuum, just like as a matter of English, I think one would say that that waiver applies only in actions brought in the Court of Federal Claims.

Now, what's confusing here is that the Federal Circuit has said -- at least there's language in the Federal Circuit's opinion in Quality Tooling that says the opposite and that it suggests that the waiver in the

Tucker Act applies in any lawsuit in a court that otherwise has competent jurisdiction over the action.

Now, in fairness to the debtor, when I raised this question with counsel for the United States earlier on, what counsel told me, consistent with what the Federal Circuit says in Quality Tooling, is that there is concurrent jurisdiction in this Court and the Court of Federal Claims.

The Government's more recent papers take the opposition position. In fairness and sort of consistent with my opening observations, there is no reason why counsel would have expected that issue to have arisen back when I asked the question and so I think it's only fair to permit the Government to have the chance to protect its interest, having now given the matter more complete consideration, so I'm not inclined to hold anyone to the earlier statement, sort of consistent with my view that I'm -- I want to do my best just to get it right.

Now, as the Government points out, Quality Tooling is factually different from the case before me here in that, there, the action was originally filed in the Court of Federal Claims but ended up in the Bankruptcy Court through a mechanic that the Federal Circuit's opinion leaves quite elliptical.

But, more fundamentally, I think that the reasoning of Quality Tooling is overtaken by subsequent

Supreme Court authority and, here, I'm going to say a little bit about the Supreme Court's decision in United States v. Miller.

That's a case from just two terms ago. It's a -- arose in the fraudulent conveyance context and the Court reads the waiver granted in Section 106(a) fairly narrowly, relying heavily and expressly on the principle that waivers of sovereign immunity must be narrowly construed.

Here, it's -- as I alluded to earlier, it's crystal clear that the 106(a) waiver doesn't extend to the claim for breach of contract. Indeed, the waiver for counterclaims under 106(b), if anything, reinforces the notion that, in the absence of a Government proof of claim, the Government isn't waiving sovereign immunity for a breach of contract action in the Bankruptcy Court.

And it seems to me that that specific language that limits the scope of the waiver needs to prevail, particularly under the reasoning of Miller, over the general grant of subject matter jurisdiction in 1334(b).

So I'm not really excited about disagreeing with the Federal Circuit on the question of the meaning of the Tucker Act. But, here -- you know, right, then that's obviously narrowed where that court has specialized expertise.

But the language with which I'm disagreeing really

wasn't clear that it was necessary to the decision because that case was at least filed originally in the Court of Federal Claims and, more fundamentally, I don't see how the broadest construction of that language can be reconciled with subsequent Supreme Court authority, including the Miller case that makes clear that waivers of sovereign immunity must be narrowly construed.

So, for that reason, for any part of the breach of contract claim that is not essentially overtaken by my ruling on what is subject to turnover, I incline to think that I don't have subject matter jurisdiction on account of federal sovereign immunity and, therefore -- and that leads me to sort of the docket entry that I made, I don't know, a couple days ago -- therefore, any part of that that's left likely ought to be transferred, under Section 1631, to the Court of Claims and there is language in the Third Circuit's decision in Seven Fields that suggests that a Bankruptcy Court may invoke 1631 to transfer a case to another court of competent jurisdiction.

So -- and then that leads me to the question of what is, in fact, subject to turnover in light of the pleadings and the declarations and the 108 lines of what Mr. Albergotti sets forth in his declaration and the Government's response to it and, there -- this is summary judgment, not testimony, but there I'm going to need help

from the parties working my -- I've spent time with the 108 lines, with the help of a fabulous law clerk, and I don't know the answers and I'm going to need to -- we're going to need to spend some time working through that.

So -- okay. That's been a lot of words for me. Let me make clear that as much as some of this might have sounded like a ruling, it's not intended to be. It's really intended to avoid the scenario in which, you know, you all come all the way here and get up and present your case and at the end, I give you a ruling that was written all along and you're like well, why did I spend all this time talking if you had already thought through this.

I want to tell you what I'm thinking. You know, again, it -- don't take it more seriously than it deserves. It is what I'm thinking but I brought you here for a reason.

So that's enough words for me and I'm happy to hear from the parties.

MR. DEAN: Just very quickly, Your Honor, thank you for that. It was very helpful.

Just on the adversary, I think we're on the same page. That's why we proceeded this way and filed the motion for summary judgment because we knew we would likely need to win that to win the turnover count anyway. So I think we're on the same page there, just to confirm.

I just have one comment on the lift stay aspect of

this.

THE COURT: Um-hum.

MR. DEAN: It may make sense for us to maybe have a short preliminary argument to see whether we can try to convince you otherwise because, otherwise, we're not going to call Mr. Albergotti to the stand for an hour to go through schedules that don't matter, if you're --

THE COURT: Right.

MR. DEAN: So I think --

THE COURT: That's --

MR. DEAN: -- we should try to have a little argument on that first and then --

THE COURT: I think if it's resolvable, as a matter of law, then there's no need to hear the evidence. If it turns out -- again, I want to allow you to present your case as you see fit but I -- part of why I was sharing what I was, was it might help you be efficient --

MR. DEAN: Yes.

THE COURT: -- if I've ruled against you, as a matter of law, and it doesn't matter what the facts are --

MR. DEAN: Yes.

THE COURT: -- then you can save yourself the time and energy.

MR. DEAN: Yes. We don't want to waste your time today with that testimony if it's not necessary, so I would

suggest we take that up on this preliminary --

THE COURT: All right.

MR. DEAN: -- argument first and then call him if necessary.

THE COURT: Okay.

MR. DEAN: So that would be my only suggestion.

THE COURT: That's fine with me.

MR. DEAN: Thank you.

THE COURT: Any objection from the Government about proceeding in that fashion?

MR. LAMB: No, Your Honor. I think that makes perfect sense.

THE COURT: Okay. Very well.

MR. DEAN: Okay.

THEC: Okay.

MR. DEAN: Thank you.

THE COURT: So, as I understand it, we've got the adequate protection motion first and the Government is the movant, so happy to hear from either of the lawyers from the Government, or both.

MR. LAMB: Your Honor, debtors' counsel suggested that the adequate protection would be first --

THE COURT: Right.

MR. LAMB: -- and then the stay motion. So we're doing adequate protection first?

THE COURT: That's my understanding.

MR. LAMB: Right. Thanks.

THE COURT: And, again, I mean if the parties agree to proceed that way --

MR. LAMB: I'm fine with that.

THE COURT: -- I'm not going to be in the way. If the parties have a different view, you know, I'm happy to resolve a dispute if there's one for me to resolve but if you agree, you can do it in whatever order you want.

MR. LAMB: Understood. Thank you, Your Honor.

THE COURT: Okay. Counsel?

MR. GESMUNDO: Good morning, Your Honor.

Alastair Gesmundo, on behalf of the United States.

Echoing opposing counsel's comments, I appreciate sort of the Court's attention to at least narrow the target for us.

And I want to address the Court's question because -- I'll start with the question of the Government's status. We include in our brief a cite to Lee v. Schweiker. That's a Third Circuit case and there it talks about the -- a setoff, in effect, elevating an unsecured claim to secured status.

And so what we're --

THE COURT: I agree with that, right?

MR. GESMUNDO: Yes.

THE COURT: So once you're -- then I think that flows from the language of 506 itself --

MR. GESMUNDO: Yes.

THE COURT: -- that talks about secured by a right of setoff. The question for me is -- as I understand it, right? We had a hearing a few weeks ago. We addressed what was addressable then.

What I now understand is that the Government contends that there is an additional False Claims Act liability that wasn't the subject of the prior hearing that gives rise to a right of setoff. Am I right about that?

MR. GESMUNDO: So, Your Honor, I think I -- I would frame it differently. It's that debtors' counsel started today with the fact that they have reached this point. They're very close to a sale. But the United States' position is that that's because we've been bankrolling the case, essentially.

The -- as the Government pays, via through DLA -- but it's actually coming straight from the Treasury -- or from the Treasury to DLA --

THE COURT: I understand.

MR. GESMUNDO: -- we're funding the bankruptcy without the adequate protection that we're entitled to.

THE COURT: Well, so let's -- that's -- and I get that at some level. But let me -- I think I may not have

been clear about why -- what -- where your right to adequate protection kicks in.

So the way I think about this -- and there are a number of cases and we can talk about them. They're not really addressed very much in the briefing, and that's okay. But the way I understand the law, when you have -- look, if you -- if two parties owe notes to one another and the amounts are fixed and liquidated and undisputed, there is a right of setoff and that makes the non-debtor party secured by its right of setoff and, therefore, it would be entitled to adequate protection.

On the one hand, if the non-debtor party holds an unliquidated and disputed claim that there isn't a right of setoff until that claim is fixed and, therefore, they remain an unsecured creditor and -- because you don't get -- an unsecured creditor doesn't get -- an unsecured creditor whose claim is unliquidated and disputed typically doesn't have a right of setoff. You can't set off an unliquidated amount. And so as long as the amount is unliquidated and disputed, there isn't a right of setoff.

That's sort of a -- there are lots of old cases that say that. That's sort of a general proposition about when a party is entitled to setoff. And it seems to me that as long as the Government's claim against the debtor is unliquidated and disputed, there isn't yet a right of setoff

and, therefore, there's nothing to give rise to a claim for adequate protection.

So that's -- again, if people want to tell me I'm wrong and why, I'm happy to listen, but that -- just to me, this is just for principle stuff and I think those are what the principles are, which is what led me to say I was disinclined to grant a motion for adequate protection.

And even if I got there, I've got other questions about the extravagant use of 507, but we can talk about that if we get there but I don't think we do.

MR. GESMUNDO: Understood, Your Honor.

THE COURT: Does that make -- am I making sense?

MR. GESMUNDO: You're making sense, Your Honor, and I understand. But I think Your Honor alluded to and, admittedly, it wasn't briefed thoroughly as to why the Government's claim that Your Honor referred to -- treatment of Government's claim differently than all other secured creditor -- or all other unsecured creditors and so that's part of why -- the significance of the debt at issue that, admittedly, is not fixed yet but will be once -- whether it's -- it's because it becomes a liquidated claim by virtue of settlement on the FCA claim --

THE COURT: So this is why when we started I started out by saying -- because, look, I get the potential unfairness to a holder of an unliquidated claim and, to me,

from first principles again, the logical solution to that would be estimation. Then we fix your claim and we avoid that unfairness and we fix it in a way that's quick and dirty and imperfect because life is imperfect. But as among the unfairnesses, that strikes me as -- you know, in bankruptcy, often we deal with the fact that things are fast-moving and we've got to do the best we can with the time we've got.

This case sort of speaks that quite loudly. And that's, to me, the rationale behind having an estimation in a case like this so that we can then fix the amount and then, once it's fixed, for -- you know, for better or for worse, then a right of setoff would attach.

But I -- you know, no one has taken me up on that. I'm not faulting anyone. But we are sort of where we are and so where we are is you're the holder of a claim that's unliquidated and disputed and, therefore, not subject, by my lights, to a claim of setoff.

Look, the -- on the question whether the Government is different, the -- for what it's worth, there's an old case that says it's not. It's United States v. Robeson, 34 U.S. 319 (1835). There's some more recent authority that suggests -- possibly suggests otherwise.

And, again, I don't want to be overly harsh but none of that authority was cited to me so I'm not going there.

MR. GESMUNDO: Sure.

THE COURT: And so I'm inclined to think, under ordinary principles of setoff, the holder of an unliquidated disputed claim -- and I don't think you're telling me, as of today, you have anything other than that -- am I misunderstanding your position?

MR. GESMUNDO: Not as far as what I can disclose in terms of what the Government continues to -- exists.

THE COURT: Okay. And, look, again, I'm not faulting anyone.

MR. GESMUNDO: Correct.

THE COURT: And I appreciate the sensitivity and the difficulty --

MR. GESMUNDO: Yes.

THE COURT: -- and so I want to be highly sensitive to not putting anyone in an unfair spot.

MR. GESMUNDO: Right.

THE COURT: But that's it. I can only decide cases based on the information that you give me.

MR. GESMUNDO: Sure. I -- Your Honor --

THE COURT: Go ahead.

MR. GESMUNDO: May I?

THE COURT: Yes.

MR. GESMUNDO: So you mentioned sort of in the sort of spread of potential injustices or unfairness, I

should say. I would like to briefly speak on 506(a). I think Your Honor, in the earlier hearing, was concerned about liquidated debt amounts. But if -- under 506(a), I think our position is that the setoff interests -- let's take a step back.

The relevant facts for adequate protection is the amount of our interests in that security and so we're looking at the -- we're looking at the receivables going back and forth. So that's the payment at issue, not the debts that each of the sides are contending they have because we don't disagree at the time of the last hearing, both sides had disputed debts.

I think -- because, you know, this motion was brought before the -- Your Honor under 363(p) and it starts with the debtors' burden as -- burden of proof on adequate protection. We understand that under (p)(2), it -- as the entity asserting an interest in property, we have the burden of proof on the issue of validity, priority, or extent of such interest.

And so as to validity, our argument is that the Court has already recognized it -- United States' setoff rights by virtue of what happened last hearing. But, again, that was in the context of the Court considering the administrative freeze and what was appropriate to setoff at that time.

THE COURT: Right. But, there -- right, what the -- what was told to me at that time was there was -- and, again, I appreciate that life is more complicated than what I understood then but, basically -- I don't remember the numbers precisely but there was a larger amount that the Government was seeking and a smaller amount that the debtor conceded was due.

And I said, as to the smaller amount, that has a setoff right because that amount wasn't unliquidated and disputed. But I don't think anything I said suggests that, as to an unliquidated and disputed amount, there's a present right of setoff.

The whole point of my suggesting an estimation was a means to solve the problem that the holder of an unliquidated and disputed claim doesn't get to set off.

Does that make any sense?

MR. GESMUNDO: That would make sense, Your Honor, yes.

THE COURT: Okay. And I do -- I don't mean to cut you off. I want to make sure --

MR. GESMUNDO: Nope.

THE COURT: -- I've heard and understood your position.

MR. GESMUNDO: No, and I was just going to say because -- it's in the alternative, validity, priority, or

extent, and the extent that -- of our interests is in the money that continues to flow because, in compliance with the Court's order, the Government has continued to pay properly invoiced receivables.

THE COURT: Okay.

MR. GESMUNDO: And so Your Honor mentioned the request for -- under 507(b) and has expressed sort of its position on --

THE COURT: Right.

MR. GESMUNDO: -- either how extraordinary it is or --

THE COURT: Right.

MR. GESMUNDO: -- however you would --

THE COURT: Right.

MR. GESMUNDO: -- you'd like to phrase it.

THE COURT: And you don't really point to me any -- to any authority in which courts have ever done what you're asking me to do, have you?

MR. GESMUNDO: Not -- other -- you mean as far as ruled on as -- versus stipulations of adequate protection where the parties --

THE COURT: Stipulations --

MR. GESMUNDO: Yeah.

THE COURT: -- happen all the time. Right. But a court --

MR. GESMUNDO: Exactly.

THE COURT: -- over someone's objection says I'm going to give you an adequate protection claim that's going to come ahead of secured creditors. Right? There's no -- the Code doesn't allow -- parties can agree to whatever they want to agree to.

MR. GESMUNDO: Correct.

THE COURT: But the Code doesn't allow me to -- the debtor is not agreeing to that, the secured creditors aren't agreeing to that, and there's no authority to permit me to do that over their objection, right?

MR. GESMUNDO: Not that I'm aware of.

THE COURT: Okay.

MR. GESMUNDO: But --

THE COURT: Very well.

MR. GESMUNDO: -- the only other point I would point out as far as our request for relief was that -- and it's -- part of why we filed the motion is to sort of bridge that what we believe to be a gap with debtors' counsel about what we're asking for because their papers talk about an indiscriminate or inordinate amount or sort of not finite amount and what we're actually asking for is it would have a cap, right? It's limited to the lesser of the amounts flowing from the Government to the debtors versus what they would owe us and so that's what I would point out on that

front, Your Honor.

And so, ultimately, we feel like it's a reasonable ask from the Government to simply preserve their rights because the -- you know, the fixing of the claim, the disputes over those claims, those can be addressed at a later time.

But in the meanwhile -- at the -- at this point in time, the U.S. is the one that's continued to bear this risk, and you've spoken about the fairness of it.

THE COURT: Right, and I understand that. I think that's the -- that's just the consequence of the holding a disputed claim and I remain available if you file a motion for estimation to try to get it heard as promptly as possible.

I understand what leads you to say we shouldn't be paying cash out the door today when we are a net creditor who's owed money. I'm not unsympathetic to that concern but I'm just applying the law as I understand it to the facts as I understand them and I think, as I now understand it, that the Government's claim remains an unliquidated and disputed claim, which means you don't have setoff rights, which means you've got to meet your obligations to them, whatever those obligations are.

And, look, there are ways -- there are -- there -- the law permits contracts to create the right to set off

against unliquidated claims. The law doesn't do that by default and no one has pointed to language in this contract that changes the default.

So, again, I'm not unsympathetic to what you're saying. I just think the law here sort of is what it is and the answer is the holder of an unliquidated claim against a debtor who owes money to the debtor is required to pay the debtor the money it owes and, you know, its claim gets fixed when it gets fixed, and I'm available if you file a motion but I don't think the law gives you more than that.

So, for that reason, I'm inclined to deny the motion, unless Mr. Dean wants to get up and talk me out of that.

MR. GESMUNDO: Thank you.

MR. DEAN: I do not, Your Honor. Thank you.

THE COURT: All right.

MR. DEAN: I just want to address one issue because I know we're all getting along today, but we were accused of not being honest with the Court about this qui tam situation so I just want to note that we filed the motion to contempt. The Government had a chance to assert whatever claims they were going to assert against us and they did not mention these.

THE COURT: But in defense -- in their defense, it's -- right, the argument is it was under seal.

MR. DEAN: Agreed, from our perspective, too.

THE COURT: Right. Okay. No -- okay. So that's why I said what I did at the beginning, which is I get it.

MR. DEAN: I just want to make it --

THE COURT: And that's complicated.

MR. DEAN: -- clear though, we didn't know that they were going to use the qui tam to allege setoff. It wasn't even the subject of the hearing --

THE COURT: All right.

MR. DEAN: -- Your Honor. So I just want to make clear there was no --

THE COURT: All right.

MR. DEAN: -- intention on our part not to disclose something to you.

THE COURT: That -- I didn't think there was, which is why I said what I did at the top so --

MR. DEAN: That's all I have to say on this one, Your Honor.

THE COURT: Okay.

MR. DEAN: Thank you.

THE COURT: Okay.

MR. AXELROD: Your Honor, Tristan Axelrod, Brown Rudnick, for the Committee. Might I be heard --

THE COURT: You may.

MR. AXELROD: -- very briefly on this?

I want to say a few words, not because I disagree with the ruling just now. I very much don't. But I think there are issues that should be spoken to because the Government's response even just on the record right now feeds into some of the discussion that we're going to have in the next few minutes on what they allege is a contract dispute and I want to talk about how that is impacting my constituents like really by way of explaining why this is a bankruptcy issue that implicates this Court's jurisdiction.

Just taking a step back, Noble is a prime contractor. Like a general contractor for home building and so on, its job, for the most part, is not to be the manufacturer and supplier. I think everybody knows that. That's why we have hundreds of millions of dollars in debts to suppliers that are my constituents.

So the Government obtains the prime contracting services from Noble to meet its needs, supply -- for government purposes without having to deal with every single producer of screws and MREs and whatever else the Government might need.

The DLA pays the prime contractor a premium for the service and the prime contractor is essentially supposed to be a pass-through. It takes a fee. It takes a premium. And if it bids its contracts correctly and it maintains good relationships and so on, it should be profitable because it's

just passing costs back to the suppliers, taking its costs for itself, plus a margin.

Obviously, that did not happen successfully for Noble. There's been some ink spilled as to why. Noble covered some of its losses with secured debt and secured debt for other business purposes as well, I'm sure. The secured lenders were involved in the company for a time. And when the company ran out of funds over the last year, it stopped doing that pass-through process.

It took supplies from suppliers under contract. It delivered those supplies to the Government. It got the money from the Government, with exceptions that we're discussing today, and it sent those funds to the secured lenders.

In the two months before the bankruptcy, tens of millions of dollars went to pay down secured debt and this -- basically, the same amount caused an increase in supplier debt.

Why do I mention this? Well, partly, my constituents are very angry about it. But the Government -- I think one of the first things out of counsel's mouth was the Government is financing these cases. I think everybody who's in the courtroom today would say their clients are financing these cases. Certainly, the debtors; certainly the secured lenders; certainly my clients.

There are issues raised by the contract dispute and issues raised in the adequate protection motion. The Government says the reality of what's in the adversary proceeding is a contract dispute and, respectfully, there's no indication of that that we can see in the record.

The -- as been -- has been said, is going to be said -- I'm not going to speak too much on the evidence. The Government is holding goods. They were supplied by my constituents. The Government is not returning them. It's just refusing to pay and process paperwork and so on. But we don't have an allegation, to my knowledge, that the issue is that the goods are defective. It's a dispute over the services of the prime contractor.

Getting -- cutting to the point, Your Honor, the adequate protection motion, it is a motion for a claim and, in fact, it even says in the Government's reply at paragraph 9 that they plan to make proofs of claim for billions of -- over a billion dollars.

That implicates jurisdiction in a manner that I don't think was previously discussed, which is I think 106(c). The Government is going to have a proof of claim and we know that this contract dispute concerns its dispute over the services of the prime contractor.

So what it seems like the Government is saying is there's no basis for jurisdiction under 106(c) yet because

the Government bar date hasn't come yet but we're going to have a claim. At that point though this dispute will already be in the Court of Federal Claims and it's out of the hands of the parties and the stakeholders in the bankruptcy.

So that's why it connects to the adequate protection motion. That's why I wanted to bring this up now. I think there's a real issue beyond -- even when you get to whether this is a contract dispute. If it's a contract dispute that hinges on issues that are going to be the subject of a billion dollar claim in this bankruptcy that's essentially like a mandatory counterclaim, then it really ought to stay in this bankruptcy.

And all of the parties that are here today and might come later are going to want to participate in discussions of this contract dispute, whether it's here or in the Court of Federal Claims. But the nature of the bankruptcy suggests it really ought to be here.

THE COURT: All right. So what exactly am I supposed to do with that argument? Help me.

MR. AXELROD: Excuse me, Your Honor.

It's really trying to make the connection between --

THE COURT: So you're not saying that, under 106(b) and (c), a proof of claim that is likely to come but hasn't yet been filed is treated like a claim that's been

filed, are you?

MR. AXELROD: I am not.

THE COURT: Okay.

MR. AXELROD: But I am pointing to a fundamental unfairness of what would happen if -- on the basis of a claim not being filed yet, even though the Government promises to bring it --

THE COURT: Yeah. And the law -- so, look, let me say a couple of things just to -- about how I view my job.

You know, when -- because sort of what you're saying is it would really be best for the estate and parties in interest if I would do X and I should really take that very seriously, and I do. But when I've got a pure -- when I have a pure question of law, I've got to call it the way the statute is written and the cases come out.

When I've got a matter that's committed to my discretion, I am not shy about saying I care about having the cases succeed. I care about the purposes reflected in the code of maximizing value and facilitating reorganization and getting to good outcomes for the parties in the case and when given the choice, that's how I'll exercise my discretion.

But when I've got just a question of law and there's just an answer, I don't get to say I'd rather the law be different; it would be more consistent with the overarching purpose if the law were different and, therefore,

I can do what I feel like instead of what the law requires.

So, to the extent someone wants to get up and say, Judge, the law requires you to do X but it would be really better for my clients and the parties to the case if you would do the opposite, let me just tell you now you're going to lose. Okay? Is that -- am I clear enough?

MR. AXELROD: You're very clear, Your Honor.

THE COURT: Okay. Very well.

MR. AXELROD: I think our comments later in the day may be directed to why we believe you do have a choice.

THE COURT: Okay.

MR. AXELROD: But, clearly, I've made the point as far as I need to make it right now.

THE COURT: Very well.

MR. AXELROD: Thank you.

THE COURT: Okay. Anything else?

(No verbal response)

THE COURT: All right. So I'm going to deny the motion for adequate protection and we can talk about forms of order and all of that when we finish the other matters in front of us.

What's next?

MR. DEAN: Lift stay, Your Honor.

THE COURT: Very well.

MR. LAMB: Good morning, Your Honor.

Ryan Lamb, Department of Justice for the United States. With me is co-counsel, Alastair. Behind me is counsel for DLA, Steven Sosko and Andrew McQuire, as well as our declarants, Amanda Parker, John Cuorato, and Lauren Vendetti.

As we understand the Court's comments at the beginning of this hearing that all of the parties -- that Noble's rights and ability to contest any orders would be preserved if our order is entered. We fully agree with that position.

I mean I think our position is that if that's the Court's view, we wouldn't see the need to kind of go through --

THE COURT: Right.

MR. LAMB: -- testimony --

THE COURT: And that's --

MR. LAMB: -- and line-by-line.

THE COURT: -- this is a motion for relief from stay. So what you're asking me is the right, asking me for is the right to go exercise your non-bankruptcy rights.

You're not asking me to decide the metes and bounds of your non-bankruptcy rights. If the debtor wants language in the order that makes perfectly clear if there's any ambiguity that their rights, as to what their non-bankruptcy rights are, are not adjudicated in this motion,

are fully preserved, I take it you'd work with them to get to such language.

MR. LAMB: We totally agree with that, Your Honor.

THE COURT: Okay. All right.

Well, that's my -- my instinct is they're not really disputing -- and, again, I'll hear from the debtor -- but as I understand it, they're not saying they dispute your right to stay relief; they're saying, yeah, but by -- but some of the rights you're asking to exercise are rights you don't have under non-bankruptcy law and I think that's interesting. And they might well be right, but that this isn't the forum for that.

MR. LAMB: We would agree with that, Your Honor. I do not -- I didn't interpret -- and, certainly, debtors can correct me that they're asking for that. We would simply -- we're simply asking that the lift -- the automatic stay be lifted for the contracts so that if there are any rights that the debtors want to exercise or any rights that we want to exercise, that those are fully preserved --

THE COURT: Right.

MR. LAMB: -- non-bankruptcy rights are fully preserved.

THE COURT: Okay. All right.

So, why don't I hear from Mr. Dean or whoever else would like to help about how I'm thinking about this

question, just thinking about what a motion for relief from stay is.

MR. DEAN: Well, look, from our perspective, they have the initial burden under 362 to show good cause to lift the stay. And from our perspective, the Government cannot, by law, legally, terminate orders that have already been delivered. You won't hear that they think the --

THE COURT: No, but --

MR. DEAN: -- oh legal right to do that.

THE COURT: So I understand that, but, look, the question of cause, you don't really contest in the sense that --

MR. DEAN: In scope we do.

THE COURT: Okay. Imagine I read the motion to say the following, it's saying, Judge, to the extent we have non-bankruptcy rights, we'd like to exercise them, period.

MR. DEAN: Yes.

THE COURT: You know, we're not asking you to adjudicate what they are, but to the extent we have them, we want to go enforce those rights outside of bankruptcy.

Do you oppose that relief?

MR. DEAN: Not in a vacuum, but I would like to give an explanation as to why I think this would be unfair and that they have failed to meet their order on the delivered orders, because as you're going to hear today, we

believe that the Government improperly issued a termination notice with respect to orders that were delivered prior to the date of termination.

What this is, is just stage one of stage four and we're going to be right back in front of you on another turnover action again if they do this because they're going to use it -- they're going to improperly use this as a mechanism to refuse to process orders and not pay us again. We're trying to avoid --

THE COURT: So -- so --

MR. DEAN: -- an additional litigation on this matter.

THE COURT: So, I hear you there but I guess I see this question through the lens of a statute that says, to me as I read it, disputes between government contractors and the United States, that the meaning of those contracts are heard by the Court of Federal Claims. And I hear your argument as essentially trying to side door in a dispute that the statute means to send to a different court.

MR. DEAN: It's not a *bona fide* dispute, though, and I don't think you'll have --

THE COURT: To the extent it's not a *bona fide* dispute, then it'll be -- look, if I rule for you on turnover, that's presumably going to be binding against the Government and that will be that.

MR. DEAN: Okay. Fair enough.

I want to -- I do want to make one more comment about the form of order, though --

THE COURT: Okay.

MR. DEAN: -- and that is this. They've got this provision in there that says we have to go to the contracting officer to deal with disputes. We want to preserve our rights to come back here for turnover and we think -- we do not think you should be ruling on where the next fight happens.

THE COURT: I think by saying, "Everyone's rights are preserved," I mean everyone's rights are preserved. And so, you know, look, we'll address, in connection with the adversary, whatever we address. And whatever I decide, if I enter an order, is going to be as preclusive as it is.

MR. DEAN: Okay.

THE COURT: But that --

MR. DEAN: I understand your position. I hear you. Whatever happens on turnover is going to be applicable to this anyway, and --

THE COURT: Let me see if the Government disagrees with that. Mr. Lamb, do you disagree with that?

MR. LAMB: Disagree with the --

THE COURT: The proposition that if I enter a ruling on turnover -- you can disagree with that and you can

appeal it -- but that unless and until it's stayed or reversed, it's going to be binding on the Government and it has whatever consequence it has.

MR. LAMB: Yes, we would agree with that, I think, Your Honor.

THE COURT: Okay. So I think that ought to resolve this question, unless there's something I'm missing.

MR. DEAN: Yes. Just for the record, we would ask for the provision that they put in the order with the forum be stricken.

THE COURT: I'm going to have the parties meet and confer about the form of order and if there's a disagreement, I'll resolve it.

MR. DEAN: Okay. Very well, Your Honor.

But that ruling, I don't think we have a need to call Mr. Albergotti to the stand because the evidence is not -- we have a ruling as a matter of law.

THE COURT: Right. Okay. All right.

So, from the Government's perspective, I'm inclined to grant the motion, but it's not adjudicating any question of what the scope of their rights or adjudicating the question of where further disputes are to be resolved. We'll do this as generic an order as we can that says the Government has relief from the automatic stay in order to enforce its non-bankruptcy rights, period, and we'll stop

there.

MR. LAMB: That's perfectly acceptable, Your Honor.

THE COURT: Okay.

MR. LAMB: We're glad to work on a form of order.

THE COURT: All right. Very well.

MR. DEAN: Thank you, Your Honor.

THE COURT: Okay.

MR. DEAN: And then we may be here a while on the motion for summary judgment. Does it make sense to take a short break before we start that?

THE COURT: I think that probably does, but particularly if you're going to resolve it for me. But even if not --

(Laughter)

THE COURT: Very well. Okay.

So it is now 11:06. 11:15? What time works for the parties?

MR. DEAN: That's fine with us, Your Honor.

MR. LAMB: That's good enough.

THE COURT: All right. Very well.

So we'll see everyone at 11:15. Until then, we're at recess.

MR. DEAN: Thank you.

(Recess taken at 11:06 a.m.)

(Proceedings resumed at 11:15 a.m.)

THE CLERK: All rise.

THE COURT: Be seated.

MR. DEAN: Your Honor, in the opening paragraph of our reply brief, we make the sometimes dangerous decision to tell the Court that the question before the Court is a simple one, because when you peel back the onion --

THE COURT: I thought it was you're just trying to let me know that maybe I can understand it.

MR. DEAN: Yes. When you digest the various arguments that the Government has made questioning performance and when you compare those arguments against what is and what's not in the evidentiary record, what jumps off the page to us is not what is dispute, but rather what's not in dispute. So let's start with what's not in dispute.

The Government does not dispute that the orders were delivered by Noble prior to termination, save for 2.2 million of the 14 and a half. And on that two-two, they're clearly and objectively wrong. It's clearly contradicted by the evidence, as we lay out in paragraph 27 of our reply. The Government doesn't dispute that the orders were retained, save for three emails the Government identified that are wholly reviewed on their face, as described in paragraph 29 of our reply. The Government argues, but presents no evidence that the orders were rejected. The Government

doesn't dispute that none of the orders were refused or returned to Noble. The Government does not raise material issues with Noble's performance relative to its right to payment.

This is Contracts 101, Your Honor. We have purchase orders. We have deliveries prior to termination. We don't have evidence of any rejections. We certainly didn't get any of the goods back.

THE COURT: Mr. Dean, can I ask you this question, shipper believes -- sells -- sends widgets to buyer and buyer doesn't pay for the widgets. Shipper sues -- seller sues buyer for the value of the widgets and comes to court and says, I shipped the widgets. Here is my FedEx invoice showing delivery to buyer. Buyer gets up and has a witness say in a declaration, That's really interesting, but I didn't get them.

Is that resolvable on summary judgment?

MR. DEAN: I don't think that's what happened here --

THE COURT: Okay. All right. Okay.

MR. DEAN: -- but I will tell you, I would say it depends on what evidence contradicts that statement.

THE COURT: Fair enough. Fair enough.

But if -- there's a point --

MR. DEAN: Because there are -- what the

Government is doing here is saying your evidence of receipt isn't good enough or its shipping. They're not saying they didn't --

THE COURT: Well --

MR. DEAN: Nowhere will you hear them say they never received it.

THE COURT: Well, let's -- why don't --

MR. DEAN: Okay.

THE COURT: I mean, this is going to be sort of in the weeds --

MR. DEAN: Right.

THE COURT: -- but I think I'm going to need to get into the weeds and work my way through this.

MR. DEAN: Well, one of the other things we learn in Contract 101, I think we're getting to, is this concept of implied acceptance. It's not a controversial principle of commercial law. It's a facet of everyday life and it's not one that's contested as applied to the Government under the FAR either. If you order something and you don't want to pay for it and you want to return it, you best move quickly to return it. That's true, Your Honor, whether we're talking about what my kids bought on Amazon yesterday or with respect to Government contracts. The same principles apply.

THE COURT: Do they have your account?

(Laughter)

MR. DEAN: Unfortunately, Alexa orders things.

(Laughter)

MR. DEAN: Now, the Government here, Your Honor, says acceptance cannot be implied under the FAR without an affirmative act, which, of course, remains under their exclusive control, ironically. The Government is, of course, wrong about this because as I mentioned, the FAR explicitly incorporates the principle and implied acceptance in the face of untimely rejection and the case law clearly holds the Government to this contract principle.

But to be sure, the question before the Court, as I mentioned, is a simple one. Can the DLA withhold payment of goods and services that Noble provided to the Government and which the Government did not reject based on its own refusal to execute a validation form?

The answer to that question, Your Honor, is, of course, no. There are no material disputes of fact or *bona fide* disputes that need to be resolved to decide this issue; in fact, the Government admits in its own filing that the critical issue is whether the goods or services were delivered after August 27th, when the termination notice was issued. For goods and services delivered on or before that date, the Government had an obligation to validate their delivery. This is consistent with its own termination notice, which expressly agreed the process for payment of

goods and services delivered on or before the termination date.

Now, Your Honor, despite what the Government expressly said in the termination notice with the contract officer and for reasons unknown to us to this date, the Government decided just to stop validating any orders after the termination date, even the pre-termination orders that the termination notice said would not be affected by the termination. The Government has provided no reason for refusing to validate these, other than to maintain this litigation posture or preserve whatever setoff rights they may attempt to prove in the future.

More, and this is important, does the Government offer any explanation whatsoever as to why 60-plus days might be necessary to validate orders, given their own stated internal policy and the undisputed course of conduct that saw it done here in five to seven business days on a regular basis, prior to the termination. There is no explanation, Your Honor, or evidence of a *bona fide* dispute.

The Government's other challenges, which are fully addressed in our papers and I'm not going to belabor all of them, though, we might get into some back-and-forth about the lines, so I welcome that --

THE COURT: Right.

MR. DEAN: -- are artificial and immaterial to

Noble's matured right to payment. We submitted proof of delivery of all of the pre-termination goods and services provided. The Government didn't rebut any of this proof with any admissible evidence showing that the goods and services were not delivered or provided. They just say you're tracking is not good enough. You needed a goods receipt from the customer, which is completely inconsistent with the common practice of them posting and validating the deliveries prior to this dispute.

The Government has provided no legitimate excuse for which discovery would be helpful as to why it is still refused to this day, for more than 60 days, and for much longer than that in some cases, to validate deliveries that ordinarily and undisputedly take a week or less.

Now, turning to the Government's objection to our evidence, the objection to the admissibility of the schedule attached to the Albergotti declaration should be overruled. The declaration filed with the opening brief and its corresponding chart is a voluminous record compilation that's admissible under Federal Rule of Evidence 1006. As the Government acknowledged, we provided them with the underlying supporting files in a document production at the time we filed the exhibit.

Now, they misread a couple of those underlying files, so we brought those ones that they misread, into the

record in our reply. And there was one that they pointed out involving about $30,000 that was a mistake in download by the company that we corrected in the reply to show the appropriate order confirmation.

Now, we were not required to submit the voluminous files, themselves, to the Court and I can assure you that you would not have wanted us to do so. The Rule requires us to provide the other party access to them and Mr. Albergotti is more than qualified to examine and testify as to what the corporate records show. The DLA's suggestion that Mr. Albergotti must have physically witnessed each delivery to possess the requisite knowledge to testify as to the corporate records showing delivery dates and to make a *prima facie* showing of delivery dates, should be rejected out of hand.

And so for those reasons, Your Honor, we think that the summary judgment motion, itself, should be granted and the cross-motion and the 12(b)(6) motion should be summarily denied. As we detailed in the briefing, Your Honor, turnover -- and I think -- and the Court's preliminary rulings address this -- but just for the record, I will note that we agree with you, that turnover is certainly appropriate and can be appropriate when matters involve contracts if the standard is met. And the Government's existence in a turnover dispute has no bearing because, as

you noted in your preliminarily remarks, Section 106 provides the express waiver of sovereign immunity with respect to 542 and a point that I just want to observe was notably absent from any of the Government's filings. They failed to recognize it at all.

Now, as for the amounts not subject to summary judgment, so we're talking about the four million that were not part of the summary judgment --

THE COURT: And any amount in which I might rule against you.

MR. DEAN: And any amount that you might rule against us on, the Court should accept the allegations as true under Iqbal, with respect to the 12(b)(6) piece of this and --

THE COURT: Yeah, but that's not -- the question is whether it's within the exclusive authority of the Court of Federal Claims.

MR. DEAN: Well, it is, but we allege in the pleadings that these are undisputed and I think you have to accept the allegation as true --

THE COURT: I understand that.

MR. DEAN: -- for purposes of 12(b)(6).

THE COURT: I understand that --

MR. DEAN: Now --

THE COURT: -- but I can also take notice of the

fact that the Defendant is the Government, right?

MR. DEAN: You can, absolutely.

THE COURT: Okay.

MR. DEAN: You can. But the question of whether the turnover elements have been satisfied --

THE COURT: Oh, I understand --

MR. DEAN: -- is another question.

THE COURT: -- I understand that.

MR. DEAN: On count -- on the portion of the four million relating to Count 1, that's -- okay, let me clarify. And then there's Count 2, which also relates --

THE COURT: Right.

MR. DEAN: -- to both, as well.

Now, we obviously argued in our papers that you should accept the D.C. Circuit Court's view of the contract count and we hear you. We understand.

THE COURT: Yeah, the Federal Circuit.

MR. DEAN: I don't think -- I don't think I'm going to convince you otherwise of that in argument --

THE COURT: Right.

MR. DEAN: -- so I will just say -- and I spoke to Mr. Lamb at break about this -- I think we are both in agreement that if there are any pieces remaining from this on Count 2 and you decide you don't have jurisdiction and dismiss, we would prefer a without prejudice dismissal

because we actually don't want -- we would actually rather prepare a separate suit to deal with --

THE COURT: Fine.

MR. DEAN: -- some issues that they raised about the contracting officer and the like and eliminate the turnover counts and clean it up a little bit if we decide we have to go down that road.

THE COURT: And, Mr. Lamb, do you disagree with that?

MR. LAMB: No, we agree.

THE COURT: Okay. Very well.

Okay. So what I'll do, then, is whatever I think I don't have jurisdiction to hear, to the extent there's anything -- and we'll come back to that -- but to the extent that's my decision, I'm happy to, then, just dismiss whatever is left without prejudice and you can all do whatever you want wherever you want.

MR. DEAN: Thank you, Your Honor.

THE COURT: All right.

MR. DEAN: I have nothing further, unless you have questions for me at this point.

THE COURT: So, look, I have to say, look, I understand that this is a voluminous amount of material and that this is complicated, but the sort of overlapping objections and the like make it hard for me to sort of figure

out on an issue-by-issue basis which of these 108 lines is subject to dispute and which isn't and what's the reason for each of them.

MR. DEAN: Uh-huh.

THE COURT: And so what I am inclined to think I ought to do -- and I apologize if this is going to be burdensome for everybody -- is to have us all do our best to sort of group these into categories and for me to rule on, is there a material dispute of fact or not on each, and then have that apply to the chart however it does.

MR. DEAN: I think the best way to do that is to look at the Cuorato declaration where the object -- and it's at Docket 19-2 -- and I'm happy to walk you through all of these --

THE COURT: No, so that's -- I'm on page -- what's sort of page 10 of the chart, the annotated chart. Is that where you are or...

MR. DEAN: Well, I'm looking at the filed declaration --

THE COURT: Okay.

MR. DEAN: -- and the groupings that he has.

THE COURT: Okay. We can certainly do it.

MR. DEAN: He actually groups them in narrative form --

THE COURT: Okay.

MR. DEAN: -- starting at paragraph -- the section starts on page 3 of paragraph 8 --

THE COURT: Hold on, I --

MR. DEAN: -- but the first one starts on paragraph 9 and goes through 17. And there are seven or eight of these groupings and they start with this.

THE COURT: Yeah, hold on one second, because I've turned the PDF sideways so I could read the chart --

MR. DEAN: Oh.

THE COURT: -- so now I need to turn it back so I can find that. Hold on.

(Pause)

THE COURT: So in the declaration, itself, you're -- I'm sorry, can you just give me the page number again?

MR. DEAN: It's Docket 19-2 --

THE COURT: Yeah.

MR. DEAN: -- starting on page 3 of the PDF. It's on paragraph -- it's starting on paragraph 8. It's kind of the introductory paragraph.

THE COURT: Is it -- it against with Exhibit E?

MR. DEAN: Yes.

So that's sort of the summary of the 108 lines.

THE COURT: Okay.

MR. DEAN: And then if you look at italicized

categories that they're objecting to, I think we should just walk through those groupings.

THE COURT: All right. Why don't -- before we do that, why don't I hear from the Government, big picture, and then we'll --

MR. DEAN: We'll do that.

THE COURT: -- sort of turn to the detail after we orient ourselves if that's agreeable?

MR. DEAN: Thank you.

THE COURT: Mr. Lamb?

MR. LAMB: Thank you, Your Honor.

Ryan Lamb for the United States.

I think, you know, the United States certainly does identify that --

THE COURT: So, Mr. Lamb, before we get into the detail --

MR. LAMB: Yeah.

THE COURT: -- I want to make -- because, look, and you don't -- I want to make sure I've given you the chance to be heard because I -- before we get into the detail, I tentatively concluded that to the extent there's something that turnover applies to the Government the way it does to everybody else. Let me pause there for a second. In light of the 106(a) waiver as to 542, if something meets the statutory requirement for turnover, it applies to Government,

even if the underlying source of the obligation is contractual.

Do you disagree with that?

MR. LAMB: Do not disagree with that, Your Honor.

THE COURT: Okay. And so then there's the question -- and I accept your argument that real disputes about what's owed aren't amenable. There are a lot of cases that say that to resolution by turnover and so the question is, where's the line? And there's no case that tells me exactly that the question is the same line that's drawn by Rule 56, but I don't have a better alternative. But before I adopt that, I want to hear you out. If you think that's wrong, I want to give you a chance.

MR. LAMB: I haven't -- we haven't had the opportunity to really look into that either. I do not believe you're wrong in that being the standard.

THE COURT: Okay. All right.

So then you agree, essentially, at least for conversation's sake, that to the extent they could establish their entitlement to money as a matter of summary judgment, then it's subject to turnover and then there's no sovereign immunity. And so the question I really have is, is there a real dispute about these amounts or not?

Okay. So, I think we're in agreement about the exercise, then?

MR. LAMB: I think we are, Your Honor. We had taken the approach of the total amount and is there any -- is there disputes or are any of the amounts -- any amount of the 14 million, is that subject to, you know, does it qualify for turnover as a block amount. That's how we approach --

THE COURT: Okay. So I don't think that's the right way to think about this.

MR. LAMB: All right.

THE COURT: They're thinking of turnover of, like, on a dollar-by-dollar basis --

MR. LAMB: Okay.

THE COURT: -- or line -- let's think of it as line-by-line --

MR. LAMB: Right.

THE COURT: -- through the 108 lines. We have to ask that question individually. And that just seems to me just subject to the ordinary way you think of a contract dispute when there's lots of different line items, you view each of them, either it gives rise to a claim or it doesn't.

MR. LAMB: Right.

THE COURT: And then a dispute as to one doesn't mean there's a dispute as to all.

So, okay. So then I think what we've got to do is figure out, as to the 14-some -- and let me ask this question and this may be to both of you -- in the papers, when I read

them, there were some amounts where the Government said, we're going to pay you on October 21st. It's now October 28th.

I take it, as to those amounts, those have been paid and that's no longer in front of me?

MR. LAMB: I haven't been told otherwise. I presume that they've been paid.

THE COURT: Does -- Mr. Dean?

MR. DEAN: I don't know the answer to that. I can check with the company.

THE COURT: Okay. Let me suggest at some point we should figure out the answer to that because if there's something that is, in fact, moot, I don't think I ought to be exercising judicial authority and giving you a decision.

MR. DEAN: We're checking on that now.

THE COURT: Okay. Very well.

So, do you disagree with Mr. Dean's suggestion that -- well, I guess we can -- we can have a conversation about whether the declarations that they've submitted are properly cognizable on summary judgment, right. What is your -- and I take it the bid and ask there is Mr. Dean saying this is a summary of voluminous documents that's admissible under the rule that permits that and we've given you access to all the underlying documents.

And, again, this is just -- you know, the standard

at summary judgment isn't exactly the same as at trial. It just needs to be something that is likely to become admissible. So, what's your argument that what they're -- what they've given me isn't likely to become admissible?

MR. LAMB: So it is our understanding that the declaration relied upon review of the debtors' internal, what they call their NetSuite invoicing system. We have not been made -- those documents and records have not been available to us to review, so the summary is a summary of a review of those documents or of that system that we haven't reviewed.

What was provided for the Government to review was a series of emails and UPS receipts and matters like that.

THE COURT: And the underlying invoices, right; the things that feed into the NetSuite system, you had access, to, at least?

MR. LAMB: That's our understanding.

THE COURT: Okay. So I guess I'm inclined to think, then, at least for summary judgment purposes that's sufficient.

MR. LAMB: Uh-huh.

THE COURT: That, look, if we had a trial, we'd have to bottom it out more thoroughly, but that there's no particular prejudice. If you had the underlying material and had the ability to do the math to figure out does this map, and I take it you don't dispute that you've had that

opportunity?

MR. LAMB: We've had the opportunity to review what they provided to us --

THE COURT: Okay. And --

MR. LAMB: -- to map it out to the extent we were able to.

THE COURT: Okay. And so, to the extent the math didn't add up, you have the ability to come and tell me, Judge, you know, they're saying two and two is seven and they're wrong.

MR. LAMB: Correct.

THE COURT: Okay. So then I don't think there's prejudice to -- so I'm going to -- I don't have an admissibility question, *per se*, but I'm not going to strike the declaration. I think that I can work my way through this because we're all looking at the same numbers.

MR. LAMB: Understood.

THE COURT: To the extent we're concerned about substantive fairness, I want to be careful about it, but I don't think they're saying we believe they made these numbers up.

MR. LAMB: We don't believe they've made the numbers up, Your Honor.

THE COURT: Okay. Very well. So, then, we're just going to work with the numbers.

And I think what I want to understand, and Mr. Dean's suggestion is that we go through the categories of objections that are in sort of your declaration so that I can understand where there's a factual dispute. I start out with the view that having a party say, I've shipped you the stuff; you owe me the money, is a starting point and that you have the opportunity to say, No, there's a factual dispute about whether we owe you the money. Here's what it is.

MR. LAMB: Right.

THE COURT: And if that's a real dispute, then it's not subject to turnover and if it is, then -- right. Okay. So, I think we're on the same page.

So, and I think what we ought to do is go through, beginning with the bottom of page 3 of your declaration, the bases for saying particular lines are disputed, and then I'll try to do my best to make decisions about each of them and we'll see where we are. Does that make sense?

MR. LAMB: I think I understand, Your Honor.

THE COURT: Okay. So beginning of paragraph 8, paragraph 8 is introductory and then, so paragraph 9: Proof of delivery. DLA found Noble's proof of delivery insufficient for 73 lines and it's about $12 million. For most of them, nothing in the proof shows that the customer received the goods. For others, the proof of location shows a location other than the one the order requires.

So help me understand what the record before me shows with respect to this question.

MR. LAMB: So the debtors are required to provide a proof of delivery upon delivery of the items identified in the order. It's a document that's provided through the electronic system that the parties communicate through. What DLA found is for 73 of those lines, the proof of delivery that was supplied by Noble was insufficient in some material aspect and either didn't demonstrate that the customer received the goods or that it was -- or that it was delivered elsewhere.

THE COURT: Okay. And so where do I look for the detail? Is this reflected in the line-by-line?

MR. LAMB: My understanding is that it is, Your Honor.

THE COURT: Okay. So --

MR. LAMB: And just for clarity, Your Honor, we do have our declarant here if the Court does have questions.

THE COURT: Yeah, and I've got a motion --

MR. LAMB: And I understand, yeah.

THE COURT: -- and I'm sort of pointy-headed about what my task is.

MR. LAMB: I understand.

THE COURT: So let's sort of keep going through the categories so that maybe this will help. So paragraph 10

says receiving reports. Only 21 lines had a receiving report signed by a Government representative. For the other 87 lines, Noble's proof is a carrier's record, a contractor document, or an email.

So let's just talk about that for a second. Imagine they have a carrier's report that says we've delivered it to such and such place. I start out, as my question to Mr. Dean suggests, saying if you've got a witness who's saying I didn't get it, then I've got a dispute.

MR. LAMB: Uh-huh.

THE COURT: On the other hand if you're saying, I never signed for it, but I don't deny that I got it; I'm not sure that that's a factual -- that that's a dispute about your obligation to pay. So I sort of want to understand. Only 21 have a receiving report signed by a Government representative.

Are you saying there's some principle of federal contracting law that says you're obligation to pay turns on having a Government contracting officer sign the document?

MR. LAMB: It doesn't turn on when the Government entity or Government representative signs a receiving report.

THE COURT: Okay.

MR. LAMB: All that does, under the federal -- under the FAR is that begins a time to calculate any interest owed once confirmation of the goods is received and --

THE COURT: Okay. So they're not seeking --

MR. LAMB: -- later invoiced.

THE COURT: -- they're not seeking the interest, right?

MR. LAMB: They're not seeking the interest.

So all the receiving report demonstrates is that something was received on that date. It doesn't demonstrate what was in the box. There's no information as to whether those goods conformed to the item that was delivered or not.

THE COURT: Okay. Okay. But if -- I -- do you disagree with the proposition that if they come forward with a declaration that says, We shipped the things that they had ordered and here's the shipper's report saying they delivered it, that that's not conclusive, right. If you came in and said, I ordered eggs and you sent me milk, then that's one thing. But if they say, I sent you eggs and we've got a shipper's report, in the absence of your coming forward and saying, No, they weren't eggs, it was milk, then there's not a dispute.

MR. LAMB: There's a dispute because the Government hasn't had the opportunity to review, to open the box and confirm what is inside of it.

THE COURT: All right. Because that's essentially a 56(e) argument that you need more time for discovery. But because these are materials in your possession, I'm not

inclined to treat that as a dispute. I think that, you know, here we are and we're on -- I shortened notice, but I think the circumstances were appropriate. So I do think it's -- I think it's not inappropriate to impose on the Government, the obligation to come forward in connection with -- you did a terrific job with a long declaration explaining what the issues were, but I think I've got to go by what you've actually raised, not by things you wish you had more time to have raised.

MR. LAMB: So that, and Your Honor's recitation may go to the dispute. The other issue is going to be whether or not the debt is mature. And whether or not it's mature --

THE COURT: Okay. Help me --

MR. LAMB: -- is a completely separate issue.

THE COURT: So help me with that.

MR. LAMB: So that the --

THE COURT: When do these debts mature?

MR. LAMB: So debts mature under the FAR, under these contracts when the Government has received the item, confirmed that -- and the debtors have demonstrated through the system where the parties talk to each other, that it, in fact, delivered; the Government's inspected; and then the debtors have invoiced.

The debtors haven't invoiced the vast majority of

these and because they haven't invoiced, the debt is mature. The amount owed is not known until the invoice appears.

THE COURT: So if the language says -- let's just work through this -- this is the language of 542(b):

An entity that owes a debt that is property of the estate that is mature, payable on demand, or payable on order, shall pay a debt to the trustee.

And I take it you're saying, Listen, Judge -- you're being very polite and all of that -- but payable on demand is a term of art that covers, like, notes and the like that are written to be payable on demand.

MR. LAMB: Yes.

THE COURT: Payable on order is also such a thing and so if it's just a sort of ordinary trade obligation, it's either matured or it hasn't. And these haven't matured because the process hasn't run its course.

MR. LAMB: Yeah, and the contractual relationship describes how the debt becomes matured. And so that -- because it hasn't occurred yet, these debts would not be mature.

THE COURT: Is that your position, that that's true of all of these amounts?

MR. LAMB: It's my understanding that for all of the amounts for which the debtors haven't provided an invoice for, none of these debts are mature.

THE COURT: And of the 108 lines, how many of them is there not an invoice?

MR. LAMB: I would need a moment to go through the orders.

THE COURT: That's totally a fair ask.

Mister -- let me -- I don't mean to be playing ping-pong, but I'm just trying to do my best to get to the bottom of this -- so, Mr. Dean, what's your response to that point about the debts not being matured?

Well, before you do that, because I think I know what you're going to say, let me ask you this question, Mr. Lamb. Imagine the reason it hasn't matured is because you've wrongfully done something that you're legally obligated -- that you've failed to do something that you're legally obligated to do and that's why the debt hasn't matured.

What do I do about that?

MR. LAMB: So for any -- so you're referring to the Government hadn't provided a goods receipt?

THE COURT: Right.

MR. LAMB: Yeah.

THE COURT: And you've done that because -- imagine -- again, you know, I'm not saying there's evidence that says this -- but imagine the Government just didn't want to pay and it was obligated to pay, but it just decided, we're going to throw sand in the gears, so we're just not

going to do these things we're obligated to do and then we'll say it's note matured because they can't invoice us.

Would that exempt that debt from 542, is that sufficient?

MR. LAMB: Can you rephrase your question, Your Honor, just so I understand?

THE COURT: Yeah. Right.

In order to mature it --

MR. LAMB: Yeah.

THE COURT: -- in order for the debt to be matured, you need to check a box, essentially, right --

MR. LAMB: Correct.

THE COURT: -- and you haven't checked the boxes. Well, imagine you were legally obligated to check the box, you just didn't because you didn't want it to mature. In that case, does the that preclude turnover from being available?

MR. LAMB: These, all of these contracts relate to the terminated -- to the contract that was terminated prepetition.

THE COURT: Right.

MR. LAMB: To the extent that the termination order controls whether or not DLA can or is even able to issue a goods receipt is controlled by that termination notice.

THE COURT: Okay.

MR. LAMB: So to the extent that DLA has received an appropriate, acceptable delivery notice and is unable to issue a goods receipt due to the termination notice, DLA is simply following its -- the termination notice issued to the debtors prepetition, which is exercising its rights under non -- of equitable non-bankruptcy law.

THE COURT: So help me with this. The termination notice says, We're done buying from you, right, essentially?

MR. LAMB: Yes.

THE COURT: And so help me understand, what's the effect of the termination?

MR. LAMB: The termination notice does a couple of things. It terminates the underlying IDIQ, which allows for the Government to make orders in the future.

THE COURT: Okay.

MR. LAMB: So it terminates the ability to make any orders.

THE COURT: Okay.

MR. LAMB: So that's thing one.

Thing two, it terminates -- it precludes the debtors from, or the recipient of this, from delivering any goods that are -- haven't been fully delivered and complied with the requirements under the FAR.

THE COURT: Okay. So if there are orders that are

in process, what's the consequence of the termination notice for orders that are in process?

MR. LAMB: So goods, let's say they're in transit --

THE COURT: Right.

MR. LAMB: -- they're on a truck somewhere.

THE COURT: Right.

MR. LAMB: It is, for those goods, it is my understanding that Noble's obligation is to issue a return to sender to prevent those goods from being delivered. The DLA -- the customers of the DLA are not obligated to accept those items.

THE COURT: The customers of --

MR. LAMB: So the DLA does contracting for the military. So the customers of DLA are the Army, the Navy, the --

THE COURT: All right. But if they're shipped and actually received and not returned to sender, is that the allegation here, with respect to the sum of this $14 million?

MR. LAMB: Well, the obligation would be on the sender, on Noble to have the goods returned. To the goods either schedule them to be shipped back or what have you. Because the contract is terminated, the DLA cannot accept any goods after the termination event.

THE COURT: And so if, in fact, you have them,

then what? They should come pick them up?

MR. LAMB: Exactly, Your Honor.

THE COURT: All right. So, look, I'm going to -- so, I'm not a Government contracts expert, but I -- you know, I want to be respectful, but I sort of want to -- what I would like to do is try to figure out how do I put these disputes into categories and give -- do my best, by my lights, whatever that is, to answer the questions on a category-by-category basis.

Is there an easy way, easier than going through this declaration, to put these into categories like that or what's the best way, by your lights, to identify, here are the categories of questions that are raised by our dispute.

MR. LAMB: Certainly. I don't have an answer for you right now, but thankfully, we do have DLA counsel in the courtroom today.

THE COURT: Okay.

MR. LAMB: If we have a brief recess, we could come back to you with an answer to the question.

THE COURT: Would that be a useful exercise to get -- to have the parties talk and say, Judge, there are really six questions; here's what they are. I mean, I'm not -- I don't want to resist just doing my job and going through this and if you think it's all fully percolated in the papers, I'm happy to just keep going, but I'm struggling

to understand in a concrete way what the specific disputes are.

Mr. Dean, you look like you want to try to be helpful.

MR. DEAN: Well, that may be a good idea if we get stuck, but I think if you and I have a conversation first before that, I may be able to guide you in the right direction.

THE COURT: Let me give you that opportunity and then we'll come -- and Mr. Lamb, you're welcome to jump in whenever you'd like, so...

MR. LAMB: Thank you, Your Honor.

THE COURT: Okay. So if you have a view about the categories?

MR. DEAN: I do. I'd like to just tell you what our view is walking through them and then I think that'll clarify some things.

THE COURT: Okay.

MR. DEAN: And then if we have open issues, I'm happy to talk and go off the record.

THE COURT: Okay.

MR. DEAN: But I think some of this may be answered by some of the discussion that we're going to have.

THE COURT: Okay.

MR. DEAN: I first just want to confirm one thing

that you and Mr. Lamb were just talking about. This summary judgment motion has nothing to do with the goods that were on the truck or that were not received or delivered before the date of the termination notice. That's part of the four. And we intentionally did not bring those because we thought there may be, arguably -- these were the easier ones to deal with on summary judgment. So once --

THE COURT: All right. Tell me about the categories of things that are before me.

MR. DEAN: And I also have confirmation of what's been paid, by the way.

THE COURT: Okay.

MR. DEAN: So, let's -- if you look at the declaration, starting on paragraph 9, every time there's an italics --

THE COURT: Yeah.

MR. DEAN: -- that's a category. So that's what I want to kind of walk you through.

THE COURT: Okay. So let's go through that, then.

MR. DEAN: So the proof of delivery, basically, what they're saying is that we don't agree that the customer received it because we don't agree with your shipping confirmation. But the language is important because it says nothing in the proof shows that the customer received the goods, but they don't say that the customer didn't receive

the goods. They didn't come into court and say, We never got this --

THE COURT: Right.

MR. DEAN: -- or it's apples or it's oranges --

THE COURT: All right. Let me stop you there. When we look at your evidence, where do you come forward and say, We gave them the goods?

MR. DEAN: We gave them confirmation from the carriers that the goods were delivered. And they're saying because the customer didn't sign a receiving report, that's not good enough.

THE COURT: All right. I understand. I just want to --

MR. DEAN: That's the issue.

THE COURT: Let me just -- can we look at your declaration for a second? So that's D.I. 5, right?

MR. DEAN: I want to get the whole declaration, because I have it.

(Pause)

MR. DEAN: Okay. I have Exhibit 5 and the 108-line Exhibit E.

(Pause)

THE COURT: I understand that, but I guess I'm looking for, is there a textual statement that says, The stuff on Exhibit E is stuff that we shipped to DLA.

MR. DEAN: One second, Your Honor.

(Pause)

MR. DEAN: So at paragraph 19, Mr. Albergotti says, Attached is Exhibit C, identifying the contract number, the invoice number, the item delivered, the quantity delivered, and, critically here, the date of delivery. And the way that we calculated the date of delivery was either to look at the receiving report signed by the customer if we had it. We don't always have it.

THE COURT: Can we go back to paragraph 17, right. Paragraph 17 says Noble delivered certain goods to the contractually agreed-upon destinations or provided services to the appropriate party through the date of DLA's purported termination on August 26th.

MR. DEAN: Yes.

THE COURT: The Government retained possession of such goods, and this is a pre-termination delivery order.

Is all of the amount that you're seeking in that category?

MR. DEAN: Yes.

THE COURT: Okay. So I've got, now, a declaration that says we shipped the goods and the Government kept them.

MR. DEAN: And we provided them the underlying receipts.

THE COURT: All right. And for each order, either

the Government signed a receiving report or we've got proof of delivery and the Government hasn't raised any defects or non-conformities.

Okay. So that -- I just wanted to work through this from the starting point.

MR. DEAN: Correct.

THE COURT: So what we're talking about is $14 and a half million of stuff where I've got a declaration by a witness who says, This $14 and a half million of stuff was shipped and delivered and no one's complained to me that the stuff doesn't work.

MR. DEAN: That is correct.

THE COURT: Okay. And so then, from there -- and I apologize -- and it's all identified in the schedules and so forth and so on -- and so then, we've got the response that says, No, no, no, Judge, there are the following problems. And those problems are, first, as you're saying, for $11 million, we found the proof of delivery insufficient.

Okay. Now, I -- so let's talk about that. Is their finding the proof of delivery to be sufficient necessary for the debt to mature?

MR. DEAN: No, not from our perspective.

THE COURT: Let me pause there.

Mr. Lamb, do you disagree with that?

MR. LAMB: I very much disagree with that, Your

Honor. The debtors are conflating delivery with acceptance, which is a requirement under the FAR.

THE COURT: So now someone's got to show me the FAR. Where -- and that's in this record somewhere?

MR. LAMB: Yes, Your Honor.

So under the contracts, Your Honor, just to be clear, the party delivers the goods to wherever they're supposed to be delivered. Party -- Noble or the shipper provides a proof of delivery through the system where DLA and Noble communicate. The proof of delivery, then, triggers a review of the goods that were delivered to make sure they conform to the contract. If they do, DLA, then, provides a goods receipt in that system.

Upon the goods receipt being entered into the system, that allows Noble to provide an invoice in the system, which then triggers the payment obligation. It's the filing of the notice that makes the debt mature.

THE COURT: Okay. And what's your response?

MR. DEAN: The problem with that is that we can't issue the invoice until they acknowledge the receipt. And when they sent this termination notice, instead of doing it in the five to seven days they normally do, they just stopped. They stopped on everything, despite the fact that the text of the termination order that you were just hearing about. I would direct Your Honor to that at Exhibit D(1),

Docket 5-1. It's one of three. It's D(1) to D(3), but the relevant language is the same for all.

And the one I'm looking at now is Docket 5-1 at page 186 of 205 of that filing, and I think the language of this is important.

THE COURT: Hold on one second.

(Pause)

THE COURT: I'm sorry, this is Docket 51?

MR. DEAN: 5-1.

THE COURT: Oh, 5-1. I'm sorry. I'm sorry.

MR. DEAN: No worries.

THE COURT: I got it.

MR. DEAN: Exhibit D(1) of the declaration --

THE COURT: Got it. I apologize.

MR. DEAN: -- in the adversary.

THE COURT: Yep, yep, yep. Hold on. 5-1.

What page? Do you have the --

MR. DEAN: The second page of the letter, about three-quarters of the way down where it says, "Delivery of material after..."

THE COURT: Hold on. So 5-1, Exhibit?

MR. DEAN: D(1) and it's on page 187 of 205 --

THE COURT: Oh, thank you. Perfect. 187 of 205.

MR. DEAN: -- about two-thirds down.

THE COURT: Hold on. Let me get there in a

second.

(Pause)

THE COURT: Okay. I'm on page 187 of 205.

MR. DEAN: And this is the same for all three of the letters, but so --

THE COURT: Yep, I understand.

MR. DEAN: -- it starts with, "Delivery of material..."

Are you with me? It's the third-to-last paragraph.

THE COURT: Delivery of the material after the date of this notice.

MR. DEAN: Okay. So here's what the order says that you were just being told about. Delivery of material after the date of this notice -- so, that means stuff on the truck or stuff that hasn't even been put on the truck, which we're not dealing with here --

THE COURT: Uh-huh.

MR. DEAN: -- will not be considered for goods received -- that's not what we're dealing with -- posting and proof of deliveries indicating delivery of material -- delivery of material --

THE COURT: Yeah.

MR. DEAN: -- after the date -- delivery of material --

THE COURT: Right.

MR. DEAN: -- after. It doesn't say that they cannot post and confirm delivery of stuff after the termination notice that was delivered previously. But that's what they've done here and that's why we have a problem.

THE COURT: I understand that, but Mr. Dean, the -- I think the argument that the Government is making is, I understand that, and we may have breached our contract in that regard, but that's a claim for breach of contract, not a claim for a debt that is matured within the meaning of 542(b) and so that's an argument that you can take to the Court of Claims.

MR. DEAN: I -- if you took that interpretation, Your Honor, you would never be able to hold that a contract claim could fall within the scope of 542. If you allow the counterparty to the contract --

THE COURT: They usually don't. They usually don't. They do only when it's really obvious and when -- then it's matured.

MR. DEAN: Well --

THE COURT: And if there's a barrier to maturity, that is a contract violation. Then we've got a contract dispute, not a turnover action.

MR. DEAN: But, Your Honor, our argument is that they normally did this in five to seven days. They stopped,

and by stopping, they have constructively accepted the goods and they owe us the money. And the only thing to do is to allow us to invoice them.

This is the same hard argue -- fight that we had at the setoff hearing where they were blocking the CAGE codes and not letting us put the invoices in. This is what's going on here.

THE COURT: Let me hear Mr. Lamb, your response.

MR. LAMB: The parties are merely complying with their understanding of the contract, Your Honor. This really is a --

THE COURT: Do you dispute that, to the extent you received goods before the termination, that you're obligated to process them in the ordinary course?

MR. LAMB: (No audible response.)

THE COURT: You received them before the termination. So at the time they arrived, there was a valid contract.

MR. LAMB: Right.

THE COURT: You're saying you've got the goods. Do you get to say we're going to strangle the supplier and just stop the exercise of processing payments?

MR. LAMB: I believe the answer is, Your Honor, that if we received the goods and received a delivery report from the debtors, that their obligation to provide proof of

delivery --

THE COURT: Uh-huh.

MR. LAMB: -- if that happened prior to termination, then they would be processed in the normal course.

THE COURT: Okay. And imagine the evidence is that they were delivered and that you didn't process it in the ordinary course. Then what?

MR. LAMB: If we -- in the -- so, this presumes the debtors filed a proof of delivery and the Government hasn't filed its good receipt, which then triggers the invoice?

THE COURT: Right.

Is that -- Mr. Dean, that's the circumstance that you think we have here?

MR. DEAN: Yes, Your Honor. They're not engaging with us to -- in this process that they normally would engage with to get all of this done. They stopped engaging with us when the termination of this issue, so we cannot complete the paperwork because they refuse to engage with us on pre-termination delivery orders at all. This is a back-and-forth. This is an engagement. It isn't like, they have -- the people have conversations, send emails, they work it out. They literally stopped engaging with us at all on these issues and will not agree to allow us to put these invoices

in. And so that's why we've made the constructive acceptance argument that we've made because not only are they sitting around not doing anything, they haven't given us our stuff back. They still have it.

Think about, Your Honor, the way this could work. If the Government just decided they wanted to get a bunch of our stuff, not pay for it. They just issue a termination notice that day and say I'm not going to process anything. That's what's going on.

THE COURT: Well, look, so I understand that, Mr. Dean. The question that I'm struggling with is when do we say that's now a matured obligation and it's subject to turnover versus saying, you know, now you've got a claim against the Government for breach of contract that's hearable in the Court of Claims. That's where I'm struggling.

And I hear your point that says, look, there's got to be a limit. You don't get to, through, you know, sort of egregious misconduct, deprive someone of their rights. So I'm not unsympathetic to the common sense of that, but I'm just trying --

MR. DEAN: Well --

THE COURT: -- to get to the bottom of, what is -- again, I want to sort of wrap my brain around what exactly is the dispute in front of me based on the record before me.

MR. DEAN: Your Honor, the -- we believe the law

is when the debtor performs the obligations that it is supposed to perform to get paid and all that is left is this perfunctory action that somebody else hasn't taken, that's not --

THE COURT: No, I hear you.

MR. DEAN: -- that's no different than somebody just not paying us.

THE COURT: I'm open to the proposition that if the record shows that the only reason this debt isn't matured is because the Government hasn't taken a ministerial act that it's legally obligated to take, that that's insufficient to treat it as matured. And I'm trying to understand is that what's happening here or is there something else, based on the record before me?

MR. LAMB: I would say that's not what happened here, Your Honor.

THE COURT: Okay. So help me with the record, then.

MR. LAMB: So the record -- so the debtors have provided evidence suggesting delivery of something somewhere.

THE COURT: Right --

MR. LAMB: Right.

THE COURT: -- at the very least.

MR. LAMB: So all we know is that something was delivered somewhere.

THE COURT: Right.

MR. LAMB: We don't know what is in that because the debtors have not provided the proof of delivery.

THE COURT: Well, for some of them, they say they have provided proof of delivery, right?

MR. LAMB: For some they have. For many they haven't. And that proof of delivery is insufficient. It needs to happen prior to the termination.

THE COURT: No, that can't possibly be the answer, right, that -- what if -- if they've delivered the goods, right, and then, and you've -- and so you've got the goods and then there's a process that involves giving you the proof that involves -- because what the letter that is in the record says is basically, Stop sending me stuff. We don't want new stuff after today. But there's at least implicit, that to the extent there's stuff that you've already got, we're just going to run the course and pay you the normal way.

Do you disagree with that?

MR. LAMB: I don't disagree with that.

The issue is what the proof of delivery is insufficient for a wide number of the deliveries.

THE COURT: All right. So show me -- so, look, they -- where they have proofs of delivery, what in the record is here that says this delivery was insufficient and

here's why.

(Pause)

MR. LAMB: So, Your Honor, that would be in the spreadsheet to our declaration --

THE COURT: Uh-huh.

MR. LAMB: -- under the column "proof type." So carry -- and it describes carrier records, Government receiving reports, carrier records.

Carrier records are not proof of delivery. Carrier records are UPS delivered -- a receipt that UPS delivered something somewhere.

THE COURT: As to any of those goods, are you denying that you received them?

MR. LAMB: We're not denying that we received something, but we don't know what we received because the debtors never provided proof of delivery that identifies what's in the box and what -- and that what's in the box matches what's in the contract.

THE COURT: All right. So let me look at your exhibit real quickly.

(Pause)

THE COURT: So looking at your exhibit for a second, your chart, if you look at exhibit line 11, it says there's a carrier record and then next to it, it says, yes. I take it meaning that the carrier record is sufficient;

whereas, line 16 says carrier record and no.

Is that the relevant distinction between where you think the carrier record -- the yes/no column to the right of -- right -- the -- there's a column. It's the one, two, three, four, five, six, seven, eight, nine, tenth -- tenth column on your chart. What does the yes/no mean here?

(Pause)

MR. LAMB: Give me a moment, Your Honor.

THE COURT: All right. So, look, it's 12:15. I'm totally prepared to do my job to the best of my ability to stick through this, and while it's a slog, go through it all. Another alternative is for you to take a break and see if there's a way to organize this more cleanly.

And let me say the following, just notionally, I'm interested in understanding -- I take the statutory language seriously. That probably wouldn't surprise any of you. The debt needs to be matured to be subject to turnover. If there is evidence in the record that the debt didn't mature because there's a *bona fide* dispute about what your obligations are, then I'm inclined to say it hasn't matured. If the reason the debt hasn't matured is simply because the Government hasn't taken a ministerial step that it's legally obligated to take, then I'm less inclined to say that's an unmatured debt.

And so I'd like your help in understanding how do

I put the $14 and a half million into categories based on that principle. Does that make sense?

MR. LAMB: That completely makes sense, Your Honor.

MR. DEAN: It does.

THE COURT: All right. So why don't we take a break, unless there's something else that you think -- where I can be helpful to you all before then.

MR. DEAN: I don't think so, Your Honor. I think that works.

THE COURT: All right. So why don't you see if there's a way to sharpen -- and I'm not -- and, again, I'm -- I don't mean to be moving my job to you. I'm happy to be the one who makes decisions and, you know, and I'll stand behind whatever those decisions are. But I also, when we've got a detailed and complex record that you know better than I do, I want to see if we can put this into categories that facilitate the disposition of the case.

Does that --

MR. LAMB: That completely makes sense, Your Honor. We're happy to make your job as easy as possible.

THE COURT: All right. Okay.

All right. So why don't we do that. How long should we take at that break to give you all a reasonable opportunity? Should we break until 1:30? Is that -- longer?

Shorter?

MR. DEAN: I don't think we need that long --

THE COURT: Okay.

MR. DEAN: -- but it's up --

THE COURT: No? 1:15?

MR. DEAN: 1:15 is fine.

MR. LAMB: I would kind of prefer 1:30, Your Honor, just so we have the opportunity to talk internally and then we can talk with --

THE COURT: That's fine. You're going to want to talk to your clients. That's fine.

Why don't I do that. So we're going to recess. We'll come back at 1:30 and we'll see where we are. And, again, I don't mean to be punting, so to the extent you tell me, Judge, you need to decide this, you're allowed to tell me that.

Okay. Very well. I appreciate this -- the terrific help. Until then, we're in recess. Thank you.

(Recess taken at 12:15 p.m.)

(Proceedings resumed at 1:30 p.m.)

THE CLERK: All rise.

THE COURT: Okay. We're back on the record.

I hope that the break was constructive. I'm happy to hear from the parties.

MR. DEAN: Thank you, Your Honor and thank you for

the break. I think we've agreed that it probably makes sense just to go through the exercise of going through the declaration, but I'll deal with some framework this time --

THE COURT: Okay.

MR. DEAN: -- to try to help you. So I'd like to just present our positions on what they said in the declaration and give you some explanation of things and I'll sure you'll want to hear from the Government on that, as well --

THE COURT: Okay.

MR. DEAN: -- on that. And I'll deal within the framework of what do I think is important here and what do we have to show and what I think the Court cares about. So I think showing delivery of the goods on or before the August 27th termination date is important. Those are the pre-delivery termination orders that we've defined under the subject to summary judgment. So I'm just going through sort of an elements of proof here to show that the debts are unmatured in the order.

So, then we have to show proof of delivery that the goods that we say were delivered were actually delivered either before or after the termination date, according to their own termination notice. I think the date that they received the proof of delivery is also important, and I'm going to walk you all through the evidence on this because

their failure to engage with us -- and just -- I think it's helpful to understand, like, how this process works. So when we get a proof of delivery, whether it's the customer signs the slip or we get a FedEx tracking number or something, we compile a package and somebody from Noble emails it to someone from the DLA and says: Here's the notice; here's this; here's that. Do you approve? And sometimes the DLA comes back and says, Looks good. Goods receipt. It's going to be posted now and that is what allows us to upload the invoice for 30 days or less, if it's a fast-pay in payment terms.

If they have a problem, we work through it together over the next couple of days. We make whatever corrections. If something was delivered to one address and when the manufacturer and the end-user worked out a different address, they might point that out and we'll correct the address and we'll get paid for that, as well. So there's sometimes a couple of days of back-and-forth through email to clarify or fix whatever the issue is and then they post the goods receipt.

The problem that we have here is that they have completely failed to engage with us because they've taken the position that if the goods receipt wasn't posted prior to the termination date, regardless of when the delivery was made, that they're not going to pay or they're not going to post it

at all. So they've just gone radio silent.

And all that happened, with a couple of minor exceptions, more than 30 days ago. So had they done what they were supposed to do more than 30 days ago when they acknowledged they first received the proof of delivery, we would have been paid by now.

THE COURT: And the obligation to act within 30 days comes from where?

MR. DEAN: The contracts.

THE COURT: Okay.

MR. DEAN: Well, the invoices would be due and payable in 30 days, generally speaking, unless there's a fast-paying component of it that allows us to invoice before the goods receipt is posted.

THE COURT: So if they've got a problem, they should tell you that within the 30 days?

MR. DEAN: If they have a problem, they normally tell us within five -- they tell us immediately.

THE COURT: I'm trying to separate. I mean, there may be things that they do in the ordinary course of business that they're not legally required to do and so what I'm trying to figure out, right, just as I'm thinking about this, is if they decide to slow-pay you within their rights, like, you know it could be that they're required to pay within 30 days; they would typically pay you in 7. If they decide

we're mad for any reason or no reason and we're now going to take the full 30 days, that doesn't violate the contract, right?

MR. DEAN: I think that we're mixing up two issues.

THE COURT: No, I understand, but I guess what I'm trying to understand is it seems to me that the contract, by its terms, is basically a 30-day pay following X, Y, and Z. And you deliver whatever you're supposed to deliver, if they were required to pay that within 30 days, I think it's reasonably implicit that if there's something wrong with what you've given them, they've got to tell you what that is within the period they would otherwise be required to pay you.

MR. DEAN: Right. And that's correct and they always do it much earlier than that. And they have a policy that says that this is what they're supposed to do.

THE COURT: Okay.

MR. DEAN: And we cited that in the pleadings, okay.

But I agree with that proposition, as well, but either way, it would result in we would be paid by now, had they done what they were supposed to do.

So let me do that this time in the context of walking you through the record.

THE COURT: Okay.

MR. DEAN: And I'll start with paragraph 9 of the Cuorato declaration, the proof of delivery. We've kind of gone over this one a bunch and I think you understand the issue there. We've provided the proof. All they said is yes or no, but -- in their chart, but they provided no explanation as to what yes or no means.

And from our perspective, you can't just say I disagree and not provide any reason as to why the order wasn't valid. And even if the proof was insufficient after they had reviewed it, they would have had an obligation to tell us by now and pay us and work it out and solve the problem, but they didn't.

Now, I just want to detour to the chart for a second that they provided, because we don't have to guess on this issue. They told us. They told us when the proof of delivery was first received by Noble. This is when they should have told us whether there was a problem or posted the goods receipt and paid us. And if you look, Your Honor, most of them happened before August 31st. That was more than two months ago or about approximately two months ago from today. A couple of them, at lines 7 through 9, occurred on the 28th and 29th. So, like, maybe they'd be doing it a couple -- a day or two from now on those.

There's one on the 22nd at line 50. There's one

on the 21st at line 48. I mean, you get the point. But most of them are ones that we provided them in August, almost 60 days ago. Not just the delivery date, but we actually provided them the actually proof of delivery as they have admitted in their own filing.

THE COURT: So this column, so help me with this. So, if I -- just reading this chart, the first column is just numbers. The second and third are presumably order numbers or the like, right? With me so far?

MR. DEAN: Yes.

THE COURT: The fourth column, is this, like, a quantity? Do you know what that is?

MR. DEAN: The claim number?

THE COURT: Oh, I see.

MR. DEAN: That's the contract line number.

THE COURT: Got it. Okay.

So the version I'm looking at doesn't have titles to the columns.

MR. DEAN: I'm looking at -- I'm looking at their -- so they recreated this version of the Excel in Cuorato's declaration, so it's at Docket 19-2.

THE COURT: Right. Page 10 of 14.

MR. DEAN: Correct.

THE COURT: And at least the version on my screen, the very top line, for whatever reason, doesn't have titles.

MR. DEAN: Oh, it may be cut off on the -- would you like us to get you a clean copy of that, because it may be cut off on your --

THE COURT: Does it exist in this record somewhere?

MR. DEAN: It does. It should be in the agenda binder and in their exhibit binder.

(Counsel confers)

MR. DEAN: One second, please.

(Pause)

THE COURT: U.S. 4?

MR. DEAN: U.S. 2.

MR. LAMB: It's U.S. 2, Your Honor.

MR. DEAN: U.S. 4 is the Albergotti dec.

THE COURT: Okay.

MR. DEAN: So U.S. 2 is theirs.

And then I'm looking at the schedule --

THE COURT: Okay. I see. Got it. I now have it.

MR. DEAN: -- to that one.

THE COURT: Sorry about that.

So this is -- so, I think U.S. 2 -- U.S. 2 is the same declaration that's attached to D.I. 19?

MR. DEAN: We didn't prepare that binder, but I believe it is. It says it is, but we're happy to provide you with a copy of it, too, but maybe I'll defer to.

UNIDENTIFIED MALE SPEAKER: Well, I'm -- this is the wrong one. This is the Cuorato declaration for the stay relief.

THE COURT: Yeah.

MR. DEAN: Oh, that's a stay relief Cuorato declaration. Okay, sorry. Let me --

(Counsel confers)

MR. DEAN: It's also an attachment to the brief -- to their brief.

THE COURT: See, that's the version I've got on my screen. It's just that that version doesn't have headers on the columns.

MR. DEAN: Let us try to get you a copy of that. It must be an issue, because the version that I have that's printed from the docket has all the headers. So, I don't know what's going on there.

(Counsel confers)

MR. DEAN: Let me -- can I just confer to get you another copy?

THE COURT: You may. Thank you.

(Counsel confers)

THE COURT: So, with the help from my law clerk, I've got a version that does have headers printed on it.

MR. DEAN: Okay. Great.

THE COURT: So that is helpful.

MR. DEAN: Okay. Thank you.

THE COURT: And I apologize for misunderstanding earlier. Okay. So now I understand, so the -- what you were just explaining to me and I would have understood if I had the headers in front of me, is that their chart indicates the date when the Government first received proof of delivery --

MR. DEAN: That's correct.

THE COURT: -- and the column is titled "proof first received."

MR. DEAN: And then they tell you what it is and then they tell you whether it's acceptable.

MR. LAMB: Your Honor, that's not entirely correct.

The proof received for some of them is when the proof was -- that an adequate form of proof was received. So for -- I'm sorry, give me one moment, Your Honor.

THE COURT: Go ahead. Take your time. And I'm happy to do this sort of informally. I don't mean to encourage folks to cut each other off, but where we can get to the bottom of it --

MR. DEAN: I'm -- I think this is helpful.

THE COURT: Yeah.

MR. DEAN: I think this is helpful.

THE COURT: Yeah, okay. We're all on the same page.

(Pause)

MR. DEAN: It's their chart. I don't want to misrepresent what it means anyway, so I'm just telling you what I'm reading.

MR. LAMB: So, Your Honor, for example, line 58 --

THE COURT: Yup.

MR. LAMB: -- states that proof first received 9/9/26. The notes state that October 7th production shows an earlier email sending proof.

THE COURT: I see. So, where the proof is acceptable you have listed the date when it was --

MR. LAMB: First received.

THE COURT: -- first acceptable.

MR. LAMB: The first acceptable proof, correct.

THE COURT: Okay. All right.

MR. LAMB: If it is acceptable.

THE COURT: If it's acceptable and where it's not acceptable it's the date where you got whatever you got that you found to be unacceptable.

MR. LAMB: I believe that is correct, Your Honor. Yes.

THE COURT: Okay. So, we're on the same page there.

So, Mr. Dean, let me let you continue in an orderly way. I will try not to cut you off and make sure I

will --

MR. DEAN: No, its fine. I actually like when you cut me off. It's not a problem for me. I prefer having conversations then talking to myself in any event. So, it's completely fine.

So, the point that I was trying to make here, Your Honor, is I think Mr. Lamb just even made the point even stronger for me is that many of these have actually already been -- they have already said the proof is acceptable and they're still not paying us because they argue, as I will go through in a minute, that the proof was sent after the termination date which is, obviously, incorrect.

So, just going back to the text of the affidavit we've got the Paragraph 10 of receipting report issue. I think we have covered that. I think Mr. Lamb acknowledged that that was not material to the contract requirements related to the interest issue that we're not going after.

Eleven, this is really the critical point and this is where we're having a lot of problems here is that they take the position -- and they do it here -- that when Noble sent the proof actually matters, not when the delivery occurred. That is completely inconsistent with what their own -- with what the contracting officer's order said was going to happen.

This shows that what they did was they just

stopped engaging with us at the point in time when the termination order was entered and they have taken the position with us, and they have taken it here, that if the goods receipt wasn't posted by the time of the termination notice then we're not going to post it regardless of whether the delivery occurred and we're keeping the stuff and not paying for it.

So, to us 11 is a legal defect and it's something that is irrelevant as to when we provided the proof. As long as we provided it to them within 30 days to be paid that that would be, otherwise, matured due to nothing other than their own failure to engage and tell us what is wrong or post.

The destination line, this largely relates to a bunch of drone deliveries. And I will represent to you, Your Honor, there is no chance that Noble would be sending drones to addresses that we were not told to do so by the Army. And that is exactly largely what happened here with the Fort Bragg one, which is the big one. The Army called the supplier directly, the manufacturer, and they worked out a new address.

So, what generally happens here is we will send the goods -- we will send the documentation to DLA. If they notice that the address is different then what was in the contract they will -- sometimes they will point it out to us and sometimes they won't. If they point it out to us then we

just make a correction in the paperwork and say, oh, well, the -- in this case the military officer and the Army directed the manufacturer to send it directly to Fort Bragg instead of somewhere else, let's just make the change.

But because they completely failed to engage with us when we submit the addresses that show the actual delivery that are different then what is in the contract they just say, oh, well, its defective because the address is different then what is in the contract.

THE COURT: Does -- where does Mr. Albergotti's declaration tell me what you just did explaining that this is the story?

MR. DEAN: That -- the story about the army officer that I just told you that is just me trying to give you some background as to how this came up.

THE COURT: And I appreciate that but --

MR. DEAN: It's not in the record.

THE COURT: -- even the broader point that says, listen, to the extent there is a discrepancy between the address where it was delivered and what the contract says, the reason for that is such and such.

MR. DEAN: That is not expressly in the record. So, what I will say to that is that is just more background for me to explain to you.

THE COURT: No, I understand. You understand why

I'm asking this question.

MR. DEAN: No, I get it. I totally get it but our response to that is had they engaged with us when we submitted the proof we would have fixed the address and we would have gotten paid.

Now, our alternative argument on these is that they have constructively accepted the goods at the addresses because they have not taken issue with the address.

THE COURT: Okay. I understand.

MR. DEAN: So, those are the two alternative arguments in category destination.

THE COURT: Okay.

MR. DEAN: The goods receipt -- again, Your Honor, this is the same flawed argument that they have -- they're arguing that they didn't post goods receipt until after the termination date. Their telling you when the goods receipts were posted or that they hadn't posted it within certain periods of time.

Now, on Paragraph 14 you asked about this at the beginning of the hearing, so I got an answer for you there. Everything in lines -- everything in all of the lines here except for the last sentence, at line 76, had been paid. So, the $1,000 at line 76 has not been paid but everything on 14 has now been paid. I can confirm that for you. So, I don't think that you need to rule on that.

So, again, there is an issue on dates at 15. They're challenging --

THE COURT: I'm sorry, slow down. I just want to make sure -- I apologize for being slow. 13 -- the issue in 13 is that you haven't invoiced -- DLA has posted a goods receipt for only nine lines and then it identifies those nine lines. Four of them are the lines DLA did not terminate. DLA posted goods receipts for three of those four. Noble hasn't invoiced for any of those four. The other five are fast payments.

When I issued the termination notice, DLA had posted no goods receipt for any line terminated -- on a terminated order line. DLA has posted no receipts for the other 99 lines.

So, I'm sorry, I'm just not following what the point is here. So, if you can help me understand what the issue is.

MR. DEAN: I think what they're saying is that because they didn't post goods receipts prior to the termination that they didn't.

THE COURT: Okay.

MR. DEAN: I think that is -- but I will defer to Mr. Lamb on that as to what --

THE COURT: Mr. Lamb, help me understand this.

MR. LAMB: So, for four of them they were never

terminated. They were never on the terminated list. Those have been paid. They were not subject to the termination.

THE COURT: So, that is not in front of me.

MR. LAMB: That is not in front of you.

THE COURT: I don't have to worry about that.

MR. LAMB: Correct. The other five -- so, the concern the Court is the other five are fast payment lines described at Paragraph 14.

THE COURT: I see. So, nothing in 13 matters because either it's not at issue -- it either is never at issue or its been paid by now.

MR. DEAN: That's correct or it's a fast pay where the goods receipt doesn't need to be posted and we can invoice it.

THE COURT: Okay. So, 13 -- on the list of things we need to worry about, Paragraph 13 should fall off of that list.

MR. LAMB: Yes, sir.

THE COURT: Okay, I'm with you.

MR. DEAN: And 14 is the same other than the small amount at line 76 on the last sentence, which is --

THE COURT: Which is $1,500.

MR. DEAN: That's correct.

THE COURT: Okay. So, let's assume that we're not going to worry about the $1,500 for this purpose because

we're going to burn more than that trying to figure out the answer.

MR. DEAN: Fair enough. Fair enough.

THE COURT: Okay. Though my rate is very fair, I just want you all to know.

(Laughter)

THE COURT: Really bargain at any price.

Okay. Paragraph 15.

MR. DEAN: So, here they're challenging whether the dates that we provided are actually the dates of delivery and Sub (a) they are correct that some of the delivery dates were off but they all were still prior to August 27th, and we describe this in the reply. So, it does not matter for the purposes of whether we're entitled to payment on (a).

THE COURT: Okay.

MR. DEAN: For the issue on (b) it's a little convoluted. We attached the document in reply but, effectively, somebody looked at a 9/4 date on the top right of an invoice but it says on the invoice that the delivery date was prior to the termination date. So, someone just misread it and put an email and said delivery date was 9/4 but it was just somebody misreading the document. So, we explain that in the reply and put the actual document in so the Court can see why there was some confusion about the actual delivery date but it was, in fact, delivered prior to

the termination date.

THE COURT: Okay, I see.

MR. DEAN: Okay. And that is in the transmittal declaration, Exhibit B to the reply.

THE COURT: Okay. What about 15(c)?

MR. DEAN: This -- lines 83 and 84 --

THE COURT: No, that's (b).

MR. DEAN: Right, but it's also noted in (c). It's a duplicative -- some of this stuff overlaps. They're raising multiple issues.

THE COURT: I'm sorry, yup.

MR. DEAN: These were in a folder that they misinterpreted the label in the folder that we produced to them, okay, but this 83 and 84 why they say on or after August 27th is because those are the two that they were taking the position it occurred after August 27th due to the issue I just explained to you. So, that is 1.2 of the 1.3.

The other ones totaling about $100,000 at lines 94 to 108, just due to the -- we don't have all of those in the record but we did doublecheck and I think when you look at this language it actually matches up. They say it took place on or after August 27th but if it was delivered on August 27th, which all of these were other than the two I mentioned before with the 9/4 issue, they would have been carved out of the termination notice because the termination

notice says anything delivered after the date of the termination notice.

So, everything except -- all of this was delivered on August 27th or before. It's just that this invoice had the 9/4 date on it, so it lead to some confusion.

THE COURT: Okay.

MR. DEAN: There's a couple of minor issues that I won't spend a lot of time on was on 16 but the first one is in (a), lines 63 and 68, they say those were for two -- we double billed them for that training course but that is actually not accurate. We submitted -- the amounts were the same, it looked like a dupe but when you look at the two invoices submitted with the reply transmittal declaration there's like different transaction numbers on the invoice. So, this was just the same course twice for the same amount. So, this is one of the ones I mentioned that they just misread from the production that we brought out in the reply to confirm that they misread it.

And then the other issue in (b) is that, and we described this in the reply as well, that line 9 lists three units but the packing slip shows 10 and that is because the packing slip showed products and services and the three were just the products. We explained that in the reply. It's a small issue. Then for line 10 we can live with the 15th instead of the 16th.

Then the final issue that they raised, Your Honor, is the need to go get customer records and I think we've already addressed that they control all of this and that they don't need additional discovery for that. I am happy to address that if you need to, Your Honor, but they have access and control, and can gather, and has gathered in five to seven days throughout this process when they wanted to cooperate all of these records.

So, I think that they are putting that out there to try to form the basis for a Rule 56(d) motion, which I think we have already discussed, so I won't address it unless the Court has any other questions.

So, just to summarize, Your Honor, we submitted sufficient evidence to show that all of the goods and services were provided and/or delivered on or before August 27th, 2026 when the termination notice was issued. The government admits that we provided them with proof of delivery at least 30 days ago except for the one or two that are like 9/28 and 9/29.

They decided not to engage with us to try to approve it, provide us corrections, tell us to make a change, do whatever needs to be done to post the goods receipt. That is the only reason why the goods receipt has not been posted and we can't invoice them until, obviously, the goods receipt is posted.

So, we would submit that we have submitted more than sufficient evidence to show that we delivered these goods. They have not objected to them. They have not returned them. They have kept them all. They admit that we gave them proof of delivery. They, I think, admitted that they didn't engage with us because of the termination notice even though that is actually inconsistent with the language of the order. And that they would have owed us the money had they not done so.

So, for those reasons, Your Honor, and that includes the address changes, by the way. Like those would have been corrected and we would have been paid on those. As I said alternatively, they constructively accepted those at the alternative address in any event because there's never been an issue raised, nor would they raise any issue in the paper with the actual address we delivered to. They just said, oh, the address on your piece of paper is different then what is in the contract but they didn't -- and they say we didn't approve it in advance but they never told us to come get it. They never returned it. They never said here is the issue, here is how to fix it. They just didn't engage.

So, for all those reasons, Your Honor, we would submit that there is no *bona fide* dispute here as to the fact that the debt is owing, the debt is matured and the only reason that the debt is not due and owing today is solely due

to the government's failure to engage when we provided the proofs of delivery to them, Your Honor.

Thank you.

THE COURT: Thank you.

MR. LAMB: Your Honor, Ryan Lamb for the United States.

We would like to kind of go through in the same fashion. And I think before we do that, I think it bears some discussion as to the type of contracts that Noble has with the United States.

These contracts are controlled by the FAR. These contracts are somewhat unique in the world of contracting. They are different and apart from regular standard commercial contracts. The termination rights afforded to the United States under the FAR, incorporated into these contracts, is exceptionally unique in the world of contracting. And I think it bears to keep in mind that these contracts, again, are completely separate and apart from your standard contract.

They incorporate the FAR -- one moment, Your Honor.

THE COURT: Take your time.

MR. LAMB: Section 52-212-4(m), which states termination for cause.

THE COURT: 52-212 --

MR. LAMB: -- dash 4(m).

THE COURT: Okay. Tell me what it says.

MR. LAMB: That states, and I'm just going to read it into the record, termination for cause:

"The Government may terminate this contract or any part there hereof for cause in the event of any default by the contractor or if the contractor fails to comply with any contract terms and conditions or fails to provide the government upon request with adequate assurance of future performance. In the event of termination for cause, the Government shall not be liable to the contractor for any amount of supplies or services not accepted and the contractor shall be liable to the Government for any and all rights and remedies provided by law. If its determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience."

The important sentence in this for purposes of this hearing is "In the event of termination for cause the Government shall not be liable to the contractor for any amount of supplies or services not accepted." And that is the important component here.

The debtors were informed of the termination for cause on August 27th. The debtors were provided information --

THE COURT: We're only talking about goods you would have received before August 27th, right?

MR. LAMB: So, received -- the definition of received is somewhat unique in FAR contracting, Your Honor. So, in the termination for -- in the letter that they received it stated that delivery for material after the date of this notice will not be considered for goods receipt posting and proof of deliveries indicating delivery of material after the date of this notice will not be accepted or viewed by DLA.

THE COURT: Right.

MR. LAMB: There is a second paragraph, Your Honor, that says:

"Accepting the above, delivery orders with partial performance will have their outstanding balances terminated. Any receipted balance will remain receipted and if an invoice has not been submitted to date, Noble must invoice for the outstanding amount that has been receipted."

THE COURT: Right. That is exactly what they say they have done.

MR. LAMB: So, what this states, Your Honor, is that any partial orders will have their outstanding balance terminated. So, any partially performed orders cannot -- you know --

THE COURT: I don't -- I just don't think in

English that is what those words mean. I think what that says is to the extent you have already delivered it we will process it in the ordinary course. If we haven't yet gotten it then we're not going to touch it.

I don't read any -- just listening to the way you read that, read to me again the words that suggest that for things where they have already delivered the goods you get to keep the goods and not pay for them no matter what. That there is nothing the contractor can do. They have delivered the goods and now we get the benefit of the goods and you don't get paid too bad.

I mean, everything you read made commercial sense to me but the position you're taking doesn't.

MR. LAMB: So, under the termination FAR and under the language provided to the debtors in the termination notice, any balance that -- any receipted balance -- so, if the Government has provided a goods receipt, the Government has reviewed and confirmed that the order has been -- is appropriately delivered debtors are then obliged or they can provide an invoice which triggers payment.

THE COURT: I'm sorry, so this letter is in the declaration you submitted to me. Can you just point me to where it is so I am actually looking at the same language?

MR. GESMUNDO: Your Honor, this letter is -- its actually an exhibit to the -- it's in 5-1, it's the

debtors --

MR. DEAN: It's in our declaration.

MR. LAMB: Yeah, it's an exhibit to debtors declaration.

THE COURT: Got it.

MR. LAMB: I'm looking at 5-1, page 191.

THE COURT: Okay. That is helpful. I appreciate it. So, I've got that too. All right. Delivery of material, right, after date of this notice will not be considered for goods received posting and proof of delivery indicating delivery of material after that date will not be accepted or reviewed by DLA. So, that makes perfect sense. You're saying you want to send me something after the date of termination, do that at your own risk but we're not going to touch that stuff. So, don't expect to get paid, right. I understand that, accepting the above, colon.

So, I think that that is saying for stuff that was received before delivery orders with partial performance, right, which is to say you have delivered the stuff but the process hasn't run its course. Are we talking about the same universe?

MR. LAMB: Yeah. The Government ordered 20 widgets, you delivered 10.

THE COURT: Okay. Or you have delivered -- okay, if you delivered 10 widgets out of the 20 that's fine. That

is partial performance. We will have their outstanding balances terminated, right. So, that means if you delivered me 10 widgets -- if I ordered 20, you delivered 10, I will pay you on the 10, keep the other 10. I don't want to hear from you about the 10 you haven't delivered. Any receipted balance will remain receipted. So, if you charged me for the 10 that you have delivered we will deal with that.

MR. LAMB: One correction to your previous sentence, Your Honor.

THE COURT: Yeah, go ahead.

MR. LAMB: It wouldn't mean that we're going to pay you -- we're not agreeing to pay you for the 10 you delivered, it's that those 10 have been delivered.

THE COURT: Right.

MR. LAMB: If there's 20 ordered then the rest of them are terminated.

THE COURT: Exactly. We both picked a bad example of using 20 with 10 and 10 but if you delivered 13 and there are seven that you haven't delivered we will deal with the 13 and we will go through the process of paying you for the 13. For the seven that you haven't delivered keep those.

MR. LAMB: Maybe not go through the process of paying but to the extent that 13 have been delivered the process -- we're going to be held to the terms of the contract for those 13.

THE COURT: Okay. We're on exactly the same page. Any receipted balance will remain receipted. I take it that's their way of saying if you -- if we've gotten the goods we're not going to un-get the goods.

MR. LAMB: So, what that means is that receipted refers to goods received. So, if the Government has provided a goods receipt for those deliveries that goods receipt is still good.

THE COURT: And if an invoice has not been submitted to date Noble must invoice for the outstanding amount that has been receipted.

MR. LAMB: Correct. So, to refresh the Court's recollection, the posting of the goods receipt triggers the ability for Noble to provide an invoice that then DLA pays.

THE COURT: Okay. If Noble has already submitted an invoice for that receipted balance no further action is needed. So, all of what this says seems to me to be non-controversial and probably doesn't answer the question that's before us now.

What we are talking about, I think, are goods that were delivered by the date of termination, right, where they've provided proof of delivery but where you have not, I think -- tell me if I've got this -- either of you should tell me if I've got this wrong, the term "receipted" here is a term of art and it means the Government has acknowledged

receipt.

MR. LAMB: The Government acknowledged receipt because Noble provided proof of delivery by the 27th.

THE COURT: That was acceptable to the Government, right.

MR. LAMB: Yes. So, the 27th is the cutoff date for the acceptable proof of delivery.

THE COURT: Understood. The universe of things that I think we're talking about now are goods where Noble's position is they delivered them and they provided proof of receipt before the 27th and the Government has not acted on that proof of receipt.

MR. LAMB: Any goods -- any proof of delivery provided after the 27th under the terms of this letter and under the FAR cannot be acted on because this letter states that no goods receipt will be provided for any later --

THE COURT: So, let's hold on and hold aside the question of goods that are received on the 26th where proof of delivery happens on the 28th. Hold that to one side.

Let's talk about goods that were received on the 25th and proof of delivery happens on the 26th. So, all of those -- both of those things have happened by the 27th. Why does this letter say we don't have to process this delivery and pay for it subject to our ability to say I ordered eggs and you sent me milk or even let's hold aside

for this purpose I ordered it in location A and you sent it to location B. But where you don't have one of those disputes, what here says if I've received it before the termination date and the contractor has provided proof of delivery before the termination date I can stop the process of paying you.

MR. LAMB: In the grand scheme of this 108 lines that amount is very meniscal, Your Honor.

THE COURT: All right. Help me with that because I thought that there was this category -- there is this thing that says proof first received, right, which is the one, two, three, four, five, six, seventh column in your chart. And what I think this says is that -- oh, I see, some number of these proofs first received, I mean many of them are before August 27th and some of them are after.

First, let's talk about the ones where proof is received before August 27th. What is your position as to why you don't have to pay those?

MR. LAMB: So, our position on why we shouldn't have to pay those or can't pay those is not a the Government is refusing to post a goods receipt for those, it's that legally under the FAR the Government doesn't have the ability to because the contract has been terminated.

THE COURT: But that is inconsistent with what you just said to me. You just said to -- and I think, unless I'm

misunderstanding -- is that if we don't have received proof of delivery by the 27th let's -- we can have a conversation about whether what this does deals with deliveries by the 27th or proof of delivery by the 27th. Let's treat that as a thing that we have to talk about.

First, let's start with the easier case for the debtor which is, no, we're talking about ones where the goods were delivered on August 1st, we sent you proof of delivery on August 2nd, nothing happened in the meantime, and on August 27th you terminated. And you're saying I can't pay those because why, because the FAR stops you. So, that is the conclusion. Say a few more words.

MR. LAMB: There is actually two categories in that group.

THE COURT: Okay.

MR. LAMB: There's ones where the debtors have, you know, pro -- they say it was delivered, they provided proof of delivery, that proof of delivery is insufficient for whatever reason.

THE COURT: Okay. So, there if they've provided me proof of delivery and you're contention is I don't have to pay it because their proof is insufficient do you have an obligation to tell me what is insufficient about it and show me what is insufficient or do I just have to trust you?

MR. LAMB: I don't want to say that the Court has

to trust us, Your Honor, but the debtors have the obligation and were informed before all of this through the conversations with DLA prior to the termination that the proof of delivery was insufficient for X, Y, and Z. They had the opportunity to correct that. They did not. They were fully aware of why the proof was insufficient.

THE COURT: I'm actually now thinking more about summary judgment standards than anything else. If -- it seems me that -- look, if someone comes -- this is the hypothetical I started with, right, if someone comes forward and says goods were delivered and someone says in response, no, I didn't get them, then I've got a factual dispute but just hearing the conclusion your proof was insufficient without any flesh on the bones doesn't seem to me to create a genuine dispute.

MR. LAMB: To the extent that debtors proofs they have brought to the Court that the delivery was adequate and identified with very important specificity as to what was in the delivery, that it conforms to the reorder --

THE COURT: So, isn't that what the Albergotti declaration says? It says, look, we delivered the goods, here's the description, here are the attached invoices, here's a chart showing what it is. They have never responded by telling us there was a problem with any of these goods.

MR. LAMB: In fact, DLA did respond and say there

was a problem with a lot of delivery orders. They identified that in the conversation they had.

THE COURT: Where is that in the summary judgment record?

MR. LAMB: In the summary judgment record that would be in debtors declaration Exhibit 5-1 where they attach the addition to the notice of termination for cause they have identified the -- I'm just scrolling, Your Honor.

THE COURT: Yeah.

MR. LAMB: They have identified notice of termination for cause for the contracts. They also identified the requests by DLA prior to the termination responding -- includes response to the cure notice and they provided the cure notice issued by DLA or DLA is requesting Noble to identify and provide a cure notice.

THE COURT: But I thought all of this was about assurance of future performance, not about problems with the deliveries as made. I mean, I confess that I read this long stack of documents, you know, not with excruciating care but I did work my way through it and I read this to be saying we -- to say what it says is we're not -- we want adequate assurance of your performance. That is about saying we are concerned that in the future you are not going to be able to perform, so we're terminating. Not what you sent me wasn't the right stuff.

MR. LAMB: Give me a moment, Your Honor. I apologize again.

THE COURT: No, it's okay. Look, this is a pretty thick record and I want us to get it right.

MR. LAMB: So, DLA provided show cause notices which debtors have included in their declaration at 5-1. There is numerous of them. An example of one is page 119 of 5-1. That is where DLA identifies that they have not -- there is delinquent deliveries or delivery orders. The reason why those delinquent deliveries -- why this show cause notice has been provided for the delinquent deliveries is because DLA hasn't received a proper delivery notice, proof of delivery.

If, in fact, Noble believed that it did deliver these goods appropriately then its response to the show cause notice would have been, should have been we provided delivery, here is proof of delivery.

THE COURT: Okay, let me pause here. Mr. Dean, are the deliveries that are the subject of the show cause notice part of the 108 deliveries that are at issue before me now?

MR. DEAN: I would say it covered some of the stuff that got delivered after the show cause notice but before the termination notice, before the decision to terminate. So, some of it was already in transit and being

delivered. We tried to respond and explain, they didn't buy the explanation. There were things that were delivered in the interim but what we're talking about here are only things that were delivered before the date of termination notice.

THE COURT: If they ordered it and you were required to deliver it by day one and, in fact, deliver it on day two what happens then?

MR. DEAN: They can accept it or not.

THE COURT: And is there a mechanism for not accepting delivery.

MR. DEAN: Yes. And, in fact, the provision of the FAR that Mr. Lamb didn't tell you about is 46-407, which I have on my screen right now, (g), and that actually provides that the Government has to timely provide a notice of rejection of delivery of goods within a reasonable period of time where they will be deemed to have constructively accepted them as a matter of law.

THE COURT: And Mr. Albergotti's declaration says that they received no such notice.

MR. DEAN: We received no such notice.

THE COURT: Mr. Lamb, can I -- I just want to try to simplify this from my little brain. Let's start with line 1 of the chart. Line 1 says that proof of delivery was received on January 22nd, 2026 and that proof was acceptable.

MR. LAMB: I'm sorry, Your Honor, can you hold on

for one second. I'm sorry, let me make sure I have --

THE COURT: Absolutely. I have asked for your patience too, so that is only fair.

MR. LAMB: I appreciate that, Your Honor.

(Pause)

MR. LAMB: Okay. I'm sorry, Your Honor, I am looking at line 1.

THE COURT: Line 1, so what we know about this is that the -- you've told me that if the proof of delivery is after August 27th you take the position that you're not obligated to pay that. We will come back to that question.

Now, let's talk about the ones where the delivery is before August 27th, right. So, like line 1 is such a thing. So far we agree?

MR. LAMB: Yes, Your Honor.

THE COURT: Then you said there are some where the proof was not acceptable to the Government but here it says proof acceptable, yes. Right, this is your declaration. So, explain to me if delivery -- if the delivery was received before the termination and the proof was acceptable why you get to not pay that.

MR. LAMB: I don't have an answer for you, Your Honor.

THE COURT: All right. So, in the absence of an answer I'm going to order turnover with respect to those

amounts.

I think, if I understand the disputes your raising, I want to take them one by one. Let me go back to your declaration.

(Pause)

THE COURT: So, look, let me -- I am not right now announcing rulings but let me share my reactions to where I am on these various categories of dispute. And we will see if this moves the ball forward.

It seems to me that where delivery, in fact, occurred by August 27th and you, in fact, received proof of receipt before then and the form of -- and the proof was acceptable to the Government seems to me that there is no dispute about the Government's obligation to pay that and I'm going to order that subject to turnover. So, line 1 is an example of that by my count, and this is me taking credit for the work of the a terrific law clerk which is kind of what I do for a living. That is true of lines 1 through 6, and 23 to 25, and 27 to 31, and 56. So, that is however many of those.

And as I understand it, as to those, I don't get from your chart what you're disputing. So, therefore, I am inclined to say you haven't' shown me a dispute and applying the principles that we started with that -- oh, I'm sorry, in 51 I'm told. Okay. In any event, we can all sit down and

do the math and get it right but where there is delivery that occurred before the termination and the proof was acceptable, in the absence of some other issue, and we will talk about whatever the other issues are, it seems to me that those are subject to -- those debts are subject to turnover because they're not disputed debts. They're matured, they fit within the language of 542(b).

MR. LAMB: Your Honor, where the proof of delivery was acceptable before the 27th?

THE COURT: Where the proof of delivery arrived before the 27th and turned out to be acceptable.

MR. LAMB: Understood.

THE COURT: And, look, I don't want to be creating more work for the parties but I don't know that I've got an alternative. Here is -- let's just go through the issues and we can talk more about this one by one.

So, Paragraph 10 says that for a number of reports DLA found the proof insufficient for 71 of them. I don't think a conclusory statement that proof is insufficient makes it a real dispute. If there is something in this record. As to any line where you can show me something in the record that identifies the reason why the proof was unacceptable and that is an objectively reasonable basis to challenge it then we've got a dispute and I'm not going to resolve such a dispute. That is going to go to the Court of claims.

But you have got to show me something that is non-conclusory that -- again, I'm just applying ordinary principles. Something non-conclusory, genuine factual dispute that this is actually not sufficient because and it's got to be something in the existing summary judgment record. So, to the extent that you can show me what those are, then I've got a genuine dispute, and I don't get to resolve those. They're not subject to turnover but in the absence of it the mere conclusory statement is insufficient.

So far, are we on the same page?

MR. LAMB: I understand where you're coming from.

THE COURT: Okay, that's fine. You don't have to agree but I want to, at least, give you something actionable.

I want to come back to the question of receipt of proof after August 27th because I want to give you both the chance to be heard a little bit further on that because I'm not sure I understand enough to have a clear answer in my head on that question.

I will say this, where the Government hasn't -- takes the position that the goods were delivered to the wrong place there I'm going to shift the burden the other way and the debtor is going to have to show me where in the record it shows that that was okay. In the absence of that, then we've got a factual dispute that isn't subject to turnover.

So, if there is a real dispute about whether that

was the right location to send it then we've got a contract dispute not resolvable on turnover and only if the record is really clear that the Government said, no, send it to location B instead. If they can show me that then that is a different thing.

I think we would agree that Paragraph 13 there is nothing for me to decide -- or Paragraph 14.

With respect to this question of if there is an agreement that delivery occurred and -- look, we're only talking here about things that were delivered before the termination date. If there is a delivery after the agreed delivery date but before the termination date, which is what I think Paragraph 15 is talking about, there I think applying the principles that were described there's an obligation to pay unless you can show rejection so that -- as I understand the principle if its ordered for the 1st and it comes on the 2nd that gives the recipient the right to say, no, I don't want this anymore but if you keep the thing then you need to pay for it. I think that it was the language from the FAR that you were reading to me says.

MR. LAMB: And to add onto that, Your Honor, the August 27th letter specifically states that it will not accept any deliveries after the 27th.

THE COURT: Exactly. I don't think the debtor is asking to be paid for any deliveries after the 27th. So, if

they were you'd win on that, at least on this basis. So, I am only talking about deliveries before the 27th.

MR. LAMB: Right.

THE COURT: So, we're, otherwise, together so far about deliveries --

MR. LAMB: I understood your previous statement to mean any orders that were agreed to be delivered before the 27th but they were delivered in September.

THE COURT: No. If it delivered after the 27th the termination precludes it. I am talking about the delivery was agreed to be on the 1st, it actually came on the 5th, what happens then. And there if you show me, no, I said I don't want it anymore come pick it back up that is one thing but in the absence of that you don't get to both keep the thing and not pay for it.

MR. LAMB: Understood, Your Honor.

THE COURT: Again, that's only if its delivered before the 27th.

MR. DEAN: Do you want me to chime in on this or do you want me to -- I have a comment on the -- I don't think that is what 15 says but I'm happy to --

THE COURT: Tell me what 15 says then.

MR. DEAN: I think what 15 is saying is that they interpreted the records that we gave them that some of the stuff was delivered --

THE COURT: Oh, I see.

MR. DEAN: -- after the 27th. It doesn't amount to when it was due.

THE COURT: I understand. You're right and that's what you told me the first time and that's what my notes, which is a happy coincidence. I just read 15 incorrectly when I read it myself.

So, look, on these questions of there was a misunderstanding about the paperwork, to me I want to get to the bottom of what the paperwork actually says based on what's in the summary judgment record. So, I think we can just apply the principles I've described in light of what the actual paperwork says, appreciating that no one is finding new pieces of paper now. We've got the existing summary judgment record and I'm going to resolve the motion in front of me based on that record.

And with respect to this question of double billing it sounds to me that that was also, sort of, a paperwork mistake, like a misunderstanding of the paper and that if the paper -- if it's clear that there wasn't actually double billing but it was a legitimate misunderstanding because the same number appeared twice but it was actually for two separate invoices then it seems to me, in the absence of a dispute, again in the absence of some other basis to dispute it, it ought to be paid.

So, I haven't done the math to figure out what that turns out to be but I guess what I'm inclined to do is direct you to meet and confer to apply those principles.

Well, let me first see if any of you want to be heard to say -- I want to give you a chance to say, no, Judge, you're wrong about these principles and I want to make sure I -- before I overrule anyone's objection I want to make sure I really understand the objection. But that is my initial take about what the substance of this ought to be. If you disagree let me give you a chance to tell me why.

MR. LAMB: Your Honor, I don't want to say I disagree with your approach --

THE COURT: You're allowed to.

MR. LAMB: -- but I believe the Court is applying the burden on whose burden it is to demonstrate that the goods were not -- did not conform or the goods were appropriately delivered to the wrong party here.

THE COURT: So, the way I'm thinking about the burden is not really from a contract law basis. It's on a summary judgment basis, which is I've got a declaration that says -- Mr. Albergotti's declaration says what it says and what I'm trying to figure out is do I have a genuine issue of fact that is a dispute that, therefore, I should resolve for applying the principle that we talked about or not.

So, it seems to me that to create a dispute, a

party who is challenging a declaration that says something has got to come back and show a dispute but that is just the ordinary application of Rule 56. So, that is how I'm thinking about it, which is I've got this declaration, here is what it says, saying I -- just filing a legal paper that says I dispute it is insufficient. You have got to show me a real dispute.

The way I'm thinking about this is asking the question based on the record before me where have you come forward with evidence that shows me a dispute and where not. Does that make --

MR. LAMB: I understand that, Your Honor. Thank you.

THE COURT: Okay. So, let me give you a chance to continue with your argument.

MR. LAMB: I mean, that was kind of my starting point and kind of my end point. I think -- we understand what the Court is asking for, I believe, to demonstrate in the papers where the disputes are as to the pre -- the pre-August 27th delivery. The items were delivered then. We're excluding from discussion any post-August deliveries.

THE COURT: Correct. Mr. Dean, am I right, you're not asking to be paid for anything that was delivered after August 27th from me today?

MR. DEAN: Not delivered but certainly proved,

proof of receipt.

THE COURT: We will come back to that question. That is the question I intentionally left open.

MR. LAMB: So, the issue that -- and that is exactly where I was going. So, the issue that we really will probably be focusing on in the next couple of days when we do the meet and confer, if we do it now even, is what about the deliveries where the proof of delivery wasn't provided prior to the 27th.

THE COURT: So, that is a legal question that I think I need to decide. So, I'm not making you agree about that. I am only making you agree where the question is what does this record show me.

MR. LAMB: Understood.

THE COURT: To the extent there are legal questions that is my job. As much as I sometimes would prefer not to have to do it, that is the job for which I signed up. So, on that question there is a category, and it's sizeable category, of deliveries that occurred before the 27th where the proof of delivery arrived afterwards. And the question is, is that a mature debt because there is just a ministerial act that the Government has to do and hasn't done or is the Government not obligated to do that for those deliveries and, therefore, it's not a ministerial act and, therefore, the debt is not matured.

I don't know the answer to that question, and I want to hear from both of you on that issue if you walk me through whatever -- and I don't want to be an expert in the way the FAR works. There is a good reason why Congress created the Court of Federal Claims but I feel like here I am and I think that that is kind of what I have to figure out.

So, let me give you both the chance to be heard.

MR. LAMB: Certainly, Your Honor. So, as to the FAR on that point, and that goes to Subparagraph (m) that I identified earlier. It states that the Government shall not be liable to any contractor -- or to the contractor for any amount for supplies or services not accepted and that -- the moment that occurred in this instance was August 27th.

THE COURT: Hold on one second, let me pull up that FAR language for a second.

(Pause)

THE COURT: The Government may terminate this contract or any part here of for cause in the event of default by the contract or if the contractor fails to comply with the contract terms and conditions or fails to provide the Government with adequate assurance of future performance.

MR. LAMB: That was all the actions that DLA took prior to the termination.

THE COURT: All good. In the event of termination for cause, the Government shall not be liable to the

contractor for any amounts, for supplies or services not accepted and the contractor shall be liable to the Government for any rights and remedies provided by law.

So, let me tell you, if it is determined that the Government improperly terminated the contract for default -- okay, and no one is saying that applies here. So, I've got a pure legal question of what does it mean to say for supplies or services not accepted. I guess my instinct on the answer to that is that there is a mechanism to address rejection that if it's been delivered and there's no dispute about its delivery and there is no evidence of rejection that the presumption is that it has, therefore, been accepted in the absence of some other reason to show that it was rejected. Tell me why that isn't a sensible way to read this.

MR. LAMB: So, there's two points on that.

THE COURT: Okay.

MR. LAMB: The Government's exception is an affirmative act. That is the posting of the goods received.

THE COURT: What is the authority that tells me that?

MR. LAMB: I don't have that in front of me. I'm happy to provide a supplemental brief on that point but that is --

THE COURT: Okay. I'm going to -- I'm sorry to delay this and I'm going to ask you to -- look, you

appreciate that this is a tight case where cash flows have to move. I am not going to tilt my decision one way or the other for that reason but I am going to try to speed it up for that reason. So, we're going to have to walk and chew gum and the stuff that is indisputably owed we're going to have to get to the bottom of that at the same time we're briefing the issues where there are disputes. And we're going to brief quickly too.

Look, I think that your point that -- and I will hear from Mr. Dean on this issue too, but I hear you that it's a non-insane reading of the language to say acceptance is an affirmative act by the Government and if there is authority that supports that proposition I want to make sure I have given you the chance to tell me what it is.

MR. LAMB: I am happy to find that for you. I can find that in probably 10 minutes, Your Honor.

So, the second point I would like to make is that the case law that the debtors cite for the constructive acceptance all points to instances where the Government used the goods provided.

THE COURT: I hear that.

MR. LAMB: The debtors haven't provided any proof that the goods have been used by the United States.

THE COURT: Okay. So, what we're talking about presumptively are goods that are sitting in a warehouse

somewhere, they've been shipped, they've been left there, no one has touched them since them.

MR. LAMB: And the debtors haven't come pick them up.

THE COURT: Right. You haven't told them to come pick them up. They've just sat there. You haven't said yes, you haven't said no, we're living in a world of like silence with respect to these deliveries, right?

MR. LAMB: There hasn't been a goods receipt -- there hasn't been a proof of delivery or goods receipt. So, the debtors have the ability to go retrieve estate property from wherever its sitting.

THE COURT: Okay. I understand your position.

So, is there anything else that you want to add on what we've talked about?

MR. LAMB: No. Just those -- well, those two points and then the incorporation of the termination notice language in each of these contracts specifically identifies that any non-receipted goods will not be later receipted. So, there -- so, any items that are delivered -- and for any items that DLA does not have a goods receipt for -- a proof of delivery for cannot be goods receipted.

THE COURT: So, let's go through that again because, again, that is not how I remember the language. So, this is in the termination notice itself?

MR. LAMB: Yes, Your Honor.

THE COURT: So, that is in Exhibit 5. Bring me to the language, I'm sorry.

MR. LAMB: I am right there with you, Your Honor. It's 5-1.

THE COURT: I see. Notice of termination for cause, is this -- I am, again, taking credit for the good work of others. Page 186 of 205.

MR. LAMB: Yes. Thank you very much, Your Honor.

THE COURT: I'm happy to take the credit for other people's good work.

MR. LAMB: You said page 187, Your Hoor, you're looking at?

THE COURT: Okay, yes. Delivery of material, is that where you are? We went through this. Delivery of material after this notice will not be considered for goods receipt and proof of delivery indicating delivery of material after the date of this notice will not be accepted or reviewed. So, to me reading that, if anything there is a negative inference that things that are delivered before that date will be.

So, the question is then does the next paragraph help you any. And the next paragraph is about partial deliveries which is speaking to a different question. So, it seems to -- so, any receipted balance will remain receipted

and if an invoice has not been submitted to date Noble must invoice for the outstanding amount that has been receipted.

So, to me this section doesn't -- this doesn't speak to the question of -- the prior paragraph clearly implies that material received before the date of the notice will be accepted or reviewed by DLA. To the extent there is a thing called being receipted, which is as grotesque as the English language gets, I think that has to happen. At least that is the way -- again, I'm not saying that this document is itself the legal obligation but I certainly don't read anything in this document to take the view that to the extent you've sent it to me and I've received it by the date of termination I am now off the hook.

MR. LAMB: If Your Honor doesn't read that in this language then Your Honor can read it in Paragraph (m) of the FAR where the Government's obligations full stop on August 27th.

THE COURT: I hear you. And that turns on my accepting your position that acceptance requires an affirmative act.

MR. LAMB: Correct.

THE COURT: So, it boils down to that. I don't think that that is obviously correct but nor do I think it's obviously incorrect. And you said you're going to give me more and I'm happy to hear you on that.

Anything else from your position?

MR. LAMB: We have really nothing else on our position at this time, Your Honor.

THE COURT: Okay. Let me hear from Mr. Dean.

MR. DEAN: So, the provision of the FAR that was just discussed it says that when a termination notice is issued the Government doesn't have liability for goods that are not accepted. It doesn't say accepted as of the day of termination notice. It says accepted period. So, it doesn't define when something has to be accepted.

So, that is why in the reply brief we spent so much time talking about what is constituting acceptance. It can't be that the Government just refuses to receipt goods that were delivered prior to the termination date because -- I mean, we couldn't have even provided the proof of delivery and got the goods receipted for much of these goods because it was so close to the termination and just keep our stuff and not pay for it, and that is why 46-407 of the FAR exists.

It says that promptness in giving a rejection notice shall be promptly furnished by the contractor. Promptness in giving this notice is essential. If timely nature of rejection is not furnished, acceptance may, in certain cases, be implied as a matter of law. This is what the FAR says about what acceptance provides for.

THE COURT: All right. So, look, Mr. Lamb has

asked for a chance to respond to that directly. I think he's entitled to that. I am going to ask for this in like a couple of days because I want to get you all a decision as promptly as I can and I'm trying to balance the needs of the case with, you know, common human decency but any disagreement with the notion of giving you a couple of days and then we will get a decision.

MR. DEAN: If Your Honor thinks it would be helpful to you that is all I --

THE COURT: Well, I want to be fair to the parties also.

MR. DEAN: We really needed to have this hearing before the end of the month and it's the 28th. So, we really need the money by the beginning of November.

THE COURT: No, I understand. I think some of it, you know, for the parts that we have talked about where there is not -- where based on these principles it doesn't turn on the answer to those questions we ought to get -- I mean, what I'm expecting is for the parties to put these things into buckets as promptly as possible. Ones where, based on what I've said there is no longer a dispute. That should just be paid.

Ones where, you know, you take the position that there is something in the record that caused it to fall on one side of the line or the other and on that you can show me

what it is in the record or those that turn on this legal question of what happens to goods that were delivered before the 27th but proof of delivery came afterwards and the Government is refusing to act. I will have to answer that question.

MR. DEAN: That is the vast majority of what we're dealing with here.

THE COURT: Okay. I will give you both a couple of days to set out your positions and they could be informal, it can be a letter, you can do it in whatever form you want and I will give you answer to that question as quickly as I can.

MR. DEAN: Okay. I mean, we will certainly do that.

If I could just make a couple of other points as we wrap up and we will do that.

THE COURT: Yeah, go ahead.

MR. DEAN: I don't know if you want us to do simultaneous or --

THE COURT: Yeah, I think under the circumstances we ought to do it simultaneously and I ought to get all of it by the end of the week and I will try to get you something over the weekend or on Monday.

MR. DEAN: Okay. Just to answer your question about from earlier whether Mr. Albergotti's declaration

provided evidence that there were no issues raised. In Paragraph 17, he specifically says the Government has not raised any defects or non-conformities with respect to the goods.

THE COURT: Right. That is why it seems to me -- that is what leads me to say that then requires the Government to show me that there is either acceptance is something affirmative or that it did something that is non-acceptance. Even if acceptance is affirmative there is still your argument that acceptance is implied under the terms of the FAR itself.

MR. DEAN: Right. Our position, and I think you're reading this contractors notice the same way we are that that notice certainly did not reject goods -- I mean, I think it's an inference that we're going to accept the proof of deliveries and post receipts but it's certainly not a rejection of the goods that were delivered prior to August 27th.

THE COURT: No. That is how I read that document. That document isn't itself -- that is just a notice that they wrote. So, if there is something else that doesn't preclude them from taking some different position.

MR. DEAN: Yeah, they haven't raise it yet.

THE COURT: Okay, fair enough. That is what I'm going to give you a chance to tell me.

MR. DEAN: Well, that is why I was suggesting I don't know what they're going to say and so to do a simultaneous submission --

THE COURT: So, look, we could do it in the other order. That delays the process and you're in a hurry. So, you tell me.

MR. DEAN: Give me -- let me confer.

THE COURT: Fair enough.

MR. LAMB: Your Honor, just to speak. If debtors prefer to sequentially informed the Court of our views we would respectfully request an opportunity to reply to whatever position --

MR. DEAN: I think we're okay with a Friday submission simultaneous letters to address the issues.

THE COURT: All right.

MR. LAMB: Friday is perfectly --

THE COURT: All right. Let's do it that way. If I could, not to be inhumane, could I get it by like, say, 2:00 p.m. on Friday so that I take it with me and spend --

MR. DEAN: Sure.

THE COURT: -- we ruin my weekend not yours.

MR. LAMB: Of course, Your Honor. Would you request a page limit?

THE COURT: No, there's no -- I will read as much as you -- I want to give you a chance. I'm not encouraging

you to go on and on but I'm not going to artificially tell you, you know, you have to do it in X pages.

MR. LAMB: Thank you, Your Honor.

THE COURT: It would surprise me if this is a very long piece of paper but sometimes I'm surprised.

MR. DEAN: And letter is fine?

THE COURT: Letter is fine.

MR. DEAN: Just one last point I want to raise on the delivery addresses in Paragraph 12 because you said you wanted us to point to the record. There are a bunch of emails that are quite confusing about this back and forth about the delivery addresses. So, we didn't bring them in.

Our position is that because there has been no rejection of the delivery addresses then they have accepted those too because we gave them the proof to engage with us.

THE COURT: So, look, in the letter point me to the emails. If they're already in the record you don't need to reproduce them. If they're in the summary judgment record, and I have it, but here I do think that -- just my instinct is if you say I delivered it to place X and they point to the contract that says delivery had to be in point Y, and you're saying that they have agreed to take it at point Y that is something where if they have shown me that it says X that that is enough to basically show the absence of a dispute you need to show me that they have agreed to Y. And if it's

confusing that's a problem for you but that sort of is what it is.

MR. LAMB: Your Honor, just to be clear, you're limiting the record we're relying on for this Friday submission to the record before the --

THE COURT: To what is already in the summary judgment record, exactly.

MR. LAMB: Okay. Because the debtors did provide numerous documents for review that are included in the record.

THE COURT: I'm going to rule based on the existing record. I feel like -- I'm asking for additional help in understanding the existing record, not in redoing summary judgment.

MR. LAMB: Understood, Your Honor. Thank you.

THE COURT: Okay.

MR. DEAN: Okay. Fair enough, Your Honor. I have nothing further unless you have any other questions for me. We will get you our letter by Friday and we thank you very much for your time today. I know this is a difficult motion and a difficult record to get through.

THE COURT: No, look, this is the job for which I signed up. So, I am not -- you are not going to hear me complaining about this.

MR. LAMB: Your Honor, if I may?

THE COURT: Yes, you may.

MR. LAMB: If the Court does order turnover today, it's unclear --

THE COURT: So, I'm not ordering it today because I haven't identified what the universe is. If -- what I'm asking you to do though is for the things were based on my ruling you don't have a basis to dispute the obligation to turn it over. I would like you to see if you can work out an order that you can submit under certification. I'd like to enter that order as quickly as I can.

So, where there are things where you're taking the position in light of everything I've said it's going to turn on my resolution of these letters. That is not going to be subject of that order but where there is no longer a good faith basis other then you disagree with me, which you can do in good faith, but I'm going to enter an order requiring turnover of that stuff.

Let me say this, that's going to be -- once you do that I'm going to order that the payment be made within five days of the order and that five days is an administrative stay. So, you have got to get -- I'm going to give you five days to get the District Court or the Third Circuit to grant a further stay pending appeal. I want to be respectful of them and not jam them unduly but I also think I have no choice but to jam them a bit under the circumstances of the

case.

MR. LAMB: Understood, Your Honor. That is exactly what I going to ask.

THE COURT: Okay, very well.

MR. DEAN: Can I just ask one clarifying question on the potential certification where you've kind of already told us where you are and what is not disputed. Are we really talking about the lines that your clerk identified?

THE COURT: I think so.

MR. DEAN: 1 through 6, 23, 25, 27 to 31, 51 and 56, is that -- I just want to make sure.

THE COURT: Why don't we ask Sandy that question.

(Pause)

THE COURT: I know my own limits.

MR. DEAN: I just want to make sure I wrote them down accurately so I don't mess it up.

(Off record discussion)

THE COURT: And, again, the principle is the one that we were talking about which is we're talking about deliveries before the 27th, proof received before the 27th, and where the column that says proof acceptable the answer is yes.

MR. DEAN: Understood.

THE COURT: And so that is what we're talking about.

MR. LAMB: Thank you, Your Honor.

THE COURT: Okay, very well. So if you can meet and confer about that and get me an order that would be great. Everyone's rights to challenge the order are a thousand percent preserved and then as to the other issues I will look for your next submissions and then I will do my best to get you an answer as quickly as I possibly can.

MR. DEAN: Thank you, Your Honor.

MR. LAMB: Thank you, Your Honor.

MR. GESMUNDO: Your Honor.

THE COURT: Yes.

MR. GESMUNDO: Your Honor, just on the motion of adequate protection on the order, so as to avoid -- I know everyone is under a time crunch. The order situation we had last time, would Your Honor be issuing its order denying the motion for adequate protection?

THE COURT: Yeah, so why don't -- let me ask you this: With respect to the motion for relief from stay, I sort of said on the record what that order ought to say. Can I ask you to give me that under certification?

MR. GESMUNDO: Yes, Your Honor.

THE COURT: Why don't you -- can you just do the same then for the order denying the motion for adequate protection?

MR. GESMUNDO: Yes, Your Honor.

THE COURT: Okay. So, if those can just come in under certification we will get them entered promptly when they come in and then everyone can then carry about however they see fit.

Anything else I can do to be helpful while we're here?

(No verbal response)

THE COURT: Look, I appreciate this is a little bit messy and I appreciate everyone's patience as I've done my best to make sense of this record, quite imperfectly I acknowledge. I think the supplemental letters will be helpful in working through the rest of the matters. And I really appreciate everyone's good faith and hard work to get us to here. So, if anything comes up where you need us you know how to find Chambers. Otherwise, we're adjourned.

Thank you.

(Proceedings concluded at 3:00 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling October 29, 2026

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Mary Zajaczkowski October 29, 2026

Mary Zajaczkowski, CET-531

Certified Court Transcriptionist

For Reliable

EXHIBIT C

SECTION C – REQUIREMENTS

SPE4AX-21-D-9407

Statement of Work

Federal Stock Group 53 (FSG 53), Hardware and Abrasives

In Support of All U.S. Military, Foreign Military, and Non-Military Customers

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1.0 SCOPE, CONTRACT DETAILS & RESPONSIBILITIES

1.1 Scope

This Statement of Work (SOW) defines the scope of effort to provide performance-based material support for Federal Stock Group 53 (FSG 53), Hardware and Abrasives. The Contractor shall provide supplies and perform associated supply chain management functions in support of all Defense Logistics Agency (DLA) worldwide customers including Foreign Military Sales (FMS). The target population consists of National Stock Numbers (NSNs) or "items" that are segmented into the population categories (or "baskets") listed below. Lists for each basket are included at Appendix A.

1.1.1 Core Customer Direct (CD) and Military Retail Stock Replenishment Order management under Time Definite Delivery (TDD) shipment requirements where Contractor shall prepare delivery orders for shipment to DLA customers within one to three days after receipt of order (ARO), the Contract Delivery Date (CDD). Contractor shall use Vendor Shipment Module (VSM (Section 2.7.3)) for shipment processing. CD orders will be delivered directly to DLA customers and Military Retail Stock Replenishment orders will be delivered to the DLA Retail Stock Depot(s) to support demands at the retails sites. The CD requirement for TDD standards is based on DLAD 11.402-90, Time Definite Delivery (TDD) standards. The Contractor shall perform multiple supply chain management functions necessary to ensure the items are delivered directly to the customer in accordance with the metrics identified in Section 7.0 of this SOW. Such supply chain functions include, but are not limited to, material forecasting, acquisition, storage, packaging, and readying the material for shipment through VSM, warehousing, planning, forecasting, and delivery order shipment preparation responsibilities for these NSNs.

1.1.2 Alternative Production Lead Time (PLT) away shipment to DLA stock locations and Customer locations. The Contractor shall use VSM for shipment processing to Customer and DLA Direct (DD) locations specified on each delivery order within the PLT for each item. The determination of CD or DD is based on shipping address for each item. For CD items, the Contractor will ship directly to DLA customers. For DD items, the Contractor will ship directly to DLA warehouses. The historical PLT is provided in Appendix B. The contractor will have a one-time opportunity to provide a revised PLT to the Contracting Officer within 90 days of order issuance when the first order is issued for each item in the Alternative basket. There may also be times over the life of the contract when supplier production times significantly change, requiring a PLT adjustment. For this situation, DLA will allow for the adjustment of

Alternative item PLTs on a negotiated basis when the contractor submits supporting documentation and rationale. Upon mutual agreement of PLTs, PLTs may be adjusted at the time contract unit prices for Alternative items are adjusted and will be evidenced in a bilateral modification to the contract.

1.2 Contract Type, Term, & Administration

The resultant contract between DLA (or "Government") and the Contractor shall be an Indefinite Delivery Indefinite Quantity Commercial Fixed Price Contract with Economic Price Adjustments.

The contract has a potential ten year duration. The contract will have a one (1) year Transition Period and a base period of three years with two three-year option periods, to be exercised at the discretion of the Government. The base period of three years will begin upon the conclusion of the Transition Period. Notice of intent to exercise the option shall be furnished to the Contractor in writing within twelve (12) months of contract expiration of the base period. The preliminary notice does not commit the Government to an extension.

DLA Aviation, located in Richmond, VA, will maintain administration of the basic contract and will be responsible for contract performance measurement.

The Guaranteed Minimum (GM) for the total contract will be set at $1,000.00.

1.3 Pricing

(1) Appendix A – Total Evaluated Price (TEP) Model, a Microsoft Excel document, shall be utilized for proposal submissions of unit prices, rebates, fees, and specific item order quantities.

(2) Fixed and variable fees may be proposed by the Contractor as they relate to the level of performance required to support customer demands over the 10-year life of the contract. The awarded Transition and Management Fees, as outlined within Appendix A, TEP Model, are revised to allow for the submission of monthly invoices (12 equal increments) to begin one month after the beginning of the 12-month transition and performance periods. The awarded Throughput Fee percentage will be applied to the negotiated unit prices of the Alternative items and will be part of the unit prices for each performance period and paid via daily delivery orders. Likewise, the awarded Core item unit prices will be paid via delivery orders.

a. Transition Fee: Contractors may propose a one-time transition fee to cover transition and implementation costs for the first year of the contract.

b. Management Fee: Contractors may propose a management fee for the Core and Alternative baskets of items to cover the fixed costs of managing the material. This is a fixed fee applicable to each basket of items.

c. Throughput Fee: Contractors may propose a throughput fee for the Alternative basket of items which represents variable costs associated with management of these items. This is a variable fee applicable to each unit price of the Alternative basket.

(3) Economic Order Quantities (EOQs) may be proposed by the Contractor to ensure optimal ordering quantities. EOQs are highly suggested for items with Estimated Annual Demand (EAD) of 1.

a. EOQs: Contractors may propose EOQs to provide the Government quantity-based discounts for items that are expected to experience a dramatic shift in customer demand.

2.0 TRANSITION PERIOD & OPERATIONAL CAPABILITY

2.1 Transition Period

A one year Transition Period is required. During the Transition Period, the Contractor shall take actions detailed in its Contractor Transition Plan (Section 2.2) to assure satisfactory performance beginning on the contract start date.

The Contractor will conduct a kickoff meeting at DLA Aviation, Richmond within the first 30 calendar days of the Transition Period to discuss the gap analysis (Section 2.3(c)) and detail the proposed Transition Plan, including key milestones and timelines for completing Transition Plan deliverables.

In the event the Contractor does not meet Transition milestones as negotiated and/or cannot become fully operational within the Transition Period, the contract will be subject to termination for convenience at no cost to the Government, in accordance with FAR clause 52.212-4(l), Termination for the Government's convenience.

2.2 Contractor Transition Plan

The Contractor shall immediately implement its Contractor Transition Plan upon award. The Contract Transition Plan shall detail milestones that include, but are not limited to:

a. Implement a Supplier Management Plan to address ramp up time and pathway to meet contract performance requirements at the conclusion of the Transition Period.
b. Hold an Industry Day to maximize small business participation in this acquisition.

c. Develop adequate stock of items to fully support these items at the conclusion of the transition.
d. Conduct and verify a gap analysis and identify any long lead time items that could potentially become unsupportable during the transition (creating a gap in coverage) and coordinate actions with DLA to ensure material is available (Section 2.5).
e. Submit Transition Period-specific reporting each week including, but not limited to the reporting listed in Section 2.4.
f. Support Transition Period meetings with DLA (Section 2.6).
g. Demonstrate ability to integrate and interface with IT systems, including EDI and VSM (Section 2.7).

2.3 Data Provided to Contractor

The Contractor shall be provided with the following reports on a weekly basis for the Core NSN population and on a monthly basis for the Alternative NSN population for import into Contractor system:

a. Demand history to be used for demand planning
b. On hand inventory levels
c. Material movement between DLA stock locations
d. On order/due in positions

2.4 Transition Period Reporting by Contractor

The Contractor shall submit weekly written status reports to update the DLA Contracting Officer detailing their progression toward the implementation milestones. This includes, but is not limited to, personnel hired for specific tasks and in place, material(s) acquired, progress on supplier agreements, initial forecasting / demand planning / gap analysis reports, warehousing locations to support the contract, security access, etc.

The reporting requirements for the Transition Period are in addition to the reporting requirements outlined in Section 10.0.

2.5 Transition Period Gap Analysis

Within the first 30 calendar days of receipt of the contract, the Contractor will have conducted a gap analysis and identified any long lead time items that could potentially become unsupportable during the Transition Period and/or the three-year base year creating a gap in coverage and coordinate actions with the Government to ensure availability.

2.6 Transition Period Meetings

During the Transition Period, the Contractor shall meet with DLA on a weekly basis, or as mutually agreed upon, to ensure progress within the Contractor's Transition Plan

milestones are being accomplished. Meetings can be in person or via teleconference to assess whether the Contractor is on track to complete Transition Period activities by the end of the Transition Period.

2.7 System Interface & Integration

During the Transition Period, the Contractor shall complete the following system interface and integration activities and become operational in the IT systems outlined below.

a. Complete all testing to facilitate receipt of EDI transactions
b. Interface with DLA data via e-mail flat-file sharing
c. Import from DLA the demand history via e-mail and/or DoD SAFE to be used for demand planning
d. Import from DLA on-hand inventory levels
e. Import from DLA on-order/due in positions
f. Confirm Contractor's order pack date is a trackable and reportable data field with the flexibility to be included into EDI transmissions.

2.7.1 EDI

Electronic Data Interchange (EDI) is the exchange of routine business transactions in a computer-processible format, covering such traditional applications as inquiries, planning, purchasing, acknowledgements, pricing, order status, scheduling, test results, shipping and receiving, invoices, payments and financial reporting. Additional standards cover interchange of data relating to security, administrative data, trading partner information, specifications, contracts, production data, and distribution and sales activities.

The American National Standards Institute (ANSI) X12 Standard will be utilized for formatting the EDI transactions. Information regarding EDI, ANSI X12 transactions, and Defense Automated Addressing System (DAAS) approved Value Added Networks (VANs) can be obtained from the DAAS website at https://www.transactionservices.dla.mil/daashome/edi.asp. Value Added Networks (VANs) are private network providers that facilitate EDI services.

<u>EDI Transactions</u>

a. EDI 850 Delivery Order (DO)
b. EDI 856 Shipment Notice/Manifest Transaction Set
c. EDI 997 Functional Acknowledgement

As the data sharing and communication processes are further defined during contract implementation, the EDI transactions required as listed above may be modified or supplemented through mutual agreement of the

parties via bilateral contract modification. Subject to mutual agreement, the Contractor shall use (or upgrade to) the latest EDI transactions as they become available.

2.7.2 DIBBS In addition to EDI submission, delivery orders will be available through the DLA Bid Board System (DIBBS) website at https://www.dibbs.bsm.dla.mil. The Contractor may set up a DIBBS account in order to receive email notification of orders.

2.7.3 VSM Vendor Shipment Module (VSM) is a DLA, web-based system that integrates shipments into the Defense Transportation System (DTS). The Contractor shall utilize VSM to process all delivery orders. The Contractor shall create a VSM profile. To create a profile, contact the DLA Distribution (Code: TOT (1-800-456-5507)) which will assign a unique User Name and Password to access the website at https://vsm.distribution.dla.mil/net. The Military Shipping Label (MSL) and carrier information/shipping instructions should be available in VSM within 24 hours of initial shipment registry. The carriers chosen by the Government will be responsible for shipping from the consolidated container point (CCP), port of embarkation (POE) or Freight Forwarder point to the OCONUS customer destination.

2.7.4 ELLIS Enterprise Linked Logistics Information Source (ELLIS) is an online, active and dynamic data gathering system that reports real time performance and is planned to be utilized to track deliveries and performance reporting. ELLIS has the functionality to utilize VSM data, and EDI 850 and EDI 856 transactions from DLA and the Contractor for accurate delivery and performance tracking within the system. DLA shall provide the Contractor with ELLIS implementation and training information during the Transition Period.

2.7.5 iRAPT Invoicing, Receipt, Acceptance, and Property Transfer (iRAPT), formerly Wide Area Workflow (WAWF), is a secure web-based system for electronic invoicing, receipt and acceptance. Access https://wawf.eb.mil/ for additional information on getting setup in iRAPT/WAWF. Additionally, the Contractor shall have an account in the Systems for Award Management (SAM) at https://www.sam.gov in order to register in WAWF at https://wawf.eb.mil/.

3.0 CONTRACT ORDERING

DLA will submit DOs to the Contractor via EDI Transaction 850. Ordering will begin following completion of the Transition Period or in accordance with the Contractor's Transition Plan if the Contractor's Transition Plan allows for ordering prior to completion of the Transition Period.

The obligations of the parties and terms and conditions will remain in effect for any order that remains open after the expiration date of the final ordering period of the contract.

DLA Aviation, Richmond, VA may issue and administer order for contract NSNs listed in Appendix A. Ordering authority for any additional DLA or Military Service may be added by bilateral modification to the basic contract.

3.1 Ordering Contract Numbers

Ordering contract numbers will be established under the resultant basic contract number to accommodate contract NSNs for the purpose of ordering. There will be multiple ordering contract numbers assigned to each of the three baskets and will be provided to the Contractor at time of award. During the course of the contract, new ordering contract numbers may need to be established and will be coordinated with the Contractor and implemented via bilateral modification to the contract.

3.2 Payment Office

The payment office set forth in Block 12, Page 1 of the contract is applicable to all individual delivery orders.

3.3 Freight on Board (FOB), Inspection/Acceptance (I/A), and Place of Inspection (PIC)

a. FOB: Origin (see FAR Clause 52.247-30, F.O.B. Origin, Contractor's Facility)
b. I/A: Destination or Origin; designation on Quality Matrix, Appendix C.
c. PIC: Same as Block 7, Page 1 of delivery orders

3.4 Shipping Addresses

The Contractor shall utilize DLA's VSM (Section 2.7.3) for all DO's in order to obtain current shipping addresses.

3.5 Partial Quantity Deliveries

The Contractor is authorized to deliver partial quantity shipments and/or early shipments provided there is no additional cost to the Government. However, unless the Contractor is specifically directed otherwise, the partial shipments must be shipped against the delivery order with the earliest delivery date. This statement does not apply to Government-requested expedites where an additional fee may apply. Partial fulfillment of a requisition is considered incomplete for performance metric purposes.

3.6 Cancellations

Delivery order cancellations shall be in accordance with subsection (l) of FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items.

3.7 Inventory and Warehouse Management

The Contractor shall have access to DLA inventory levels and delivery schedules to ensure the Contractor meets or exceeds the requirements of this contract.

The Government shall provide the following reports on a weekly basis for the Core NSN population and on a monthly basis for the Alternative NSN population for import into Contractor system:

a. Demand history to be used for demand planning
b. On hand inventory levels
c. Material movement between DLA stock locations
d. On order/due in positions

4.0 ADDITION OF ITEMS AND SERVICES

As the partnership between DLA and the Contractor evolves and matures, DLA envisions a potential opportunity to add additional items within FSG 53 and services relating to the supportability of those items without seeking competition.

4.1 Addition of Items and/or Services

DLA or the Contractor may propose the addition of FSG 53 items and/or services to either basket. Addition of items and/or services shall be executed via bilateral modification.

New items proposed will initially be added to the Alternative basket. Items may migrate to the Core basket as outlined in Section 6.0.

5.0 DELETION OF ITEMS

5.1 DLA Deletion of Items

The Government may request deletion of items from the contract at any time due to changes in quality or technical requirements, changes in demand, or other situations where it is in the best interest of the Government to remove items from the contract.

When the Government deletes items from the Core basket, the buyback provisions outlined in Section 9.0 will apply to residual and committed inventory for these items. Residual inventory is defined as inventory the Contractor has on the shelf at the time of the buyback in order to support the CD requirements of the Core basket. Committed inventory is defined as inventory that the Contractor has committed with suppliers for parts in direct support of the CD requirements of the Core basket. For committed

inventory, the Contractor will provide reports of purchase orders that show part number(s), quantity purchased, and expected date of delivery from suppliers.

In situations when a delivery order is issued for an Alternative item for less than the supplier's Minimum Order Quantity (MOQ), the contractor may submit supporting documentation and rationale for an MOQ. DLA will review and will either increase the delivery order or cancel the order with the contractor and seek to procure the item elsewhere. The Government may also determine the need to delete the item from the solicitation in accordance with this Section.

The Contractor shall continue to accept orders for any deleted items until issuance of a bilateral modification that deletes them, or for any duration specified by that modification. Deletion of items under this provision is not subject to the Termination for Convenience provision of this contract, FAR Clause 52.212-4(1), and will not otherwise result in any liability by the Government to the Contractor.

5.2 Contractor Deletion of Items

The Contractor may request deletion of items from the contract. The Contractor will provide documentation supporting the deletion request. The Government will review the list of deletion candidates and supporting documentation. In approximately 30 days after its review and concurrence, if the Government agrees that an item should be deleted, the Government will issue a bilateral modification to remove the items from the contract. If there are open orders for the items being deleted, the Government will review and determine if orders should be retained or cancelled.

Items deleted from the contract at the Contractor's request are not subject to the buyback provisions outlined in Section 9.0.

6.0 NSN MIGRATION ACROSS BASKETS

The scope of this contract provides for support for the FSG 53 items listed in Appendix A that are segmented into two baskets; Core and Alternative.

As demand and situational changes occur during the contract term, the migration of NSNs across baskets may be necessary for optimal support of DLA customers. NSN migration across baskets shall be negotiated between the Government and the Contractor and a bilateral modification will be issued.

Both DLA and the Contractor will be able to propose NSN basket changes on a quarterly basis. For example, the Contractor may request to move an NSN from the Alternative basket to the Core basket as purchases increase and DLA may request to move an NSN from the Core basket to the Alternative basket based on demand and supportability changes.

7.0 PERFORMANCE METRICS

The Contractor shall support, and be responsible to fulfill, all demand from DLA worldwide customers, including Foreign Military Sales (FMS) customers.

Contractor performance shall be measured on a quarterly (3-month) basis and reconciled on an annual (12-month) basis, referred to as the performance period.

7.1 Performance Periods

For administrative purposes, 12-month performance periods will be established for the 3-year base period and the two, 3-year option periods.

7.2 Core Basket Performance Metrics

Contractor performance for the Core basket shall be measured based on a combination of Customer Direct Availability (CDA) and delinquency of delivery orders.
For the Core basket, a primary data element to measuring performance is the Contractor's pack date, or the date that the Contractor has packed delivery order item(s) in a shipping box sealed for shipment.

7.2.1 CDA

CDA is the percentage result of comparing the date when the Contractor has a delivery order packed and ready (pack date) for VSM processing to the delivery order due date (Contract Delivery Date (CDD)). CDA will be measured quarterly. For CDA metric calculation, CDA will be measured on all orders with CDDs within the 12-month performance period.

The CDA performance metric target is 90% for the Core basket. The CDA metric will be measured beginning with the first performance period and will be measured for each performance period of the contract.

CDA will be calculated as follows:

Total Orders Pass CDA Metric / Total Orders Due in Performance Period = CDA %

Example: There were 9,500 orders due in a 3-month Performance Period. 8,900 were packed and shipped on time:

8,900 CDA pass orders / 9,500 total orders due = 93.6% CDA

When a delivery order's recorded pack date is on or before the CDD and the total quantity of the order is packed and ready for shipment, the order will receive a CDA "pass" rating. When an order's recorded pack date is past the CDD or the total quantity of the order is not ready for shipment, the order will receive a CDA

"fail" rating. All orders with a CDD in the performance period will be measured with the exception of orders that are cancelled as outlined in Section 7.8, Requisition Cancellations (Core).

7.2.1.1 CDA Incentives and Disincentives

CDA incentives and disincentives will apply if the required CDA performance metric is either improved upon or not achieved in the 12-month performance period. The incentive and disincentive scale follows and applies to items and sales within the Core basket only:

Incentive and Disincentive Table											
CDA %	0	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1
100	7.00%	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
99	6.16%	6.24%	6.33%	6.41%	6.50%	6.58%	6.66%	6.75%	6.83%	6.92%	7.00%
98	5.32%	5.40%	5.49%	5.57%	5.66%	5.74%	5.82%	5.91%	5.99%	6.08%	6.16%
97	4.27%	4.38%	4.48%	4.59%	4.69%	4.80%	4.90%	5.01%	5.11%	5.22%	5.32%
96	3.22%	3.33%	3.43%	3.54%	3.64%	3.75%	3.85%	3.96%	4.06%	4.17%	4.27%
95	2.17%	2.28%	2.38%	2.49%	2.59%	2.70%	2.80%	2.91%	3.01%	3.12%	3.22%
94	1.12%	1.23%	1.33%	1.44%	1.54%	1.65%	1.75%	1.86%	1.96%	2.07%	2.17%
93	0.56%	0.62%	0.67%	0.73%	0.78%	0.84%	0.90%	0.95%	1.01%	1.06%	1.12%
92	0.00%	0.06%	0.11%	0.17%	0.22%	0.28%	0.34%	0.39%	0.45%	0.50%	0.56%
91	No Incentive or Disincentive										
90											
89											
88	0.45%	0.41%	0.36%	0.32%	0.27%	0.23%	0.18%	0.14%	0.09%	0.05%	0.00%
87	0.90%	0.86%	0.81%	0.77%	0.72%	0.68%	0.63%	0.59%	0.54%	0.50%	0.45%
86	1.35%	1.31%	1.26%	1.22%	1.17%	1.13%	1.08%	1.04%	0.99%	0.95%	0.90%
85	1.80%	1.76%	1.71%	1.67%	1.62%	1.58%	1.53%	1.49%	1.44%	1.40%	1.35%
84	2.40%	2.34%	2.28%	2.22%	2.16%	2.10%	2.04%	1.98%	1.92%	1.86%	1.80%
83	3.00%	2.94%	2.88%	2.82%	2.76%	2.70%	2.64%	2.58%	2.52%	2.46%	2.40%

In the following examples for CDA incentives and disincentives, the Contractor's annual sales to Government for the Core basket are $100,000,000.

Example of CDA Incentive: If for Year 3, the CDA performance level for the performance period is 92.75%, the Contractor would receive a .39% incentive on its total material sales. In this example, the monetary incentive would be $390,000.

Example of CDA Disincentive: If for Year 9, the final CDA performance level for the performance period is 88.50%, the Contractor would experience a .23% disincentive on its total material sales. In this example the monetary disincentive would be $230,000.

7.2.2 Delinquent Orders Disincentives

Contractor performance shall also be measured on the delinquency of delivery orders. A delivery order is considered delinquent if the Contractor's pack date is ninety (90) or more days past the CDD of the delivery order.

For each performance period, completed Core Basket orders will be categorized by the number of calendar days the orders were late. The degree of disincentive increases proportionate with the age of the late orders as shown in the following delinquency disincentive chart:

Category	Number of Calendar Days Delinquent	Disincentive Percentage
A	0 to 89 days	0%
B	90 - 179 days	1%
C	180 - 364 days	2%
D	Above 365 days	3%
E	Each additional 365 days	Additional 1%*

*As shown in the table above, each time a late order exceeds an additional 365 days, an additional 1% disincentive applies. For instance, if an order breaches 730 days, an additional 1% disincentive will apply to that order, for a total disincentive for the order of 4%. If an order exceeds 1,095 days, an additional 1% disincentive will apply to that order for a total disincentive of 5%, and so on until the order is delivered or mutually agreed to be cancelled.

The calculation of the late order disincentive is as follows:

[($ Sum of Late Orders in Category A) x (Disincentive % for Category A)]
+
[($ Sum of Late Orders in Category B) x (Disincentive % for Category B)]
+
[($ Sum of Late Orders in Category C) x (Disincentive % for Category C)]
+
[($ Sum of Late Orders in Category D) x (Disincentive % for Category D)]
+
[($ Sum of Late Orders in Category E) x (Disincentive % for Category E)]

Disincentive Example: Total value of orders included in the CDA metric and completed after their CDDs: $17,100,000

Category	Value of Late Orders Included in CDA Metric	Disincentive %	Disincentive Calculation
A	$2,700,000	0%	$0
B	$5,400,000	1%	$54,000
C	$4,500,000	2%	$90,000
D	$2,700,000	3%	$81,000
E	$1,800,000	4%*	$72,000
Totals	$18,000,000		$297,000

Late order disincentive = $297,000

*Category E may have multiple Disincentive Categories based on age of orders exceeding 365 days multiple times as described above.

The late order disincentive will be tracked monthly beginning in Performance Period 1 for all orders included in the CDA metric that are completed after their CDDs. The disincentive will be assessed for each 12-month performance period beginning with the Base Period following completion of Performance period 1. A quarterly report of delinquent orders will be provided by the contractor to DLA with a recovery plan and new CDD.

7.3 Alternative Basket Performance Metric

Contractor performance for the Alternative basket shall be measured based on the On Time Delivery (OTD) rate of orders. The OTD metric is 100%. For the Alternative basket, the primary data element to measuring performance is the delivery date.

7.3.1 On Time Delivery (OTD)

Contractor performance of the Alternative basket shall be measured by On Time Delivery (OTD) with a 100% performance metric. OTD will be measured quarterly. For OTD metric calculation, OTD will be measured on all orders with CDDs within the 12-month performance period. This metric calculates the percentage of delivery orders that were delivered on time.

When the total quantity of material for a delivery order is received by DLA or the customer on or before the scheduled delivery date, the order will be considered on time. If the delivery order's receipt date is after the scheduled delivery date and/or the total quantity of the order is not received, the order will be considered late. The percentage of delivery orders that are on time divided by the total number of orders will determine the OTD percentage rate.

Total Orders Met Scheduled Delivery Date / Total Orders Due in Performance Period = OTD%

Example: There were 9,500 orders due in a 3-month Performance Period. 8,900 were packed and shipped on time:

8,900 met scheduled delivery date / 9,500 total orders due = 93.6% OTD

7.3.2 Late Orders

Contractor performance shall also be measured on the lateness of delivery orders. A delivery order is considered late if the Contractor fails to meet the Scheduled Delivery Date of a delivery order. A quarterly report of delinquent orders will be provided by the contractor to DLA with a recovery plan and new CDD.

7.4 Application of Metrics

Performance metrics will apply to all items in the Core and Alternative baskets as outlined above. DLA will track Contractor performance upon the start of Performance Period 1.

7.5 Measuring Performance and Metric Reconciliation

Contractor performance and applicable incentives and disincentives will be measured and reported by DLA in 12-month performance periods utilizing DLA and Contractor data reflected in the ELLIS online portal and/or utilizing data reports generated by DLA and the Contractor. Results will be shared with the Contractor via a Performance Period Report. The Contractor will have a challenge period to dispute initial performance scores, see Metric Challenge Process section below.

Performance Period Reports containing details of the performance metrics and any applied incentives and disincentives will be reconciled at the end of each contract year to determine monetary payments due. Annual reconciliation will be completed within 90 calendar days after contract year end, unless extended by mutual agreement. A bilateral modification will be issued to report the findings of the reconciliation and any monetary payments due. If DLA owes the Contractor, a delivery order will be issued to the Contractor, in accordance with a material related type Contract Line Item Number (CLIN), for the monetary amount mutually agreed upon in the bilateral modification. If the Contractor owes DLA, DLA will submit a Request for Reimbursement Letter to the Contractor for the monetary amount mutually agreed upon in the bilateral modification.

7.6 Incentive and Disincentive Payment Process

For each performance period, a bilateral modification will be issued to show the final incentive paid or disincentive taken. If DLA owes the Contractor, a delivery order will be issued to the Contractor, in accordance with a material related type Contract Line Item Number (CLIN), for the monetary amount mutually agreed upon in the bilateral modification. If the contractor is required to make a payment to the Government, it will be done at the end of the 12-month period via the aforementioned bilateral modification and a Request for Reimbursement Letter will detail the amount due to the Government, the address where the payment is to be sent, the required due date, and any other pertinent

information required for payment processing. The amount owed by one party to the other will be the net amount owed after combining the Cost Containment share with all incentives and disincentives and will be reflected in a bilateral modification.

7.7 Delivery Order Cancellations (Alternative)

Delivery order cancellations are applicable to the Alternative basket only. Any order that is due in the 12-month performance period of evaluation and is cancelled in the same period will not be evaluated for performance in that period. If an order was evaluated for performance in one performance period and the same order is cancelled in a future performance period, there will be no adjustments made in performance score or disincentive. Once a performance period is evaluated for performance and the amounts due are mutually agreed upon and reconciled, a bilateral modification will be issued. Once the modification is executed, the performance period reported on the modification is closed.

7.8 Requisition Cancellations (Core)

Requisition cancellations are applicable to the Core basket only. Metric calculations assume all requisitions cancelled are cancelled due to non-availability of material and subsequent material workaround solutions. For cancellations of requisitions, the following applies:

If the cancellation occurs within the CDA metric timeframe, it is not counted towards the metric calculation - i.e. the customer/requisitioner cancelled the order too fast for the system to respond one way or the other.

If the cancellation occurs after the CDA metric timeframe, but a positive issue is made, it will count as a contract metric fill - i.e. the system responded as required.

If the cancellation occurs after the CDA metric timeframe, and a positive issue is not made, it is counted as a contract metric miss - i.e. it was cancelled due to material workaround solutions providing alternate sources of material.

7.9 Metric Challenge Process

A challenge period will be opened at the end of each performance period which will allow the contractor to take exception to the performance score either in ELLIS and/or in written response to the Performance Period Report. The Contracting Officer will provide the Performance Period Report within 45 days from the end of the performance period. If a delivery order that failed the metric is challenged, it is the Contractor's responsibility to present information to the Contracting Officer so that a thorough review of the problem can occur. The contractor has 30 days from the date the report is received to provide the Contracting Officer with documentation to support the challenges. If a back and forth exchange of data or discussion are required, the period may be extended. No response

from the contractor within these 30 days will be considered acceptance of the performance measurement for the quarter, and a bilateral modification will be issued.

The Contractor may request relief for the following events:

7.9.1 Severe Weather Events Hurricanes, floods, and other severe weather events that cause a significant delay or shut down of facilities shall be communicated to the Contracting Officer within 1 to 2 days of the event.

7.9.2 EDI Order Issues If the Contractor receives an order via EDI with a Contract Delivery Date in the past, the Contractor shall notify the Contracting Officer when the issue is realized. For Core basket CDA performance, these orders will be granted metric relief up to three days based on original CDD of the order and the Contractor has material ready to ship.

7.9.3 Other delays beyond the control of the Contractor and not due to any fault or negligence of the Contractor.

The contractor will provide rationale supporting the relief requested for the above events, and the rationale shall be sent and received by the Contracting Officer as soon as the delay is encountered. The Contracting Officer will issue a determination of whether to grant relief to the contractor within 15 business days of receipt of request.

8.0 SMALL BUSINESS COMMITMENT METRIC

The Contractor is expected to and will commit to include small business participation under the contract by ensuring small businesses are awarded subcontracts for this contract. This metric applies to the entire contract spend, both Core and Alternative baskets.

The Contractor (unless the Contractor is a small business) shall submit a Small Business Subcontracting Plan in accordance with FAR 52.219-9. In addition, in order to ensure that the small business community continues to be utilized in support of FSG 53, a Small Business Commitment Metric is applicable to all size businesses and will be established by the Government to evaluate the Contractor's small business participation throughout contract performance. The Contractor shall ensure at least 25% of total value of all orders are fulfilled by small businesses over the evaluated performance periods as outlined in Section 7.1.

To encourage the Contractor to improve small business participation, the Government shall award the Contractor an incentive fee for small business participation above and beyond the 25% metric. Small business commitment less than 25% will result in disincentives set in place by the Government. Small business incentives and disincentives are further discussed in Sections 8.3 and 8.4.

In Appendix F, the Government has detailed all small businesses utilized by DLA in the past, specific to each NSN. In addition, the Contractor is encouraged to utilize the Small Business Administration (SBA) subnet to post subcontracting opportunities related to this contract. The Contractor may also utilize the Dynamic Small Business Search database in System for Award Management (SAM) to search for small businesses across small business socio-economic categories if the current small business source is unavailable.

8.1 Application of Small Business Commitment Metric

The Small Business Commitment Metric will apply to all items in the Core and Alternative baskets. DLA will track small business utilization beginning in Performance Period 1. Incentives and disincentives measurement will become applicable for orders created on the first day of contract performance, after the Transition Period has ended.

8.2 Small Business Commitment Metric Documentation

The Contractor shall provide spend data documentation supporting their utilization of small business for each 12-month performance period. Documentation is due no later than 15 days following the last day of the performance period. Documentation shall include spend data by delivery order and the type of small business utilized (i.e. women-owned, service-disabled veteran owned). An example of documentation shall be submitted with the proposal.

The Small Business Commitment Metric will be finalized in tandem with the Core and Alternative basket performance metrics, 90 calendar days after the last day of each performance period.

8.3 Small Business Participation Commitment Document

The Contractor is required to submit a Small Business Participation Commitment Document with the proposal. The Small Business Participation Commitment Document shall address the Contractor's strategy for meeting the 25% Small Business Commitment Metric and it shall include proposed incentive targets, via an incremental incentive scale, to achieve up to 60% small business participation. The Small Business Participation Commitment Document shall also detail techniques the Contractor will utilize to assure small business participation throughout contract performance, e.g., industry days, notices in commercial publications, and similar efforts.

8.4 Small Business Incentives and Disincentives

As stated in Section 8.3, the Contractor shall propose an incremental incentive scale to achieve up to 60% small business participation. The incentive scale shall include incremental targets starting with 26.00% up through 60.00%. The following incentive

scale is included in the Contractor's proposal and is incorporated into the SOW:

Small Business Spend %	Incentive %
26.00% < SB % ≤ 31.00%	0.20%
32.00% < SB % ≤ 37.00%	0.40%
38.00% < SB % ≤ 43.00%	0.60%
44.00% < SB % ≤ 49.00%	0.80%
50.00% < SB % ≤ 60.00%	1.00%

The Government has set forth the following incremental disincentive scale for small business participation that falls below 25%:

Small Business Spend %	**Disincentive %**
25.00% < SB % ≤ 25.99%	Metric – Neutral
24.00% < SB % ≤ 24.99%	-0.2%
23.00% < SB % ≤ 23.99%	-0.4%
22.00% < SB % ≤ 22.99%	-0.6%
21.00% < SB % ≤ 21.99%	-0.8%
20.00% < SB % ≤ 20.99% or less	-1.0%

The disincentive will be applied to the total value of all orders, inclusive of all management and throughput fees, issued during the 12-month performance period being measured for both the Core and Alternative baskets. The disincentive may be recouped via reduction of existing or future orders, or through request for payment via other means.

9.0 BUYBACK PLAN

9.1 Buyback Volume

In the event of Government-initiated deletion of items or end of contract support, the Government will purchase residual and committed inventory up to 100% of the actual demand experienced in the nine (9) months preceding buyback implementation. The Government retains the unilateral right to compute the actual demand figure for the buyback process, in accordance with the criteria stated above. The Government may purchase a higher quantity than what is contractually required depending on the circumstances for the individual item. Final buyback quantities will be mutually agreed upon between the Government and the Contractor.

9.2 Buyback Ordering

The Government will issue buyback orders to the Contractor within 90 days of the mutually agreed upon final buyback quantities. All buyback orders must be issued to the Contractor before the final expiration date of the contract. See Section 12.0 Contract Closeout and Exit for details on final expiration of the contract.

9.3 Buyback Unit Price

Buyback orders will be issued with the item's unit price in place at the time the buyback takes place.

10.0 CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for supporting the target population's two baskets of items. The items in these baskets are identified in Appendix A.

The Contractor shall utilize VSM to coordinate all shipments for all NSNs in the entire target population.

The Contractor shall ensure all NSNs meet the Government technical and specification requirements and comply with Contractor quality standards as outlined in Section 10.3. The Contractor will not knowingly procure and supply counterfeit parts or materiel. The Contractor shall take the necessary actions to mitigate counterfeit occurrences. If counterfeit products or materiel are found, the supplier shall investigate and report incidents to the Government Industry Data Exchange Program (GIDEP) system at http://www.gidep.org. The Contractor shall provide similar guidance to sub-vendors and sub-suppliers to ensure supply chain integrity.

The following sections detail Contractor reporting requirements required for submission to the PCO based on the periodicity specified. All reports shall contain the minimum elements identified and be submitted in a Microsoft Excel format (for raw data) and Microsoft PowerPoint or Word (for charts pertaining to raw data), unless otherwise directed by the PCO.

Additional reporting elements may be required by the PCO throughout the contract term and shall be mutually agreed to with the Contractor via bilateral modification.

These reporting requirements are further detailed in the Contract Data Requirements Lists (CDRLs) provided. *CDRLs, DD Form 1423, are used to delineate any requirement for data which must be provided by the contractor as deliverable items. This can include, but is not limited to, Transition Period Status Report, etc. If a CDRL applies, it will be stated in the SOW or in the PID Text/Item Description as a QAP with CDRL in the description. CDRL documents are included with the solicitation or posted to cFolders (https://pcf1.bsm.dla.mil/cfolders/).*

10.1 Supply Chain Management

The Contractor shall employ strategies to manage both every day and exceptional risks along the supply chain to reduce vulnerabilities, eliminate counterfeit consumables, and ensure continuity to fulfill contractual metric requirements as outlined in this contract.

The Contractor shall perform comprehensive supply chain management of FSG 53 NSNs to include but not limited to the following:

Supply Chain Management Functions	Core	Alternative
Procurement & Purchasing	X	X
Order Processing & Fulfillment	X	X
Quality Control	X	X
Obsolescence Management	X	X
Data Management & Data Delivery	X	X
Packaging, Transportation Coordination & Shipment	X	X
Customer Support Services	X	X
Counterfeit Control	X	X
Material Returns	X	X
Warehousing	X	
Planning & Forecasting	X	
Shelf-Life Management	X	

10.2 Program Management

Maintain a single point of contact (POC) to interface with the Government's Program Manager and/or Contracting Officer to ensure timely resolution of business and technical problems and implementation of corrective action.

10.2.1 Contractor Representatives

The Contractor shall provide a Program Manager (PM) who has the authority and necessary staff to accomplish program performance requirements. Responsibilities of the PM include, but are not limited to:

a. Schedule and support, at a minimum, semi-annual Program Management Review (PMR) meetings with DLA
b. Coordinate program requirements and information with DLA
c. Ensure timely resolution of business and technical problems
d. Implement corrective action in accordance with the terms and conditions of this contract

10.2.2 Program Management Reviews (PMR)

The Government and Contractor representatives will conduct meetings semi-annually to provide a technical and logistics review.

During the PMR, the Contractor shall provide status of schedules and support goals, any process improvement initiatives, and provide status on the following elements:

a. Support Overview – to include overall schedule status (Delays, Concerns)
b. Metric Performance
c. Contractor Issues
d. Item Support Issues (including Unused Former Government Surplus)
e. Quality/Safety Issues
f. Obsolescence/DMSMS Issues
g. Other Issues or Challenges
h. Opportunities to further the partnership and improve overall parts support
i. Previous PMR Open Action Items/New Action Item
j. Use of Unused Former Government Surplus
    a. The Contractor must seek Government approval via process in Procurement Note C04 prior to filling a delivery order with surplus.
    b. The Contractor must maintain a spreadsheet to track the delivery orders where surplus is approved and used.
    c. The Government will not grant relief on order metrics for the Core or Alternative Baskets for additional time needed to determine if the offered surplus is acceptable.

The Contractor shall prepare minutes for PMR meetings containing a brief summary of each major issue; identify all agreements achieved, and any open issues which require further coordination or action. These minutes shall be furnished to the Contracting Officer within two weeks after each PMR Meeting.

10.2.3 Program Management Reporting Deliverables

The Contractor shall submit all reporting materials according to the following requirements:

a. Received via electronic format
b. Formatted in MS Excel
c. All reports will indicate date report submitted
d. All data formats will be standard across all reports – e.g. 01/21/2016
e. Previous day report due by 9:00 AM local next business day
f. Previous week reports due by 9:00 AM local the first business day of next report cycle
g. Previous month, quarter, and semi-annual reports are due within 5 business days after the start of next report cycle
h. Historical data must be maintained by Contractor

The Contractor shall be responsible for submitting the following report(s) on a weekly basis:

a. Inventory Report – Date/Time, Site, NSN and Part Number, Count in Unit of Issue
b. Metrics Summary Report
c. Supportability Analysis – Gap analysis of unsupportable parts, get well date, NSN and Part Number, mitigation efforts.

The Contractor shall be responsible for submitting the following report(s) on a monthly basis:

a. Inventory Report – Date/Time, Site, NSN and Part Number, Count in Unit of Issue
b. Metrics Summary Report
c. Supportability Analysis – Gap analysis of unsupportable parts, get well date, NSN and Part Number, mitigation efforts

The Contractor shall be responsible for submitting the following report(s) on a semi-annual basis:

a. Socio-economic Data Report - % of total contract dollars awarded under subcontracts with small business, % of total contract dollars awarded under subcontracts with women-owned small businesses, % of total contract dollars awarded under subcontracts with small disadvantaged businesses, % of total contract dollars awarded under subcontracts with service-disabled veteran-owned small businesses, % of total contract dollars awarded under subcontracts with HUBZone certified small businesses. This report shall include an Excel list of all the contract awards backup data used to derive the % reported to allow for Government verification.

The Contractor shall be responsible for submitting the following report(s) on a annual basis:

a. Socio-economic Data Report - % of total contract dollars awarded under subcontracts with small business, % of total contract dollars awarded under subcontracts with women-owned small businesses, % of total contract dollars awarded under subcontracts with small disadvantaged businesses, % of total contract dollars awarded under subcontracts with service-disabled veteran-owned small businesses, % of total contract dollars awarded under subcontracts with HUBZone certified small businesses. This report shall include an Excel list of all the contract awards backup data used to derive the % reported to allow for Government verification. .
b. Material Sourcing Report - NSN, consumable number, Contractor name, CAGE code (if applicable), quantity procured, and date of purchase.

c. NSN Migration Candidate List

The Contractor shall also be responsible for submitting reporting on miscellaneous performance and program management dimensions based on ad-hoc requests from the Government.

10.3 Technical Requirements

10.3.1 Item Descriptions

All materials delivered under this contract shall be provided in strict compliance with the applicable Procurement Item Description (PID) requirements. The Contractor is responsible for notifying the Government if the part number or technical data (including specification and drawing revisions) are different from the information cited in the PID. Until the Government has approved such a change, the Contractor shall provide the product in accordance with the PID.

The Contractor shall receive Government approval prior to ordering material from sources other than those approved in the PID, on a source controlled drawing, or in a qualified products list.

10.3.2 Source Control or Qualified Products List

The Contractor shall ensure its parts, vendors, suppliers and sub-contractors comply with all applicable Qualification Data Sheet (QDS), Qualified Products List (QPL), Qualified Supplier List for Manufacturers (QSLM) and Qualified Suppliers List for Distributors (QSLD) requirements, as specified by Government technical requirements for spare parts and industrial hardware. The solicitation document, SF 1449, includes information on Page 2 regarding the Joint Certification Program (JCP) and Collaboration Folders (C-folders) and within the SF 1449, FAR 52.212-1(i) provides specific information regarding the availability of requirements documents.

The Contractor shall qualify its network of manufacturers, and such suppliers otherwise must meet all requirements for qualification as a source of supply under government contracts (such as Qualified Products List, qualified suppliers list or other quality control demonstration). In addition, the suppliers must not be cited on the list of parties excluded from Federal Procurement or Non-Procurement Programs (EPLS) website at https://www.sam.gov/portal/public/SAM/, within 24 hours prior to delivery of material.

Items on the QPL can be identified with an AMC of 1 or 2 and an AMSC of T and can be located within Appendix C on the “Technical” tabs for each basket.

The Qualified Products Database (QPD) is the official repository for all qualification information in the form of Qualification Data Sets. The QPD

contains QPLs and other useful qualification information regarding products and manufacturers as approved, compiled, and maintained by the Qualifying Activity (QA). The QPD can be accessed via https://qpldocs.dla.mil/.

QSL items have AMC/AMSC codes of 1G. The PID of the items contain the reference tables to identify QSL (see table list below). Refer to Appendix L for reference tables included in each item's PID.

QSL Reference Table	Type of Item	FSC(s)
IS054	Class 3 Fasteners	5305, 5306, 5307, 5310
IS072	Class 2 Fasteners	5305, 5306, 5307, 5310
IS086	Rivets	5320
IS097	Pins	5315
IS098	Quick Release Pins	5315

The Contractor must confirm that they are acquiring QSL parts from an approved manufacturer on the QSLM. The manufacturers offered must be qualified as QSLM for the specific class of items and included on the qualified companies spreadsheet at the following website:

https://www.dla.mil/TroopSupport/IndustrialHardware/Engineering-and-Technical-services/Qualified-Suppliers-List/

The Contractor must be certified as a QSLD (dealer). The website above includes a section on how to participate (qualification) in the QSL program.

Inspection/Acceptance (I/A)

I/A Origin

DCMA source inspection is a requirement when designated by DLA Aviation. NSNs requiring origin inspection are identified in the Quality Matrix (Appendix C) and are subject to change throughout the term of the contract. The Contractor's commercial purchase orders shall include Government source inspection clauses. It will be the Contractor's responsibility to contact DCMA to schedule an inspection at the plant.

I/A Destination

NSNs requiring destination inspection are identified in the Quality Matrix (Appendix C). DLA will be responsible for quality assurance and inspection at the final destination of the order.

10.3.3 Shelf Life

Shelf life of items is identified in the Quality Matrix (Appendix C). The Contractor shall be responsible for tracking shelf life on all items.

10.3.4 Configuration Control

The Government shall maintain configuration control and change authority for all modifications or changes regarding the material acquired under this contract. DLA shall notify the Contractor of any configuration changes implemented by the Services. If the Contractor should identify configuration control issues, the Contractor shall immediately notify the PCO in writing.

a. The Contractor shall not supply any item under the contract that incorporates a known departure from technical or contractual requirements unless a request for a deviation, submitted from the Contractor to the PCO, has been approved by the Engineering Source Authority (ESA). Authorized deviations are a temporary departure from the requirements only and do not authorize a change to the item's configuration baseline. Deviation requests shall be prepared in accordance with DI-CMAN-80640C-Request for Deviation. Guidelines for preparing deviations may also be found in MIL-HDBK-61A, Military Handbook: Configuration Management Guidance and ANSI/EIA-649, National Consensus Standard for Configuration Management.

b. The Contractor may review configuration items and recommend other known available items that meet or exceed the current application of the item(s) and represent a better value to the Government. The Contractor shall submit an Engineering Change Proposal (ECP) for all suggested configuration changes to the PCO for approval by the Services. ECPs shall identify at a minimum, impacted system(s), old and new part numbers, and the reason for the proposed change. The final decision making authority for the recommended solution shall remain with the Government. All approval on engineering changes shall be administered and executed through bilateral modification by the PCO.

For any ECP, the Contractor shall maintain the sourcing and replacement of that part if the consumable remains under management of DLA. Any configuration changes that require a change outside of the Contractor's sources shall satisfy the Contractor quality standards.

10.3.5 Obsolescence and Diminishing Manufacturing Sources and Material Shortages (DMSMS)

The Contractor shall assist DLA in mitigating obsolescence and Diminishing Manufacturing Sources and Material Shortages (DMSMS) occurrences for the population of items covered under this contract.

The Contractor is responsible for managing and resolving obsolescence and DMSMS challenges applicable to the entire population of items throughout the life of the contract by providing timely notice, briefs and recommended solutions. Obsolescence management includes ongoing review and identification of actual and potential obsolescence issues, including obsolescence of consumables and material to support the repair of engines or components.

Obsolescence responsibilities of the Contractor shall include, but are not limited to, Life of Type buys, bridge buys, sourcing replacement consumables from secondary Contractors, and finding or developing new Contractors. Class I ECP redesigns (non-recurring and recurring engineering) for obsolescence are neither included nor required in this contract. The Contractor will not be held accountable for failure to implement ECPs that address obsolescence provided the Contractor has exhausted and documented all efforts made to provide support during transition to the replacement part. Any exceptions shall be reviewed on a case-by-case basis. All non-recurring engineering (NRE) and recurring engineering costs for Class I changes due to obsolescence shall be paid for under a separate ECP and subject to availability of funding in consultation and support the Services and DLA, as appropriate.

Obsolescence and DMSMS briefings shall include recommended solutions and workarounds to maintain support. If a fully developed solution has not been developed, the briefings shall include a timeline including Milestones and interface/approval requirements with Government personnel.

The Contractor shall provide the Government with immediate, written notification of any known manufacturer discontinuations, including a recommendation for and potential substitute of replacement items and substantiation of such recommendations.

The final decision making authority for the recommended solution shall remain with the Government. All approval on engineering changes shall be administered and executed through bilateral modification by the PCO.

10.3.6 Quality Management

The Contractor shall manage quality to ensure all material is delivered on time and meets required technical specifications.

In addition, the Contractor and/or its subcontractors shall maintain a Quality System that addresses the elements of ISO 9001-ANSI/ASQC Q9001, quality system model for Quality Assurance in Design and Development, Production, Installation, and Servicing.

The Contractor's Quality System must be approved by an ISO 9001 International Registrar. The Government reserves the right to assess compliance with this requirement, and quality system procedures, planning, and all other documentation, media, and data which comprise the quality system shall be made available to the Government for its review and use. The acceptance of non-conforming supplies is a prerogative of and shall be prescribed by the Government. The Government reserves the right to disapprove the quality system or portions thereof when it fails to meet its intended objectives.

10.3.7 Product Quality Deficiencies & Supply Discrepancies

DLA will contact the Contractor in writing when a Quality Notification (QN) is issued by a DLA Product Specialist to advise of a Product Quality Discrepancy Report (PQDR) or a Supply Discrepancy Report (SDRs) when they occur.

PQDRs are related to product deficiencies including but not limited to design, specification, material, and insufficient packaging. SDRs are related to product deficiencies including but not limited to loss, misdirected shipment, shortages and overages.

The Contractor shall investigate and respond in writing to DLA regarding PQDRs and SDRs. The Contractor shall be responsible for picking up and correcting or replacing any material requiring correction or replacement, and for delivery of conforming goods to the customer. A bilateral modification will be issued to document PDQR and SDR actions.

10.3.8 Warranty and Item Returns

The Contractor warrants that items under the resultant contract will be free from defects in materials and workmanship and in conformity with any applicable specifications. The Contractor agrees to repair, replace, or refund any defective item within one (1) year from the date of delivery. The Contractor shall pay the delivery costs associated with the defective item (e.g., if a defective item needs to replaced, the Contractor shall be responsible for covering the delivery cost for returning the item and shipping the new item.)

The Contractor shall accept Item Returns for shipping errors, damage or loss upon delivery within 30 days of date of delivery when Item Returns have been reported within 10 days of the delivery date.

10.4 Packaging and Marking Requirements

In addition to the information outlined in the section below, packaging and marking requirements for each NSN is listed in the Packaging Matrix (Appendix C).

10.4.1 Packaging Requirements

(a) Packaging requirements, as specified in the Packaging Matrix (Appendix C), shall be IAW ASTM D-3951, Standard Practice for Commercial Packaging, when Column "First Dest Pkg" is marked with a "Y" or shall be IAW MIL-STD-2073-1, Standard Practice for Military Packaging, when Column "First Dest Pkg" is marked with an "N".
(b) Unit of Issue (UI) and Quantity Unit Pack (QUP) – Contractor shall provide material in the Unit of Issue and Quantity Per Unit Pack (QUP) as identified in the Quality Matrix (Appendix C).

(c) Prohibited cushioning and wrapping materials: Use of asbestos, excelsior, newspaper, shred paper (all types, including wax paper and computer paper), and similar hygroscopic or non-neutral materials and all types of loose-fill materials, including polystyrene, is prohibited for application such as cushioning, fill, stuffing, and dunnage. In addition, the use of yellow wrapping or packaging material is prohibited except where used for the containment of radioactive material.

10.4.2 Marking Requirements

All unit, intermediate and shipping containers shall be marked in accordance with MIL-STD-129R.

MIL-STD-129 establishes requirements for contractors that ship packaged materiel to the Government to provide both linear bar codes and two-dimensional (2D) symbols on shipping labels. Shipping labels with 2D symbols are referred to as Military Shipping Labels (MSL) and are required on all CONUS and OCONUS shipments.

(a) MIL-STD-129 provides numerous illustrations of what should be bar-coded and the recommended placement of the bar code. Further information is available on the DLA Packaging Web Site at: http://www.dla.mil/LandandMaritime/Offers/Services/TechnicalSupport/Logistics/Packaging.aspx

(c) PIID and MIL-STD-129 label marking requirements. The FAR has been amended to implement a uniform award identification system. This uniform numbering system is referred to as the Procurement Instrument Identification (PIID). For current DFARS compliant DOD contracts, cite the 13 character PIID (e.g. SPE8EJ16F0001) on the MIL-STD-129 label as the contract marking.

WOOD PACKAGING MATERIAL (WPM)

Assets packed in or on wood pallets, skids, load boards, pallet collars, wood boxes, reels, dunnage, crates, frames, and cleats must comply with the Heat Treatment (HT) or Heat Treatment/Kiln Dried(HT/KD) (continuous at 56 degrees Centigrade for 30 minutes) standard in DOD Manual 4140.65-M"Compliance for Defense Packaging: Phytosanitary Requirements for Wood Packaging Material(WPM)". WPM must be stamped or branded with the appropriate certification markings as detailed in DOD 4140.65-M and be certified by an accredited American Lumber Standards Committee (ALSC)-recognized agency. The WPM certification markings must be easily visible, especially in pallet loads, to inspectors.

PALLETIZATION – Palletization shall be in accordance with MD00100452, REVISION C, DATED 09/2016 found at http://www.dla.mil/LandandMaritime/Offers/Services/TechnicalSupport/Logistics/Packagng/Palletization.aspx. Among the required pallet's characteristics are winged slides and four way entrance. Complete specification of the acceptable pallets can be found in Part 9 of ANSI MH1.

Electro-Static Discharge (ESD) – If vendors/contractors providing Electro-Static Discharge (ESD) sensitive items encounter a situation in which the packaging requirements in the contract reflect ASTM-D3951 and do not reflect MIL-STD-2073 Military ESD packaging (i.e. Method of Preservation GX, etc.) requirements, then the vendor/contractor must contact the contract issuing agency (i.e. DLA Land and Maritime, DLA Aviation, DLA Troop Support) to seek clarification for the proper packaging requirements.

HAZARDOUS MATERIALS - Packaging and marking of hazardous material (HAZMAT) items shall be in accordance with requirements detailed in MIL-STD-2073-1. The contractor shall identify any HAZMAT items and prepare Safety Data Sheets (SDSs) in accordance with the FED-STD-313E.

SHELF LIFE - The contractor shall use the applicable shelf-life paragraphs and table in MIL-STD-129R to apply either Type I or Type II shelf -life markings for an item's unit, intermediate and shipping containers. Contractors will ensure that at least eighty-five percent (85%) of the shelf-life requirement is remaining when received by the first government activity.

10.5 Surge and Sustainment

Items with surge and sustainment requirements are identified in Appendix G. Surge will be fulfilled at the unit price quoted for the item.

10.6 Cyber Security Requirement

The Contractor shall follow and comply with all National Institute of Standards and Technology (NIST) policies of the contract. At the time the Department of Defense (DoD) imposes the new Cybersecurity Maturity Model Certification (CMMC) process, the Contractor shall comply with the policy and secure the required certification, regardless of the potential that the new policy may not require active DoD contract holders to comply. The Government reserves the right to review contract NIST compliancy, which may require additional documentation during contract performance.

11.0 DLA RESPONSIBILITIES

11.1 Government Representative(s) for Program Management

The Government shall provide the Contractor with a Government Program Manager and/or Contracting Officer to interface with to ensure timely resolution of business and technical problems and implementation of corrective actions. Only the Contracting Officer has authority to bind the Government; therefore, all contract changes shall be made by a Government Contracting Officer.

11.2 Periodic Reporting Requirements

The Government shall provide the Contractor with the following reports on a weekly basis for the Core NSN population and on a monthly basis for the Extended and Alternative NSN population for import into the Contractor's system:

a. Demand history to be used for demand planning
b. On hand inventory levels
c. Material movement between DLA stock locations
d. On order/due in positions

11.3 Contract Change Responsibilities

The Government shall maintain responsibility of the following: alternate source approvals, Qualified Products List (QPL), Quality Assurance Letters of Instruction (QALI), PQDR/SDR approval, Military/Federal Specifications, waivers and deviations, creation of new NSNs as required, maintaining the Qualified Status List (QSL), approving Safety Data Sheets (SDS) and Hazard Warning Labels (HWL) when needed, origin inspection determination, provide access to the QSL on an as-needed basis, and Procurement/Product Item Description (PID) updates.

In the event that PID specifications change and the contractor has stock of the item meeting the previous PID specification, either in inventory or on order, DLA will determine if the contractor can issue the stock until stock is exhausted or if the Buyback Plan of SOW Section 9.0 applies. To ensure the contractor has current PID data, the Government will provide the refreshed PID updates on a monthly basis. The contractor

will be required to provide the date of order for the material in question so that the Government may verify the contractor built the item to the PID specifications in force at that time.

11.4 Technical Data Requirements

The Government shall provide the Contractor all required drawings and bid sets via the C-folders.

12.0 CONTRACT CLOSEOUT AND EXIT

Contract closeout is the period before the expiration of the contract on its own terms or execution of one of the termination clauses in the contract. If the contractor's CDA or OTD performance falls below 85% for an annual period of performance, the Government may unilaterally terminate the contract in part or in whole.

Other than in the event of termination, contract closeout shall begin at least 24 months prior to the final expiration of the contract. DLA shall notify the Contractor 12 months prior to the end of the base or option period of their intent to either continue to contract for performance based services or pursue a different concept.

The Government reserves the right to purchase residual inventory and committed inventory (see Section 9.0 Buyback Plan) up to 100% of the actual demand experienced in the 12 months preceding pipeline restocking implementation. However, the Government is only bound to purchase residual and committed inventory up to 100% of the actual demand experienced in the nine (9) months preceding buyback implementation. Residual inventory is inventory that the Contractor has laid in to support requirements. Committed inventory includes the Contractor's commitments with Contractors for consumables in support of requirements. The Government retains the unilateral right to compute the actual demand figure for the restocking process, in accordance with the criteria stated above. The Government may purchase a higher quantity than what is contractually required depending on the circumstances for the individual item with concurrence from the Contractor.

Throughout the contract closeout period, the Contractor shall provide the DLA Contracting Officer its materiel forecast data for this analysis and determination. The initial data set shall be provided to the Contracting Officer 90 days prior to commencement of contract closeout with following submissions provided on the 1st of each month during closeout, along with inventory levels and due-ins.

In addition to the forecasting data, no less than 90 days prior to contract expiration, the Contractor shall provide a material sourcing report for all procurements completed during the contract term. The report shall identify the NSN, consumable number, Contractor name, CAGE code (if applicable), quantity procured, and date of purchase.

12.1 Contract Closeout Team and Exit Plan

A Contract Closeout Team shall be established prior to commencement of contract close-out (i.e. no less than 24 months prior to contract end) to fully develop a mutually agreed upon contract closeout and exit plan.

12.2 Contract Exit

Contractor shall furnish effort including labor, material, and facilities as may be required to successfully transition program responsibilities back to DLA, or DLA's designated representative. Specific requirements to support contract exit shall be identified no less than twelve (12) months prior to contract end.

EXHIBIT D

EXHIBIT

US-8

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 26-11369 (CTG)
NOBLE SUPPLY & LOGISTICS, LLC, *et al.*,	(Jointly Administered)
	Courtroom No. 7
	824 Market Street
Debtors.	Wilmington, Delaware 19801
	Wednesday, September 16, 2026
	10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commence at 10:00 a.m.)

(Call to order of the Court)

THE COURT: Be seated.

Good morning. We are on the record in Noble Supply & Logistics LLC, which is Case Number 26-11369.

Let me thank the parties. I know this is all set on very short notice. And the briefing that came through has been very helpful, and I appreciate you all scrambled to do that, so I don't take that for granted. I appreciate that.

I guess I'm happy to start by getting a little bit of an understanding of the lay of the land. And before we launch into evidence and argument, I guess I'd like to understand if we could sort of crystallize where there are disputes.

So Mr. Dean, I'm happy to start with you.

MR. DEAN: Good morning, Your Honor. For the record, David Dean of Cole Schotz on behalf of the debtors.

As the Court is aware, we're here today on the debtors' motion to compel Defense Logistics Agency, or "DLA", to pay the debtors certain undisputed amounts necessary to maintain the debtors' operations in these cases.

With me today is my co-counsel Seth Van Aalten and Rob Albergotti, both of whom submitted declarations in support of the motion today.

Now, as detailed in the motion, we're here, Your

Honor, because, on September 4th, with no notice or explanation to us, the DLA instituted a complete block on all the payments owed to the debtors. As of the date of the motion, the DLA owed the debtors more than $3 million on account of invoices that had been properly submitted and scheduled for payment.

In just the few days since the motion was filed, Your Honor, the number had increased -- has increased to over $5.8 million and will increase to $8 million in the next couple of weeks.

Importantly, the debtors' books and records reflect over $32 million owed by the DLA to the debtors in total, and $26 million of that thirty-two is contained and included in the debtors' thirteen-week interim budget that was approved by the Court on an interim basis a couple of weeks ago.

Now, as you'll hear from Mr. Albergotti today, there is simply no way for the debtors to remain in Chapter 11 and in compliance with its covenants if these undisputed amounts aren't received by the debtors in the next couple of weeks.

And I think just -- I think it might be important just to give you an update on the sale process. The IOI deadline was yesterday; we did receive seven IOIs. We feel pretty good about the sale process right now. And I think

allowing us to continue with that process would be --

THE COURT: All right. So --

MR. DEAN: -- a value-maximizer --

THE COURT: So let me --

MR. DEAN: -- for everybody.

THE COURT: So I get you need the money.

MR. DEAN: We need the money.

THE COURT: And I get that, if you get the money, you're going to use it for good --

MR. DEAN: Uh-huh.

THE COURT: -- and valuable purposes that will maximize value for the benefit of everybody, that -- I get all of that.

MR. DEAN: Got it.

THE COURT: The question is: Are you entitled to the money?

MR. DEAN: Well, we believe so.

THE COURT: Right. No, I understand. But so I'm much more interested --

MR. DEAN: Yep.

THE COURT: -- in that than in the fact that you need it. I -- let's assume you need it. There are lots of times when people need money in order to run a case, but if they don't have a legal right to it, the Bankruptcy Court can't help them, right?

MR. DEAN: Well, certainly. We'll get into the argument, but I'll just give --

THE COURT: Yeah, so --

MR. DEAN: -- you a little preview.

THE COURT: So -- yeah, so I get -- I want to give you a chance to be heard. But I guess, having read the Government's papers, I guess where -- let me just rattle off the issues on which I'm most interested and concerned. And I'll need help on the math because, I mean, I've read the papers, but I haven't really sat down and puzzled through like with a spreadsheet -- okay? Exactly what parts are associated with which arguments.

MR. DEAN: Uh-huh.

THE COURT: But -- so the Government's -- there are various -- there are various claims that the Government makes that it's entitled to a right of setoff, right? Part of it is this disincentive payment that it looks like it's a net seven point some million dollars. And there's also these False Claims Act claims as to which they're asserting a right of setoff.

And so, when you say that there are amounts that are undisputedly owed, I guess my question is: If there's stuff that's indisputably owed after -- in excess of what the Government claims is owed to it, that's one thing. And if, though -- but if the rights of setoff would consume the

payables, that's another.

And then we've got questions of, okay, do we have mutuality. And if the claims that are subject to setoff are disputed and unliquidated, then what do we do? And so that's -- those are the questions that, as I get on the bench, I don't know the answer to.

There were other points that were made about whether the contracts are executory, whether we need --

MR. DEAN: I don't think we need to get into that today.

THE COURT: -- an adversary. And that -- there seemed to me like that that -- that seemed, to me, less critical to the determination than the questions that I started with.

So, in any event, I hope that's making some sense. That's sort of what I'm struggling with as I get on the bench.

MR. DEAN: Yeah, I'll -- let me try to respond to the last part first. I don't think we need to decide whether the contract is executory today. It was an alternative argument to enforce the stay. So I don't think that that's really germane to the -- so much germane to the hearing today.

I think where we're ultimately going to come out is that we agree that we owe the Government the $537 [sic]

under the settlement agreement. We believe that the rest of the amount is purely an *ipso facto* bankruptcy trigger that's an unenforceable penalty, so it's a very disputed amount, and we don't think it's owed.

The disincentive payments, what they failed to mention in their declaration and their paper -- which we'll put into evidence today when we get there -- is that we actually asserted an eighty-million-dollar claim against them for breach of those contracts, and that 7.9-million-dollar disincentive payment is part of that and is also highly in dispute. And I'll show you the pleading or the letter that we submitted in the form of the claim that specifically notes that those amounts are in dispute.

And when we get into legal argument, I'll explain to you why I don't think Strumpf allows an administrative hold for setoff of disputed amounts. And if this were just about the $537,000, Your Honor, we would have agreed to that; we wouldn't be here today.

THE COURT: Okay.

MR. DEAN: It's about the disputed amounts.

THE COURT: Okay.

MR. DEAN: So that's really what this hearing boils down to in a nutshell.

And I think more -- most importantly, Your Honor, is they -- we believe that they have delayed the filing of a

motion for relief in violation of the stay --

THE COURT: No, so --

MR. DEAN: -- to try to get these --

THE COURT: -- I under --

MR. DEAN: -- these issues decided.

THE COURT: If we have what is really a Strumpf issue, I don't know that I know all the answers, but at least I know how to think about that. And I'm just sort of -- I'm trying to do it to start out.

MR. DEAN: I do think this is a Strumpf issue. This case is -- this -- I think today's hearing is about whether the administrative hold, so to speak, the block on the CAGE codes, the block on payments that they indisputably owed us was proper under --

THE COURT: Okay.

MR. DEAN: -- under the doctrine --

THE COURT: All right.

MR. DEAN: -- of Strumpf.

THE COURT: Okay. So I think I know how to think -- and so, look, if that -- if what we have is that legal issue -- I mean, there may be -- I don't know if the facts are disputed or not. I -- look, I understand some of the claims are disputed. I don't think anyone is asking me today to liquidate those undisputed claims. Well, I'm not speaking for any of you; you're welcome to put on evidence

and ask me to do that.

But let me ask this other question, just so that I under -- just by way of framing.

MR. DEAN: Uh-huh.

THE COURT: Is there a mutuality issue? Does the debtor contend there's a mutuality issue with respect to the claim of setoff, or do you acknowledge the -- that there is sufficient mutuality that, to the extent the claim is -- the disputed claim is valid, it's -- the Government has a setoff right?

MR. DEAN: As far -- well, there's one issue on mutuality that I don't think we dispute right now, but they haven't filed a full, robust motion. We haven't had a chance to brief it.

THE COURT: Right.

MR. DEAN: But just as a threshold matter, today, we don't appear to have a dispute on the position the Government has taken on the unitary creditor theory.

THE COURT: Okay.

MR. DEAN: But I think it's going to take a little bit more analysis for us to decide the pre- versus post-issue and when the claims arose, and that we haven't quite gotten there in the analysis because this response was just filed.

THE COURT: I see, No, I understand. No. My

question -- let's assume the Government is a single -- the United States is a single entity.

MR. DEAN: Right.

THE COURT: I didn't know if different debtor entities created mutuality issues.

MR. DEAN: I don't believe so, Your Honor --

THE COURT: Okay.

MR. DEAN: -- but it's something that we would need to analyze --

THE COURT: Okay.

MR. DEAN: -- a little bit --

THE COURT: Fair enough.

MR. DEAN: -- deeper, if --

THE COURT: Okay. But you're not here making that point.

MR. DEAN: We're not here make --

THE COURT: Okay.

MR. DEAN: We're not here -- our position is we're not here to argue whether they are entitled to relief from stay because they haven't filed a motion, and we think they should have had to have done that very promptly after issuing the hold under the construct of Strumpf, so --

THE COURT: All right. So I understand that position and -- but here -- but look, the case was -- the passage of time in this case has all been relatively short.

So I understand you're saying they should have moved faster. Maybe you're right; maybe you're not.

I'm inclined -- and look, I get that you need the money right away. But you know, I set this hearing as promptly as I reasonably could after the motion was filed, so here we are.

And I guess I'm interested if there's authority for your proposition that Strumpf doesn't have application where the counterparty's claim against the debtor is disputed.

MR. DEAN: We have a Third Circuit case, and under common law, that says you can only set off disputed claims.

THE COURT: Well, so I know you can't actually effect setoff, but I guess let me just --

MR. DEAN: Yeah, the question is --

THE COURT: This is --

MR. DEAN: -- can you put a hold on something while you figure it out, that's the issue.

THE COURT: Right. Exactly. And is there a case that answers that question?

MR. DEAN: There is no case directly on point that answers it, one way or the other, that we're familiar with because this is -- Strumpf is about banks.

THE COURT: No, I understand. But the point -- the common sense point of I've got this right of setoff and I

shouldn't be required to send the money out the door and thereby lose my right has a common sense to it. And I guess my common sense reaction to it -- and again, I'm just making this up, so I don't know if there's case -- if there's case law that says the other -- the opposite, I'd be interested in understanding it. But my common sense reaction is well, if that's the case, we should set up a prompt estimation procedure and do the best we can to liquidate it.

And that's exactly what 506(c) is about, right? It is about when full liquidation would delay the administration of the case. That seems to be a basis to make people move quickly. That's not going to get you paid tomorrow. So I guess I'm interested in understanding: Is that way of thinking about dealing with this problem a way to think about it or are there cases that I should read in order to be smarter about that? We're all -- I know we're all moving fast and we're all doing the best we can, but that's where my head is.

MR. DEAN: We're not aware of any authority where a creditor has been allowed to put an administrative hold on place -- in place in connection with the disputed claim.

THE COURT: Okay. I understand that.

MR. DEAN: That's the issue.

THE COURT: Are there cases that say this administrative hold is improper because the claim is subject

to bona fide dispute?

MR. DEAN: No. But there are cases --

THE COURT: Okay.

MR. DEAN: -- that say you cannot set off --

THE COURT: -- I understand.

MR. DEAN: -- disputed claims.

THE COURT: I understand.

MR. DEAN: And so --

THE COURT: I understand that. Okay.

MR. DEAN: So the question is: Can you exercise leverage as a litigation party and basically block the debtor from getting paid when the --

THE COURT: Well, or --

MR. DEAN: -- amounts are in dispute?

THE COURT: Put another way: Does it make sense for a court, when that's the case, to set up an expedited process to bottom it out and get it resolved promptly?

MR. DEAN: Well, the other thing that I think is highly relevant here is that you're going to hear from Mr. Albergotti supplemental director today, there's going to be $32 million of -- most of which is going to be undisputed, that the DLA owes to us. So, if you allow us to get paid the incremental amounts that we're asking for today, pending that resolution, there's still going to be more than adequately protected --

THE COURT: Well --

MR. DEAN: -- to effect a setoff.

THE COURT: All right. Well, that's an evidentiary question. If the if the maximum amount of their setoff is otherwise adequately protected --

MR. DEAN: We believe it is.

THE COURT: Okay. Well, if you can show me that --

MR. DEAN: We will --

THE COURT: -- that would make a difference.

MR. DEAN: We will show you that.

THE COURT: Okay. Let me hear from the Government and see what the United States thinks about the question in front of me. And again, I do appreciate you're here on very short notice and I appreciate the paper. But if you can help me with some of the questions that I was discussing with Mr. Dean, that would be very helpful.

MR. GESMUNDO: Good morning, Your Honor. Alastair Gesmundo behalf of the United States.

I do appreciate the Court's comments about recognizing sort of the short notice, and we appreciate the Court accommodating witnesses.

I think Your Honor touched on exactly the point about setoff, which is that, as shown in the papers and the evidence, the DLA hasn't actually performed a setoff. In

other words, the hold is what's in place.

THE COURT: Right.

MR. GESMUNDO: And so --

THE COURT: No, I get you haven't effected setoff.

MR. GESMUNDO: Yes.

THE COURT: If you had, you -- there would be we'd be having a different conversation because -- right? So 362(a)(7) makes really clear you can't have done that, so you're not getting that many points for not having done it --

MR. GESMUNDO: Sure.

THE COURT: -- because it's -- it would be expressly prohibited.

MR. GESMUNDO: Yes.

THE COURT: But I appreciate it, nevertheless.

But the question is: You've placed an administrative hold. Strumpf isn't really about disputed claims, right? It's about the bank, and there's a liquidated loan and there's a bank account, not these sort of inchoate claims. And so I get the common sense behind your paper of yeah, but we shouldn't lose our rights in the meantime. But I also -- there's a common sense to Mr. Dean's point of yeah, but you can't like strangle us in the meantime. So help me think about -- and if there's law that I have -- I'm not aware of that that helps me think about those questions, I'd be interested in what that is. Does that make -- am I making

any sense?

MR. GESMUNDO: You are, Your Honor. And I am also not aware, as Mr. Dean noted, of any controlling precedent that would influence or sway the Court in that sense, but

THE COURT: That's great.

(Laughter)

THE COURT: I have to say sometimes I love how interesting my job is, and other times I have a different reaction to how interesting my job is, so ...

But let you continue.

MR. GESMUNDO: No. So, Your Honor, I think you alluded to the sort of expedited process where we could -- you know, obviously I would get the agency to work diligently on sort of an estimation to help the Court get to that answer. But I think we're still left with this position of they're not -- the debtors are not going to get paid tomorrow, and so we're sort of at a loss in that sense, Your Honor.

THE COURT: All right. So let me let me ask you this. If I heard evidence today that persuaded me that -- well, can I ask you another couple of --

MR. GESMUNDO: Sure.

THE COURT: -- questions first?

The underlying right to payment is on a Government contract. Your papers don't say Judge, under the Tucker Act,

only the Court of Claims can tell us what that contract means or make any of those sorts of arguments. So I take it you know what you're doing, you did that on purpose, and that I'm allowed to resolve the disputes that the parties have brought me.

MR. GESMUNDO: Your Honor, we would -- to the extent that was before the Court, we -- I mean, DLA's position is that the Court of Federal Claims has concurrent jurisdiction --

THE COURT: Concurrent. Okay.

MR. GESMUNDO: -- concurrent -- after a certain point in time, and that's a certain point in time -- we -- my understanding is that it's after the contracting officer has made its decision and the debtor can either appeal it --

THE COURT: Okay. But there's no exclusive jurisdiction, there's no argument about exclusive jurisdiction. You're not -- you haven't said and you're not saying that the questions that the debtors put before me are questions I don't have the authority to resolve.

MR. GESMUNDO: We didn't put that in --

THE COURT: Okay.

MR. GESMUNDO: -- the papers, Your Honor.

THE COURT: Very well.

MR. GESMUNDO: Yeah.

THE COURT: Okay. And if I were then to conclude,

based on the record that I'm going to hear today, that the maximum amount of your claims against the debtor are less than other amounts that will be due to you from the debtor, therefore requiring you to make the payment of what is indisputably due now wouldn't deprive you of your right of setoff. If the evidence shows that, would that be a sense -- I understand that you're not agreeing that that's what the evidence will show, and I have no idea what the evidence will show. But if the evidence were to show that, would that be a sensible way to resolve this particular dispute or would there still be a reason I couldn't do that?

MR. GESMUNDO: I think Your Honor mentioned indisputable. So understanding that --

THE COURT: Yeah, exactly.

MR. GESMUNDO: -- that's the presumptive right --

THE COURT: Assuming the evidence showed that that wasn't subject to bona fide dispute. If you show that the amount they're asking you is not actually owed by you to them, that's a totally different thing.

MR. GESMUNDO: Yes. And so that's what we intend to do. But yes, in the alternative scenario that you've just explained, Your Honor.

THE COURT: Okay. So then I guess I kind of need to hear this evidence about what are the disputes about the amounts owed. Is that where everyone is?

MR. DEAN: Yes, Your Honor.

THE COURT: Okay. Very well. Thank you.

MR. DEAN: And may I just deal with the documentary evidence before we call the witnesses to the stand?

THE COURT: Sure.

MR. DEAN: And I'd like to just ask for permission to hand up a couple of other documents that weren't in the binder --

THE COURT: Very well.

MR. DEAN: -- in response to what they filed. I'm handing two -- would you like one or two? Is --

THE COURT: Two copies would be helpful.

MR. DEAN: Two copies?

I'm handing you what we're going to ask to be marked as Exhibit 4, and then we're handing you a demonstrative that we're going to put on the screen and show the witness, but we're not going to move into evidence.

THE COURT: Okay. Very well. Thank you.

MR. DEAN: And just so the Court knows, Exhibit 4, the letter from Arnold & Porter --

THE COURT: Uh-huh.

MR. DEAN: -- is the claim that we filed against the DLA relating to the $7.9 million, and we'll discuss that later, but I just wanted to identify that for now, Your

Honor.

And we do have a stipulation with the DOJ on exhibits.

THE COURT: Okay.

MR. DEAN: We've agreed that -- the debtors, first of all, will agree to admit the three declarations supporting the opposition without objection and without cross.

I do understand that one of the three witnesses may not be available until noon. We have no questions for that witness. If Your Honor has any questions, then --

THE COURT: Okay. We'll sort that out if we get there.

MR. DEAN: -- we can sort that out later, but --

THE COURT: And I appreciate everyone's on short notice and, you know, I -- you know, I appreciate the -- everyone scrambling to be as available as you have been.

MR. DEAN: And then with respect to our exhibits, Exhibit 1 is the declaration of Mr. Albergotti, and as well as the three exhibits attached to his declaration.

THE COURT: Uh-huh.

MR. DEAN: We've agreed that those would be admitted without objection.

The declaration of Mr. Van Aalten, which is a transmittal declaration with the emails with the DLA prior to filing the motion attached.

And Exhibit 3 is a dupe of one of the attachments to their declaration, which is the settlement agreement. This is the settlement agreement that they based the three-million-dollar on --

THE COURT: Okay.

MR. DEAN: -- that we say we owe 500,000 on.

So we would, at this point, move all of those exhibits into evidence. And subject to any other discussion the Court wants to have about them, we would then call Mr. Albergotti.

THE COURT: All right. So, first, is there any objection to the admission of -- into evidence of the exhibits to which Mr. Dean referred?

MR. GESMUNDO: No objection, Your Honor.

THE COURT: Okay. So those will be admitted.

(Debtors' Exhibits 1 through 4 received in evidence)

THE COURT: And I'm happy to hear from the witness, so you should call your witness.

MR. DEAN: Okay. the debtor's called Robert Albergotti.

THE COURT: Okay. Mr. Albergotti, if you could take the stand. And Ms. Barksdale, if you could swear the witness.

THE COURT OFFICER: Good morning.

//

ROBERT ALBERGOTTI, WITNESS FOR THE DEBTORS, AFFIRM

THE COURT OFFICER: Please state your full name and spell your last name for the record.

THE WITNESS: It's Robert Albergotti.

THE COURT OFFICER: You may be seated.

THE WITNESS: It's A-l-b-e-r-g-o-t-t-I.

THE COURT OFFICER: Thank you.

THE COURT: Mr. Dean, you may proceed.

DIRECT EXAMINATION

BY MR. DEAN:

Q Good morning, Mr. Albergotti. Thank you for coming today.

Do you happen to have a copy of the witness and exhibit binder --

A I do.

Q -- in front of you? Okay. Thank you. I'll -- I may direct you to certain things in there.

I'd like to just start out by asking you a couple questions about the CAGE code block discussed in your declaration. When did the debtors first learn that the DLA instituted a block against the CAGE codes?

A The initial indication was September 4.

Q And after receive -- and how did you receive notification of it?

A One of the accounts receivable clerks at the company

was attempting to upload invoices into the Wide Area Work Flow for the DLA and received an automated response that rejected an invoice, saying that the rejection was due to Chapter 11.

Q Okay. And is that the note attached to your declaration as Exhibit 1?

A Correct, it is.

Q Thank you.

Q Now, after receiving this auto-generated email, what did the debtors do to understand from the DLA the reasons for the block prior to the debtors filing of the motion on September 9?

A We asked -- I asked counsel to contact their -- their -- our counterparts at DLA and their legal department, which I believe Mr. Van Aalten sent an email or -- or several emails trying to understand the -- the issues as well as highlight some other operational issues that we wanted to have a discussion on, and we did not receive a response at that point.

Q Are those emails included in Mr. Van Aalten's declaration as Exhibits 1 and 2?

A Yes, they are.

Q Now did the debtors receive any explanation from the DLA, between September 3rd when you first learned about the block and the filing of the motion, as to why the block was

instituted, other than the fact that the debtors had filed for bankruptcy?

A No, not that I'm aware of.

Q Can you just explain to the Court, Mr. Albergotti, what the impact is of the CAGE code block on the debtors' ability to submit and pay invoices?

A Yes. So we -- we have an intention of continuing to -- to fulfill obligations to both the DLA and other government agencies, which require us to pay vendors on a post-petition basis promptly, as well as addressing some pre-petition critical vendor payments to -- to facilitate shipments. The inability to access cash that was forecasted to come in has curtailed the ability to make any vendor disbursements, frankly, to -- to any material amount. So we're -- we are effectively only able to make payroll payments at this point.

Q And just to clarify, are the debtors able to be paid any of the invoices that the DLA has posted as being due?

A Anything that's flagged to the CAGE code 1HEN99, my understanding, is blocked for payment. We have received some de minimis payments on other CAGE codes related to other entities in the Noble chain, but the vast majority is -- is the CAGE code that we're talking about --

Q Okay.

A -- today.

Q I'd like to just direct your attention to Exhibit 3 in

your declaration, which is the chart that you prepared and submitted showing the $3.2 million alleged in the motion as being due and owing by the DLA as of the filing of the motion. Do you see that, sir?

A I do, yes.

Q And I just want to confirm a couple of things about this chart.

At the bottom, the total invoices sum up to a little over 3.2. Are you aware of any disputes as to the 3.2 million in invoices identified on this spreadsheet?

A I am not, no.

Q Have the overdue invoices gone up since your declaration was submitted?

A Yes. It's -- it's just over 5 million as of today. And then, over the next couple of weeks, it will -- it will grow to 8 million.

Q Are you aware of any disputes with respect to those amounts?

A None that have been flagged to my attention.

Q Now did you have a chance to review the DOJ's objection to the motion that was filed?

A I did, yes.

Q And do you agree with the statements that large amounts of the 3.2 million that we alleged are due are not yet due?

A I don't agree fully with their assertion.

Q Can you explain why not?

A Yeah. So the extract here does reference an invoice date of August -- if we just look at the first row of the nine hundred and forty -- or the nine-hundred-and-twelve-thousand-dollar invoice, it -- it says the invoice issue date is June 30th of 2026, and the invoice received date is the 24th of August. The discrepancy there is the time period between -- with which we provide proof of delivery to the DLA. And we're actually permitted, via the contracting process, to upload the invoice into the Wide Area Work Flow.

And on this specific instance, the goods were actually delivered to the DLA on June 15th. So it's now been three months since we incurred our costs to deliver the product until the payment should have been received.

Q So you do believe that all of those amounts are due and owing as of today?

A I believe these are all due and owing as of today.

Q I'd like to direct your attention to the screen. Can you see the screen?

A Yes.

Q Okay. Thank you.

Can you identify this for the Court, this document?

A Yeah. This is a chart that I put together for counsel to boil down the flow of -- of goods into cash for Noble in a very simplistic form. There's a lot of steps along the way

in this, but this just tries to boil it down into, you know, kind of some -- some bite-sized elements.

Q Can you just briefly walk the Court through these steps from the date that the goods are delivered until we receive payment?

A Yeah. So --

THE COURT: Assuming the Court is even slower than your counsel at understanding how things work.

THE WITNESS: Yeah. Yeah. So, on the far left, it's goods delivered. But obviously, before goods are delivered, Noble would receive a sales order from the Government saying we would like a product delivered to this military unit, and we would -- we would be awarded that sales order. We would engage with our vendors to get the product shipped to the right location, and those would be delivered by a third-party freight forwarder.

After the goods are delivered, the third-party logistics company provides us proof of delivery, which is kind similar to a FedEx tracking receipt, which it would include a signature from the recipient at the various base of the military unit, so that it's got a wet signature or an electronic signature on it identifying who -- who received the product.

Our billing team will then work with their respective contacts at the DLA to provide the proof of

delivery, so that they are -- they can start their reconciliation process to ensure that the right quantity and the right product was delivered to the unit.

Once we receive that confirmation, typically via email, the invoice can then be submitted to the Wide Area Work Flow.

And then once it gets its various approvals through the Wide Area Work Flow inside of DLA, we have visibility into it, into the expected payment date. And then the payment is -- is released, you know, on or about the payment date.

And so, you know, anywhere from -- like the time from when goods are delivered to -- you know, payment can be anywhere from, you know, 15 days on the -- on the short end, all the way up to 90 days or longer, kind of as we talked about on the first invoice on this -- on this.

MR. DEAN: Okay. Thank you.

Can we just turn to the next slide, please?

BY MR. DEAN:

Q Can you identify this slide for the Court, please?

A Yes. This is a chart that I put together with the Portage Point team that kind of bridges what Noble's books and records indicate as to the open accounts receivable owed to it from the Defense Logistics Agency, from what's on our books back to what's in the Wide Area Work Flow, which is

what we have visibility to.

Q And just to confirm, can you describe to the Court what information you used to prepare this slide?

A Yeah. So the -- the source information is predominantly from Noble's NetSuite accounting system. And then we linked that back to the -- an extract from the DLA's Wide Area Work Flow, which we download daily to understand what -- what invoices have been approved, what requires additional reconciliation, and when we could, in theory, expect payment.

Q Okay. I'd like -- I think it's important to explain the various columns that you prepared to bridge the thirty-one eight, so I'm just going to walk you through those and actually explain what they are and why you categorized each of them there.

So let's start with the $8 million that you have noted as scheduled for payment. Can you describe what that reference is?

A Yeah. So that is invoices that we can see inside of the Wide Area Work Flow that have gone through the entire approval process inside of the military's approval chain and have been assigned a prospective payment date in the system.

Q Now --

A So it's -- it's accounts receivable that we view as, you know, good and owing in the sense that the -- the

customer has gone through their entire approval process and assigned a payment date to it.

Q Now the 3.2 in the motion, is that consumed in the $8 million here?

A Yes, that -- that's part of the 8 million.

Q And is the 5 million that you mentioned a few minutes ago that the amount has increased to since the filing of your declaration, is that also encompassed in the 8 million?

A Yeah, correct.

Q We -- we tried to break out the -- the week we would have expected payment and the ---

Q Is that the arrow down?

A That's the arrow down into the -- the line across.

Q So what does the arrow -- can you just explain to the Court briefly what that arrow refers to --

A Yeah. So --

Q -- to get to the eight.

A -- when you look inside the Wide Area Work Flow for that 8 million, you -- you can see approximately $8 million in invoices with assigned payment dates. And if you then kind of just map it to a week, it would fall in there.

So the before 7/31/26 column, there's approximately $100,000 of invoices that, for whatever reason, have been, you know, kind of hung up in the -- in the payment process.

And then, if you go further to the right, based on the date we downloaded this Wide Area Work Flow, we would have expected $800,000 in additional payments the week ending the 4th of September, and then 5.7 million in payments the week of the 11th, 700,000 this week, 400,000 next week, and 300,000 the next week.

Q Now are you aware of any disputes with respect to this $8 million?

A I am not.

Q Okay. The next column is $2.9 million in researching quantity and/or price discrepancy.

A Right.

Q Do you see that one?

A I do.

Q Can you explain what that is?

A Yeah, so in the Wide Area Work Flow, there is a comment field that you can see. So one of them is comment that it's scheduled for payment. One of them is, you know, researching quantity and/or price discrepancies.

And so what these typically will be is an invoice was provided to DLA. There's a mismatch between what the receiving officer had of what was in the shipment versus what the invoice said, or a mismatch between what the purchase order said and what the sales order said. And there's a reconciliation that just needs to take place between the

company and the customer.

So, typically, I -- I think these are what I kind of think of as light disputes, so, you know, kind of maybe a paperwork mismatch or something. But we can see that they're working their way through the process in the Wide Area Work Flow, but are not yet fully approved for payment.

Q Now do you expect, ultimately, that the 2.9 would be approved for payment after the mismatches and the reconciliation construct is finished?

A Yeah, I -- I would assume the vast majority of that would be --

Q Okay.

A -- set for payment.

Q Now let's talk about the next column, reasons and remark, Code B.

A What does that mean?

Q Yeah. So, again, in the -- in the Wide Area Work Flow, there is a comment field that then references to a code, and there's about $1.7 million that are flagged as reason Code B. And then within the procurement world, "reason Code B" is, for lack of a better word, a dispute code. So it -- we, effectively, couldn't reconcile the order quantity or pricing, or there's some other dispute that exists of, you know, we shipped the wrong product or the product was never ordered, but it was signed for.

And so I think, if we think of like kind of magnitudes of dispute, this 1.7 would be, you know, less likely to be collected because there's a more valid dispute than just some, you know, price or quantity mismatch.

Q Okay. Thank you.

What about the pending goods receipt posting from DLA for 10.1?

Q Right. So --

Q What does that mean?

A -- these columns to the right from here are not in the Wide Area Work Flow, but are in our accounts receivable ledger. And so this 10.1 is representing goods that have been delivered to DLA, signed for. We have the electronic proof of delivery and have transmitted the proof of delivery to the relevant counterparty inside of DLA, and we're just waiting for confirmation from the contracting officer or -- or counterparty that we're okay to bill the invoice.

Q Are you --

A So -- yeah, go ahead.

Q Are you aware of any disputes with respect to this $10.1 million?

A I am not, no

Q Do you anticipate those, ultimately, being approved for payment?

A Yes.

Q How about the 5.5 pending signed receipt and report?
A Yep. So the 5.5 are for goods that have been delivered to the end customer; however, we have not received the final shipping documentation back from our third-party logistics provider. So we're ready to invoice, but we haven't provided the -- the signed shipping documents back to the DLA to get authorization to pay -- or for authorization to upload the invoice for payment.
Q And are you aware of any disputes with respect to the 5.5 million?
A I am not, no.
Q And do you anticipate that 5.5 million ultimately being approved and paid?
A I would, yes.
Q Okay. Let's talk about the 3.3, FSG-53.
Can you just first explain to the Court what FSG-53 is?
A Yeah, so FSG-53 was a contract that Noble entered into with the Defense Logistics Agency to provide specialized MRO equipment and supplies. It -- it subsequently was a contract that was terminated on June 30th.
There's a number of disputes that we have with the Government about how that contract was performed against. And I think as the Government alluded to in their -- in their motion or their objection, they have some counterclaims against us.

But ultimately, we filed an eighty-six-million-dollar claim against the DLA shortly before we filed Chapter 11 to preserve our rights in -- in that -- under that contract.

Q Can you just turn to the back of the exhibit book? It's the loose letter from Arnold & Porter.

A Yep.

Q Is this the claim that you're referring to?

A It is, yes.

Q Okay. Now is the 3.3 directly involved in this claim?

A It is not directly involved, but it would be subsumed in the claim. So when we put the bar chart together, just for ease of breaking our accounts receivable up into different buckets, we just said anything FSG-53 related that hasn't already been scheduled for payment or received by the DLA into the WAWF file should just be put to the side to not conflate matters.

And so we think these are valid receivables that are owed to the company. I think DLA might have a different opinion of that. But you know, we just wanted to highlight that there is, you know, this value -- this amount of money that we have in our receivables ledger that we believe is owed to us.

Q I just want to direct you to Page 4 of Exhibit 4 and Page 5 of 58. Let me know when you're there at the bottom where it says -- starts "seventh."

A That's -- is that the Arnold and Porter letter?
Q Yes, sir.
A Okay. Page 5 --
Q Page -- the bottom of Page 4 --
A Yep, "seventh."
Q -- and the top --
A Yep.
Q -- of Page 5 --
A I see that.
Q -- where it says:

"Seventh, Noble disputes DLA's demand for payment of the 7.9 million disincentive amount."

Do you see that?
A I do, yes.
Q Is it -- is that consistent with your understanding that the debtors dispute the $7.9 million?
A Yes.
Q Is that $7.9 million the same $7.9 million that's identified in the opposition that was filed?
A I believe it is.
Q Okay. And that amount is approximately ten times what the debtors are alleging that DLA owes us as a result of the alleged breach, correct?
A Correct.
Q Okay. Can you explain the $100,000 of invoices ready

to submit, but blocked?

A Yeah. So where we first saw the indication of CAGE code issues was on or about September 4th, when one of our accounts receivables clerks were working to upload invoices specifically related to the FSG-53 contract, but under the 1HEN99 CAGE code, and received the automated response that those invoices have been rejected.

The invoice upload process is a fairly laborious process. The woman spent some time uploading, I think, 10 or 15 of these invoices, just to get a similar rejection. And so there's roughly $100,000 of invoices that have been rejected that we haven't uploaded.

So, once those would be uploaded, they would likely move into the FSG-53 column. But there -- there are invoices that have been, you know, kind of rejected in our, you know, ind of ability -- ability to upload into certain -- certain parts of the -- the Wide Area Work Flow.

Q Now, since the filing of the motion and your declaration, have you done some further investigation into the impact that the CAGE code block may have had on the ability to upload new invoices?

A Yeah. I spoke with our team yesterday to understand if -- if we're still having invoicing issues. And they said that, in some instances, invoices are going through and other invoices, they're still being blocked. And they're -- you

know, kind of the -- the comment that was made is there's no rhyme or reason for what's getting through and what's not. So it's a fairly, you know, inconsistent process with our ability to upload invoices to DLA.

Q And is "other" just everything else?

A Yeah, everything -- yeah, everything else that's on the books and records.

Q And so what does total open balance of thirty-one eight mean?

A That is what -- if you look at our accounts receivable ledger, we've got $31.8 million of receivables owed to us from the Defense Logistics Agency.

Q So is it fair to say that at least 26 million of the amounts on this chart are for invoices for which you are not aware of any dispute?

A Yes.

Q I know this is obvious. But for the record, can you just explain to the Court the impact that not being able to receive monies from the DLA under these contracts would have on the ability to administer these bankruptcy cases?

A Yeah. I -- I think we would, over the next few weeks, quickly become administratively insolvent in our inability to fund, you know, basic operations, including payroll and benefits to the employee base, probably by, you know, the end of two -- two or three weeks from today.

Q Is that about how long you think the debtors could survive in Chapter 11 without payment from DLA?

A Correct.

MR. DEAN: I have no further questions on direct, Your Honor.

THE COURT: Okay. Any cross-examination?

MR. GESMUNDO: Yes, Your Honor, just briefly.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. GESMUNDO:

Q Good morning, Mr. Albergotti.

A Good morning.

Q You mentioned that you reviewed the United States' objection. Is that correct?

A Yes.

Q And do you have it there in front of you? I'll give you some time.

A Is it in the binder? I do not know if it's in here.

(Participants confer)

MR. GESMUNDO: I have a copy of if -- you have it.

MR. DEAN: Yeah, we have a copy.

MR. GESMUNDO: Okay.

(Pause in proceedings)

MR. DEAN: Do you need a copy of your objection?

MR. GESMUNDO: Oh, I have one.

(Participants confer)

THE WITNESS: Oh, yeah. I need a copy. Sorry. It's not in the in the binder.

MR. GESMUNDO: You need one. Okay.

THE WITNESS: Sorry.

(Participants confer)

BY MR. GESMUNDO:

Q Mr. Albergotti, could you turn to Paragraph 12, or page -- I'm on Page 10. Do you have that? This is --

A Yep.

Q -- ECF 124.

A Where the header is "DLA Hasn't Maintained the *Status Quo*"?

Q Correct.

A yeah.

Q Paragraph 28 refers to acknowledging the receipt of a proper invoice. What's your understanding of what a "proper invoice" is?

A I believe that would be fulfilling all of the requirements in the contract regarding price, quantity, and, you know, kind proof of delivery and receipt from the Government. I'm sure there's other steps along the way inside of DLA, but I -- I'm not a hundred percent sure what those would be.

MR. GESMUNDO: And in the demonstrative debtors

counsel put up -- I don't know if it's possible to put it up, so he can refer to it. The first one had a Work Flow --

MR. DEAN: We're going to put it back up.

MR. GESMUNDO: Yeah.

MR. DEAN: One second.

MR. GESMUNDO: Oh, okay. Thank you.

BY MR. GESMUNDO:

Q On the previous --

A Yep.

Q Yeah. Thank you.

Do you see Number 5 says "invoice submitted"?

A Correct.

Q And so what's your understanding of how much time the DLA has to pay once an invoice is submitted?

A I think, under -- I believe, under the Prompt Payment Act, it is within 30 days. And then there's obviously the small business provisions, there's various provisions that would accelerate those payments.

Q Understood.

And going back to -- sorry to have you move around --

A Yep.

Q -- your declaration, Exhibit 3. It's the spreadsheet --

A Yep.

Q -- where, both in our motion, and you sort of just

testified to it as well -- do you see invoice received dates for August 24th and August 21st on those first two lines?

A Correct.

Q Based on those dates, is it fair to say that the 30 days haven't lapsed?

A That is correct, but also, I think what we would also see is the invoice issue date is also June 30th. I understand there's, like, a discrepancy there, but that's the reconciliation process that the company goes through with DLA.

Q And so would it be fair to say that that issue or that discrepancy is a dispute as to the payment being due on a certain date?

A I'm not sure I -- could you ask that one more time.

Q Sure. I'm happy to ask it one more time.

So, is it fair to say, then, that whether payment is due is in dispute, based on the fact that those invoice-received dates and today's date don't add up to 30 days yet?

A What I would say, though, like, in response to that is DLA has assigned a payment date to that and that's that forecasted date column. So, in DLA's process, they have approved the payment and we've made forecasts based on those approved dates. And the goods, also, have been received by the Government for over 60 days at that point.

Q Understood.

A And so, like, I get it, but there's numerous examples that we could go back and forth around when payment would be due based on when invoices were. And, you know, the first contact that we had with DLA on this specific line was August 6th, asking for confirmation and proof of delivery, which DLA did not respond to until August 23rd or 24th, I believe.

Q Understood.

A So there was a three-week delay on DLA's part on that of when we actually provided all of the relevant information.

Q Understood.

But what's your understanding of the forecasted date, that doesn't necessarily trump the Contract Disputes Act that you cited, correct?

MR. DEAN: Objection; calls for legal conclusion.

THE COURT: I'm not going to have the witness give his legal understanding, but if he can -- I will permit him to describe what the practice has been in his experience as a business matter.

THE WITNESS: Yeah, since we were -- since boarded -- since I got engaged with the company in July, almost without fail, the forecasted date that we see in WAWF is the date that the Government pays. Maybe there's a day or two discrepancy, but typically it's every week with when we get the refreshed wide area work flow file, it will list a

certain number of payments on a certain date and we will, within a very tight margin, see those payments come through.

BY MR. GESMUNDO:

Q Understood. Thank you, is Mr. Albergotti.

A Uh-huh.

MR. GESMUNDO: If my colleagues are -- or opposing counsel wouldn't mind going to the next demonstrative, please?

BY MR. GESMUNDO:

Q Mr. Albergotti, you noted that I believe it's starting from the 10.1-million-dollar amount, that column --

A Yes.

Q -- to the right, that doesn't appear in the WAWF, wide area work flow, like, that information is, in other words, not in DLA's -- within DLA's knowledge?

A It should be within DLA's knowledge, but in the extract that we run in forecasting our receivables, it's not in the report that we generate on a daily basis to track this. But they should be aware of the order, especially on the 10.1, the order that was placed, delivered, and received. There's just a reconciliation process that goes through while we're confirming with the relevant counterparties and DLA, that they have everything they need for us to upload the invoice into the wide area work flow.

Q Understood.

Moving to the column to the left, there's the $1.7 million that counsel had asked you about. It's the one that says, "Reasons," undermarked "Code B."

A Yes.

Q In your declaration, you noted that in the preparation of the spreadsheet, you -- I believe this is ECF 103 -- do you have that in front of you? This is your declaration, page 3 of ECF 103, paragraph 8 and 9.

A Yep, I'm there.

Q I think it's one, two, three -- four bullets down within 9, you noted that the following columns were removed from the schedule because they were relevant to the motion and one being a reason code.

Is that what you were referring to, reason code, is that the same one?

A Yeah, what we were trying to identify is just the invoices that were scheduled for payment --

Q Okay.

A -- and it was more of a formatting issue to try to get it to fit into the file.

Q Okay.

A We're not disputing that the reason code exists and there's 1.7 million of invoices that are in various forms of dispute with DLA.

Q Okay. And so you just said they're in dispute,

correct?

A Yes.

Q Okay.

A There's a host of reasons under Reason Code B for which an invoice could not be moved for payment. And the team at Noble works kind of diligently with DLA to reconcile those items.

Q Okay. And I think at one point when counsel was asking you, you mentioned that DLA might have a different opinion of that.

Do you recall what you were referring to?

A I think of just more on the FSG 53, that those invoices are due, given the ongoing disputes with that. And if you look at those specific invoices, there's -- I mean, there's a lot of small-dollar invoices just because the nature of that contract is large-volume, small-dollar quantities. And, you know, there's a number of mismatches, you know, products shipped to the wrong location. There's just, you know, the commentary in that is lengthy around if those invoices are, you know, kind of, I would say, matched on both sides. And so I would assume, given the litigation that may take place around the FSG 53 contract, those invoices, likely, kind of get reserved and dealt with as part of a larger settlement around the FSG dispute.

MR. GESMUNDO: No further questions, Your Honor.

THE COURT: Okay. Anything by way of redirect?

(No audible response)

THE COURT: Okay.

MR. HARRIS: Thank you, Your Honor. Adam Harris from McDermott Will & Schulte on behalf of Blue Torch Finance, as the secured lender.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. HARRIS:

Q Good morning, Mr. Albergotti. How are you?

A Good morning, I'm good.

Q Just a couple quick questions.

The chart that's up on the screen right now, you have the objection from the Government in front of you?

A I do, yes.

Q Okay. If you could take a look at paragraph 3, which is on the petition date, 20,380 delivery orders remained outstanding and then it refers to prior cancellation of about 11,800 of them.

A Correct.

Q So there's about 9,000 orders that are still outstanding; is that right?

A That's correct.

Q Are those accounted for anywhere in this chart?

A Some of them may be in the invoices ready to submit,

but blocked, but not 9,000. That was -- that's like a hundred or so in that.

Q And what is the anticipated timing for performance by the company for delivery of those orders?

A I'm not a hundred percent on all of them, but there -- like, as we go through every day, we are continuing to perform on those orders and ship those orders out to the best of our ability.

Q So, in effect, the Government is asking you to continue to perform under the terms of this contract, but basically saying, We're not going to pay you, with respect to your prepetition obligations?

A I don't know if that's a legal --

Q Well, it's just a question. I mean --

A I think the concern that I would have is failure for us to collect on receivables and have cash to continue to pay our employees would make it almost impossible to perform on that contract.

Q Has anybody from DLA contacted you with respect to the performance relative to the 9,000 outstanding orders?

A Not that I'm aware of or not that I've had contact with.

MR. HARRIS: No further questions, Your Honor.

THE COURT: Okay. Very well.

Mr. Dean?

MR. DEAN: Yeah, just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. DEAN:

Q Mr. Albergotti, I just want to have a -- I just want you to clarify how you and I, when we were talking, are using the word "dispute" when I was asking you whether you were aware of any disputed disputes as to the 8 million, the 2.9, the 10.1, and the 5.5, okay.

Were you referring to substance or timing of payment?

MR. GESMUNDO: Objection; vague.

THE COURT: What's your response to the objection?

MR. DEAN: I'm happy to rephrase, but I thought that the question was clear as to what I was asking the witness.

THE COURT: I think it's clear enough, so I'll overrule the objection, and you can answer to the extent that you are able to.

THE WITNESS: I think, you know, when I think about the disputes, I think it is more around a price-and-quantity dispute and maybe a little-d dispute, not a defined term dispute, but a reconciliation process that needs to take place that may delay the timing of payments.

BY MR. DEAN:

Q So when you were speaking to me about whether these amounts were in dispute, you were not referring to whether it

might be to -- there may be some -- a couple of days of variation as to when the payment was actually due and payable under the contract, correct?

A Correct, especially for the 8 million.

Q Okay.

A There would be some variability on the days that the payment might be received and then it becomes less certain on the timing of payment as we look at the 2.9 and the 1.7, because there's additional work that needs to be done between both, Noble and the customer, to understand what the discrepancy is.

Q And just to clarify, are you aware of any substantive dispute, not payment timing, with respect to the 8 million, the 10.1, or the 5.5 million?

A I am not, no.

Q And any -- do you believe that any substantive dispute, with respect to 2.9 will ultimately be resolved?

A I don't have any reason to believe that it wouldn't be, but given that there's, you know, 1.7 that's, over time, has moved -- like, has not been able to be reconciled on an easy basis, my suspicion is some portion of that 2.9 will move into the 8 million category and some portion would move into the 1.7.

Q Thank you.

MR. DEAN: Your Honor, I have no further

questions.

THE COURT: Okay. Any other party have questions for Mr. Albergotti; if not, thank you very much for your testimony. You may step down.

(Witness excused)

THE COURT: And Mr. Dean, you may call your next witness.

MR. DEAN: That concludes the evidentiary presentation, Your Honor.

THE COURT: Okay. I'm happy to hear from the Government, then.

MR. GESMUNDO: Your Honor, I think I just had a couple of points that I wanted to bring up --

THE COURT: Okay.

MR. GESMUNDO: -- one, which has to do with -- it's in relation to this total balance that's projected at 31.8. I think I wanted to point out to Your Honor that notwithstanding the total amount of claims that the debtors are projecting to be owed to them, the United States also has time, up to 180 days, to file its proof of claim and to gather that information and to present that it is also owed. So, I guess the point being that it sort of leads the Court back to where you started, Your Honor, which is that we might need a claims estimation process.

THE COURT: All right. So I understand that and

based on the evidence I've heard so far, I've got any number of questions, but it seems to me, just as a matter of ordinary process, that we should give you the opportunity to present your evidentiary case --

MR. GESMUNDO: Sure.

THE COURT: -- and then we can have a conversation about what to do in light of what the evidence is, if that makes sense to you.

MR. GESMUNDO: Yes, that's fine, Your Honor.

THE COURT: Okay. So I understand your point and I just think we ought to proceed in the sort of normal course and address the various questions that arise from the evidence after I've got a full body of evidence.

MR. DEAN: Your Honor, I believe that their declarations were their evidence and they've already been admitted. I don't think they have anything else, but I just want to --

THE COURT: Okay. Well, I --

MR. DEAN: -- I think we're --

THE COURT: If that's the case, then that's the case. I just -- is there anything further on an evidentiary basis that the United States --

MR. GESMUNDO: I mean, as counsel pointed out, the declarations demonstrate --

THE COURT: Okay.

MR. GESMUNDO: -- DLA's position as to whether there's a payment in dispute and so I don't anticipate calling a witness, unless the Court has questions for DLA.

THE COURT: So, I have one set of questions and if they're answered by your declarations and I've missed it --

MR. GESMUNDO: Okay.

THE COURT: -- then you should tell me, but Mr. Albergotti's testimony and the emails he attached identify DLA taking the view that, basically, claims were not being paid on account of the bankruptcy and I sort of want to understand what the Government's position is about that. That feels like, at least first blush, feels like an *ipso facto* thing and so I don't know if there's a position, if this is a factual question about policy, or just a legal position, but if there's anything you can tell me to help me understand what the Government's view of that is, that would be helpful to me.

MR. GESMUNDO: Understood, Your Honor.

And I think -- I don't think Your Honor missed anything in the briefs or in the declarations. I will say that the witness, in particular, that is unavailable till noon is the one that was attesting to the fact that this was an administrative hold, in regards to Mr. Albergotti's testimony, that they received notice on September 4th. We're still sort of within this period of where the information

needs to get disseminated and so it was inadvertent, to the extent that was the phrasing, but it has since been corrected, I believe, and the witnesses' declarations demonstrate that. And that's Ms. Sawdey's declaration, Your Honor.

THE COURT: Okay. You know what? Let me just take a minute to refresh on those declarations.

MR. GESMUNDO: Of course.

MR. DEAN: Do you think we could take a five-minute break before argument, would that be okay?

THE COURT: Certainly. Actually, it might be helpful if --

MR. DEAN: Okay.

THE COURT: Why don't we take 15 minutes. I'd like to look at the material, and we can come back at 11:15 and discuss further.

MR. DEAN: Thank you.

THE COURT: Okay. So until then, we're in recess. Thank you.

MR. DEAN: Thank you.

(Recess taken at 11:01 a.m.)

(Proceedings resumed at 11:27 a.m.)

THE CLERK: All rise.

THE COURT: Be seated.

Okay. Mr. Dean?

MR. DEAN: Thank you for the break, Your Honor. We appreciate it. And thank you for the extended break.

I had a bunch of things I was going to say, but listening to what --

THE COURT: Can I apologize for a second? And I -- when I left the bench, I grabbed my phone that I need to authenticate to log on and now I'm here and I can't log on and, therefore, I can't take notes. And if I were smarter, I'd be able to get through this without it, but because I'm not, I need to grab my phone. So let me recess for a second. Only a second, though. Apologies.

(Pause)

THE COURT: And because I have the greatest team in show biz --

MR. DEAN: You have it. It just appeared.

(Laughter)

THE COURT: Hold on one second.

(Pause)

THE COURT: Okay. Very well. My apologies. I'm with you so far.

MR. DEAN: Okay. Thank you, Your Honor.

I had a lot of things I was going to say about Strumpf and the related issues, but I tried to listen to you and the conversation we had earlier and the concerns that you had, so I think I know where you are.

THE COURT: Okay.

MR. DEAN: So I'm going to be brief and I'm going to focus on what I think you care about today and then if you could tell me you disagree with me, we'll have a conversation about that.

THE COURT: Okay. Before we launch, I take it, notwithstanding whatever conversations you had, I still have this question to resolve and that I've got a decision to make?

MR. DEAN: That is correct.

THE COURT: Okay.

MR. DEAN: Thank you.

I think sort of where this hearing has evolved to and boiled down to from my perspective, and I think you would agree with me, is can you allow us to get paid while the DLA is adequately protected on whatever setoff rights its alleging while that dispute is resolved? And we think the evidence shows that the answer to that is yes.

As you know, we alleged that we're owed $3.2 million as of the filing of the motion; $5 million now; and 8 will come due in the next few weeks. The evidence was undisputed that there is no dispute, other than a couple of days here and there with respect to at least $23 million of monies that's going to come due and owing by DLA to the debtors by the end of November.

And so what have they alleged? They have alleged we're owed a little under $3 million under the settlement agreement, and I'll talk about that in a minute --

THE COURT: Uh-huh.

MR. DEAN: -- and then we're owed $7.9 million under this FSG contract. So even if you accept everything they said to be completely accurate --

THE COURT: What about the False Claims Act claim?

MR. DEAN: That's the -- the False Claims Act claim is the settle -- the settlement agreement claim, is my understanding.

THE COURT: Oh, that's been reduced to a settlement?

MR. DEAN: That's the settlement agreement claim. Counsel can correct me if I'm wrong, but I believe that's the case.

THE COURT: Okay. Got it. Okay.

MR. DEAN: Okay. So there's just two claims that they've alleged against us. One is the settlement agreement claim, the false acts claim, and then the other is the seven nine it's consumed in this litigation --

THE COURT: I understand that.

MR. DEAN: -- that we commenced against them for $80 million.

So my first response to Your Honor's question is

they are absolutely adequately protected just by virtue of the mere dollars that are going to be owed after the 8's paid for the next few weeks. If there was any dispute beyond that, I want to make a couple of observations. One about -- a couple about the agreement -- the settlement agreement claim itself and then a couple about the 7.9-million-dollar claim consumed in our litigation against them.

Let me start with making a couple of observations about the settlement agreement. I just want to point Your Honor in Exhibit 3 in the binder to the provision that we're dealing with here and that -- and the one in dispute -- and that is on page 10 of the settlement agreement. It's paragraph 9, sub (e).

THE COURT: So my form of binder has tabs for Exhibit 1 and Exhibit 2 and not a tab with Exhibit 3, unless you mean Exhibit 3 to Exhibit 1?

MR. DEAN: I think it's exhibit -- I think we updated the binder yesterday after we got --

THE COURT: Oh.

MR. DEAN: -- so let me get you a copy of the Exhibit 3.

THE COURT: Okay.

(Pause)

MR. DEAN: Do we have another?

(Counsel confers)

MR. DEAN: Your Honor, may I hand up a copy of Exhibit 3?

THE COURT: Certainly.

MR. DEAN: I apologize, I thought you had a copy of this in the binder.

THE COURT: And it's possible that that exists and it's my fault.

MR. DEAN: My apologies.

THE COURT: No worries. And never eliminate, you know, the possibility that it's my fault.

MR. DEAN: This is the same document that's attached to their declaration that was docketed, as well --

THE COURT: Got it.

MR. DEAN: -- just for the record, Your Honor. So if you ever want to look at it on the docket, it's there.

So what we're talking about here is page 10 and it's paragraph 9(e)(2). And what this paragraph says in relevant part is if there is a bankruptcy filing, then the settlement amount basically blows up and goes to $3.4 million. So the agreed amount that we owe them now is 537,000. We don't dispute what they say about that, but what we do strongly contest is the enforceability of this provision, which is an objective and very clear, unenforceable penalty, and *ipso facto* clause.

THE COURT: Walk me through the specifics. So

this is paragraph 9?

MR. DEAN: 9(e).

THE COURT: And the United States has an undisputed, noncontingent, liquidated, allowed claim against Noble in the amount of 3 point -- roughly $3.5 million, less payments received under, one, provided, however, that such payments and amounts otherwise avoided and recovered from the United States by receiver, trustee, custodian.

That's different from saying --

MR. DEAN: Well, I think it's -- you've got to start with (e) on the third line.

THE COURT: Yeah, okay.

MR. DEAN: It says: If before the settlement amount -- it's the third line.

THE COURT: I see.

If they're avoided for any reason --

MR. DEAN: And then it goes on to say if before the settlement is paid in full, Noble files for bankruptcy, then... and then it explains --

THE COURT: Okay.

MR. DEAN: -- the result of that in (2).

THE COURT: I see. Thank you.

Or if before the settlement Noble commences a bankruptcy proceeding.

I see.

MR. DEAN: So there are countless -- and we just got this, like, this morning --

THE COURT: Okay.

MR. DEAN: -- but there are countless decisions that talk about what a penalty is --

THE COURT: Assume I understand the way 541 treats *ipso facto* clauses.

MR. DEAN: Well, I was actually going to talk about --

THE COURT: I'm sorry.

MR. DEAN: -- the distinction between a penalty and a liquidated damages provision in the context of this, but this is a clear penalty, from our perspective, that this is an *ipso facto* clause that's unenforceable. So our position is you could rule on this. This is a purely legal issue from our perspective.

THE COURT: I understand that.

MR. DEAN: I don't think we need an estimation hearing on this issue.

THE COURT: No, I understand that question -- that point, also, but I -- help me with the math.

MR. DEAN: Okay.

THE COURT: The effect of this increases the Government's claim under the settlement from what to what?

MR. DEAN: Five thirty-seven to three two, minus

the payments that have been made, which is about two nine. It's in their objection.

THE COURT: Okay.

MR. DEAN: So that's the spread of the dispute; it's about $2.4 million.

THE COURT: And I take it your fundamental position is, okay, even if we owe them $3 million, that's still --

MR. DEAN: It's so -- the math still works.

THE COURT: -- they're still -- so, therefore, if I accept that, there's no reason for me to hurt my head over this, right?

MR. DEAN: The math still works. I just -- I only say if you're going to say anything about an estimation hearing on the other piece of it, which we'll talk about in a minute, I don't think we need to do that here because this is purely a legal issue that the Court can rule on.

THE COURT: No, I -- okay, so I'm with you that far.

MR. DEAN: Okay. Now, let's talk about the seven nine, and, again, it's the same concept. They've got plenty of money that's going to come due in the next several months. It's disputed they could cover that, but more to the point, what would an estimation proceeding on this look like? I mean, you --

THE COURT: No, I understand -- I think I understand what you're saying.

MR. DEAN: This is a pretty complicated claim that we put into this 58-page, single-spaced letter, right. But I think all you have to do is find that our claim is at least seven -- our eighty-million-dollar claim is at least $7.9 million and it becomes a wash. It's like a defense or a recoupment to this.

THE COURT: I understand.

MR. DEAN: So my point is, they're adequately protected to allow us to get paid and the releases CAGE-block in so many different ways.

THE COURT: So, Mr. Dean, this is helpful and so -- and apologies, although I've read the papers, there have been a lot of numbers floating around and your floating bar chart is helpful for me to under -- put these in buckets --

MR. DEAN: Uh-huh.

THE COURT: -- but just so I -- let me pull up your floating bar chart for a second.

So I understand the $8 million. I under -- I certainly understand that some of the -- you could have a conversation about whether the 2.9 is either disputed or not disputed, but I think I understand what the record tells me about that. I understand that the 1.7, let's call that "disputed" and the 3.3 that you claim is a receivable under

FSG 53, that's clearly disputed, right?

MR. DEAN: Not necessarily. It's sort of encompassed in all of that. We don't have a reason to believe that these invoices right now are disputed, but we do anticipate that if we're going to be litigating this whole FSG contract with them, that they may raise --

THE COURT: Okay.

MR. DEAN: -- it at the appropriate time. So, potentially disputed, I would call it.

THE COURT: Okay. Let me make sure I understand the state of play. The $80 million that you're claiming under FSG 3 (phonetic), that's -- the only thing you're showing on this bar chart as to that $80 million is this 3.3?

MR. DEAN: That's what our invoices for work.

THE COURT: You've already invoiced, and there's a dispute about the rest and that you may or may not get it.

MR. DEAN: Correct.

THE COURT: And the issue about the settlement payment and the -- I'm sorry -- the incentive payment issue is encompassed within that?

MR. DEAN: It's consumed in that.

THE COURT: So if they win that, that will reduce that claim by $7.7 million?

MR. DEAN: That's correct, Your Honor. You got it.

THE COURT: Okay.

MR. DEAN: You got it.

THE COURT: All right. So I understand that.

And then the other moving part is this settlement agreement, your Exhibit 3, in which they have a claim against you that is either for 2.9 or for 5.7 --

MR. DEAN: 5.7.

THE COURT: -- depending on the *ipso facto* question?

MR. DEAN: Correct.

THE COURT: And so the maximum that you may owe --

MR. DEAN: Is 11 -- nearly almost 11 --

THE COURT: It's the three million --

MR. DEAN: -- a little under 11.

THE COURT: -- it's the $3 million here; it's the $8 million --

MR. DEAN: Call it 11.

THE COURT: I see. And some of the amounts that you're claiming, you might not get, so -- right -- like, say, the 1.7 and maybe some of the 2.9. But that's not --

MR. DEAN: But we're at least --

THE COURT: -- a payable?

MR. DEAN: -- going to get the 23 of that.

THE COURT: Okay. All right. I understand.

Okay. All right. So I think I understand what

you're saying. Taking the time to actually understand the evidence has been helpful, so I appreciate your patience with me, but I think I get it.

MR. DEAN: No problem. There's a lot involved, Your Honor. I know we're doing this in a very short period of time, so I appreciate Your Honor's indulgence.

I don't think it makes sense for me to get into any of the other legal issues. I just really wanted to explain to you why --

THE COURT: Yeah.

MR. DEAN: -- we think that we should get this CAGE-block release today and start getting paid. They're completely protected, not just by the setoff on our litigation claim, but the amounts due, and I think this *ipso facto* provision in the settlement agreement is very tenuous, at the best, in any event.

THE COURT: Understood. Okay.

MR. DEAN: Thank you, Your Honor.

THE COURT: All right. Thank you.

So, Mr. Gesmundo, help me with -- please come up. So -- okay. So what's, exactly, the Government's position here?

MR. GESMUNDO: I think, Your Honor, the Government's position is Mr. Dean's right that two claims have been presented before the Court, the 80 million and then

on their side, they've obviously presented, in supplemental declaration, and Mr. Albergotti's testimony, this Contract Disputes Act, eighty-million-dollar claim. I think the Government's point is what we're seeking is adequate protection and, obviously, we have a dispute over the dollar amounts because the Government anticipates filing further proofs of claim that would --

THE COURT: So --

MR. GESMUNDO: -- shift the funds -- the dollar amounts that we're --

THE COURT: So, look, I want to be respectful of the Government's rights here, right. I mean, I'm not going to -- this is a court and we're going to do this according to law and the record and be respectful of the fact that you've got time to file your proof of claim, but what we're not going to do is sort of strangle the debtor, needlessly, in the meantime.

So what I really want to understand is, let's -- you haven't presented me with any evidence today about amounts due to the Government, other than this $3 million and the potential $8 million in the incentive payments, right. It's $11 million and that's the maximum, subject -- the Government's going to continue to do its investigation, it's going to do what it's going to do, but based on the record before me, all I've got is this $11 million, right?

MR. GESMUNDO: Yes, Your Honor.

THE COURT: And so if the Government were to -- and it seems to me that what the record shows me -- and tell me if you disagree -- is that, really, the only basis for withholding the payments that were described as otherwise being scheduled to be made since the petition date is, essentially, a Strumpf argument that you need to freeze those amounts in order to protect your right of setoff.

MR. GESMUNDO: Correct, until we can file that motion for relief from stay to file our setoff motion; Your Honor, that's correct.

THE COURT: Okay. So, look, I'm not going to stop you from protecting your rights, but it seems to me, based on the record before me, there's a way to get the case -- there's plenty of money in future amounts that will be due from the Government to the debtor to allow us to get through a sale process and then sort that out.

I was prepared -- look, I was prepared to set a very quick estimation process, if necessary, and I'm still sort of happy to do that, but I don't really see the need for us all to be -- to have our hair on fire if what we're talking about is protecting your right to get paid -- to retain $11 million worth of setoff in a world in which it's pretty clear there's more than that in the pipeline, including for amounts that haven't yet been shipped, but are

going to be. And so it doesn't seem to me, necessary, to create an -- look, the debtor is running out of money in two weeks, right. And so if we were going to do an estimation, what we were going to do is we were going to have a hearing in the a week, where we were going to do an estimation and figure out what's owed and resolve all of that. And we could do that, but to what end? Why -- that's going to be a sloppy, fast, highly expedited process in which we sacrifice getting it as right as we can because we have an emergency. And if we had a real emergency, that's what I would do, but just looking at this record before me, I don't think it's necessary to do that in order to protect the Government's interests.

And so let me pause there for a second and if you think there's something that I'm misunderstanding or I've got the facts wrong, I want to make sure I've listened to you fully.

MR. GESMUNDO: Sure, Your Honor, and I appreciate that.

And it's not so much that you've misapprehended anything that the debtors have said. I think the United States maintains that by virtue of filing that letter, that that $80 million or whatever's mentioned in that supplemental exhibit that was filed today, in the same way that as you've already recognized, the Government has its right to file its

proofs of claim in amounts that we anticipate will be in excess of that. That $80 million, in our view, although it was received in (indiscernible) today, Your Honor, shouldn't be calculated --

THE COURT: Let's assume that I'm not crediting any of the $80 million --

MR. GESMUNDO: Yes.

THE COURT: -- and I'll really going -- making this decision based only on this chart --

MR. GESMUNDO: Sure.

THE COURT: -- and the record about there being future deliveries, you know, in the millions of dollars as to which, you know, the debtor is going to deliver the product and they'll send invoices and if there remains, at that point, a receivable due to the Government, the Government would be able to set off against that and I've retained the authority to resolve that.

So why isn't that sufficient to ensure that we can get to a sale process, maximum value for everybody, and still not prejudice the Government's interests?

MR. GESMUNDO: Your Honor, at that point, I would direct the Court's attention to our objection and more specifically, the background where we describe each of the contracts and highlight which ones have been expired on their own terms, terminated. So when the Court's premise is that

there's still three deliveries, the United States would dispute that, and so...

THE COURT: Okay. That's fair. So let's -- and the record I've got on that is not crystal clear.

Okay. Mr. Dean, can I ask you this question -- and don't go very far --

MR. GESMUNDO: Sure. I'll be right here.

THE COURT: -- because I'm trying -- look, before you come up, let me tell both of you this is sort of how I view the world, right. Strumpf says what it says. No one seems -- it clearly contemplates surely when there's an undisputed relationship back-and-forth, you're allowed to freeze. It doesn't tell us what happens when there's a dispute, but the references in that opinion to parties moving quickly for stay relief and the like clearly contemplate that we're not going to, you know, basically freeze the case indefinitely to the detriment of the estate and other creditors for this purpose.

So -- and in the absence of any other authority that gives me any greater clarity, what I take from this and the principle that I glean is, therefore, the Court ought to, based on the record before it, set up an appropriate process and exercise its discretion wisely to set up a process that protects the rights of the party that's entitled to setoff on the one hand and balance that against the interests of the

estate in maximizing value for others on the other, and use your best judgment to come up with a process that's rational.

So, does anyone disagree that that's, like, the best thing I can do under the circumstances?

MR. DEAN: We agree, Your Honor. Thank you.

MR. GESMUNDO: No disagreement, Your Honor.

THE COURT: All right. So that's -- so we now agree on what the question is. So what's the answer?

And there, I'm interested in hearing a little more from both of you. The motion that I've got is asking me for relatively narrow relief about the first -- this week or so, right? So help me --

MR. DEAN: Yeah, I actually have the proposed order here. I want to address that. So that was at that time. Since then, the amounts have increased and we've also asked for the relief for them to perform under the contracts and to unlock the CAGE/CLIP code so the idea was that they would pay us the amounts overdue now, but they would continue to honor the invoices and pay them as they go forward until such time as we have a hearing.

THE COURT: Can we stop there for a second and let me go back, because the locking of the CAGE code, that stops them from submitting additional invoices?

MR. GESMUNDO: That's not correct, Your Honor, based on the declaration.

THE COURT: Okay. So tell me what is the story?

MR. GESMUNDO: So they're able to submit, but I believe Ms. Dunaway -- Sawdey, sorry, testified that it's just the DFAS, who's managing the payments, has not issued final payment. But it's --

THE COURT: So you don't dispute the proposition that they should be permitted -- it would be improper to block them from submitting invoices?

MR. GESMUNDO: Correct, which is why we submitted a declaration that they're not.

THE COURT: Okay. All right.

So if there are details that need to be worked out, you can work through that, but that's certainly my view.

MR. DEAN: Your Honor, on that issue, and just to clarify, Your Honor, when all of this was going on originally, we were having problems uploading invoices, so we assumed that the locking of the CAGE code prevented us from doing that till we --

THE COURT: And I get that, and everyone's working fast, and, look, the Government -- representing the United States, I appreciate, is a complicated thing. It's a large bureaucracy. There are a lot of -- you know, it's -- I get -- and so I'm assuming that everyone here is proceeding in the best of faith, doing their best with a complicated circumstance. So I'm not -- no one is to be faulted if

there's a disconnect. That happens in life, but it sounds to me like there isn't a dispute that the Government agrees that you should be permitted to submit invoices and if there's some step that needs to be taken to cause that to happen, the Government will do that. And if you need an order from me, you should include that in the order that we're going to end up with today. And if that's helpful to the lawyer for the Government in getting its client to do what it needs to do, I'm happy to try to be helpful.

All right. So --

MR. DEAN: Yeah, and the CAGE code block is basically just blocking their payment processor from paying us on invoices that have already been approved.

THE COURT: Okay. So I understand that and that's -- they're taking the position that they're entitled to do that as an administrative freeze.

MR. DEAN: Correct.

THE COURT: And what I want to figure out is what's an appropriate mechanism. It seems to me, at a gut level, from having heard this testimony, that there's a way to set up a process that will get you through a sale process and get enough money into the estate to run the case while, at the same time, protecting the interests of the United States to preserve whatever setoff rights it may have.

And what I'm interested in really flushing out is

let's talk about the details of what that looks like. Does that -- am I making sense?

MR. DEAN: It does. It makes absolute sense.

THE COURT: So, from your -- from the debtors' perspective, how much needs to be released and when in order to get us to whatever point you think you need us to get to and explain to me how we can do that while protecting the Government's interests.

MR. DEAN: Would you mind if I took a quick break and consulted with Mr. Albergotti? I think I need to talk to our finance guys to sort of understand --

THE COURT: Certainly.

MR. DEAN: -- the projections a little bit more to answer that question?

THE COURT: So, yeah, and, look, let me tell both sides, this is -- I can do this or I can have you do it and -- but this is where we're going to end up. We're going to end up with some mechanism that creates some -- that directs some short-term funding, as necessary, and then what we do on the back end, you know, I'm happy to have a further conversation about or you could talk about. Are you guys -- if the Government is comfortable that there's enough in there that we can let it roll out, we can. If the Government wants, after two or three weeks, to have an estimates hearing, where we can estimate its claim and then liquidate

it and then you would effect setoff then, we can do that.

I'll tell you, preliminarily, this looks like an *ipso facto* clause to me and that seems like that's likely to reduce the amount. I don't -- you know, again, that hasn't been briefed so I don't want to rule or pre rule, but just from reading the words, I don't -- you know, that's how it looks to me. And so, therefore, it seems to me the max -- the likely maximum amount is likely protected by allowing this case to run for a few weeks and then doing an estimation then.

MR. DEAN: And what I would like to ask, but I just want to make sure before we take a break and I do that is, I understand -- I think the question is, at what point in time will we get to $11 million that the Government owes us under these invoices? And I don't know whether we can even answer that, but I'm going to try to get you an answer to that.

THE COURT: Okay.

MR. DEAN: But is that the question? Is that essentially the question?

THE COURT: Sort of, yeah. And I mean, it's 11 in, you know --

MR. DEAN: Undisputed -- 11 of the undisputed.

THE COURT: Right. And if we can get to a point where we can set up a mechanism before we threaten their

ability to get paid in full if they win everything, how do we fund the case until then and set up a mechanism, then, where, then, we'll decide what the claim is and make a decision and allow it to roll forward thereafter?

MR. DEAN: If you can give us a couple of minutes, I --

THE COURT: I'm happy to give --

MR. DEAN: -- think I can get you an answer.

THE COURT: Look, I'm also happy to give the parties the time to talk about what such a mechanism would look like if you think that would be helpful.

MR. DEAN: Okay. I think I need to have a conversation with my side first and then --

THE COURT: First, you're talking -- why don't you first talk to your finance team and then --

MR. DEAN: We'll confer with them before we come back --

THE COURT: Fine.

MR. DEAN: -- and we'll see whether we can work something out.

THE COURT: And if you can't, I'm happy to make a decision. I'm not punting, I just think that we have the usual, you know, having you entrust your faith to a monkey with a gun, if you're able to figure this out consensually among yourselves, you might do better than I'm going to do.

So, again, I'm not -- I'm willing to make a decision, I just want to be respectful that all of you know your case better than I do.

MR. DEAN: Okay. I think I understand what you're looking for.

THE COURT: All right. Very well.

MR. DEAN: Thank you.

THE COURT: Is there any objection to proceeding in that fashion?

MR. GESMUNDO: No, Your Honor.

THE COURT: Okay. Very well.

So we'll recess. Thank you. And just let Ms. Barksdale know when you wants to come back.

MR. DEAN: I will. Okay. Thank you very much.

THE COURT: All right. Thank you.

(Recess taken at 11:55 a.m.)

(Proceedings resumed at 12:15 p.m.)

THE CLERK: All rise.

THE COURT: Be seated.

Mr. Dean, before you start, I want you to know that I found the version of the binder with Exhibit 3.

MR. DEAN: Okay. I feel --

THE COURT: It was on my desk.

MR. DEAN: I feel much better now, thank you.

THE COURT: Thank you.

So, yes, it was my fault like I had predicted.

MR. DEAN: Well, I have good news for you, too.

MR. GESMUNDO: (Indiscernible.)

MR. DEAN: I have good news for you, too. I think we have an agreement on how we will proceed. We're going to need to revise an order, but let me just put on the record what I think the order would say that we propose.

First and foremost, we are going to agree to allow the DLA to set off the five thirty-seven under the settlement agreement against the three two now. So we would put that in the order. And so on the settlement agreement, that would only leave what we call the "*ipso facto*" and if they get that, it would credit against the payment that we made against them.

THE COURT: Okay.

MR. DEAN: And if we win that issue, then there's nothing -- there would be nothing due under the settlement agreement.

THE COURT: Okay.

MR. DEAN: At that point, all we would have to deal with would be the 7.9.

We would also agree that on the -- in the 10.1 and 5.5 buckets -- and those go up and down daily --

THE COURT: Uh-huh.

MR. DEAN: -- we would agree to not let those

collective balances dip anywhere below ten five. So it's -- we'll figure out the exact math in the order, but it's roughly the 11 that the DLA is claiming, minus the five thirty-seven that we're going to pay them now, to make sure they're adequately protected, pending the hearing. And we would propose that the hearing on estimation be scheduled for around October 16th. I know we have an omnibus hearing that day. I don't know if that gives you enough time or --

THE COURT: That's fine.

MR. DEAN: -- but that's sort of what we're thinking, is that we would just use the omnibus hearing to have the estimation proceeding.

THE COURT: That is fine with me. And if the parties can work out a schedule for presenting whatever briefing schedule you want, and I'm not -- I don't need more than a day with the material beforehand in order to be prepared for it.

MR. DEAN: Yeah, I was going to suggest that we would talk afterwards and put a briefing schedule in the proposed order --

THE COURT: Fine.

MR. DEAN: -- for the estimation hearing and we will go from there. So we'll take a shot at revising the order and then once we get it agreed to with the DLA, we'll file it under certification of counsel --

THE COURT: Okay.

MR. DEAN: -- if that's okay with Your Honor?

THE COURT: Certainly.

Mr. Gesmundo, is this -- is what Mr. Dean described agreeable to the United States?

MR. GESMUNDO: It is, Your Honor.

THE COURT: Okay. Look, this actually, to me, is a commercial and sensible way to work through our day and I think it preserves everybody's rights. It's more precisely tailored than if I had to craft it, so thank you all for doing this for me. But I'm satisfied that that is an appropriate resolution and I'd be happy to under an order under certification when it comes around.

MR. DEAN: Thank you very much, Your Honor. We appreciate your time today.

THE COURT: All right. Anything else that I can do to be helpful while we're here today?

MR. DEAN: We have nothing further, Your Honor, on behalf of the debtors.

THE COURT: Okay. Any other party in interest wish to be heard further while we're here?

MR. GESMUNDO: Nothing further from the Government, Your Honor.

THE COURT: Okay. Anyone -- any other parties on Zoom wish to be heard?

(No verbal response)

THE COURT: It doesn't look that way.

Okay. So look, I appreciate that you all scrambled. I get that that was challenging, but, you know, it's part of what we do here is deal with emergencies, and so I do appreciate everyone's flexibility. I moved the hearing up because the schedule got complicated, so thank you all for accommodating that.

We'll go ahead and enter this order when it comes through. If anything else comes up in the meantime, you all know how to find us, but until then, we're adjourned. Thank you.

MR. DEAN: Thank you, Your Honor.

(Proceedings concluded at 12:19 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling September 17, 2026

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Coleen Rand September 17, 2026

Coleen Rand, CET-341

Certified Court Transcriptionist

For Reliable