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**

DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Defendants Chain Bridge Bank, N.A., John J. Brough, and David J. Evinger hereby answer Plaintiff Blue Flame Medical LLC's ("Blue Flame") Complaint and set forth their affirmative defenses, and counterclaims as follows:

1. Denied.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. On information and belief, Defendants admit that Blue Flame is a Delaware limited liability corporation. Defendants are without sufficient information to form a belief as to whether and where Blue Flame has a principal place of business, and therefore deny those allegations.

9. Admitted.

10. Denied.

11. Admitted.

12. Defendants admit that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it presents a federal question. Defendants deny that Chain Bridge Bank, N.A., violated any applicable Federal Reserve Board regulations, including Federal Reserve Board Regulation J, and otherwise deny the allegations in Paragraph No. 12.

13. Admitted.

14. Admitted.

15. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 15, and therefore deny those allegations.

16. Denied. Defendants further state that Blue Flame has admitted to the U.S. House of Representatives' Subcommittee on Oversight and Investigations for the Committee on Energy and Commerce that, in fact, it lacked any meaningful "ability to source … medical supplies" in response to orders placed during the early months of the global pandemic.

17. Defendants are without sufficient information to form a belief as to what arrangements, if any, Blue Flame had with its alleged "manufacturing partners," or what its alleged "manufacturer's prices" were in March 2020, and therefore deny those allegations. Defendants otherwise deny the allegations in Paragraph No. 17.

18. Defendants admit, on information and belief, that there was intense competition to secure certain medical supplies in March 2020. Defendants are without sufficient information to form a belief as to the remainder of the allegations in Paragraph No. 18, and therefore deny those allegations.

19. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 19, and therefore deny those allegations.

20. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 20, and therefore deny those allegations.

21. Defendants deny, on information and belief, that Blue Flame set out to "provide the lowest prices possible" for personal protective equipment. Defendants are without sufficient information to form a belief as to the remaining allegations in Paragraph No. 21, and therefore deny those allegations.

22. Defendants admit, on information and belief, that Blue Flame's principals had no career experience in the medical supply industry prior to March 2020. Defendants further admit that Michael Gula is or was associated with Mike Gula & Associates, the Gula Graham Group, and Prime Advocacy. Defendants are without sufficient information to form a belief as to the remainder of the allegations in Paragraph No. 22, and therefore deny those allegations.

23. Defendants admit, on information and belief, that Blue Flame was incorporated in the State of Delaware on March 23, 2020. Defendants are without sufficient information to form a belief as to the remainder of the allegations in Paragraph No. 23, and therefore deny those allegations.

24. Denied. Defendants further state that, in fact, Blue Flame has admitted to the U.S. House of Representatives' Subcommittee on Oversight and Investigations for the Committee on Energy and Commerce that it has routinely *failed* to "successfully fill[] orders for personal protective equipment," and that it received refund demands from the bulk of its customers.

25. Defendants admit, on information and belief, that $609,161,000 was California's final purchase price for its order of 100 million N95 masks from Blue Flame, including tax and

shipping. Defendants further admit, on information and belief, that Blue Flame required California to pay $456,800,000 “up-front” and before the delivery of any masks. Defendants admit that $456,800,000 is approximately 75% of $609,161,000. Defendants are without sufficient information to form a belief as to the remaining allegations in Paragraph No. 25, and therefore deny those allegations.

26. Defendants admit that Blue Flame contacted Chain Bridge Bank, N.A., to open a new business checking account for Blue Flame. Defendants otherwise deny the allegations in Paragraph No. 26.

27. Denied.

28. Defendants admit that Chain Bridge Bank, N.A. is well known in the political consulting and finance worlds and that is has served as the bank for numerous presidential and congressional campaigns as well as for various party committees. Defendants are without sufficient information to form a belief as to the remainder of the allegations in Paragraph No. 28, and therefore deny those allegations.

29. Defendants admit that on March 24, 2020, at 12:17 PM ET, Mr. Gula emailed Maria Cole, “need wiring instructions to RECEIVE blue flame medical account,” and otherwise deny the allegations in Paragraph No. 29.

30. Denied.

31. Defendants admit that Blue Flame spoke with Mr. Brough and Mr. Evinger on March 25, 2020, about Blue Flame’s business, its transaction with California, and its anticipated need to send and receive wires. Defendants otherwise deny the allegations in Paragraph 31.

32. Defendants admit that, on March 25, 2020, at 11:19 AM ET, Mr. Gula emailed Ms. Cole, "also need email ASAP when the wire hits from Cali," and otherwise deny the allegations in Paragraph No. 32.

33. Admitted.

34. Admitted.

35. Defendants admit that, on March 25, 2020, at 3:03 PM ET, Ms. Cole sent Mr. Gula wire instructions and a verification letter for Blue Flame's account at the Bank, and otherwise deny the allegations in Paragraph No. 35.

36. Defendants admit that on March 25, 2020, at 4:11 PM ET, Ms. Cole asked Mr. Gula, "[t]his wire you are waiting for, how much are you expecting and who is the originator?" Ms. Cole further stated that "Our wire department would like to know how to track it and let you know." Ms. Cole also sought to confirm that the wire was "coming to your new account Blue Flame Medical." Defendants otherwise deny the allegations in Paragraph No. 36.

37. Defendants admit that Mr. Gula responded one minute later that the expected amount was "$450,000,0000 from the state of California (not a typo)" and that "Blueflame medical" would be the beneficiary.

38. Admitted.

39. Defendants admit that, during the March 25 call that commenced at approximately 4:47 PM ET, Mr. Gula provided certain information regarding Blue Flame's business and transaction with California and identified a China-based supplier of masks. Defendants further admit that Mr. Gula stated that he expected Chain Bridge Bank, N.A., to receive, for Blue Flame's benefit, a $450 million wire transfer originated by California. Defendants otherwise deny the remaining allegations in Paragraph No. 39.

40. Denied.

41. Defendants admit that Mr. Gula expressed his desire to exit the world of politics. Defendants otherwise deny the allegations in Paragraph No. 41.

42. Denied.

43. Defendants admit that Mr. Brough reviewed operational challenges with the Bank's receipt of a $450 million wire transfer, and otherwise deny the allegations in Paragraph No. 43.

44. Admitted.

45. Denied.

46. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 46, and therefore deny those allegations.

47. Denied.

48. Admitted.

49. Defendants admit that Mr. Gula sent an email on March 25, at 6:18 PM ET, attaching wire instructions to a California bank account for a Chinese company, and stating "no, we have not sent the money to china but when we do this is where we are sending it." Defendants otherwise deny the allegations in Paragraph No. 49.

50. Denied.

51. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 51, and therefore deny those allegations.

52. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 52, and therefore deny those allegations.

53. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 53, and therefore deny those allegations.

54. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 54, and therefore deny those allegations.

55. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 55, and therefore deny those allegations.

56. Denied.

57. Defendants admit that Chain Bridge Bank, N.A., was in contact with Blue Flame representatives on the morning of March 26. Defendants are without sufficient information to form a belief as to the remaining allegations in Paragraph No. 57, and therefore deny those allegations.

58. Denied.

59. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 59, and therefore deny those allegations.

60. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 60, and therefore deny those allegations.

61. Defendants are without sufficient information to form a belief as to Mr. Gula's actions upon receipt of the wire confirmation email as alleged in the last sentence of Paragraph No. 61. Defendants otherwise admit the allegations of Paragraph No. 61.

62. Defendants are without sufficient information to form a belief as to the alleged call between Ms. Cole and Mr. Thomas, and therefore deny those allegations. Defendants otherwise deny the allegations in Paragraph No. 62.

63. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 63, and therefore deny those allegations.

64. Defendants admit that at 12:11 PM ET, on March 26, 2020, Ms. Cole emailed the Bank's wire transfer request form to Blue Flame and stated that "[o]nce completed please send it to me." Defendants are without sufficient information to form a belief as to the other allegations in Paragraph No. 64, and therefore deny those allegations.

65. Defendants admit that at 12:14 PM ET, an attorney purportedly working with Blue Flame sent Ms. Cole details for an outbound wire transfer including the amount, account name and number, wire routing number, and receiving bank, which had an address in New Jersey. Defendants otherwise deny the allegations in Paragraph No. 65.

66. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 66, and therefore deny those allegations.

67. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 67, and therefore deny those allegations.

68. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 68, and therefore deny those allegations.

69. Admitted.

70. Admitted.

71. Defendants deny that some or all of Mr. Gula's personal accounts or accounts related to Mr. Gula's other business ventures have not been closed. Defendants otherwise admit the allegations in Paragraph No. 71.

72. Denied.

73. Defendants deny the first sentence of Paragraph No. 73. Defendants are without sufficient information to form a belief about which "news reports and public statements" are alleged, and therefore deny the second sentence of Paragraph No. 73. Defendants further state,

however, that Mr. Brough and Mr. Evinger asked California officials if they knew Blue Flame was a new company with a bank account opened just the day before by political lobbyists. Defendants deny telling any California officials that Defendants were concerned Blue Flame's transaction with California "was fraudulent."

74. Denied.

75. Denied. Defendants further incorporate by reference their answer to Paragraph No. 43.

76. Defendants admit that Chain Bridge Bank, N.A.'s total deposits as of December 31, 2019, totaled approximately $762 million. Defendants otherwise deny the allegations in Paragraph No. 76.

77. Defendants are without sufficient information to form a belief as to what caused California to cancel its wire transfer to Chain Bridge Bank, N.A., for the benefit of Blue Flame, and therefore deny the allegations of Paragraph No. 77.

78. Defendants admit that Chain Bridge Bank, N.A., agreed to California's request to cancel the payment order and return the funds. Defendants otherwise deny the allegations in Paragraph No. 78.

79. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 79, and therefore deny those allegations.

80. Denied.

81. Defendants admit that Representative Katie Porter sent an April 8, 2020 letter to the Principal Deputy Inspector General of the Department of Health and Human Services, and refer the Court to that letter for its contents. Defendants further admit, on information and belief, that

government law enforcement agencies have commenced investigations into Blue Flame and its business. Defendants otherwise deny the allegations in Paragraph No. 81.

82. Defendants admit, on information and belief, that news outlets began reporting in May 2020 on California's cancellation of its wire transfer to Blue Flame and Blue Flame's failure to complete its transaction with California and numerous other customers. Defendants otherwise deny the allegations in Paragraph No. 82.

83. Denied.

84. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 84, and therefore deny those allegations.

85. Defendants admit, on information and belief, that press have reported an agreement between California and BYD, a China-based manufacturer, to purchase N95 masks for approximately $1.4 billion. Defendants otherwise deny the allegations in Paragraph No. 85.

COUNT I
VIOLATION OF FEDERAL RESERVE REGULATION J AND SECTION 4A-404(a) OF UNIFORM COMMERCIAL CODE

86. Answering Paragraph No. 86, Defendants repeat and reallege their answers to Paragraph Nos. 1 through 85.

87. Admitted.

88. Defendants state that the allegations in Paragraph No. 88 contain legal conclusions to which Defendants are not obligated to respond. To the extent a response is required, Defendants deny these allegations.

89. Defendants admit that California's bank, JPMorgan, sent a payment order to Chain Bridge Bank, N.A., via the Fedwire Funds Service for the benefit of Blue Flame. Defendants are

without sufficient information to form a belief as to the remaining allegations in Paragraph No. 89, and therefore deny those allegations.

90. Defendants deny that Chain Bridge Bank, N.A., confirmed "the availability of the funds for Blue Flame's use" and that "the Bank's online account access portal" "show[ed] the funds as available in Blue Flame's account." Defendants are without sufficient information to form a belief as to the remaining allegations in Paragraph No. 90, and therefore deny those allegations.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

COUNT II
VIOLATION OF FEDERAL RESERVE REGULATION J
AND SECTION 4A-204 OF UNIFORM COMMERCIAL CODE

98. Answering Paragraph No. 98, Defendants repeat and reallege their answers to Paragraph Nos. 1 through 97.

99. Admitted.

100. Defendants state that the allegations in Paragraph No. 100 contain legal conclusions to which Defendants are not obligated to respond. To the extent a response is required, Defendants deny these allegations.

101. Defendants admit that California's bank, JPMorgan, sent a payment order to Chain Bridge Bank, N.A., via the Fedwire Funds Service for the benefit of Blue Flame. Defendants are without sufficient information to form a belief as to the remaining allegations in Paragraph No. 101, and therefore deny those allegations.

102. Denied.

103. Defendants are without sufficient information to form a belief as to the allegations in Paragraph No. 103, and therefore deny those allegations.

104. Denied.

105. Denied.

106. Defendants admit that they contacted California government officials, but otherwise deny the allegations in Paragraph 106.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied. Defendants further state that funds were returned to JPMorgan, for the benefit of the California State Treasurer's Office, as a result of JPMorgan's written cancellation of its wire transfer transmitted via the Fedwire Funds Service.

112. Denied.

COUNT III
CONVERSION

113. – 124. By Order of the Court dated September 8, 2020, Count III has been dismissed and therefore no response to Paragraph Nos. 113 through 124 is required.

COUNT IV
TORTIOUS INTERFERENCE WITH CONTRACT

125. Answering Paragraph No. 125, Defendants repeat and reallege their answers to Paragraph Nos. 1 through 124.

126. Defendants deny that they "improper[ly] interfere[d]" with any contractual relationship between Blue Flame and California, or that any such contractual relationship "would have provided substantial future economic benefit to Blue Flame." Defendants state that they are without sufficient information to form a belief as to the remaining allegations in Paragraph No. 126, and therefore deny those allegations.

127. Defendants state that they are without sufficient information to form a belief as to the allegations in Paragraph No. 127, and therefore deny those allegations.

128. Defendants admit that they were aware of a purported contractual relationship between Blue Flame and California on March 26, 2020, when they contacted California government officials, but otherwise deny the allegations in Paragraph No. 128.

129. Defendants state that the allegations in Paragraph No. 129 contain legal conclusions to which Defendants are not obligated to respond. To the extent a response is required, Defendants deny these allegations.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

<u>COUNT V</u>
TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY

134. Answering Paragraph No. 134, Defendants repeat and reallege their answers to Paragraph Nos. 1 through 133.

135. Defendants state that they are without sufficient information to form a belief as to the nature of any "valid business expectancy" that Blue Flame had with California, and therefore deny that allegation. Defendants otherwise deny the remaining allegations in Paragraph No. 135.

136. Defendants state that they are without sufficient information to form a belief as to the allegations in Paragraph No. 136, and therefore deny those allegations.

137. Denied.

138. Denied.

139. Denied.

140. Defendants deny the allegations in the first sentence of Paragraph No. 140. Defendants state that they are without sufficient information to form a belief as to the allegations in the second sentence of Paragraph No. 140, and therefore deny those allegations.

141. Denied.

142. Denied.

<u>COUNT VI</u>
FRAUD

143. – 151. By Order of the Court dated September 8, 2020, Count VI has been dismissed and therefore no response to Paragraph Nos. 143 through 151 is required.

<u>COUNT VII</u>
CONSTRUCTIVE FRAUD

152. – 159. By Order of the Court dated September 8, 2020, Count VII has been dismissed and therefore no response to Paragraph Nos. 152 through 159 is required.

COUNT VIII
NEGLIGENCE

160. – 164. By Order of the Court dated September 8, 2020, Count VIII has been dismissed and therefore no response to Paragraph Nos. 160 through 164 is required.

COUNT IX
DEFAMATION

165. Answering Paragraph No. 165, Defendants repeat and reallege their answers to Paragraph Nos. 1 through 164.

166. Defendants admit that Brough and Evinger communicated with the California State Treasurer's Office, but otherwise deny the allegations in Paragraph No. 166.

167. Denied.

168. Denied.

COUNT X
BREACH OF CONTRACT

169. – 179. By Order of the Court dated September 8, 2020, Count X has been dismissed and therefore no response to Paragraph Nos. 169 through 179 is required.

PRAYER FOR RELIEF

Defendants deny the allegations in the "Prayer for Relief" section, which begins on page 35 of the Complaint. Defendants aver that Plaintiff is not entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Breach of the Obligation of Good Faith)

Plaintiff breached its obligation of good faith in the performance and enforcement of its contracts and duties, including under Uniform Commercial Code (UCC) § 1-304, by inducing California to originate a large wire transfer purportedly as an upfront deposit for N95 masks that Blue Flame lacked either the intent or capacity to deliver, making material misrepresentations to

Chain Bridge Bank, N.A., in order to induce Chain Bridge Bank, N.A., to open an account to receive such a wire transfer, failing to provide Chain Bridge Bank, N.A., requested information and documents prior to any acceptance of the wire transfer, and engaging in the bad-faith enforcement of alleged duties against Chain Bridge Bank, N.A., in a commercially unreasonable manner.

SECOND AFFIRMATIVE DEFENSE
(Cancellation)

Chain Bridge Bank, N.A.'s acceptance of JPMorgan Chase's payment order, on behalf of California as originator, was nullified by the cancellation of that payment order pursuant to UCC § 4-211.

THIRD AFFIRMATIVE DEFENSE
(Fraudulent Inducement)

Plaintiff fraudulently induced Defendant Chain Bridge Bank, N.A., to enter into an Account Agreement with Plaintiff that included wire-transfer services by knowingly or recklessly making one or more material misrepresentations concerning the nature of Blue Flame's business and the size and frequency of the wire transfers that it expected to send and receive. Specifically, on or about March 25, 2020, Plaintiff's principal, Michael Gula, falsely stated to one or more Bank employees, at the Bank and during Plaintiff's account-opening process, that Blue Flame expected to receive only a total of $75 million in domestic wires, and to send only a total of $25 million in domestic wires, on average in any given month. Gula made that statement, on Plaintiff's behalf and within the scope of his agency for Plaintiff, even while knowing or recklessly disregarding that Blue Flame was then arranging to receive a single incoming domestic wire that exceeded $450 million, and intending to arrange outgoing wires totaling a significant portion of that sum. On information and belief, Gula knowingly or recklessly misrepresented Blue Flame's expected wire activity in order not to raise Defendants' suspicions until after Plaintiff's account had been opened and its wiring instructions had been provided. Defendants reasonably relied on Plaintiff's misrepresentations, made through Mr. Gula, leading to any injuries sustained, and would not have entered into the Account Agreement or otherwise provided wire-transfer services to Blue Flame but for those fraudulent misrepresentations.

FOURTH AFFIRMATIVE DEFENSE
(Equitable Estoppel)

Plaintiff is equitably estopped from pursuing the relief it seeks because Plaintiff, through its principal Michael Gula, knowingly made misrepresentations to Defendants concerning the nature of Blue Flame's business and the size and frequency of the wire transfers that it expected to send and receive. Defendants, who did not know the truth, justifiably relied on those misrepresentations and acted on the basis of them, leading to any injuries sustained.

FIFTH AFFIRMATIVE DEFENSE
(Comparative Fault)

Plaintiff's alleged damages, if any, were caused by the actions or inactions of non-party persons or entities for which Defendants had no legal duty, contractual duty, responsibility, control, or right of control. On information and belief, JPMorgan Chase and the State of California caused or contributed to Plaintiff's alleged damages, including by cancelling their respective payment orders, receiving funds returned by Chain Bridge Bank, N.A., on account of that cancellation, and, in California's case, breaching its contract with Plaintiff. Any award made in favor of Plaintiff must be reduced by an amount equal to the percentage of fault of JPMorgan Chase and/or the State of California in causing or contributing to the damages as alleged in the complaint.

SIXTH AFFIRMATIVE DEFENSE
(Consent, Acquiescence, or Ratification)

Plaintiff, through its principal Michael Gula, consented to, acquiesced in, or ratified Chain Bridge Bank, N.A.'s accommodation of JP Morgan Chase's cancellation of California's wire transfer and return of funds to the State of California. Prior to accommodating JP Morgan Chase's cancellation request and returning to it the wired funds, Defendants informed Gula of the cancellation request and Gula knowingly and voluntarily did not object to the Bank's stated intent to honor the cancellation request.

SEVENTH AFFIRMATIVE DEFENSE
(Preemption)

Plaintiff's tortious-interference and defamation claims are preempted in whole or in part by federal law, including because disputes concerning the rights and obligations of parties to a funds transfer are governed by the provisions of Federal Reserve Regulation J, Subpart B.

EIGHTH AFFIRMATIVE DEFENSE
(Funds Availability Agreement)

Plaintiff expressly agreed to a funds availability policy stating that no funds that Chain Bridge Bank, N.A., received by wire transfer for Plaintiff's benefit would be made available to Plaintiff for use until the following business day.

NINTH AFFIRMATIVE DEFENSE
(Qualified Privilege)

Plaintiff's defamation claim is barred because Defendants' statements were made without malice to the State of California, an actor with interests or duties in the subject of the communication. To the extent that Plaintiff's tortious-interference claims are based on the same statements, they are likewise barred by Defendants' qualified privilege.

TENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

Plaintiff failed to take reasonable steps to minimize or prevent the damages it claims to have suffered. Upon information and belief, Blue Flame took no action following California's cancellation of its wire transfer to communicate with California, try to alleviate California's concerns, make alternative arrangements to receive any renewed wire transfer from California, or enforce any contractual rights it has against California.

ELEVENTH AFFIRMATIVE DEFENSE
(Limitations on Damages, UCC 4A-404(a))

The damages claimed by Plaintiff are limited, in whole or in part, by UCC § 4A-404(a). Plaintiff fails to state a claim for damages, including consequential damages, because Chain Bridge Bank, N.A., did not refuse to pay Plaintiff after demand for payment by Plaintiff and receipt of notice of particular circumstances giving rise to consequential damages as a result of nonpayment. Furthermore, any nonpayment to Plaintiff was attributable to reasonable doubt concerning Blue Flame's right to payment under the circumstances. Any award made in favor of Plaintiff must be reduced by an amount necessary to prevent award of consequential or additional damages.

TWELFTH AFFIRMATIVE DEFENSE
(Unjust Enrichment or Windfall)

Any award in favor of Plaintiff would result in its unjust enrichment and a windfall. California originated the cancelled and returned wire transfer as consideration for contractual obligations that Plaintiff was required to perform under an alleged contract. Plaintiff, upon information and belief, never performed any of its contractual obligations and is under no current obligations that would entitle it to the proceeds of the contract's consideration.

THIRTEENTH AFFIRMATIVE DEFENSE
(Setoff/Recoupment)

Plaintiff's claims are barred, in whole or in part, by the doctrines of setoff or recoupment. In the event that Defendants are liable to Plaintiff, then Defendants would be entitled by contract to offsets for amounts that they paid in connection with disputes involving Blue Flame's account.

COUNTERCLAIMS

Defendant/Counterclaim-Plaintiff Chain Bridge Bank, N.A., through undersigned counsel, as and for its Counterclaims, alleges as follows:

THE PARTIES

1. Counterclaim-Plaintiff Chain Bridge Bank, N.A. is a national banking association organized under the laws of the United States with a principal place of business at 1445A Laughlin Avenue, McLean, Virginia, 22011. It is the sole subsidiary of Chain Bridge Bancorp, Inc., a bank holding company registered with the Federal Reserve and incorporated under the laws of the Commonwealth of Virginia with the same principal place of business as Chain Bridge Bank, N.A.

2. Upon information and belief, Counterclaim-Defendant Blue Flame Medical LLC ("Blue Flame") is a limited liability company formed under the laws of the state of Delaware, with a principal place of business at 150 South Los Robles Avenue, Suite 675, Pasadena, California, 91001.

FACTUAL ALLEGATIONS

A. Blue Flame's Account Agreement

3. On or about March 25, 2020, Chain Bridge Bank, N.A., entered into a contract with Blue Flame, acting by and through one or more of its principals, Michael C. Gula and John S. Thomas, in connection with the opening of a commercial banking account for Blue Flame. The

parties' contract was memorialized in an Account Agreement, a copy of which is attached hereto as Exhibit A.

4. The Account Agreement incorporated by reference a series of additional documents governing the details of the parties' contractual relationship. Among those additional documents was the Terms and Conditions for Blue Flame's account, a copy of which is attached hereto as Exhibit B. In the Account Agreement, Mr. Gula, on behalf of Blue Flame, acknowledged his receipt of those Terms and Conditions.

5. Section 2 of the Terms and Conditions states that "this document . . . is a contract that establishes rules which control [Blue Flame's] account(s) with [Chain Bridge Bank, N.A.]." Section 2 further states that, if Blue Flame "open[ed]" the account, it "agree[d] to these rules."

6. In Section 3 of the Terms and Conditions, Blue Flame agreed that it would be "liable for [Chain Bridge Bank, N.A.'s] costs as well as for [Chain Bridge Bank, N.A.'s] reasonable attorney's fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving [Blue Flame's] account." Blue Flame further agreed that this obligation would be triggered by "any action that [Blue Flame] or a third party takes regarding the account that causes [Chain Bridge Bank, N.A.], in good faith, to seek the advice of an attorney."

B. The Cancellation Of California's Wire Transfer

7. On March 26, 2020, at approximately 11:23 AM eastern time ("ET"), a representative from the State Treasurer's Office of the State of California initiated a wire transfer in the amount of $456,888,600 for Blue Flame's benefit by delivering an instruction to California's Bank, JPMorgan Chase Co. ("JPMorgan"). At 11:55 AM ET, Chain Bridge Bank, N.A., received a payment order from JPMorgan in connection with this wire transfer.

8. Upon information and belief, the wire transfer of $456,888,600 was intended by California as a down payment for a purchase of 100 million N95 masks from Blue Flame. Neither Gula nor Thomas, however, had any experience in the medical supply industry. To the contrary, both had previously worked as political operatives. In addition, on information and belief, Blue Flame in fact had no ability, then or ever, to procure and provide the 100 million N95 masks that it had promised to California. Blue Flame nevertheless falsely represented to California that it could provide them within a matter of days.

9. Upon information and belief, California initiated the wire transfer directing payment to Blue Flame's account at Chain Bridge Bank, N.A., based on wire instructions that Blue Flame had provided to California.

10. Within hours of Chain Bridge Bank, N.A.'s receipt of the payment order for California's wire transfer, JPMorgan notified Chain Bridge Bank, N.A., that JPMorgan and California would be canceling that payment order by requesting return of the $456,888,600.

11. At 2:05 PM ET, JPMorgan sent a message to Chain Bridge Bank, N.A., through the Fedwire funds transfer system operated by the United States Federal Reserve Banks in which JPMorgan requested cancellation of the payment order.

12. At 3:21 PM ET, Chain Bridge Bank, N.A., honored JPMorgan and California's cancellation request by returning $456,888,600 to JPMorgan by wire transfer.

13. At 3:36 PM ET, Chain Bridge Bank, N.A., notified Blue Flame that Blue Flame's account had been voided.

C. Blue Flame Is Liable For Chain Bridge Bank, N.A.'s Costs And Reasonable Attorney's Fees In This Litigation

14. On June 12, 2020, Blue Flame filed this lawsuit against Chain Bridge Bank, N.A., and two of its officers, John J. Brough, and David M. Evinger. Blue Flame's complaint seeks to

impose liability based on Chain Bridge Bank, N.A.'s decision to honor JPMorgan and California's request to cancel the wire transfer and based on interactions between Messrs. Brough and Evinger and California government officials in connection with the wire transfer.

15. Chain Bridge Bank, N.A., has incurred and will continue to incur substantial costs and attorney's fees in defending against Blue Flame's claims in this action, both on its own behalf and on behalf of its officers, Messrs. Brough and Evinger.

16. Under Section 3 of the Terms and Conditions, Blue Flame is liable to Chain Bridge Bank, N.A., for the costs and attorney's fees incurred by Chain Bridge Bank, N.A., in the defense of this case. This lawsuit is a "dispute involving [Blue Flame's] account" as to which Blue Flame agreed to be "liable for [Chain Bridge Bank, N.A.'s] costs as well as for [Chain Bridge Bank, N.A.'s] reasonable attorney's fees." The fees incurred by Chain Bridge Bank, N.A., are attributable to an "action that [Blue Flame] . . . [took] regarding [its] account" that has "cause[d] [Chain Bridge Bank, N.A.], in good faith, to seek the advice of an attorney"—namely, Blue Flame's inducement of California officials to initiate the March 26, 2020 wire transfer.

17. Blue Flame is liable for costs and reasonable attorney's fees incurred by Chain Bridge Bank, N.A., notwithstanding the voiding of the Account Agreement. The events giving rise to Blue Flame's claims in this case occurred while the Account Agreement was in force. In addition, Blue Flame's inducement of California officials to initiate a wire transfer to Chain Bridge Bank, N.A., for the benefit of Blue Flame—the "action that [Blue Flame] . . . [took] regarding [its] account" that has given rise to the costs and attorney's fees in this litigation—unquestionably occurred before the Account Agreement was voided.

CAUSES OF ACTION

COUNTERCLAIM I
(Attorney's Fees Pursuant to the Account Agreement)

18. Chain Bridge Bank, N.A., realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

19. Under Section 3 of the Terms and Conditions governing Blue Flame's account, Blue Flame is liable to Chain Bridge Bank, N.A., for all costs and attorney's fees reasonably incurred by Chain Bridge Bank, N.A., in the defense of this action.

20. Accordingly, Chain Bridge Bank, N.A., is entitled to an award of money damages, in an amount to be determined at trial, for all costs and attorney's fees reasonably incurred in the defense of this litigation.

COUNTERCLAIM II
(Declaratory Judgment Pursuant to 28 U.S.C. § 2201)

21. Chain Bridge Bank, N.A., realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

22. A current dispute exists between the parties concerning whether Section 3 of the Terms and Conditions, as incorporated in Blue Flame's Account Agreement, obligates Blue Flame to pay Chain Bridge Bank, N.A., all costs and reasonable attorney's fees incurred by Chain Bridge Bank, N.A., in the defense of this litigation.

23. Under Section 3 of the Terms and Conditions governing Blue Flame's account, Blue Flame is liable to Chain Bridge Bank, N.A., for all attorney's fees reasonably incurred by Chain Bridge Bank, N.A., in the defense of this litigation.

24. Accordingly, Chain Bridge Bank, N.A., is entitled to a declaration that Blue Flame is obligated to pay all costs and reasonable attorney's fees associated with the defense of this

litigation incurred to date and through the litigation's termination, including through any and all appeals.

PRAYER FOR RELIEF

WHEREFORE, Chain Bridge Bank, N.A., prays for judgment as follows:

(a) An award of all reasonable attorney's fees and costs incurred by Chain Bridge Bank, N.A., in defending against the claims brought by Blue Flame in this action;

(b) An order declaring that Blue Flame is obligated to pay Chain Bridge Bank, N.A., for all costs and reasonable attorney's fees associated with the defense of this litigation incurred to date and through the termination of this litigation, including through any and all appeals; and

(c) Any other relief permitted by law that the Court deems appropriate.

JURY DEMAND

Chain Bridge Bank, N.A., hereby demands trial of this matter by a jury for all counts on which trial by jury is available.

Date: September 29, 2020

Respectfully submitted,

/s/ Donald Burke

Gary A. Orseck (admitted *pro hac vice*)
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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