

**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

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

WHEREAS, Blue Flame Medical, LLC, Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger (collectively, the “Parties” and each individually, a “Party”) agree to the terms of this Stipulated Confidentiality Agreement and request that the Court enter the following Protective Order under Federal Rule of Civil Procedure 26(c) in order to protect confidential information obtained by the Parties in connection with this case.

Accordingly, it is hereby **ORDERED** that the Parties to this action, their respective officers, agents, servants, employees, and attorneys, any other person in active concert or participation with any of the foregoing, and all other persons with actual notice of this Order will adhere to the following terms:

1. With respect to “Discovery Material” (*i.e.*, information of any kind produced or disclosed in the course of discovery in this action) that a person has designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pursuant to this Order, no person subject to this Order may disclose such Confidential Discovery Material except as expressly permitted hereunder.

2 **CONFIDENTIAL DISCOVERY MATERIAL.** The Party or person producing or disclosing Discovery Material (the “Producing Party”) may designate as Confidential such material by placing on each page a “CONFIDENTIAL” label or notice. Testimony given at a deposition or other proceeding may be designated Confidential by an appropriate statement at the time the testimony is given or within ten (10) business days after such testimony. During the 10-day period following a deposition, all Parties will treat the entire deposition transcript as if it had been designated Confidential. No designation of Confidential shall be made unless counsel for the Producing Party believes in good faith that the Discovery Material contains private personal information, trade secrets, confidential commercial information, or other commercially sensitive information that is not available to the public relating to product development, business and marketing plans and research, company security matters, customer lists, financial data, sales data, production data, matters relating to mergers and acquisitions, data which touch upon the topic of price, and other confidential, proprietary and/or commercial matters, and information covered by confidentiality or non-disclosure agreements with third parties or internal procedures that is entitled to protection. The omission of any type of information from the preceding sentence does not imply that such information cannot qualify as Confidential Information, so long as the designating Party in good faith believes that it is confidential.

3 Where a Producing Party has designated Discovery Material as CONFIDENTIAL, other persons subject to this order may disclose such information only to the following persons:

- a. the Parties, in-house counsel and outside counsel for the Parties, including co-counsel and the legal associates, clerical, or other support staff or services of such

counsel or co-counsel assigned to assist such counsel in the preparation of the action;

- b. insurers, and counsel to the insurers;
- c. employees or agents of the Receiving Party (*i.e.*, a Party that receives Discovery Material from a Producing Party) whom counsel for such Party reasonably believes need to receive such information in connection with this action;
- d. the Court and Court personnel, as well as court reporters and their employees;
- e. witnesses or prospective witnesses to the extent reasonably deemed necessary for the preparation or giving of testimony or potential testimony regarding facts at issue; provided such person has first executed an Acknowledgement and Agreement to Be Bound in the form annexed as Exhibit A hereto;
- f. outside vendors or service providers (such as copy-service providers and document- management consultants) that counsel hire for this matter;
- g. any mediator that the Parties engage in this matter, provided such person has first executed an Acknowledgement and Agreement to Be Bound in the form annexed as Exhibit A hereto;
- h. as to any document, its author, its addressee, its cc, and any other person indicated on the face of the document as having received a copy; and
- i. any person a Party retains to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed an Acknowledgement and Agreement to Be Bound in the form annexed as Exhibit A hereto.

4. **HIGHLY CONFIDENTIAL DISCOVERY MATERIAL.** The Producing

Party may designate Discovery Material as “Highly Confidential” by placing on each page a “HIGHLY CONFIDENTIAL” label or notice. Testimony given at a deposition or other proceeding may be designated HIGHLY CONFIDENTIAL by an appropriate statement at the time the testimony is given or within ten (10) business days after such testimony. No designation of HIGHLY CONFIDENTIAL shall be made unless counsel for the Producing Party believes in good faith that, in addition to the requirements for designating a document Confidential, the information to be disclosed contains current confidential competitively sensitive information which, if known to the opposing Party or a third party, could enable that opposing Party or a third party to obtain a competitive business advantage, including: (a) proprietary business information which is unavailable to the public and not readily determinable from other sources and which might be of value to a competitor of the Party or might be detrimental to the Party if disclosed publicly; (b) highly sensitive financial information to include forecasts, plans, analyses, pricing data, or cost data; (c) third-party agreements and the terms thereof; or (d) such other documents, information, or material which contains confidential information that the Producing Party reasonably believes is of such nature and character that the unauthorized disclosure of such information is likely to irreparably injure the Producing Party.

5. Where a Producing Party has designated Discovery Material as HIGHLY CONFIDENTIAL, other persons subject to this Order may disclose such information only to the following persons:

- a. outside counsel for the Parties, including co-counsel and the legal associates, clerical or other support staff or services of such counsel or co-counsel assigned to assist such counsel in the preparation of the action;
- b. the Court and its personnel, as well as court reporters and their employees;

- c. outside vendors or service providers (such as copy-service providers and document-management consultants) that outside counsel hire for this matter;
- d. any mediator that the Parties engage in this matter, provided such person has first executed an Acknowledgement and Agreement to Be Bound in the form annexed as Exhibit A hereto;
- e. as to any document, its author, its addressee, its cc, and any other person indicated on the face of the document as having received a copy; and
- f. any person a Party retains to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed an Acknowledgement and Agreement to Be Bound in the form annexed as Exhibit A hereto.

6. Before disclosing any Discovery Material to any person referred to in subparagraphs 3(e), 3(g), 3(i), 5(d), or 5(f) above, counsel must provide a copy of this Order to such person, who must sign an Acknowledgement and Agreement to Be Bound in the form annexed as Exhibit A hereto stating that he or she has read this Order and agrees to be bound by its terms. Said counsel must retain each signed Acknowledgement and Agreement to Be Bound and hold it in escrow.

7. No Discovery Material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL, or excerpts thereof, shall be filed in the public record of this action by a Receiving Party, unless any of the following occur: (1) the designating Party has withdrawn the designation, in writing; or (2) the Court has ruled that the document or information is not entitled to the challenged designation. **Otherwise, any document or thing containing or embodying Confidential or Highly Confidential Discovery Material that is to be filed in this**

proceeding shall be filed under seal in accordance with Local Civil Rule 5. The Parties agree to act in good faith and cooperate with one another to expedite compliance with the Local Civil Rules for filing Confidential Discovery Material and excerpts thereof.

8. If at any time during the pendency of this action a Producing Party realizes that it should have designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL some portion(s) of Discovery Material that it previously produced without limitation or under a lower confidentiality designation, the Producing Party may so designate such material by notifying all Parties in writing. Thereafter, all persons subject to this Order will treat such designated portion(s) of the Discovery Material as so designated. In addition, the Producing Party shall provide each other Party with replacement versions of such Discovery Material that bears the appropriate label or notice within two business days of providing such notice.

9. Nothing contained in this Order will be construed as: (a) a waiver by a Party or person of its right to object to any discovery request; (b) a waiver of any privilege or protection from disclosure; or (c) an admission or ruling regarding the admissibility of any document, testimony, or other evidence. Each Party expressly reserves all such objections.

10. This Order binds the Parties and certain others to treat as CONFIDENTIAL or HIGHLY CONFIDENTIAL any Discovery Materials so designated. The Court has not, however, made any finding regarding the confidentiality of any Discovery Materials, and retains full discretion to determine whether to afford confidential treatment to any Discovery Material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL hereunder.

11. Any Party who requests additional limits on disclosure may, at any time during the pendency of this action, serve upon counsel for the recipient Parties a written notice stating with particularity the grounds of the request. If the Parties cannot reach agreement promptly,

the Party seeking additional limits on disclosure will address the dispute to the Court.

12. Recipients of designated Discovery Material under this Order may use such material solely for the prosecution and defense of this action, any related case, and any appeals thereto, and not for any other purpose or in any other litigation proceeding. Nothing contained in this Order, however, will affect or restrict the rights of any Party with respect to its own documents or information produced in this action.

13. Nothing in this Order will prevent any Party from producing any designated Discovery Material in its possession in response to a lawful subpoena or other compulsory process, or if required to produce by law or by any government agency having jurisdiction, provided that such Party gives written notice to the Producing Party as soon as reasonably practicable and, if permitted by the time allowed under the request, at least 10 days before any disclosure. Upon receiving such notice, the Producing Party will bear the burden to oppose compliance with the subpoena, other compulsory process, or other legal notice if the Producing Party deems it appropriate to do so.

14. Each person who has access to Discovery Material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL pursuant to this Order must take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

15. Any inadvertent disclosure of documents or other Discovery Material that is subject to a claim of privilege as to the Receiving Party (whether protected under the attorney-client privilege, attorney work product doctrine, or any other recognized privilege or protection) shall not constitute a waiver of that privilege or protection either (a) generally, (b) with respect to the inadvertently disclosed document or other Discovery Material; or (c) with respect to the subject matter of the inadvertently disclosed document or other Discovery Material.

- a. If the Producing Party discovers that a document or other Discovery Material subject to a claim of privilege has been inadvertently produced, it shall notify the Receiving Party in writing within ten business days of discovering such inadvertent protection. The Receiving Party shall (a) within five business days, return the original produced document or other Discovery Material, destroy all electronic and hard copies thereof, and confirm to the Producing Party that it has done so; and (b) not review, use, or disclose the document or other Discovery Material unless and until the privilege or protection claim has been resolved in a manner that permits such use or disclosure; *provided, however*, that if the Receiving Party intends to raise the privilege issue with the court, it may retain and use one sequestered copy of the information solely for this purpose, which must be returned or destroyed in the event that the Court upholds the claim of privilege. If before receiving notice from the Producing Party of an inadvertent production under this Paragraph 16(a), the Receiving Party provided the specified document or other Discovery Material covered by the notice to any individual entity (as authorized by this Order), the Receiving Party shall take reasonable steps to retrieve the document or other Discovery Material.
- b. If a Receiving Party discovers that a document or other Discovery Material produced by the Producing Party appears to be subject to a legally recognizable privilege or protection that may be asserted against the Receiving Party, the Receiving Party shall (a) refrain from reviewing the document or other Discovery Material any more than necessary to determine that it appears to be privileged or protected; (b) immediately notify the Producing Party in writing that it has

produced a document or information that appears to be protected by a legally recognizable privilege; (c) within five business days of confirmation by the Disclosing Party that the disclosure was inadvertent, return the original documents or other Discovery Material, destroy all electronic and hard copies thereof, and confirm to the Producing Party that it has done so; and (d) not use or disclose the specified document or other Discovery Material unless and until the privilege or protection claim has been resolved in a manner that permits such use or disclosure; *provided, however*, that if the Receiving Party intends to raise the privilege issue with the court, it may retain and use one sequestered copy of the information solely for this purpose, which must be returned or destroyed in the event that the Court upholds the claim of privilege.

- c. Nothing herein shall waive or otherwise affect the Receiving Party's right to challenge the Producing Party's claim that the Discovery Material is privileged or protected or was mistakenly or inadvertently produced; *provided, however*, that the Receiving Party may not assert the fact or circumstances of a mistaken or inadvertent production of the Discovery Material as a ground for concluding that any applicable privilege or protection has been waived. All Discovery Material subject to a claim of privilege as described in this section shall be designated and treated as privileged until the Court rules on the matter.

16. If the Receiving Party concludes that any document, testimony, or other Discovery Material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL by another Party does not qualify for that level of designation, the non-designating Party shall notify the designating Party in a writing transmitted by email to the designating Party's counsel. Such

notification shall specifically identify each document and the reason(s) the Receiving Party contends it has been inappropriately designated. The designating Party must, within 7 calendar days, respond to the objecting Party by either agreeing to change the confidentiality designation or setting forth its reasons for maintaining the designation. If the designating Party declines to change the designation, then either Party may immediately seek relief from the Court. The designating Party shall bear the burden of justifying the designation of the disputed material. If relief from the Court is sought, the protection afforded by this Protective Order shall continue until a decision on the motion is made by the Court. If neither Party seeks relief, however, then the prior designation shall continue as to the disputed material.

17. Within 60 days of the final disposition of this action—including all appeals—all recipients of designated Discovery Material must either return all such material—including all copies thereof—to the Producing Party or destroy such material—including all copies thereof. In either event, by the 60-day deadline the recipient must certify its return or destruction by submitting a written certification to the Producing Party that affirms that it has not retained any copies, abstracts, compilations, summaries, or other forms of reproducing or capturing any of the designated Discovery Material.

- a. Provided, however, the attorneys that the Parties have retained for this action may retain an archival copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, or attorney work product, even if such materials contain designated Discovery Material. Any such archival copies that contain or constitute designated Discovery Material remain subject to this Order.
- b. Provided further that no Party shall be required to destroy electronically archived copies of such material made for backup purposes (whether such documents are

in original form or not). Rather, it shall suffice that such archived backup copies are destroyed upon the normal expiration of backup files (and maintained in confidence in the interim).

18. This Order will survive the termination of the litigation and will continue to be binding upon all persons subject to this Order to whom designated Discovery Material is produced or disclosed.

19. The Court will retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

IT IS SO ORDERED

Date: October 7, 2020

/s/ Ivan D. Davis

Hon. Ivan D. Davis
United States Magistrate Judge

SO STIPULATED AND AGREED

Dated: October 5, 2020

/s/ Peter H. White

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Counsel for Defendants

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was entered by the United States District Court for the Eastern District of Virginia (the "Court") on _____, 2020 in the civil action captioned *Blue Flame Medical, LLC v. Chain Bridge Bank, N.A. et al.*, No. 1:20-cv-00658. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the Court for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby agree to accept service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order at the following e-mail address:

_____.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]