

**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

CHAIN BRIDGE BANK, N.A.,

Third-Party Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Third-Party Defendant.

**CHAIN BRIDGE BANK, N.A., JOHN J. BROUGH, AND
DAVID M. EVINGER'S MEMORANDUM IN SUPPORT OF
MOTIONS FOR LEAVE TO FILE EXHIBIT UNDER SEAL**

Defendant and Third-Party Plaintiff Chain Bridge Bank, N.A. (Chain Bridge) and Defendants John J. Brough and David M. Evinger (together, Defendants) respectfully submit this memorandum in response to this Court's order of May 7, 2021 (Dkt. No. 133) and in support of (i) the *Motion to File Audio Recording Supporting Motion for Summary Judgment Under Provisional Seal* (Dkt. No. 115) filed by Third-Party Defendant JPMorgan Chase Bank, N.A. (JPMorgan) and (ii) the *Motion for Leave to File Document Under Seal for Good Cause* (Dkt. No. 125) filed by Plaintiff Blue Flame Medical LLC (Blue Flame).

1. On May 6, 2021, the parties filed cross-motions for summary judgment. In connection with those filings, JPMorgan moved for leave to file under seal Exhibit 5 to the *Declaration of Meredith K. Loretta* (Dkt. No. 113-1) submitted in support of JPMorgan's motion for summary judgment, and Blue Flame moved for leave to file under seal Exhibit 30 to the *Affirmation of Peter H. White* (Dkt. No. 132) submitted in support of Blue Flame's motion for summary judgment. Those two exhibits reproduce the same audio recording of a March 25, 2020, phone call between two Chain Bridge employees, which Defendants produced in discovery with the Bates label CBB00002797 and designated as "Confidential" under the terms of the Protective Order entered in this case. The memoranda in support of these motions to seal explain that JPMorgan's and Blue Flame's requests for sealing are based on Defendants' designation of the audio recording as Confidential under the Protective Order. Dkt. No. 116, Dkt. No. 126.

On May 7, 2021, the Court directed Defendants to file a response justifying their request for the exhibits to remain under seal. Dkt. No. 133.

2. Defendants submit that sealing of the exhibits is warranted because the audio recording contains a brief reference to the identity of a non-party Chain Bridge customer and that customer's use of a particular financial product (namely, an "insured cash sweep" account). The identity of that non-party customer is not relevant to any of the issues that are presented for decision by the parties' summary judgment motions, and that customer has a "justifiable expectation of privacy that [its] name[] and financial records not be revealed to the public." *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 477 (6th Cir. 1983); *see also* ; *SunTrust Mortg., Inc. v. North Shore Bank*, No. 3:14-CV-385, 2015 WL 12778624, at *1 (E.D. Va. Jan. 22, 2015) (sealing documents that "would publicly disclose the personal information of a [non-party] mortgage borrower . . . , which is private information not publicly available, and which is protected by federal banking privacy

law”). Those “interests in privacy are sufficiently compelling to justify non-disclosure” of a non-party customer’s identity in this context. *In re Knoxville News-Sentinel Co.*, 723 F.2d at 477.

Defendants further submit that redacted versions of the exhibits should be filed on the public docket. In particular, Defendants propose applying a brief, one-second redaction to the audio recording (at timestamp 3:36-3:37) in order to avoid disclosure of the non-party customer’s identity, while otherwise making the exhibits’ content available to the public. Because the identity of the referenced non-party customer is irrelevant to the issues presented for decision in this case, the filing of redacted versions would appropriately balance the public’s interest in access to court records with the privacy interests of the non-party customer. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (holding that courts should “consider less drastic alternatives” to complete sealing). Defendants have shared the proposed redacted version of the audio recording with counsel for JPMorgan and Blue Flame, and we are informed that neither JPMorgan nor Blue Flame objects to the filing of the proposed redacted version. Defendants therefore request that the Court authorize filing of the proposed redacted version of the exhibits on compact disc. *See* Dkt. No. 111 (authorizing submission of audio recordings on compact disc).

* * * * *

Exhibit 5 to the *Declaration of Meredith K. Loretta* and Exhibit 30 to the *Affirmation of Peter H. White* should remain under seal, and the Court should authorize filing of redacted versions of those exhibits as proposed above. A proposed order reflecting the requested relief is attached hereto.

Date: May 13, 2021

Respectfully submitted,

/s/ Donald Burke

Donald Burke (VA Bar No. 76550)

ROBBINS, RUSSELL, ENGLERT, ORSECK
& UNTEREINER LLP

2000 K Street, NW, 4th Floor

Washington, D.C. 20006

Tel: (202) 775-4500

Fax: (202) 775-4510

dburke@robbinsrussell.com

*Counsel for Defendants and Third-Party
Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2021, 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:

Peter H. White, Esq. (VA Bar No. 32310)
SCHULTE ROTH & ZABEL LLP
901 Fifteenth Street, NW, Suite 800
Washington, DC 20005
Phone: (202) 729-7476
Fax: (202) 730-4520
Email: peter.white@srz.com
Counsel for Plaintiff

Meredith K. Loretta, Esq. (VA Bar No. 92369)
WILMER CUTLER PICKERING HALE & DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
Phone: (212) 663-6981
Email: meredith.loretta@wilmerhale.com
Counsel for Third-Party Defendant

/s/ Donald Burke
Donald Burke (VA Bar No. 76550)
ROBBINS, RUSSELL, ENGLERT, ORSECK
& UNTEREINER LLP
2000 K Street, NW, 4th Floor
Washington, D.C. 20006
Tel: (202) 775-4500
Fax: (202) 775-4510
dburke@robbinsrussell.com
Counsel for Defendants and Third-Party Plaintiff