

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

BLUE FLAME MEDICAL LLC,

Plaintiff,

v.

CHAIN BRIDGE BANK, N.A.,
JOHN J. BROUGH, and
DAVID M. EVINGER,

Defendants.

Civil Action No. 1:20-cv-00658 (LMB/IDD)

CHAIN BRIDGE BANK, N.A.,

Third-Party Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Third-Party Defendant.

**JPMORGAN CHASE BANK, N.A.’S MEMORANDUM IN SUPPORT OF
MOTION TO FILE UNDER PROVISIONAL SEAL**

Under Federal Rule of Civil Procedure 26, Local Civil Rule 5, and this Court’s September 24, 2020 Order (Dkt. 37), Third-Party Defendant JPMorgan Chase Bank, N.A. (“JPMC”) submits this memorandum in response to Third-Party Plaintiff Chain Bridge Bank, N.A.’s Motion to File Under Provisional Seal (Dkt. 143), submitted on May 20, 2021. JPMC supports permanently sealing the unredacted version of Exhibit 104 to the Declaration of Donald Burke in Support of Defendants’/Third-Party Plaintiff’s Memoranda in Opposition to Blue Flame Medical LLC and JPMorgan Chase Bank, N.A.’s Motions for Summary Judgment. A

redacted version of the exhibit has been publicly filed at Dkt. 142-5 and JPMC has no objection to that redacted version remaining public.

BACKGROUND

On May 20, 2021, Chain Bridge filed an opposition to JPMC's motion for summary judgment. Dkt. 145. In connection with that filing, Chain Bridge moved for leave to file under provisional seal Exhibit 104 to the Declaration of Donald Burke (Dkt. 142-5), which was submitted in support of Chain Bridge's opposition to the motions for summary judgment filed by Blue Flame Medical LLC and JPMC. Exhibit 104 is the Expert Report of Teresa A. Pesce, which JPMC served on Chain Bridge on February 12, 2021. During discovery, JPMC designated the report as "Confidential," and certain portions of the report as "Highly Confidential," under the terms of the Amended Stipulated Confidentiality Agreement and Protective Order entered in the case. Dkt. 68 ("Protective Order"). Before Chain Bridge submitted the exhibit with its May 20, 2021 opposition, Chain Bridge and JPMC conferred regarding JPMC's confidentiality designations. JPMC agreed that the 11-page exhibit could be filed on the public docket, so long as six lines detailing specific criteria JPMC uses to screen transactions for suspicious activity remained redacted; JPMC continues to designate those lines as "Highly Confidential" under the Protective Order. Chain Bridge's memorandum in support of its motion to seal explains that Chain Bridge's request for sealing is based on JPMC's confidentiality designation. Dkt. 147. Chain Bridge takes no position on JPMC's continued designation. *Id.*

On May 21, 2021, the Court granted Chain Bridge's motion and ordered that Exhibit 104 shall remain redacted pending the Court's consideration of any responses filed to Chain Bridge's motion. Dkt. 151.

ARGUMENT

There is a presumption of public access to court records, but district courts may, in their discretion, seal documents when the public's right to access is "outweighed by competing interests." *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). Before granting a motion to seal, a court must "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." *Id.*

All three requirements for sealing are satisfied here.

First, the public received notice of the request to seal Exhibit 104 when Chain Bridge filed its Motion to File Under Provisional Seal on May 20, 2021. *See, e.g., E.I. Du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 2012 WL 1415638, at *2 (E.D. Va. Apr. 20, 2012) (treating motion to seal and supporting memorandum as public notice).

Second, JPMC seeks the "less drastic alternative" of filing the exhibit in minimally-redacted form. *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 2011 WL 7046021, at *2 (E.D. Va. Dec. 7, 2011). JPMC requests that only six lines out of 11 pages be sealed, and does not object to the already-filed redacted copy of Exhibit 104 remaining on the public docket.

Third, sealing the redacted portions of the exhibit is warranted because the redacted material contains specific criteria that JPMC uses to screen transactions for suspicious commercial monetary activity. Disclosing this material would provide aspiring fraudulent actors with consequential information about JPMC's system and would undermine JPMC's ability to monitor for suspicious activity. A business's "strong interest in preserving the confidentiality of its proprietary and trade-secret information ... may justify partial sealing of court record." *Doe*

v. Public Citizen, 749 F.3d 246, 269 (4th Cir. 2014). Courts in the Fourth Circuit routinely grant motions to seal trade secrets and other commercially sensitive information—including the details of fraud screening and prevention programs. *See, e.g., BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Rsch. Org.*, 2020 WL 973751, at *15 (E.D. Va. Feb. 7, 2020) (granting motion to seal documents describing “business strategy ... as well as other confidential commercial information”); *Trapp v. Suntrust Bank*, 2016 WL 6833986, at *3 (M.D.N.C. Nov. 18, 2016) (sealing confidential business information that concerned “preventing fraud”); *Regscan, Inc. v. Bureau of Nat’l Affs., Inc.*, 2012 WL 12903672, at *1-2 (E.D. Va. May 22, 2012) (sealing document that contained trade secrets in form of confidential business plans). So do courts elsewhere. *See, e.g., In re Rocket Fuel Inc. Sec. Litig.*, 2017 WL 344983, at *6 (N.D. Cal. Jan. 24, 2017) (sealing documents containing details of fraud-screening methodology); *Bohannon v. Facebook, Inc.*, 2014 WL 5598222, at *3 (N.D. Cal. Nov. 3, 2014) (sealing documents containing fraud-detection policies).

The specific suspicious-activity rules that the Blue Flame wire transfer triggered in JPMC’s monitoring system do not bear on the Court’s resolution of the motions for summary judgment pending before it, or indeed any issue in this litigation. So, redacting those rules from the docket would leave public the “legal and factual issues” raised by this case. *ActiveVideo Networks*, 2011 WL 7046021, at *1. JPMC, meanwhile, has a significant interest in keeping confidential the details of its suspicious-activity monitoring program—namely, “to prevent disclosure that could aid fraudulent actors in evading the system.” *In re Rocket Fuel*, 2017 WL 344983, at *6.

CONCLUSION

The unredacted version of Exhibit 104 to the Declaration of Donald Burke should remain under permanent seal, and the redacted version of the same (Dkt. 142-5) should remain on the public docket. A proposed order reflecting the requested relief is attached hereto.

Dated: May 26, 2021

Respectfully submitted,

**WILMER CUTLER PICKERING HALE
AND DORR LLP**

/s/ Meredith K. Loretta

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CERTIFICATE OF SERVICE

I certify that on this 26th day of May, 2021, I electronically filed the foregoing using the Court's CM/ECF system, which will then send a notification of such filing to all counsel of record.

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