

**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.

STIPULATED AGREEMENT REGARDING REMOTE DEPOSITIONS

WHEREAS, the COVID-19 pandemic has made conducting traditional in-person depositions difficult and inadvisable given health concerns and associated restrictions that have been put in place around the country;

WHEREAS, it is uncertain when these health concerns will subside and when these associated restrictions will be lifted;

WHEREAS, the Parties have agreed to begin conducting depositions on or after January 11, 2021;

WHEREAS, pursuant to Rule 29(a) of the Federal Rules of Civil Procedure, the Parties may stipulate that “a deposition may be taken before any person, at any time or place, on any

notice, and in the manner specified—in which event it may be used in the same way as any other deposition”;

WHEREAS, pursuant to Rule 30(b)(4) of the Federal Rules of Civil Procedure, the Parties “may stipulate ... that a deposition be taken by telephone or other remote means”;

WHEREAS, the Parties have agreed that it will be necessary to conduct certain depositions remotely (the “Remote Depositions”), have agreed upon the means by which they will conduct the Remote Depositions, and wish to memorialize their agreement;

NOW, THEREFORE, it is **ORDERED** that the Remote Depositions shall proceed subject to the following rules and procedures, which have been agreed upon by the Parties:

DEFINITIONS

1. “Court Reporter” shall mean the individual designated by the Court Reporting Agency to administer and record the Remote Deposition.
2. “Court Reporting Agency” shall mean any entity agreed to and designated by the Parties to select a Court Reporter, Videographer, and Operator for each Remote Deposition.
3. “Defending Attorney” shall mean the attorney representing the Witness at the Remote Deposition. If the Witness is a current or former employee of one of the Parties, any attorney appearing on behalf of that Party shall also be considered a Defending Attorney.
4. “Lead Attorney” shall mean the attorney designated pursuant to Paragraph 29, below.
5. “Noticing Attorney” shall mean the attorney whose signature is affixed to the deposition notice corresponding to the Remote Deposition to which these rules and procedures apply, and/or any individual affiliated with that attorney’s law firm and authorized by that law firm to communicate about matters relating to the Remote Deposition.

6. “Operator” shall mean the individual designated by the Court Reporting Agency to provide remote technological support to all Participants during the Remote Deposition.

7. “Participant” shall mean the Witness, the Questioning Attorney, the Defending Attorney, other attorneys or client representatives appearing on behalf of one of the Parties, paralegals or other individuals providing support to the attorneys, the Court Reporter, the Videographer, and the Operator.

8. “Parties” shall mean Blue Flame Medical LLC, Chain Bridge Bank, N.A., John J. Brough, David M. Evinger, and JPMorgan Chase Bank, N.A.

9. “Questioning Attorney” shall mean the attorney who questions the Witness on the record during the Remote Deposition for the purpose of eliciting sworn testimony.

10. “Remote Deposition Video Platform” shall mean any videoconferencing service platforms agreed to and designated by the Parties for hosting the Remote Deposition.

11. “Remote Deposition Exhibit Platform” shall mean any software application agreed to and designated by the Parties for displaying exhibits during the Remote Deposition.

12. “Videographer” shall mean the individual designated by the Court Reporting Agency to record the Remote Deposition by videographic means.

13. “Witness” shall mean the individual who gives sworn testimony on the record during the Remote Deposition.

AGREEMENT TO CONDUCT REMOTE DEPOSITIONS

14. It is presumed that all depositions in this action shall be Remote Depositions. Any Party may notice a Remote Deposition by stating its intention to take a deposition by remote means in connection with scheduling a deposition by oral examination pursuant to Federal Rule of Civil Procedure 30. If any Party or non-party Witness objects to the taking of the deposition

by remote means, it must notify the Noticing Attorney, in writing, of the objection within five days of the Noticing Attorney's notice of intent to take a Remote Deposition. The Parties agree to promptly confer in good faith with each other and, if applicable, the non-party Witness, to attempt to resolve any objections pursuant to this Paragraph. If the objection is not resolved, the person objecting may, pursuant to the Court's Rules, schedule a telephone conference with the Court in an attempt to resolve the dispute, and thereafter if necessary file a motion for a protective order or a motion to quash with the Court seeking an order that a deposition may not be taken by the means originally noticed. The deposition may not take place until the Court resolves such motion.

15. Except as provided in Paragraph 14 above, the Parties hereby expressly waive all objections to any Remote Deposition, or to the use of any Remote Deposition testimony in any submissions to the Court, including at hearing or trial, based on the fact that the deposition was taken using remote means.

COURT REPORTER, VIDEOGRAPHER, AND OPERATOR

16. Pursuant to Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure, Remote Depositions will be conducted before a Court Reporter who shall have all of the authority of an officer appointed or authorized under Rule 28 of the Federal Rules of Civil Procedure with respect to administering Remote Depositions.

17. The Court Reporter may administer the oath or affirmation to the Witness through the Remote Deposition Video Platform from a different physical location than the Witness, and such oath or affirmation shall be deemed valid and effective pursuant to applicable law to the same extent as if the oath or affirmation had been delivered in the physical presence of the Witness.

18. The Videographer shall record the Remote Deposition at the direction of the Court Reporter and shall not record the Remote Deposition during times when the Court Reporter suspends it. To the extent feasible, only video of the Witness shall be recorded unless the Noticing Attorney requests that video of the Questioning Attorney and/or published exhibits also be recorded. Audio of all Participants shall be recorded. Such recording shall be deemed a record of the Remote Deposition to the same extent as if the recording had been made in the physical presence of the Witness. For purposes of Rule 30(c)(1) of the Federal Rules of Civil Procedure, the Videographer shall be considered to be acting in the presence and under the direction of the Court Reporter, so long as the Videographer is able to hear and take direction from the Court Reporter, even though the Videographer may be in a different physical location than the Court Reporter.

19. The transcript of each Remote Deposition shall identify all individuals attending the Remote Deposition, including the Witness, the Questioning Attorney, the Defending Attorney, any Participants, the Court Reporter, the Videographer, the Operators, and any other person connecting to the Remote Deposition Video Platform for any period of time during the Remote Deposition.

20. Any Party may ask the Court Reporting Agency to designate an Operator to assist the Participants with any technical issues that may arise during the Remote Deposition.

REMOTE DEPOSITION PLATFORMS

21. Remote Depositions shall be conducted using the Remote Deposition Video and Exhibit Platforms.

22. In order to facilitate reliable use of the Remote Deposition Video and Exhibit Platforms, each attorney shall be responsible for acquiring, maintaining, and utilizing computer, audio, and video equipment that meets the minimum requirements set forth in Appendix A.

23. At least seven days prior to the Remote Deposition, the Defending Attorney shall confirm whether the Witness has access to the equipment set forth in Appendix A. If the Witness has no Defending Attorney, the Noticing Attorney shall confirm whether the Witness has access to such equipment.

24. At least one day prior to the commencement of each Remote Deposition, the Participants shall access the Remote Deposition Video and Exhibit Platforms and ensure that it and all Participants' hardware, software, and internet connections are functioning properly, including that any required audio and video functionalities are functioning properly.

25. The Remote Deposition shall not commence until the Witness and an attorney for each of the Parties confirm that they each have appropriate access to the Remote Deposition Video and Exhibit Platforms.

26. All private chat features on the Remote Deposition Video and Exhibit Platforms shall be disabled.

NOTICE

27. The Noticing Attorney shall be responsible for arranging the taking of a Remote Deposition with the Operator, providing the Operator with a copy of this Stipulated Order at least 48 hours in advance of the deposition.

28. For each Remote Deposition, at least three calendar days prior to the Remote Deposition, the Parties' attorneys shall exchange the names and e-mail addresses of any Participants other than the Witness. For those Participants who seek to appear on the record, the

Noticing Attorney shall provide their information to the Court Reporter in advance of the Remote Deposition in lieu of an oral roll call on the record.

29. The day before the Remote Deposition is taken, all Parties shall identify a Lead Attorney for the particular deposition.

30. The Noticing Attorney shall provide, or shall cause the Remote Deposition Video and Exhibit Platform(s) to provide, to the Defending Attorney (or Witness, if there is no Defending Attorney) all details necessary to gain access to each Remote Deposition, including but not limited to any web addresses, login credentials, and hardware and software requirements at least 48 hours prior to the date and time at which the Remote Deposition is scheduled to commence. Any Participant who intends be in the same room as the Witness during a Remote Deposition shall notify the Noticing Attorney and the Defending Attorney at least two calendar days prior to the Remote Deposition.

CONDUCT OF THE REMOTE DEPOSITIONS

31. The Witness, the Questioning Attorney, and the Defending Attorney shall keep their cameras turned on and unobstructed while the Remote Deposition is being conducted. All other Participants shall keep their cameras off at all times, except as otherwise directed by the Court Reporter. The Court Reporter and Videographer may also appear on camera as appropriate to facilitate the Remote Deposition. If the Witness is physically appearing in the same room with any Participant, separate video cameras shall show the Witness and the Participant. It shall be the responsibility of any Participant in the same room as the Witness to use physical distance, directional microphones, and/or other means to ensure that the Witness's testimony does not suffer from echoes or feedback.

32. The Witness shall use the audio through his or her computer or tablet (as applicable), and shall also have a phone connection available in case the device's audio does not function properly.

33. Participants shall take care to minimize background noise during the conduct of the Remote Deposition that may interrupt the Remote Deposition. Participants other than the Witness, the Questioning Attorney, and the Defending Attorney shall place their microphones on mute except during times that they desire to speak on the record. Participants shall make best efforts to refrain from speaking at the same time as other Participants.

34. In order to minimize background noise, the Operator may, at his or her discretion, or at the direction of the Court Reporter, mute individual Participants' lines when those Participants are not speaking, except that in no event shall the Court Reporter's, Questioning Attorney's, Witness's, or Defending Attorney's line be muted while the Remote Deposition is being conducted. Participants who have been muted shall retain the ability to unmute themselves during times when they desire to speak on the record.

35. The Questioning Attorney shall use the Remote Deposition Exhibit Platform to mark and publish all exhibits that are used during the Remote Deposition. The Questioning Attorney shall confirm that the Witness and Defending Attorney can access each published exhibit prior to questioning the Witness about that exhibit. Exhibits marked and shown to the Witness using the Remote Deposition Exhibit Platform shall be attached to the deposition record to the same extent as if the exhibits were physically marked and shown to the Witness. If, during the course of questioning, the Witness or the Defending Attorney wishes to review a document that is being displayed, the Questioning Attorney shall display all portions of the document reasonably requested by the Witness or Defending Attorney before requiring an answer to the

question. If the Questioning Attorney believes that the Witness or Defending Attorney is taking more than a reasonable amount of time to review a document and intends to go off the record such that the time for review is not counted against any time limit, the Questioning Attorney shall so state, and give other counsel an opportunity to object.

36. Except as otherwise provided in this Stipulated Order, no Participant shall permit anyone who is not a Participant to hear or view the Remote Deposition while it is being conducted.

37. If a technical issue prevents any Participant from being able to see or hear one or more of the other Participants clearly or to access published exhibits, the Participant encountering such technical issue shall promptly notify the other Participants. If the Participant encountering such technical issue is the Witness, a Lead Attorney, the Questioning Attorney, Defending Attorney, Court Reporter, or Videographer, the technical issues shall be noted on the record as soon as any Participant becomes aware of that issue, and the Court Reporter shall suspend the Remote Deposition until the technical issue is resolved. If those technical issues cannot be resolved, then the deposition shall be suspended until the concerns are resolved by the Court or through other means. If the Participant encountering such technical issue is not the Witness, a Lead Attorney, the Questioning Attorney, Defending Attorney, Court Reporter, or Videographer, the Court Reporter shall pause the Remote Deposition to provide an opportunity to promptly resolve the technical issue. If the Participant is unable to promptly resolve the technical issue, the Remote Deposition may proceed, provided, however, that the Participant may later make objections he or she could have made during the Remote Deposition had the technical issue not occurred, either by agreement of the Parties, which shall not unreasonably be denied, or by order of the Court.

38. Any portion of the deposition that has been transcribed while a Lead Attorney, Questioning Attorney, or Defending Attorney is absent or experiencing technical difficulties as set forth in Paragraph 37 must be re-read upon the resolution of the technical difficulty and that Lead Attorney, Questioning Attorney, or Defending Attorney must be given an opportunity to object to any questions or answers that occurred in his or her absence.

39. Any time spent addressing technical issues will count as “off the record” time and shall not count against any time limit, provided that and starting when a Lead Attorney, Questioning Attorney, or Defending Attorney specifies it is “off the record.” If a technical issue prevents the Lead Attorney, Questioning Attorney, or Defending Attorney from speaking to other Participants, the Remote Deposition shall be deemed “off the record” from that time.

40. No Participant shall communicate or attempt to communicate with the Witness while the Remote Deposition is being conducted through any means other than the Remote Deposition Video and Exhibit Platforms, except that the Videographer or Operator may communicate with the Witness to resolve technical issues through means other than the Remote Deposition Video and Exhibit Platforms. Further, no Defending Attorney shall initiate a private conference with the Witness while a question is pending, except for the purpose of determining whether a privilege should be asserted, in which case the Defending Attorney must indicate he or she is doing so in advance. Notwithstanding this provision, subject to all otherwise applicable rules, the Defending Attorney may communicate privately with the Witness by any means any time during breaks in the Remote Deposition or if the Court Reporter otherwise suspends the Remote Deposition.

41. The Witness may not use text, e-mail, phone, or any means of communication other than the Remote Deposition Video and Exhibit Platforms during the deposition, other than

during breaks. The Witness may not view any web sites or view any documents, including personal notes, other than during breaks, except for those presented to the Witness by the Questioning Attorney during the course of that Questioning Attorney's examination. During the taking of the deposition, the Witness will not view any document or material unless the document or materials are first identified on the record. All Parties stipulate that an objection for one shall be deemed an objection for all.

42. The Parties shall meet and confer regarding the timing for all Remote Depositions in different time zones.

43. The Parties shall meet and confer regarding whether any additional or different procedures are necessitated by the potential use of Confidential or Highly Confidential material, as defined in the Amended Stipulated Confidential Agreement and Protective Order (Dkt. 68), in a Remote Deposition. Such meet and confer shall take place on a date and time agreed to by the Parties. To the extent a Questioning Attorney anticipates seeking testimony from a Witness regarding Confidential or Highly Confidential material prior to such meet and confer, the Questioning Attorney shall provide notice to the Defending Attorney at least five calendar days prior to the Remote Deposition.

44. Any Defending Attorney who does not represent one of the Parties and who intends to represent a Witness during a Remote Deposition shall agree to be bound by this Stipulated Order and shall memorialize that agreement by executing a copy of the Acknowledgment and Agreement To Be Bound attached hereto as Appendix B.

45. The Parties will use reasonable efforts to cause employee Witnesses, former employee Witnesses, and non-Party Witnesses to agree to the protocols set forth herein for

Remote Depositions, however, insofar as any particular Witness cannot or will not agree, the Parties will discuss in good faith alternative protocols requested or required by such Witness.

46. The Parties may modify these procedures as appropriate by mutual agreement and reserve their rights to seek reasonable modifications of these procedures as appropriate in individual instances.

47. The Parties agree that no Witness shall be required to have their signing of the errata sheet notarized to be deemed effective.

48. The Parties recognize that disputes regarding this Stipulated Order and other issues regarding Remote Depositions may arise from time to time and agree to try to resolve those disputes in good faith before addressing any issue with the Court.

Dated: January 5, 2021

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So Ordered

/s/ *LMB*

Leonie M. Brinkema
United States District Judge 1/6/21

APPENDIX A

MINIMUM TECHNICAL REQUIREMENTS FOR REMOTE DEPOSITIONS

1. Witness, Defending Attorney and Questioning Attorney
 - a. Computer with an internet connection (connected via ethernet if available). In the alternative, the Witness may use a tablet with an internet connection.
 - b. Internet connection with a minimum speed for both downloads and uploads of 5 Megabits per second (“Mbps”).
 - c. Integrated or USB webcam.
 - d. USB microphone, headset, or similar device.
 - e. Telephone (landline if available).
2. Other Participants
 - a. Computer or tablet with an internet connection.
 - b. Internet connection with a minimum speed for both downloads and uploads of 1.5 Mbps.
 - c. Telephone.

APPENDIX B

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

BLUE FLAME MEDICAL LLC,

Plaintiff,

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DAVID M. EVINGER,

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Third-Party Defendant.

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY THE STIPULATED
AGREEMENT REGARDING REMOTE DEPOSITIONS**

The undersigned hereby acknowledges that [print or type full name:]

_____ has read the Stipulated Agreement Regarding Remote
Depositions in the above-captioned Action, that (s)he understands the terms thereof and that
(s)he agrees to be bound by such terms.

Signature

Date