No. 23-800C
(Senior Judge Margaret M. Sweeney)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR A CONTINUANCE AND TO PERMIT DISCOVERY

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November 22, 2023

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,	)	
	)	
Plaintiff,	)	No. 23-800C
	)	(Senior Judge Margaret M. Sweeney)
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A CONTINUANCE AND TO PERMIT DISCOVERY

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims (RCFC) and this Court's Order dated October 27, 2023 (ECF No. 19), defendant, the United States, respectfully responds to the motion for a continuance and for leave to seek discovery filed by plaintiff, Joshua J. Angel, on October 17, 2023 (ECF No. 16 (Pl. Mot.)).

INTRODUCTION

Mr. Angel now pursues his fourth attempt in Federal courts to advance similar claims related to the dividend rights of shareholders of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises or the GSEs) following a 2012 amendment (the Third Amendment) to the dividend structure in the agreement between the United States Department of the Treasury and the Federal Housing Finance Agency (FHFA), the conservator of the Enterprises. The Court rejected Mr. Angel's third attempt earlier this year. *Angel v. United States*, 165 Fed. Cl. 453 (2023). As we explained in our motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of this Court's rules, Mr. Angel's claims suffer from the same fatal flaws as the claims that this Court previously rejected and should be dismissed.

Rule 12's fundamental purpose is to allow a court to take final action on legally flawed allegations without subjecting litigants to the burdens of discovery and trial. Delaying a plaintiff's obligation to respond to a motion to dismiss while permitting discovery is an exceptional action, appropriate only if the requested discovery is both necessary to decide the dispositive legal issues presented and narrowly tailored to yield such information. While Mr. Angel purports to seek "jurisdictional" discovery, the discovery he seeks is not necessary to decide the dispositive legal issues raised by our motion to dismiss, for at least two reasons. First, the purported factual disputes that Mr. Angel cites are illusory, irrelevant to the grounds for dismissal, or both. Second, Mr. Angel fails to clearly describe what information he hopes to discover and how such information might bear on the issues we raised in our motion to dismiss. Instead, he seeks broad ranging discovery of every type from multiple Federal agencies and two private corporations, without clearly identifying what he plausibly expects to discover or its relevance. The Court should deny Mr. Angel's extraordinary request.

QUESTION PRESENTED

Whether Mr. Angel has met his burden to demonstrate that he is entitled to discovery prior to the time permitted by the Court's rules when there are no jurisdictional facts in dispute and discovery is not necessary to resolve the legal sufficiency of his claims.

STATEMENT OF THE CASE

In this, his third complaint in this Court related to the Third Amendment, Mr. Angel raises several claims that have already been rejected by this Court, by the Federal Circuit in *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022), *cert. denied,* 143 S. Ct. 563 (2023), and *cert. denied sub nom. Owl Creek Asia I, L.P. v. United States*, 143 S. Ct. 563 (2023), and *cert. denied sub nom. Cacciapalle v. United States*, 143 S. Ct. 563 (2023), and *cert.*

denied sub nom. Barrett v. United States, 143 S. Ct. 562 (2023), or both.[1] For these reasons and others owing to which Mr. Angel's claims fail as a matter of law, we filed a motion to dismiss all of Mr. Angel's claims on October 13, 2023. ECF No. 15. On October 17, 2023, Mr. Angel filed a motion for a continuance and for leave to seek discovery. Pl. Mot. at 32 (conclusion). As we demonstrate below, Mr. Angel's motion is not well-founded, and we respectfully request that the Court deny it.

ARGUMENT

I. Standards For Permitting Discovery To Respond To A Pending Motion To Dismiss

Discovery does not commence under the Court's rules until after the Early Meeting of Counsel, which takes place after the filing of an answer to the complaint. *See* Rule 26(a)(1)(C); Rule 26(d)(1); Appendix A Para. II. Because the United States filed a motion to dismiss, no answer will be filed unless and until the Court denies the motion to dismiss. *See* Rule 12(a)(4).

Rule 12(b) of this Court's rules requires the dismissal of untenable claims before the parties and the Court have invested resources in the discovery process. The rule allows "the court to eliminate actions that are fatally flawed in their legal premises and destined to fail, and thus to spare litigants the burdens of unnecessary pretrial and trial activity." *Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993); *see also Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (Dispositive motions "enable defendants to challenge the sufficiency of complaints without subjecting

[1] Although Mr. Angel relies on this Court's decision in *Fairholme* to permit jurisdictional and other preliminary discovery, Pl. Mot. at 17, Mr. Angel here does not meet the standards for such discovery. Additionally, despite four years of discovery, *Fairholme Funds, Inc. v. United States*, 147 Fed. Cl. 1, 21 (2019), *aff'd in part, rev'd in part,* 26 F.4th 1274 (Fed. Cir. 2022), all of plaintiffs' claims, many of which share commonalities with some of Mr. Angel's claims, were ultimately dismissed. The Federal Circuit's precedential ruling in *Fairholme* mandates dismissal of Mr. Angel's similar claims in this case, rendering discovery unnecessary here.

themselves to discovery."). Postponing discovery until the resolution of dispositive motions "is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources." *Coastal States Gas Corp. v. Dept. of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979).

"On a motion to dismiss, the court 'must accept as true all of the factual allegations contained in the complaint.'" *Hall v. Bed Bath & Beyond, Inc.*, 705 F.3d 1357, 1362 (Fed. Cir. 2013) (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1 (2002)). The factual allegations in the complaint, however, must "raise a right to relief above the speculative level" and must cross "the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*; *see Twombly*, 550 U.S. at 557-58 ("something beyond the mere possibility . . . must be alleged.").

Regarding motions to dismiss pursuant to Rule 12(b)(1), "when a motion to dismiss challenges a *jurisdictional fact* alleged in a complaint, a court may allow discovery in order to resolve the factual dispute." *Clear Creek Cmty. Servs. Dist. v. United States*, 100 Fed. Cl. 78, 81 (2011) (emphasis added) (permitting discovery related to statute of limitations defense); *see also Fairholme Funds, Inc. v. United States*, 114 Fed. Cl. 718, 721 (2014) ("The court may examine relevant evidence in order to decide any factual disputes when ruling upon a motion to dismiss for lack of subject matter jurisdiction.") (citation omitted). However, "a trial court may deny jurisdictional discovery when it is clear that further discovery would not demonstrate facts

sufficient to constitute a basis for jurisdiction." *Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1235-36 (Fed. Cir. 2010). "[A] party is not entitled to jurisdictional discovery if the record shows that the requested discovery is not likely to produce the facts needed to withstand a Rule 12(b)(1) motion." *Freeman v. United States*, 556 F.3d 326, 342 (5th Cir. 2009).

Regarding motions to dismiss pursuant to Rule 12(b)(6), Rule 12(d) states that if matters outside the pleadings are presented and not excluded by the Court, the Court should treat the motion as one for summary judgment. RCFC 12(d); *see also Martin v. United States*, 96 Fed. Cl. 627, 629 (2011) (citing *Akins v. United States*, 82 Fed. Cl. 619, 622 (2008)). In deciding a Rule 12(b)(6) motion, however, courts may consider documents attached to the complaint and documents incorporated by reference into the complaint. *Bell/Heery v. United States*, 106 Fed. Cl. 300, 307 (2012), *aff'd*, No. 2013-5002, 2014 WL 43892 (Fed. Cir. Jan. 7, 2014); *Frazier v. United States*, 67 Fed. Cl. 56, 59 (2005), *aff'd*, 186 F. App'x 990 (Fed. Cir. 2006); *Akins*, 82 Fed. Cl. at 622; *Kinnucan v. United States*, 25 Cl. Ct. 355, 356 n.1 (1992). Courts may also consider certain matters outside the pleadings, such as public records, without converting the motion to one for summary judgment. *See Terry v. United States*, 103 Fed. Cl. 645, 652 (2012). Additionally, courts may consider materials "integral" to a complaint, even if not attached or incorporated by reference, and "documents possessed by or known to the plaintiff and upon which it relied in bringing the suit." *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98, n.2 (2d Cir. 2007); *Popa v. PricewaterhouseCoopers L.L.P.*, No. 08 Civ. 8138(LTS)(KNF), 2009 WL 2524625, at *1 n.2 (S.D.N.Y. Aug. 14, 2009).

By its terms, Rule 12(d) only permits conversion of motions to dismiss for failure to state a proper claim (under Rules 12(b)(6)) and 12(c)) – not motions to dismiss based on jurisdiction

(Rule 12(b)(1)). *See DeKalb Cnty. v. United States*, 108 Fed. Cl. 681, 692 (2013); *see Estes Express Lines v. United States*, 108 Fed. Cl. 416, 420 (2013), *rev'd on other grounds*, No. 2013-5056, 2014 WL 26244 (Fed. Cir. Jan 3, 2014). Accordingly, it is well settled that "[c]onversion of a 12(b)(1) motion to dismiss into a summary judgment motion is not provided for by RCFC 12(b) [now 12(d)]." *North Hartland, L.L.C. v. United States*, 78 Fed. Cl. 172, 178 (2007).

II. Mr. Angel Has Not Demonstrated A Valid Basis For The Court To Permit Discovery Before Resolving The Government's Motion To Dismiss

The Court should deny Mr. Angel's motion for leave to seek discovery because there are no jurisdictional facts in dispute and discovery is not necessary to resolve the legal sufficiency of Mr. Angel's claims.

A. Mr. Angel Is Not Entitled To Jurisdictional Discovery

Mr. Angel contends that he is entitled to seek discovery before responding to the United States' motion to dismiss because he alleges that we dispute factual allegations in his complaint related to jurisdiction. Pl. Mot. at 18-20. This allegation is incorrect. Our motion to dismiss does not dispute the complaint's factual allegations but rests entirely on the legal insufficiency of the allegations in the complaint.

With regard to the jurisdictional aspects of our motion, Mr. Angel fails to identify any issue of fact on which discovery could plausibly impact the Court's analysis. In our motion to dismiss, we raised three jurisdictional bases for dismissing claims in Mr. Angel's complaint: (1) counts I, II, and V are barred by the statute of limitations (Def. Mot. To Dismiss, ECF No. 15, at 20-23); (2) the Court does not possess jurisdiction to entertain any claim Mr. Angel asserts for breach of fiduciary duty (Def. Mot. To Dismiss at 23-24); and (3) the Court does not possess jurisdiction to entertain count III of Mr. Angel's complaint because it is grounded in the bankruptcy provisions of title 11, United States Code, and seeks only prospective declaratory

relief (Def. Mot. To Dismiss at 25-27). Our motion does not challenge the facts alleged in Mr. Angel's complaint but instead demonstrates why Mr. Angel's claims fail as a matter of law, including the reasons why this Court does not have jurisdiction over many of Mr. Angel's claims.

In his motion for leave to seek discovery, Mr. Angel does not attempt to demonstrate that discovery is necessary regarding the second or third jurisdictional arguments asserted in our motion to dismiss. In our first jurisdictional argument, we demonstrated that counts I, II, and V of Mr. Angel's complaint are barred by the statute of limitations, as this Court has previously concluded. *Angel*, 165 Fed. Cl. at 463-64; *see* Def. Mot. to Dismiss at 20-23. Mr. Angel appears to make two separate arguments regarding his alleged need for jurisdictional discovery related to the statute of limitations. In the first, Mr. Angel wrongly attributes to us a series of allegations that appear nowhere in our briefing. Pl. Mot. at 18-19. He asserts that we:

> argue that (i) the Plaintiff's contract rights created by the dividend language in the CODs were terminated by the Third Amendment, and that (ii) therefore the Plaintiff no longer had contract rights after the Third Amendment, and that (iii) therefore no quarterly breach of contract could have occurred within the jurisdictionally required six year period.

Pl. Mot. at 18. We make no such arguments in our motion to dismiss. Indeed, Mr. Angel appears to acknowledge this fact when he states that:

> The Government has never contended in any of the Third Amendment litigation that the Third Amendment:
> i eliminated Fannie Mae or Freddie Mac Junior Preferred stock or Fannie Mae or Freddie Mac common stock; or
> ii combined the two classes of Fannie Mae or Freddie Mac stock into a single class that had the same dividend rights; or
> iii eliminated the Fannie Mae or Freddie Mac BODs.

Id. at 18-19. Moreover, it is unclear what relevance any of these issues might have to our demonstration that the statute of limitations bars several of Mr. Angel's claims. Mr. Angel

alleges that "[d]iscovery is likely to disclose additional information highly relevant to the disputed question of whether the Third Amendment totally ended all Junior Preferred express contract dividend rights." *Id*. at 20. Again, no such dispute exists, as we have made no argument that the Third Amendment ended all junior preferred contract dividend rights.

To the extent that we have addressed this issue at all, we did so in the context of our demonstration that Mr. Angel's contract claims fail to plausibly allege the existence of a contract with the United States. *See* Def. Mot to Dismiss at 28. There, we demonstrated that "the Federal Circuit has already determined that the stock certificates are not contracts with the United States." *Id*. (citing *Fairholme*, 26 F.4th at 1293-96). Mr. Angel does not demonstrate how any discovery he might seek would impact the Federal Circuit's binding determination. Instead, he merely repeats a theory that the Federal Circuit has expressly rejected, alleging that the United States assumed the Enterprises' contractual obligations to their shareholders when FHFA was appointed conservator of the Enterprises. Pl. Mot. at 5-6; *Fairholme*, 26 F.4th at 1293 ("In succeeding to the Enterprises' private contractual agreement with Cacciapalle, we conclude the FHFA does not retain its governmental character.").

Second, Mr. Angel alleges that discovery will permit him to demonstrate that "the Government each quarter took action to prevent the Companies' boards of directors from declaring dividends." Pl. Mot. at 19. Mr. Angel made the same allegations in his previous complaint, which the Court dismissed. *Angel*, 165 Fed. Cl. at 465-66 (rejecting Mr. Angel's continuing claims theory). Mr. Angel fails to demonstrate how discovery would change the Court's correct conclusion that his claims accrued by early 2013, rather than quarterly.

Moreover, Mr. Angel does not provide any factual basis for his allegation that Treasury officials gave "quarterly directions to the Companies' directors to neither make reasonable good

faith determinations as to whether or not to declare a dividend payment on the Junior Preferred Shares, nor seek Treasury's consent to declare dividends prior to each Net Worth Sweep." Pl. Mot. at 20. A plaintiff must have a basis to support his allegations; bare allegations themselves do not open the door to discovery. *Chemehuevi Indian Tribe v. United States*, 150 Fed. Cl. 181, 220 (2020) (citing, among other things, *DM Research, Inc. v. Coll. of Am. Pathologists*, 170 F.3d 53, 55 (1st Cir. 1999) ("the price of entry, even to discovery, is for the plaintiff to allege a factual predicate concrete enough to warrant further proceedings[;] ... [c]onclusory allegations in a complaint, if they stand alone, are a danger sign that the plaintiff is engaged in a fishing expedition"); *Reich v. Lopez*, 38 F. Supp. 3d 436, 459 (S.D.N.Y. 2014) ("reliance on 'conclusory' allegations is generally not enough ... as it may lead to an unwarranted 'fishing expedition' " (internal citation omitted)), *aff'd*, 858 F.3d 55 (2d Cir. 2017); *see also Monarch Assur. P.L.C. v. United States*, 244 F.3d 1356, 1365 (Fed. Cir. 2001) ("[T]he trial court is not expected to, nor should it, simply allow plaintiffs to embark on a wide-ranging fishing expedition in hopes that there may be gold out there somewhere."); *Madison Servs., Inc. v. United States*, 94 Fed. Cl. 501, 512 (2010) (denying leave to engage in "fishing expedition" and citing *Bowie v. Maddox,* 677 F. Supp. 2d 276, 285 (D.D.C. 2010) ("Plaintiff has so far presented only bare allegations and evidence that points to the mere possibility of fraud on the court, but presents no evidence that makes his claim 'appear to be true.' To permit discovery now would be to subject defendant to a costly and time–consuming process without an iota of rational justification, and the Court will not engage in such an abuse.")).

Mr. Angel's unsupported bare allegations do not justify the costly and time-consuming discovery he seeks. The Court should deny his request for jurisdictional discovery.

B. Mr. Angel Is Not Entitled To Discovery To Cure His Failure To State Plausible Claims For Illegal Exaction Or Breach Of Contract

In our motion to dismiss, we demonstrated three bases under which the Court should dismiss Mr. Angel's claims under Rule 12(b)(6), because they fail to state claims upon which relief can be granted: (1) preclusion bars counts I, II, and V (Def. Mot. to Dismiss at 17-19); (2) any illegal exaction claim asserted here has been conclusively rejected in binding precedent (Def. Mot. to Dismiss at 25); and (3) Mr. Angel fails to state a claim for a breach of any contract with the United States (Def. Mot. to Dismiss at 27-33). Mr. Angel does not attempt to demonstrate that discovery is necessary regarding the first or second of these bases for dismissal.

With regard to our third RCFC 12(b)(6) argument, Mr. Angel alleges that we dispute his factual allegations regarding the existence of alleged contracts with the United States. Mr. Angel is mistaken. He bears the burden of bringing before this Court plausible allegations that, if proven, would establish the elements of his claim. *See Angel*, 165 Fed. Cl. at 463 (citing *Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 679). In our motion, we demonstrated that his complaint does not contain plausible allegations that would establish the existence of a contract between Mr. Angel and the United States. His allegations that such contracts exist are not factual allegations; they are legal assertions that must, even at this stage, be supported by plausible factual assertions that, if proven, would establish the elements of such a contract. Our motion to dismiss demonstrates that such plausible allegations are lacking – but this demonstration does not rely on any factual dispute.

Mr. Angel first focuses on his allegation that the United States "guarantee[d] the timely payment of the GSEs' legal obligations." Pl. Mot. at 6. The Court, of course, has already rejected this same allegation in Mr. Angel's prior case. *Angel*, 165 Fed. Cl. at 467-68. Mr. Angel does not demonstrate how discovery could change this analysis. Instead, he continues

to rely on statements seeking to establish the existence of a general market perception that investment in the Enterprises was backstopped by the Government. Pl. Mot. at 6-9. As the Court has determined, however, "[n]owhere in the[se] public statements . . . is there a plausible inference that there was a meeting of the minds between Treasury and the Enterprises' shareholders as to a guarantee of dividends." *Angel*, 165 Fed. Cl. at 468. Mr. Angel fails to demonstrate how any discovery he might seek would demonstrate the existence of such a meeting of the minds.

Second, in his complaint, Mr. Angel alleges, without detailing the basis for his allegation, that the United States agreed with him to settle prior litigation. Compl. Count IV, ¶¶ 90-95. In our motion to dismiss, we demonstrated that Mr. Angel's vague allegations fail to plausibly allege facts that, if proven, would demonstrate that he agreed to a contract with a Government representative with actual authority to bind the Government in contract. Def. Mot. to Dismiss at 30-33. In a footnote in his motion for discovery, Mr. Angel appears to finally reveal the basis of his allegation that the Government agreed to settle his prior case. Pl. Mot. at 26 n.24. Mr. Angel refers to a communication, presumably with counsel for the United States, that refers to the filing of a joint status report. Notably, the communication on which Mr. Angel relies itself expressly states that no settlement has been agreed. *Id*. ("We continue to believe that your section of the JSR gives the reader the mistaken impression that a settlement has been agreed to, when it has not."). Mr. Angel then apparently misinterprets the following sentence, which refers to the filing of a draft joint status report, as somehow instead agreeing to a settlement. Not only is this reading utterly implausible, but Mr. Angel also fails to explain how discovery might yield any support for his theory. He alleges that evidence of a meeting of the minds is "solely in the possession of the Government." Pl. Mot. at 22. But because his is one of the relevant minds as

plaintiff and counsel for plaintiff, he is presumably also in possession of any communication that he might allege to have established an agreement.

Moreover, as we demonstrated in our motion, a settlement of the type that Mr. Angel alleges would have to be authorized by the Attorney General, Deputy Attorney General, or Associate Attorney General. Def. Mot. at 32-33. Mr. Angel does not allege, either in his complaint or his motion for discovery, that any of these officials authorized settlement.

Additionally, Mr. Angel relies on RCFC 56(d) to support his request for discovery. *See*, *e.g.*, Pl. Mot. at 2, 20, 23. This rule, however, is applicable to motions for summary judgment, not a motion to dismiss. Mr. Angel makes no attempt to demonstrate that our motion to dismiss relies on materials outside the pleadings and should be converted into a motion for summary judgment. Nor could he, as we did not rely on such materials.

Even if Rule 56(d) applied, "the movant is 'required to state with some precision the materials he hope[s] to obtain with further discovery, and exactly how he expect[s] those materials would help him in opposing summary judgment.'" *Simmons Oil Corp. v. Tesoro Petroleum Corp.*, 86 F.3d 1138, 1144 (Fed. Cir. 1996) (quoting *Krim v. BancTexas Group, Inc.,* 989 F.2d 1435, 1443 (5th Cir. 1993)). Although Mr. Angel cites this standard and asserts that he has satisfied it, his assertion is conclusory; as we demonstrated above, Mr. Angel does not demonstrate what he expects to find in discovery and how those materials would cure the clear legal deficiencies in his claims that we identified in our motion to dismiss. For example, although Mr. Angel lists a number of items in his motion, Pl. Mot. at 27-29, many of these items are publicly available, and Mr. Angel makes little attempt to demonstrate their relevance to any of the issues we raised in our motion to dismiss. Mr. Angel alleges that these materials "will disclose what role Treasury played in FHFA's 'decision' to enter into the Third Amendment," Pl.

Mot. at 29, as well as "the Government's genuine purpose in entering into the Third Amendment and the Government's economic projections for Fannie and Freddie," Pl. Mot. at 30. Mr. Angel, however, does not explain how any facts he might discover related to these issues bear on any of the issues we raised in our motion to dismiss, and we see no connection.

Mr. Angel also inexplicably refers to a need to rebut "the Government's jurisdictional argument that FHFA is not 'the United States' for purposes of the Tucker Act and the Government's merits argument that Plaintiff cannot satisfy the *Penn Central* balancing test." Pl. Mot. at 31. We made neither of these arguments in our motion to dismiss. An alleged need to respond to them, therefore, cannot provide a basis for discovery.

Mr. Angel also includes in his motion a discussion of "Private Label MBS Actions litigation" and "RMBS Working Group recovery." Pl. Mot. at 14; see Pl. Mot. at 12-15. Mr. Angel does not explain any relevance this discussion might have to this case, much less demonstrate entitlement to jurisdictional or other discovery on this basis.

Finally, even if Mr. Angel were correct that there is a dispute among the parties as to any fact necessary to determine our motion to dismiss for failure to state a claim, Mr. Angel is still not entitled to discovery. Instead, the Court should assume all well-pleaded allegations in the complaint as true and decide the motion accordingly. RCFC 12(d). Mr. Angel has not, therefore, demonstrated an entitlement to discovery or for a continuance to seek it. The Court should deny his motion and resume the suspended briefing on our motion to dismiss.

CONCLUSION

For these reasons, the United States respectfully requests that the Court deny Mr. Angel's motion for a continuance and for leave to seek discovery.

Respectfully submitted,

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