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 OPPOSITION TO CHAIN BRIDGE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Indemnification under U.C.C. § 4A-211(f) is not meant to protect a party from its self-interested decision-making. Accordingly, the statute only provides for indemnification where the sending bank seeks to reverse a wire and the receiving bank in turn agrees—not when the receiving bank (in this case, Chain Bridge) seeks and obtains a cancellation from the sending bank for its own self-interested reasons, which is what happened here. That straightforward conclusion accords with the purpose of indemnification, which is premised on the principle that a party should be responsible for the consequences of its actions. Chain Bridge wants to avoid the consequences of its actions, however, and so it asks the Court to adopt a contrary rule. But Chain Bridge is wrong on the law and presents an incomplete version of the facts. Its motion for summary judgment should be denied.

As JPMC detailed in its motion for summary judgment, Chain Bridge—in possession of the $456 million wired for the benefit of its client—explicitly requested and directed the wire's return. It did so because of its own serious concerns about its client, its capital requirements, and its obligations under the Bank Secrecy Act. The record is clear that, from the moment Chain Bridge learned about the wire, the bank had no intention of ever allowing the funds to go to Blue Flame. Chain Bridge immediately placed the funds on hold and ceased all communication with its client so that it could choreograph the return of the wire uninterrupted. Chain Bridge then pressed for the wire's return: first with California and then with JPMC—expressly requesting that JPMC reverse the wire, just as Chain Bridge's policy required.

Chain Bridge cannot dispute these facts, so it simply avoids them and omits them from its statement of facts. And, while avoiding mention of its own acts, Chain Bridge's central refrain is that its motivations are irrelevant. According to Chain Bridge, that is because § 4A-211 does not contemplate a wire's cancellation by the receiving bank; only a sending bank, Chain Bridge says, can cancel a wire. That argument is irrelevant and wrong.

The question here is about indemnification, not cancellation: specifically, whether Chain Bridge satisfies the elements of § 4A-211(f). And under § 4A-211(f), indemnification only applies "if the receiving bank … agrees to cancellation … of the order by the sender." Where the situation is the reverse—a cancellation requested and directed by a receiving bank, not the sender—§ 4A-211(f) does not apply. Whether and how a receiving bank or a sending bank can cancel a wire, effectively or ineffectively, is beside the point. But in any event, Article 4A recognizes that receiving banks, just like senders, can effect cancellations.

Chain Bridge's indemnification claim fails for several additional, independent reasons. Chain Bridge agrees with JPMC, on the law, that an "agreement" between banks can override an indemnification obligation under § 4A-211(f). But it then says, on the facts, that there "was no agreement." The record shows otherwise. As reflected by the parties' discussions and course of conduct, there was an agreement between Chain Bridge and JPMC to return the wire, and it did not include any indemnification obligation. An internal Chain Bridge phone call—nowhere mentioned in Chain Bridge's brief—underscores the point. In response to an employee's suggestion that Chain Bridge obtain an indemnity letter from JPMC, Chain Bridge's President and CEO waved the concern away: "Just return [the wire] to the same place it came from," and "[d]on't worry about [the indemnity letter]. … [T]his is what we have to do." The call confirms Chain Bridge's contemporaneous understanding that JPMC had not expressly or impliedly promised any indemnification, and that Chain Bridge would return the wire nonetheless. That understanding was correct, and it controls here.

Chain Bridge also agrees with JPMC, on the law, that causation is a required element for indemnification, meaning that any "loss and expenses" for which Chain Bridge seeks indemnification must have been caused by JPMC's conduct. But it ignores the undisputed facts that make clear that Chain Bridge had no intention of ever allowing the funds to make their way to Blue Flame. Indeed, Chain Bridge's policy required that it return the wire, and Chain Bridge closed Blue Flame's accounts and severed all ties with its client on the same day it returned the wire. Chain Bridge cannot now credibly say that it would have paid Blue Flame; indeed, Chain Bridge told California the opposite—that it "would be happy to return the wire."

Chain Bridge's unjust-enrichment claim fails for the elemental reason that Chain Bridge did not confer any benefit on JPMC. Instead of defending the claim it asserted, Chain Bridge seeks to amend its complaint through its brief. That tack is impermissible, and the newly asserted payment-by-mistake claim is in any event meritless for multiple reasons, including that JPMC returned all the funds to California.

Finally, Chain Bridge's motion should be denied because it failed to address, let alone refute, JPMC's affirmative defense of equitable estoppel, which bars Chain Bridge's recovery.

The parties are before the Court on cross motions for summary judgment. For the reasons set forth in JPMC's opening brief, JPMC is entitled to judgment on Chain Bridge's third-party claims. In the event the Court disagrees, then the correct result is to proceed to trial. At very best for Chain Bridge, there are substantial questions about its conduct—including whether it independently caused Blue Flame's damages (if any) on its statutory claims—that preclude summary judgment in Chain Bridge's favor.

RESPONSE TO CHAIN BRIDGE'S STATEMENT OF UNDISPUTED FACTS

As the Court is aware, the parties simultaneously moved for summary judgment. *See* JPMC Mem. in Support of Mot. for Summ. J. (JPMC MSJ) (Dkt. 113); Chain Bridge Mem. in

Supp. of Mot. for Summ J. (CB MSJ) (Dkt. 123). As JPMC set forth in its accompanying Statement of Undisputed Facts (JPMC SUF) (Dkt. 113 at 3-12), incorporated by reference here, the record shows that Chain Bridge sought and obtained the wire's cancellation for its own reasons. Thus, Chain Bridge expressly requested the wire's reversal, and directed that reversal through its own decisive, affirmative steps. JPMC SUF ¶¶ 1-47. Moreover, Chain Bridge did so without any understanding or expectation that it would be indemnified by JPMC. *Id.* ¶¶ 48-52. Indeed, the parties agreed otherwise through their communications and course of conduct, and, on an internal Chain Bridge phone call, the bank's highest two executive officers disclaimed the need for JPMC to indemnify Chain Bridge. *Id.* Chain Bridge then severed its relationship with Blue Flame on the very day the wire was reversed, ceasing communication with Blue Flame and closing all of its accounts. *Id.* ¶¶ 53-59.

Chain Bridge's Statement of Undisputed Facts casts no doubt on any of that. Chain Bridge nonetheless paints an incomplete picture through significant omissions—including omitting any reference to the internal Chain Bridge phone call about indemnification—and introduces various inaccuracies. Thus, under Local Civil Rule 56(B), JPMC responds to the specific paragraphs in Chain Bridge's Statement as follows:

1-6. Undisputed.

7. *Disputed*: This statement is incomplete because it omits the facts showing that Chain Bridge developed and acted on its own concerns about the wire before any interactions with JPMC. Before speaking a word to JPMC, Chain Bridge employees up to the highest level of the bank—including the President (David Evinger), Chief Executive Officer (John Brough), Chairman of the Board of Directors (Peter Fitzgerald), and Chief Financial Officer (Joanna Williamson):

- were involved in how to deal with the wire (*see* Dkt. 113-5, CBB00000761 at 761; Dkt 113-6, CBB00002797; *see also* JPMC SUF ¶ 3);
- expressed concerns that the wire was a "scam" (*see* Dkt. 113-5, CBB00000761 at 761; Dkt. 113-7, CBB00002798 at 8:23-8:49; Dkt. 113-10, Evinger Dep. 205:21-206:8; Dkt. 113-9, Grice BSA/AML Rep. ¶ 75; *see also* JPMC SUF ¶ 7);
- exchanged warnings that the wire would have a negative effect on Chain Bridge's capital requirements (*see* Dkt. 113-7, CBB00002798 at 3:07-3:12; Dkt 113-6, CBB00002797 at 2:26-2:30; Dkt. 113-5, CBB00000761 at 761; Dkt. 113-3, CBB00000661 at 670; *see also* JPMC SUF ¶ 4);
- communicated a need to get the funds off of the bank's books (*see* Dkt. 113-7, CBB00002798 at 3:07-3:12; Dkt. 113-3, CBB00000661 at 662, 667; *see also* JPMC SUF ¶ 4);
- stated disbelief that Blue Flame had a right to the funds (*see* Dkt. 113-5, CBB00000761 at 761; Dkt. 113-7, CBB00002798 at 8:23-8:49; Dkt. 113-9, Grice BSA/AML Rep. ¶ 75; *see also* JPMC SUF ¶ 7);
- engaged the bank's internal Bank Secrecy Act (BSA) team (*see* Dkt. 113-8, Brough Dep. 207:6-9; Dkt. 113-7, CBB00002798 at 11:51-11:54; *see also* JPMC SUF ¶¶ 5-6); and
- took the extraordinary step of directly contacting *JPMC's customer*, California—three times—to inquire about the wire (*see* Dkt. 113-19, CBB00004323 at 4333-4335; Dkt. 113-20, CBB First Interrogatory Responses at 3; Dkt. 113-21, DGS6548 at 6549; Dkt. 113-22, Gonzales Dep. 97:22-98:22; Dkt. 113-23, Baxter Rep. ¶¶ 42, 74; *see also* JPMC SUF ¶¶ 17-20).

It is therefore incomplete to state only that Chain Bridge "had placed a hold on the wired funds" (CB SUF ¶ 7) by the time of the first conversation between the banks.

This statement is also incomplete because it omits facts concerning the representations Chain Bridge made to JPMC about the status of the wire on the parties' first call, at 12:30 p.m. ET. Specifically, Chain Bridge represented to JPMC that it was "holding the funds," which made clear to JPMC that the funds had not been credited to Blue Flame's account. *See* Ex. 1 to Second Loretta Decl., Coffey Dep. 69:3-5 (describing 12:30 p.m. ET call with Evinger during which Evinger said that Chain Bridge was "holding the funds, which [was] terminology that would mean [the funds] never hit the beneficiary's account");[1] Ex. 2, Korpal Dep. 63:3-9 (Chain Bridge "confirmed that the transaction had not been credited to Blue Flame Medical's account"). But Chain Bridge stated internally that it had "credited the customer's account." Dkt. 113-24, CBB00002789 at 2:23-2:27. JPMC in turn relied on Chain Bridge's representation in determining whether to accommodate Chain Bridge's request to return the wire. *See* Ex. 2, Korpal Dep. 39:13-17, 40:6-9 (testifying that, where funds have been credited to a beneficiary, the beneficiary must authorize the reversal of funds, and that JPMC understood that Blue Flame "had not authorized the return of funds to JPM[C].").

8. *Disputed*: This statement is incomplete because it describes only one side of the 12:44 p.m. ET call, omitting what Chain Bridge said to JPMC. On that call, Chain Bridge told JPMC that the Blue Flame account was brand new, that it was opened by a lobbyist, and that the size of the wire was unusual for this client—none of which JPMC knew before. *See* Dkt. 113-26, CBB00002541 at 0:39-3:22; *see also* JPMC SUF ¶ 27. JPMC would not have known that

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[1] Exhibits to the Second Loretta Declaration, filed contemporaneously with this brief, are cited here as "Ex. ___." Exhibits to the First Loretta Declaration (Dkt. 113-1) are cited here by docket number.

significant information but for Chain Bridge sharing it. It is also incomplete to present only the fact that JPMC was conducting an investigation without acknowledging Chain Bridge's investigation and the affirmative steps Chain Bridge took to ensure that the funds remained inaccessible to Blue Flame. *See supra* pp.4-6; *see also* JPMC SUF ¶¶ 2-7, 17-20.

9. *Disputed*: This statement is incomplete because it omits material events that transpired between the 12:44 p.m. ET phone call and the 1:34 p.m. ET phone call, and it obscures the initiation of the 1:34 p.m. ET call.[2]

Concerning the omitted events, Chain Bridge does not reference three communications it had with California—all of which took place *before* the 1:34 p.m. ET call between the banks. In a voicemail to Evinger at 12:51 p.m. ET, and in a subsequent phone call at 12:55 p.m. ET with Brough and Evinger, Fee Chang of the California Department of General Services confirmed to Chain Bridge the legitimacy and amount of the wire. *See* Dkt. 113-28, CBB00000707 at 0:19-0:26; Dkt. 113-29, CBB00002543 at 0:01-0:04; Dkt. 113-10, Evinger Dep. 247:19-248:1; *see also* JPMC SUF ¶ 30. On the 12:55 p.m. ET call with Chang, Chain Bridge requested to be put in contact with the California State Treasurer's Office (STO). *See* Dkt. 113-29, CBB00002543 at 0:42-0:47; *see also* JPMC SUF ¶ 31.

Per Chain Bridge's request, at 1:19 p.m. ET, Mark Hariri and Natalie Gonzales of the STO called Chain Bridge and spoke with Brough and Evinger about the wire. *See* Stip. of Uncontested Facts (Dkt. 96) ¶ 23; *see also* JPMC SUF ¶ 32. On that 1:19 p.m. ET call, Hariri and Gonzales confirmed that Blue Flame was the intended beneficiary of the wire. *See* Dkt. 113-10, Evinger Dep. 252:10-19; *see also* JPMC SUF ¶ 33. Also on that 1:19 p.m. ET call, Evinger

[2] Chain Bridge asserts that this phone call took place at 1:35 p.m. ET. The parties' Stipulation of Uncontested Facts, however, states that the call took place at 1:34 p.m. ET. *See* Stip. of Uncontested Facts ¶ 24.

shared information about Blue Flame with the STO, including that the account had been opened the day before the wire and that the client who opened the account was a political lobbyist. *See* Dkt. 113-22, Gonzales Dep. 49:21-50:6; Dkt. 113-30, CBB00004453 at 4466; *see also* JPMC SUF ¶ 34. Finally, also on that 1:19 p.m. ET call, Chain Bridge offered to return the funds—stating to California that it "would be happy to return the wire." Dkt. 113-30, CBB00004453 at 4466; *see also* Dkt. 113-10, Evinger Dep. 255:18-20; JPMC SUF ¶ 35. According to Evinger, California responded that "they did not want [Chain Bridge] to return the money at that stage." Dkt. 113-10, Evinger Dep. 255:20-21; *see also* JPMC SUF ¶ 35.

As for the 1:34 p.m. ET call between the banks, Chain Bridge obscures the initiation of that communication by stating that "Korpal spoke again with Brough and Evinger"—in fact, it was Brough and Evinger who called Korpal to ask if there was "any way for JPMorgan to issue a recall." Dkt. 113-31, CBB00002544 at 0:04-0:09; Stip. of Uncontested Facts ¶ 24; *see also* JPMC SUF ¶¶ 36-37.

10. *Disputed*: This statement is incomplete because it omits context for reversal-related communications within JPMC as well as between JPMC and Chain Bridge. As Korpal and Coffey explained at their depositions, Korpal, as a supervisor at JPMC, made the decision to agree to Chain Bridge's reversal request and Coffey, as a subordinate, simply executed Korpal's instruction. *See* Dkt. 113-25, Coffey Dep. 125:14-21 (testifying that Korpal did not explain why JPMC would be recalling the funds and that "the only information [Coffey] had was a direction"); Ex. 1, Coffey Dep. 126:12-14 ("I was not privy to any of the conversations that drove the decision for the funds to be returned."). Chain Bridge's statement, by only quoting Coffey's comments on the phone call with Chain Bridge, omits the material fact expressed in Korpal's testimony: "There was not a need for JP Morgan Chase to call the funds back …

[because they] were being held by Chain Bridge Bank." Ex. 2, Korpal Dep. 256:9-15; *see also id.* 257:21-22. Korpal testified that, had Chain Bridge not requested the recall, JPMC "would not have issued the recall request" because Chain Bridge "said they were holding the funds." Dkt. 113-14, Korpal Dep. 284:22-285:1.

11. Undisputed.

12. *Disputed*: This statement is incomplete to the extent it purports to describe the "meaning" of JPMC's reversal message's text. As Coffey testified, the message looked to be "one of the templates" that JPMC uses, as opposed to a "freeform message." Ex. 1, Coffey Dep. 142:16-21.

13. *Disputed*: This statement is incomplete in saying that "California's State Treasurer's Office also called Chain Bridge to follow up on the recall" because that fails to capture the full context of relevant communications. Between 2:04 p.m. ET and 2:34 p.m. ET, the STO called Chain Bridge twice—once connecting with Evinger and once leaving a voicemail—and Chain Bridge called the STO once (in response to the voicemail). *See* Dkt. 113-19, CBB00004323 at 4333-4335; Dkt. 113-20, CBB First Interrogatory Responses at 5.

14. *Disputed*: The statement that Chain Bridge "honored" JPMorgan's reversal request is inaccurate. The request for reversal was made by Chain Bridge, not JPMC, during the 1:34 p.m. ET call when Evinger asked Korpal if there was "any way for JPMorgan to issue a recall for the wire." Dkt. 113-31, CBB00002544 at 0:04-0:09; *see also* Stip. of Uncontested Facts ¶ 24; JPMC SUF ¶ 37. JPMC in turn agreed to Chain Bridge's reversal request when JPMC sent the 2:05 p.m. ET Fedwire reversal message, in compliance with Chain Bridge's instructions. *See* Dkt. 113-32, CBB00002545 at 0:06-0:18, 0:18-0:27 (1:37 p.m. ET call on which JPMC asked, "What are you looking for from us?" and Chain Bridge responded that it

would "like official communication from JPMorgan to us to recall the funds," specifically a message sent "over the Fedline platform").

15. *Disputed*: This statement is incomplete because it omits California's recognition of the distinct role that Chain Bridge played in returning the wire. For example, California State Treasurer Fiona Ma recognized publicly that the "two banks involved in the wire transfer contacted her office because they had suspicions." Ex. 3, Rosenhall, *CA lawmakers told half-billion dollar Blue Flame mask deal thwarted by suspicious bankers*, CalMatters (May 11, 2020; updated Sept. 17, 2020); *id.* (crediting one bank, Chain Bridge, with providing California the information that "the recipient was a Washington, D.C.[] lobbyist who had only opened a bank account the day before"); *see also id.* (attributing to Mark Ghilarudcci, director of the Governor's Office of Emergency Services, the comment that "banks involved in the large wire transfer called state officials and alerted them that the transaction seemed suspicious").

ARGUMENT

I. CHAIN BRIDGE'S INDEMNIFICATION CLAIM FAILS

As JPMC explained in its summary judgment motion (at 13-26), Chain Bridge's indemnification claim fails for three independent reasons. Far from helping its cause, Chain Bridge's motion underscores each problem JPMC identified.

A. Indemnification Under U.C.C. § 4A-211(f) Is Inapplicable Because Chain Bridge Requested And Directed The Cancellation

Under § 4A-211(f), indemnification applies only where there is first a "cancellation … by the sender," and then, "the receiving bank … agrees to" that "cancellation." Thus, as JPMC has explained (JPMC MSJ 14-16), indemnification only applies where the cancellation is instigated by the sender: an affirmative request "by the sender" to which the "receiving bank" then "agrees." U.C.C. § 4A-211(f). That interpretation accords with the purpose of indemnification, and the one case Chain Bridge cited to counter this proposition is inapposite (*see infra* p.13). With its roots in equity, indemnification ensures that the responsible party—the party whose actual fault caused the injury—bears the burden of any resulting loss. *See, e.g.*, *White v. Johns-Manville Corp.*, 662 F.2d 243, 249-250 (4th Cir. 1981); 42 C.J.S. Indemnity § 2.

There is no § 4A-211(f) indemnification claim if the *receiving bank* requests or otherwise directs the cancellation. That is the case here. As a mountain of record evidence reveals, Chain Bridge requested and directed the cancellation.

1. Chain Bridge's legal argument is incorrect

Chain Bridge's principal response (CB MSJ 13-23) is a legal argument by which the bank seeks to avoid virtually everything that happened on March 25 and 26, 2020. According to Chain Bridge, it does not matter that its President expressly requested that JPMC "issue a recall for the wire" (*id.* 17 (quoting Dkt. 130-63)). Nor does it matter that Chain Bridge "had reasons of its own" (*id.* 18) for doing so. Indeed, by Chain Bridge's telling, *none* of its actions or reasons for the reversal matters. The only facts that matter begin *after* Chain Bridge's President and CEO called JPMC because, to Chain Bridge, the sole thing that matters is that JPMC sent the requested reversal message over Fedwire and Chain Bridge sent the funds back.

Chain Bridge's formalistic argument—that it could not have effected the cancellation because Article 4A precludes receiving banks from doing so—is irrelevant and wrong. The question here is about the statutory elements of indemnification under § 4A-211(f), not whether and how a receiving bank can cancel a wire. Under the statute, indemnification only applies if the sender cancels a payment order and "the receiving bank" then "agrees." U.C.C. § 4A-211(f). If the situation is the reverse—*i.e.*, the *receiving bank* requests or directs a cancellation—then indemnification does not apply.

In any event, Article 4A recognizes that receiving banks, just like senders, can effect cancellations. For example, § 4A-210, the immediately preceding provision, provides for the "rejection" of a payment order "by the receiving bank." A rejection is just another form of cancellation, both of which result in the reversal of the wire. *See* U.C.C. §§ 4A-210, 211. Article 4A elsewhere identifies the "functions of [a] receiving bank" as "receipt, processing, and transmittal of payment orders, *cancellations* and amendments," U.C.C. § 4A-105 cmt. 2 (emphasis added), and also speaks to a receiving bank's "processing of payment orders and communications *cancelling* or amending payment orders," *id.* § 106 (emphasis added). Thus, whether termed a "cancellation," "rejection," or something else, a receiving bank clearly can seek and obtain a wire's reversal under Article 4A—as Chain Bridge did here.

Chain Bridge insists (CB MSJ 19) that JPMC's interpretation of § 4A-211(f) would "preclude indemnification in every case governed by Section 4A-211(f)" because a receiving bank will "presumably ha[ve] good reasons" for acting. But "good reasons" and "[b]eliev[ing] cancellation to be appropriate" (CB MSJ 19) are a far cry from a bank seeking and obtaining a cancellation, as here, for its own self-interest. JPMC's rule would only bar indemnification in that latter circumstance, which follows from the text of § 4A-211(f) and is consistent with fundamental principles of indemnification. As JPMC has explained (JPMC MSJ 15-16), indemnification is meant to allow an indemnitee whose liability is merely "technical, passive or secondary" to "shift[]" "the burden for the entire loss … to the indemnitor whose actual fault caused the injury." *White*, 662 F.2d at 249-250. By contrast, where, as here, an aspiring indemnitee "active[ly]" caused the injury, "an essential predicate to [the indemnitee's] right to indemnification is necessarily missing." *Id.* at 250; *see also, e.g.*, *United States v. Seckinger*, 397 U.S. 203, 210-211 (1970); *Horton v. United States*, 622 F.2d 80, 82 (4th Cir. 1980).

The principal case on which Chain Bridge relies, *Banca Commercial Italiana v. Northern Trust International Banking Corp.*, 160 F.3d 90 (2d Cir. 1998), provides it no help. Chain Bridge repeatedly emphasizes *Banca*'s use of the phrase "'absolute liability'" (CB MSJ 2, 5, 20, 22 (quoting 160 F.3d at 94)), but that liability only attaches *if* the statutory predicates are met. There was no question in *Banca* about which party sought the cancellation—the sender. *Banca*'s statement is therefore unremarkable and irrelevant. It simply reflects the operation of the statute when its predicate condition is met (and there is no agreement to the contrary)—"the sender cancels a payment order." 160 F.3d at 94. Similarly, *Banca*'s mention of a "'depart[ure] from the common law'" (CB MSJ 5, 20 (quoting 160 F.3d at 94) (alteration in original)) refers to the point that indemnification under § 4A-211(f) does not turn on a "showing of *wrongfulness* on the part of *the sender*," 160 F.3d at 94 (emphasis added). That too is unremarkable and irrelevant. *Banca* says nothing about the applicability of indemnification under § 4A-211(f) to cases like this one—where the receiving bank requests and directs the reversal of the funds. Nor does *Banca* suggest that § 4A-211(f) was meant to depart from common law to entitle an indemnitee who actively caused an injury to nonetheless obtain indemnification.

2. The facts do not support Chain Bridge's indemnification claim

Chain Bridge relies on JPMC's reversal message as the sole factual support for its argument that JPMC canceled the wire. *See, e.g.*, CB MSJ 13-14. But as JPMC has explained (JPMC MSJ 17), that message does not constitute a cancellation by JPMC and could not alter the legal significance of Chain Bridge's original cancellation request. It is undisputed that Chain Bridge asked JPMC "to issue a recall for the wire." JPMC SUF ¶ 37 (quoting Dkt. 113-31, CBB00002544 at 0:04-0:09); CB SUF ¶ 9 (quoting Dkt. 130-63). That oral request constitutes a cancellation request under Article 4A. *See* U.C.C. § 4A-211(a); *see also id.* § 4A-210(a).

JPMC's responsive reversal message was therefore an "accommodation," *id.* § 4A-211(f) cmt. 5, to Chain Bridge's request.

It bears emphasis that Chain Bridge specifically sought the reversal message in the first place—even specifying the form in which it desired the reversal to take place, asking JPMC to "send it over the Fedline platform." Dkt. 113-32, CBB000002545 at 0:18-0:27; *see also* JPMC SUF ¶ 43. As the record reflects, there was good reason for requesting that formality. Reversal messages operate "to reverse the accounting entries effected to accounts at the Federal Reserve." Ex. 4, Baxter Rep. ¶ 46. Thus, JPMC's reversal message "not only tied the reversal to the original Wire Transfer," an "important" "housekeeping and accounting matter," but also eliminated the potential for human error in returning the funds to California. *Id.* Chain Bridge's CEO admitted as much, testifying that the requested reversal message was the "neater and tidier" form of returning the funds to California. Ex. 5, Brough Dep. 296:18-20.

Finally, in all events, Chain Bridge's indemnification claim fails because its actions and motivations to return the wire make clear that Chain Bridge directed the cancellation at every material turn. As JPMC previously detailed (JPMC MSJ 18-21):

- The day before receiving the wire, top Chain Bridge executives called the wire a "scam" (Dkt. 113-5, CBB00000761 at 761; Dkt. 113-7, CBB00002798 at 8:23-8:49; Dkt. 113-10, Evinger Dep. 205:21-206:8; Dkt. 113-9, Grice BSA/AML Rep. ¶ 75; *see also* JPMC SUF ¶ 7) and engaged the bank's BSA team (Dkt. 113-7, CBB00002798 at 11:51-11:54; *see also* JPMC SUF ¶ 6) because they were suspicious of Blue Flame. *See also* JPMC SUF ¶¶ 1-5.
- Upon receipt of the wire and before ever speaking to JPMC, Chain Bridge immediately placed the funds on hold (Dkt. 113-17, CBB00000728 at 728; *see also*

JPMC SUF ¶¶ 15-16), and then repeatedly called California to raise concerns about Blue Flame and the legitimacy of the transaction (Dkt. 113-19, CBB00004323 at 4333-4335; *see also* JPMC SUF ¶¶ 17-20).

- Chain Bridge then raised the reversal of the funds transfer—*twice*: first with California, saying that it would be "happy to return the wire" (Dkt. 113-30, CBB00004453 at 4466; *see also* JPMC SUF ¶ 35)—and then, after California said it "did not want [Chain Bridge] to return the money at that stage" (Dkt. 113-10, Evinger Dep. 255:20-21; *see also* JPMC SUF ¶ 35), with JPMC (Dkt. 113-31, CBB00002544 at 0:04-0:09; *see also* JPMC SUF ¶ 37).
- Chain Bridge worried that a wire that "massive" could pose "problems on [its] capital ratios" (Dkt. 113-3, CBB00000661 at 670; *see also* JPMC SUF ¶ 2) and so Chain Bridge had to get the wire off its books quickly (Dkt. 113-7, CBB00002798 at 3:07-3:12; Dkt. 113-6, CBB00002797 at 2:26-2:30; Dkt. 113-5, CBB00000761 at 761; Dkt. 113-3, CBB00000661 at 662, 667; *see also* JPMC SUF ¶ 4).
- Chain Bridge worried the wire would run afoul of its obligations under the BSA and AML rules and regulations. Dkt. 113-8, Brough Dep. 72:16-22, 200:4-6, 207:6-9; *see also* JPMC SUF ¶ 5.
- Finally, and critically, Chain Bridge's own wire transfer policy for incoming wires *required* it to return the wire to California. Dkt. 113-11, CBB00004294 at 4298; Dkt. 113-8, Brough Dep. 199:8-21; *see also* JPMC SUF ¶¶ 8-9.

Against these undisputed facts, the most Chain Bridge can do is point to JPMC's formal administrative claim against California. In the procedural-history section of its brief (CB MSJ 11-12), Chain Bridge trumpets the claim as though it might provide some support for its theory.

But then Chain Bridge ignores the point in its argument, but for a cursory reference in a footnote (CB MSJ 18 n.5). For good reason—it is a red herring. There is no question that California did not want to go forward with a transaction with Blue Flame. But the indemnification issue here concerns the interactions and relationship between JPMC and Chain Bridge—not California. And on this evidentiary record, the facts show that JPMC was comfortable with Chain Bridge holding the funds (as it was and planned to continue doing), and that JPMC would not have sent a reversal message were it not for Chain Bridge's express request. Dkt. 113-14, Korpal Dep. 23:6-9; *see also* JPMC SUF ¶ 45.

In sum, the undisputed facts show that Chain Bridge took independent and unilateral actions to ensure that the wire was reversed and that such actions were motivated by powerful incentives—all of which reaffirm that Chain Bridge was acting with the deliberate intent of reversing the wire. Chain Bridge's claim for indemnification therefore must fail.[3]

B. The Parties' Agreement Did Not Include Any Obligation By JPMC To Indemnify Chain Bridge

Even if § 4A-211(f) was applicable (it is not), Chain Bridge agrees that an "agreement" between the parties would override any indemnification obligation. Chain Bridge asserts that no such agreement exists (CB MSJ 15-16, 21), but the record shows otherwise. As JPMC has explained (JPMC MSJ 21-24), the bankers' communications and course of conduct show that JPMC and Chain Bridge reached an agreement that did not include any express or implied promise to indemnify.

[3] Even if the record reflected a joint decision by Chain Bridge and JPMC to reverse the wire (it does not), indemnification still would not apply. *See* JPMC MSJ 21 n.4. Chain Bridge's suggestion (CB MSJ 20) that "*every* cancelled wire after acceptance by the beneficiary's bank *requires* a 'joint' decision" ignores the statutory text and purpose of indemnification. A mutual decision reached evenly by two banks is plainly different from what the statute requires for indemnification—a cancellation instigated by the sending bank.

As relevant here, an "agreement" is a defined term under the U.C.C. meaning "the bargain of the parties in fact," as "distinguished from 'contract.'" U.C.C. § 1-201(b)(3). Such an agreement can be found in the parties' "language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade." *Id.*; *see* JPMC MSJ 21. Chain Bridge's actions and substantive concerns about the wire made clear to JPMC that it wanted to return the funds for its own reasons, and that indemnity, never raised by Chain Bridge, was not part of the bargain. So when Chain Bridge called JPMC to request a reversal, JPMC agreed to do just that—as it was evident that indemnification was not needed or appropriate to effectuate the reversal.

An internal Chain Bridge call—which Chain Bridge never mentions—further confirms the terms of the parties' agreement. Consistent with the parties' understanding, Chain Bridge's President and CEO disclaimed the need for JPMC to indemnify Chain Bridge. When an employee asked if Chain Bridge "[was] getting an indemnity letter from Chase," the President and CEO unequivocally stated: "Just return [the wire] to the same place it came from." Dkt. 113-24, CBB00002789 at 1:18-1:25, 1:37-1:42; *see also* JPMC SUF ¶¶ 51-52. This contemporaneous phone call alone supports a reasonable inference that the parties' agreement did not include an indemnity obligation. *See, e.g.*, *Dataflow, Inc. v. Peerless Ins. Co.*, 2014 WL 148685, at *4 (N.D.N.Y. Jan. 13, 2014) ("[A party's] internal communications evincing its interpretation of … [an] agreement are relevant to … [the] interpretation" of that agreement.).

Ignoring that call, Chain Bridge argues (CB MSJ 15, 21) that the agreement was not express—*i.e.*, that the parties never executed a writing, or never expressly mentioned the word "indemnity" in their discussions. But that does not matter. Article 4A specifically uses the term "agreement," and the U.C.C. provides that the parties' communications and course of dealings can amount to an "agreement" between them—it need not be express, but rather can be "inferred." U.C.C. § 1-201(b)(3).

Chain Bridge's reliance (CB MSJ 15) on the absence of the words "'No Indemnity'" in JPMC's reversal message fails for similar reasons. As JPMC explained (JPMC MSJ 17 n.3), this text operates only as a potential disclaimer; it does not impose any liability. And it is only one way, but not the only way, to avoid liability that would otherwise exist. Chain Bridge agrees; it goes only so far as to claim this text would be "customary" (CB MSJ 15), but not required to avoid liability. Moreover, Chain Bridge's own conduct reaffirms the irrelevance of the "No Indemnity" language here. The Court need only look at the internal Chain Bridge call during which Chain Bridge's highest executives—before even knowing whether the Fedwire reversal message would state "No Indemnity"—disclaimed the need for indemnification by JPMC, and instead gave their employees a clear and unequivocal instruction to return the wire.

C. Chain Bridge Cannot Establish Causation

Chain Bridge agrees (CB MSJ 21-22) that to obtain indemnification it must prove that JPMC's conduct was the cause of Blue Flame's damages—if any—on its statutory claims.[4] But Chain Bridge then ignores the facts in the record that show that it intended to return the wire regardless of JPMC's actions, fatally undermining its causation argument. *See* JPMC MSJ 25-26.

For example, Chain Bridge contacted California and proposed returning the funds—saying it would be "happy to return the wire"—*before* ever even discussing the matter with JPMC. Dkt. 113-30, CBB00004453 at 4466; *see also* Dkt. 113-10, Evinger Dep. 255:18-20; JPMC SUF ¶¶ 35-39. Moreover, Chain Bridge's wire transfer policy *required* the return of

4 Chain Bridge cannot recover for Blue Flame's non-statutory claims, *i.e.*, the two tortious interference claims and the defamation claim.

funds (*see* Dkt. 113-11, CBB00004294 at 4298; Dkt. 113-5, CBB00000761 at 761; *see also* JPMC SUF ¶¶ 7-8), and Chain Bridge's CEO testified that the bank would not make an exception to its own internal policies for a $456 million wire (*see* Dkt. 113-8, Brough Dep. 199:8-21; *see also* JPMC SUF ¶ 9). Attempting to downplay the policy, Chain Bridge insists the "record is clear" that it required "an official cancellation message from JPMorgan prior to returning any funds." CB MSJ 22 n.6. That claim lacks any evidentiary support—Chain Bridge cites nothing for it—and is certainly not a permissible inference at this summary judgment stage. The policy does not mention Fedwire reversal messages, much less make the applicability of the policy contingent upon Chain Bridge obtaining any such messages.

Moreover, the record is replete with evidence showing that Chain Bridge intended to return the wire because it was concerned that making the funds available to Blue Flame would run afoul of the BSA. *See* Dkt. 113-8, Brough Dep. 72:16-22, 200:4-6, 207:6-9; Dkt. 113-7, CBB00002798 at 11:51-11:54; *see also* Dkt. 113-9, Grice BSA/AML Rep. ¶¶ 57, 75, 105; JPMC SUF ¶¶ 5-6. Finally, Chain Bridge closed Blue Flame's accounts and severed all ties with its client on the same day it returned the wire. *See* Stip. of Uncontested Facts ¶¶ 31, 33; Dkt. 113-36, CBB00000748; Dkt 113-37, CBB00000594; *see also* JPMC SUF ¶¶ 53-59.

Chain Bridge cannot establish causation even if there were doubt about Chain Bridge's intent to return the wire regardless of any actions by JPMC (and there is none). Chain Bridge assumes (CB MSJ 21-22) that the causation element turns on whether Chain Bridge would have returned the wire in the absence of the Fedwire reversal message. But that is wrong. *If* Blue Flame suffered damages, it did so because it was deprived of the funds that it allegedly needed to secure personal protective equipment. Thus, Chain Bridge's admission that it placed a hold on the wire immediately upon arrival, and that it was "almost sure [it] would have held the funds" had it "not received the request to return the wire" (Dkt. 113-8, Brough Dep. 223:4-6; *see also* JPMC SUF ¶ 46) shows that Blue Flame's damages would have followed even in the absence of JPMC's purported cancellation. That Chain Bridge supposedly *might* not have held the funds "in perpetuity" (CB MSJ 21) is of no help to Chain Bridge. Regardless of JPMC's actions, the record is clear that Blue Flame would have been unable to wire out the funds on March 26, as it claims it intended. Ex. 6, CBB00001385. Thus, the "loss and expenses" for which Chain Bridge seeks indemnification are not "a result of the cancellation." U.C.C. § 4A-211(f).

Assuming indemnification applies (it does not), Chain Bridge is only entitled to recover for any "loss and expenses" caused by JPMC's conduct—not any "loss and expenses" that would have resulted for independent reasons. The record here supports JPMC, not Chain Bridge. But at minimum, Chain Bridge has failed to carry its burden on this element, precluding summary judgment in its favor.

II. CHAIN BRIDGE'S UNJUST-ENRICHMENT CLAIM FAILS, AND ITS NEWLY ASSERTED PAYMENT-BY-MISTAKE CLAIM IS IMPROPER AND MERITLESS

Chain Bridge's unjust-enrichment claim fails because the bank cannot establish any of the three required elements. *See* JPMC MSJ 26-28. Chain Bridge does not even attempt to argue otherwise, instead choosing to ignore these elements altogether. Sensibly so. *First*, Chain Bridge conferred no benefit on JPMC. The funds at issue were California's, not JPMC's, and JPMC returned them in in full. *See* Dkt. 113-43, JPMC-00000170 at 0174; JPMC SUF ¶ 62; *Anderson v. Fluor Intercontinental, Inc.*, 2021 WL 837335, at *15 (E.D. Va. Jan. 4, 2021) (granting summary judgment because defendant "lack[ed] any entitlement" to the financial benefit allegedly conferred). *Second*, the record is devoid of evidence that JPMC understood Chain Bridge to be conferring a benefit upon it. *See Integrated Direct Mktg., LLC v. May*, 129 F. Supp. 3d 336, 374 (E.D. Va. 2015) (Brinkema, J.) (granting summary judgment where plaintiff had "not provided sufficient evidence from which a reasonable jury could find that [defendants] knowingly used any trade secret or confidential … information to benefit themselves"), *aff'd*, 690 F. App'x 822 (4th Cir. 2017). *Third*, since Chain Bridge sought the cancellation and JPMC did not retain any benefit, there is no inequity to rectify.[5]

Recognizing its unjust-enrichment claim is dead on arrival, Chain Bridge seeks to assert a new claim, payment by mistake, for the first time. *See United States v. Ndutime Youth & Family Servs.*, 2020 WL 5507217, at *18 (E.D. Va. Sept. 11, 2020) (treating payment by mistake and unjust enrichment as separate claims, with distinct legal standards). But Chain Bridge cannot "constructively amend [its] complaint" via summary judgment briefing. *Harris v. Reston Hosp. Ctr., LLC*, 523 F. App'x 938, 946 (4th Cir. 2013); *see also, e.g.*, *Orbit Corp. v. FedEx Ground Package Sys., Inc.*, 2016 WL 6609184, at *19 (E.D. Va. Nov. 8, 2016). Thus, the Court should not entertain Chain Bridge's newly concocted claim.

The payment-by-mistake claim also fails for multiple reasons. Chain Bridge's purported mistake—that Blue Flame "had a right to payment of the wire transfer" and that "cancellation was unlawful" (CB MSJ 23-24)—is, if anything, a mistake of law, not of fact. So Chain Bridge's claim sinks at the start. *See Aetna Cas. & Sur. Co. v. Maryland Cas. Co.*, 18 Va. Cir. 162, 163 (Va. Cir. Ct. 1989) ("If a mistake in law, there can be no recovery" on a payment-by-mistake claim.); *see also Newton v. Newton*, 118 S.E.2d 656, 659 (Va. 1961). Moreover, the claim is barred by the doctrine of changed circumstances, whereby such a claim fails if a party

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[5] Chain Bridge passingly refers to JPMC's "accept[ance of] its happy customer's effusive praise" (CB MSJ 24). Even if such praise could constitute a benefit, let alone one that JPMC could disgorge—and neither is the case—it is irrelevant to Chain Bridge's claim because it came from California, not Chain Bridge. *See Hair Club for Men, LLC v. Ehson*, 2016 WL 3636851, at *7 (E.D. Va. May 6, 2016) (denying preliminary injunction for unjust enrichment where plaintiff failed to assert it directly conferred benefit on defendant).

(1) receives the funds at issue through no fault of its own; (2) changes its position before knowledge of any mistake; and (3) no longer has recourse to the payment. *See Liberty Mut. v. Williams Int'l Indus., Inc.*, 780 F. Supp. 359, 363 (E.D. Va. 1991). That is the case here: As discussed, Chain Bridge, not JPMC, directed the wire's reversal and was motivated to do so for reasons independent from JPMC. JPMC then promptly returned the funds to California—retaining nothing—and it did so long before receiving notice of the purported mistake, asserted for the first time over a year later in Chain Bridge's summary judgment brief.

III. JPMC's Affirmative Defense Of Equitable Estoppel Precludes Summary Judgment For Chain Bridge

There is a final, independent reason to deny Chain Bridge's motion: Chain Bridge failed to address, let alone refute, JPMC's affirmative defense of equitable estoppel, which would bar Chain Bridge's recovery.

In its answer, JPMC asserted the affirmative defense of equitable estoppel. Dkt. 64 at 7-8 (Sixth Defense). In response to interrogatories requesting that JPMC elaborate the legal and factual basis for its defense against Chain Bridge's indemnification claim, JPMC again identified equitable estoppel as a specific reason why it is not liable to Chain Bridge. *See* Burke Decl., Ex. 97 (Dkt. 131-32) at 10. Moreover, specifying the basis for this defense, JPMC explained that Chain Bridge led JPMC to believe that indemnification was inapplicable, and that, unlike JPMC, Chain Bridge benefited from the wire's reversal. *Id*.

Chain Bridge repeatedly invokes JPMC's interrogatory responses in its opening brief (CB MSJ 16, 18, 20, 21, 22), but it nowhere—not once—addresses this defense. "[A] claimant's right to summary judgment," however, "depends upon the nonviability of [an affirmative] defense in addition to the viability of the claimant's claim." 49 C.J.S. Judgments § 304. "Thus, to be entitled to summary judgment, a plaintiff must conclusively refute a defendant's well-pled affirmative defenses." *Id.*; *see, e.g.*, *Veolia Es Special Servs., Inc. v. Techsol Chem. Co.*, 2008 WL 11380183, at *4 (S.D. W.Va. Oct. 14, 2008) (summary judgment movant "must convince the Court" that non-movant's "affirmative defense [is] inapplicable"). Chain Bridge has defaulted entirely on its burden at this summary judgment stage. *See, e.g.*, *Hamed v. Saul*, 432 F. Supp. 3d 610, 613 (E.D. Va. 2020) (rejecting argument raised in reply to motion for summary judgment as "procedurally waived"; "[t]he Fourth Circuit has made clear that ordinarily it is improper to consider arguments raised for the first time in a reply brief").

As the Court has explained, "[e]quitable estoppel protects parties who rely in good faith upon the statements or actions, or even inaction, of another party by prohibiting the other party from benefitting by changing its position to contradict its earlier position or otherwise injure the relying party." *Newcom Holdings Pty., Ltd. v. Imbros Corp.*, 369 F. Supp. 2d 700, 714 (E.D. Va. 2005) (Brinkema, J.). Thus, the elements of equitable estoppel are "(1) a representation, (2) reliance, (3) a change in position and (4) some detriment accruing to the relying party." *Id.* For the reasons already explained to Chain Bridge, which Chain Bridge in turn ignored, the facts support equitable estoppel here. Through clear statements and actions, Chain Bridge led JPMC to believe that it wanted the wire reversed for its own reasons—period. Indemnification was not part of the equation. JPMC in turn relied on those statements and actions in agreeing to Chain Bridge's request, to JPMC's detriment and Chain Bridge's multiple benefits.[6] Equity should not now permit Chain Bridge to recover from JPMC for doing the very thing that Chain Bridge

[6] Moreover, there is a material question whether Chain Bridge's representations to JPMC, as part of the parties' discussion concerning the return of the wire, were accurate. As explained (*supra* p.6), Chain Bridge made clear to JPMC that it had not credited Blue Flame's account, but Chain Bridge stated internally that it "had credited the customer's account" (Dkt. 113-24, CBB00002789 at 2:23-2:27). And that representation was material: JPMC relied on it when agreeing to Chain Bridge's reversal request and issuing the corresponding Fedwire message. *See* Ex. 2, Korpal Dep. 39:13-17, 40:6-9.

asked it to do. Accordingly, Chain Bridge's motion should be denied. *See, e.g.*, *Branch Banking & Tr. v. Witmeyer*, 2011 WL 3297682, at *7 (E.D. Va. Jan. 6, 2011) (holding at summary judgment on U.C.C. claims that the "evidence could sustain the affirmative defense of equitable estoppel").

CONCLUSION

The Court should deny Chain Bridge's motion for summary judgment and, for the reasons stated in JPMC's summary judgment motion, the Court should grant summary judgment to JPMC on all claims in Chain Bridge's third-party complaint.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 20th 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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