

UNITED STATES COURT OF CLAIMS

JOSHUA J. ANGEL, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 1:23-CV-00800

(Senior Judge Margaret M. Sweeney)

**PLAINTIFF'S REPLY MEMORANDUM IN  
FURTHER SUPPORT OF HIS MOTION FOR A  
CONTINUANCE TO PERMIT DISCOVERY**

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*Plaintiff*

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## **Preliminary Statement and Procedural History**

On October 1, 2023, Plaintiff, in response to Defendant's motion to dismiss ("MTD") the Complaint in the within action ("Angel IV Complaint"), moved for a continuance to permit discovery pursuant to RCFC 56 (d) (the "Discovery Motion"). By Order granted on October 27, 2023, the Court extended Defendant's time to respond to the Discovery Motion until November 22, 2023, and suspended all briefing deadlines for the MTD pending the further order of the court. Plaintiff submits this memorandum in reply to Defendant's papers in opposition to, and in further support of the Discovery Motion.

### **Argument**

#### **Plaintiff Has Articulated with Specificity his Entitlement to Pre-Motion Discovery: (a) to Refute Factual Claims Made in the MTD and (b) the Claims of Insufficiency and Implausibility Made in the MTD with Respect to Each Count of the Angel IV Complaint**

Plaintiff has specifically articulated each of the governmental agencies, (namely, the US Treasury, the Federal Reserve System, the Federal Housing Finance Administration, the US Department of Justice) as well as the GSEs, which Plaintiff reasonably believes possess non-public information concerning each of the factual allegations in the Angel IV Complaint that the Government claims in the MTD is either insufficient or implausible.

The Government's papers opposing the Discovery motion errantly conclude that there are "...no jurisdictional facts in dispute." In contrast to Plaintiff's closely reasoned and particularity supported arguments, the Government has responded with an unsupported broadly argumentative assertion that Plaintiff has not "met his burden to demonstrate he is entitled to discovery prior to the time permitted by the Court's rules." In doing so, the Government has essentially conceded the relevancy of the Rule 56 (d) discovery sought by Plaintiff and this Court's five-part test required

to secure its grant. *See, Theisen Vending Co., Inc. v. United States*, 58 Fed Cl. 194, 198 (Fed Cl. 2003); *see also, Clear Creek Community Services v. United States*, 100 Fed Cl. 78, 83 (Fed. Cl. 2022); *Love Terminal Partners LLC v. United States*, 97 Fed Cl, 355, 400 (Fed. Cl. 2011), *rev'd o.g.*, 889 F.3d 1331 (Fed Cir. 2018).

**Conclusion**

Plaintiff respectfully requests that the Court allow him to undertake discovery needed to present facts essential to oppose the MTD and direct the parties to file, by no later than Friday January 26, 2024 a joint status report proposing a discovery schedule.

Dated: New York, NY  
November 27, 2023

Respectfully submitted,

s/ Joshua J. Angel

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