

**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.

[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE UNDER SEAL

Before the Court is Third-Party Plaintiff Chain Bridge Bank, N.A.’s Motion to File Under Provisional Seal (Dkt. 143), submitted on May 20, 2021. As directed by this Court’s September 24, 2020 Order (Dkt. 37), Third-Party Defendant JPMorgan Chase Bank, N.A. (“JPMC”) has filed a Memorandum in Support of Motion to File Under Provisional Seal (Dkt. ____).

Chain Bridge requested leave to file under provisional seal Exhibit 104 to the Declaration of Donald Burke (Dkt. 142-5), submitted in support of Chain Bridge’s opposition to the motions for summary judgment filed by Blue Flame Medical LLC and JPMC. Exhibit 104 is the Expert Report of Teresa A. Pesce, which JPMC served on Chain Bridge on February 12, 2021. During discovery, JPMC designated the report as “Confidential,” and certain portions of the report as

“Highly Confidential,” under the terms of the Amended Stipulated Confidentiality Agreement and Protective Order entered in the case. Dkt. 68 (“Protective Order”). Before Chain Bridge submitted the exhibit with its May 20, 2021 opposition, Chain Bridge and JPMC conferred regarding JPMC’s confidentiality designations. JPMC agreed that the 11-page exhibit could be filed on the public docket, so long as six lines detailing specific criteria JPMC uses to screen transactions for suspicious activity remained redacted; JPMC continues to designate those lines as “Highly Confidential” under the Protective Order. Chain Bridge’s memorandum in support of its motion to seal explains that Chain Bridge’s request for sealing is based on JPMC’s confidentiality designation. Dkt. 147. Chain Bridge filed a public, narrowly-redacted version of the exhibit at Dkt. 142-5. On May 21, 2021, the Court granted Chain Bridge’s motion and ordered that Exhibit 104 shall remain redacted pending the Court’s consideration of any responses filed to Chain Bridge’s motion. Dkt. 151.

In JPMC’s Memorandum in Support, JPMC represents that sealing the exhibit is warranted because it refers to certain of JPMC’s suspicious-activity screening rules, the public disclosure of which would inhibit JPMC’s future efforts to monitor for such activity. JPMC further proposes that the redacted version of the exhibit (Dkt. 142-5) remain public.

There is a presumption of public access to court records. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). “Accordingly, before a district court may seal any court documents, ... it must (1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” *Id.*

The Court finds that all requirements for sealing are satisfied here.

First, the public received notice of the request to seal Exhibit 104 when Chain Bridge filed its Motion to File Under Provisional Seal on May 20, 2021. *See, e.g., E.I. Du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 2012 WL 1415638, at *2 (E.D. Va. Apr. 20, 2012).

Second, JPMC has not asked the Court to seal the exhibit in its entirety. Instead, JPMC seeks the “less drastic alternative” of filing the exhibit in minimally-redacted form. *ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 2011 WL 7046021, at *2 (E.D. Va. Dec. 7, 2011).

Third, the information sought to be sealed is confidential and its sealing will not inhibit the public’s ability to observe and understand these proceedings. The redacted material contains specific criteria that JPMC uses to screen transactions for suspicious commercial monetary activity. Disclosing this material would provide aspiring fraudulent actors with a roadmap around JPMC’s system and would undermine JPMC’s ability to monitor for such suspicious activity. A business’s “strong interest in preserving the confidentiality of its proprietary and trade-secret information ... may justify partial sealing of court record.” *Doe v. Public Citizen*, 749 F.3d 246, 269 (4th Cir. 2014). Sealing is appropriate to protect trade secrets and other commercially sensitive information—including the details of fraud screening and prevention programs. *See, e.g., BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Rsch. Org.*, 2020 WL 973751, at *15 (E.D. Va. Feb. 7, 2020) (granting motion to seal documents describing “business strategy ... as well as other confidential commercial information”); *Trapp v. Suntrust Bank*, 2016 WL 6833986, at *3 (M.D.N.C. Nov. 18, 2016) (sealing confidential business information that concerned “preventing fraud”); *Regscan, Inc. v. Bureau of Nat’l Affs., Inc.*, 2012 WL 12903672, at *1-2 (E.D. Va. May 22, 2012) (sealing document that contained trade secrets in form of confidential business plans); *accord, e.g., In re Rocket Fuel Inc. Sec. Litig.*, 2017 WL 344983, at *6 (N.D. Cal. Jan. 24, 2017) (sealing documents containing details of fraud-screening

methodology); *Bohannon v. Facebook, Inc.*, 2014 WL 5598222, at *3 (N.D. Cal. Nov. 3, 2014) (sealing documents containing fraud-detection policies).

The specific suspicious-activity rules that the Blue Flame wire transfer triggered in JPMC’s monitoring system do not bear on the Court’s resolution of the motions for summary judgment pending before it. So redacting those rules from the docket would leave public the “legal and factual issues” raised by the motions. *ActiveVideo Networks*, 2011 WL 7046021, at *1. JPMC, meanwhile, has a significant interest in keeping confidential the details of its suspicious-activity monitoring program—namely, “to prevent disclosure that could aid fraudulent actors in evading the system.” *In re Rocket Fuel*, 2017 WL 344983, at *6.

CONCLUSION

The unredacted version of Exhibit 104 to the Declaration of Donald Burke shall remain under permanent seal, and the redacted version of the same (Dkt. 142-5) shall remain on the public docket.

IT IS SO ORDERED.

ENTERED this ____ day of _____, 2021.

Leonie M. Brinkema
United States District Judge