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

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| BLUE FLAME MEDICAL LLC,<br><br>Plaintiff,<br><br>v.<br><br>CHAIN BRIDGE BANK, N.A., JOHN J. BROUGH, and DAVID M. EVINGER,<br><br>Defendants. | **Civil Action No. 1:20-cv-00658** |
| CHAIN BRIDGE BANK, N.A,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>JPMORGAN CHASE BANK, N.A.,<br><br>Third-Party Defendant. | |

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO BLUE FLAME MEDICAL LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Defendants Chain Bridge Bank, N.A. (Chain Bridge), John J. Brough, and David M. Evinger submit this memorandum in opposition to the motion for partial summary judgment filed by Plaintiff Blue Flame Medical LLC (Blue Flame).

**INTRODUCTION**

In March 2020, Blue Flame fraudulently induced California to purchase 100 million N95 masks that Blue Flame had no hope of ever supplying. When California's down payment for that transaction arrived at Chain Bridge—in the form of an eye-popping $456 million wire transfer for Blue Flame's benefit—Chain Bridge naturally had concerns about the transaction. So too did California's own bank, JPMorgan Chase Bank, N.A. (JPMorgan). So the bankers undertook an investigation of a transaction that was full of red flags. Before long, Brough and Evinger spoke with officials from the State of California and shared with them indisputably true information about Blue Flame—that the company's bank account was just a day old and had been opened by a political lobbyist, rather than anyone with expertise in the medical-supply field. The California officials were alarmed because Blue Flame had concealed that basic information.

Chain Bridge immediately placed a hold on the funds, and later accommodated JPMorgan's cancellation of the wire transfer by returning California's funds to JPMorgan. In the following weeks, Blue Flame sought to convince California officials to move forward with the purchase, but California (understandably enough) declined to do business with Blue Flame.

In this litigation, Blue Flame claims that Chain Bridge's decision to return California's funds violated the Uniform Commercial Code (UCC), as incorporated into Subpart B of the Federal Reserve's Regulation J. Blue Flame also claims that Defendants' interactions with California officials amounted to defamation and tortious interference with Blue Flame's contract and business expectancy with California.

Those claims suffer from a raft of flaws, as we have explained in Defendants' motion for summary judgment. California's wire transfer was cancelled, so it cannot support Blue Flame's claims under the UCC. Chain Bridge agreed to that cancellation under circumstances presenting numerous red flags of suspicious and potentially fraudulent activity. Blue Flame's own bad faith also precludes it from availing itself of any UCC remedies. And as for Blue Flame's state-law claims, Defendants cannot be held liable for sharing indisputably true information with the responsible California officials. Doing so was *rightful*, not tortious.

Those are all reasons that Defendants, not Blue Flame, are entitled to summary judgment as to liability on all of Blue Flame's claims. To make matters worse for Blue Flame, there is no evidence that Blue Flame ever could have fulfilled California's order for 100 million N95 masks. Blue Flame's inability to establish any damages resulting from Defendants' conduct provides an independent basis for granting summary judgment in Defendants' favor.

In its motion for partial summary judgment, Blue Flame attempts to sidestep the latter problem, at least, by requesting judgment only as to liability. But, of course, Blue Flame's failure of proof on causation and damages would be sufficient for this Court to enter judgment in Defendants' favor without considering any of Blue Flame's liability arguments. And if the Court does reach Blue Flame's liability arguments, it will find them sorely wanting. Either way, Blue Flame's motion should be denied.

## COUNTERSTATEMENT OF MATERIAL FACTS

There is no dispute as to the facts that are material to Blue Flame's claims against Defendants. *See* Opening Memo. 3-15. Defendants are nevertheless constrained, by Local Rule 56(B), to respond to Blue Flame's mischaracterization and selective recitation of those undisputed facts. To the extent that Defendants do not here dispute a particular factual assertion, that is for purposes of this motion only. Defendants do not concede that Blue Flame's factual assertions are material to the disposition of any of Blue Flame's claims.[1]

**A. Responses To Blue Flame's Statement of Undisputed Material Facts**

1. Defendants dispute Blue Flame's assertion that Blue Flame was founded to provide PPE "at fair prices," which is unsupported by the cited deposition testimony. Defendants dispute Blue Flame's assertion here and in all subsequent paragraphs that Gula and Thomas had relationships with "suppliers" of PPE, insofar as that term is used to refer to PPE manufacturers. The cited materials do not support that assertion, and there is no evidence that Gula or Thomas had any relationships with any PPE manufacturers, as opposed to companies that purported to act as PPE brokers. *See* Ex. 2 (Thomas Tr.) at 51, 155.

2. Defendants do not dispute that Thomas began discussing Blue Flame's ability to deliver N95 masks and other PPE with California officials, including State Controller Betty Yee, on March 20. As an additional material fact, Defendants state that Thomas was able to connect with State Controller Betty Yee and other officials at the highest levels of California government by falsely representing that Blue Flame had an immediately available supply of 100 million 3M N95 masks at the Port of Long Beach. Ex. 13 at 200058; Ex. 14; Ex. 15; Ex. 12 at 200119.[2] Thomas

[1] Blue Flame's statement of undisputed facts violates this Court's Rule 16(b) Scheduling Order because it is not presented in "numbered-paragraph form." Dkt. No. 37, at ¶ 10.f. To facilitate Defendants' response, we have prepared an annotated version of Blue Flame's memorandum with paragraph numbering added. That version is attached hereto as Appendix A. Blue Flame's statement of undisputed facts also contains a series of argumentative point headings, which are not supported by record citation as required by Local Civil Rule 56, and which, for the most part, are not supported by the assertedly undisputed facts. Although Defendants do not separately respond to these headings, Defendants should not be understood as agreeing with any of the headings. Finally, we note that Blue Flame's statement of undisputed facts frequently misattributes statements made by Brough to Evinger, and vice versa. We do not note those errors individually because they are not material to the issues presented for decision by Blue Flame's motion.

[2] Exhibits cited as Ex. 1 through Ex. 99 refer to exhibits to the Declaration of Donald Burke in support of Defendants'/Third-Party Plaintiff's motions for summary judgment, at Dkt. Nos. 130 and 131. Exhibits cited as Ex. 100 through Ex. 112 refer to exhibits to the Declaration of Donald Burke filed in support of this memorandum.

made those same misrepresentations to Controller Yee herself and they "put[] pressure on the state to get a deal done as soon as possible." Ex. 12 at 200119; Ex. 16 (Chivaro Tr.) at 73.

3. Defendants do not dispute that Thomas told Wong on March 22 that "everyone requires prepayment." Ex. 17 at 200135. As an additional material fact, Defendants state that the day after the reversal of California's wire transfer, Blue Flame informed officials at the Department of General Services (DGS) that Blue Flame did not require pre-payment for the purchase of N95 masks after all, Ex. 12 at 200132; Ex. 2 (Thomas Tr.) at 240-41; and that Controller Yee told Thomas that the conflicting information on prepayment created a "credibility issue" for Blue Flame, Ex. 12 at 200133. Defendants do not dispute that Thomas provided Wong with an inventory sheet for "Allocatable Inventory" from Great Health Companion (Great Health). *Compare* White Ex. 9, *with* Ex. 20. Defendants dispute that Blue Flame could deliver any of the products or inventory listed in the inventory sheet. Of orders for 2.82 million N95 masks that Blue Flame received between March 30 and April 16, 2020, Blue Flame was able to fulfill only a single order for 96,000 N95 masks (paid for by an anonymous donor), and even that was delayed and fulfilled 40 days after purchase. Ex. 73 at 163508-13; Ex. 22 (Faulkner Rep.) ¶¶ 72-73; *see also* Opening Memo. 24-26 (collecting evidence that Blue Flame could not have fulfilled California's order).

4. Defendants do not dispute that Thomas inquired of Great Health and Suuchi Inc. about supplying N95 masks. Defendants dispute Blue Flame's implication that Thomas inquired of other potential vendors, which is not supported by record citations. Defendants do not dispute that Great Health and Suuchi stated they could supply N95 masks in connection with California's order, but dispute Blue Flame's implication that Great Health and Suuchi stated they could supply

masks before Thomas responded to Wong on March 24.[3]

5. Defendants do not dispute that DGS signed a purchase order agreeing to purchase 100 million N95 masks from Blue Flame. Ex. 7. That purchase order contained California's standard procurement terms allowing California to suspend the order at any time or terminate the order if in the State's interest. Ex. 79 §§ 23(a), 39(a).[4] Defendants do not dispute that California prepared a wire transfer to Blue Flame as pre-payment of 75% of California's order. Defendants dispute Blue Flame's implication that pre-payment was required to secure the allocation of N95 masks from Blue Flame's suppliers. The day after the reversal of California's wire transfer, Blue Flame informed officials at the Department of General Services that Blue Flame did not require pre-payment after all, undermining Blue Flame's claim that pre-payment was ever necessary. Ex. 12 at 200132; Ex. 2 (Thomas Tr.) at 240-41.

Defendants dispute that Blue Flame "received confirmation on March 25" from Great Health's CEO, Henry Huang, that Great Health could deliver 100 million masks of the four specific models California requested within 30 days, which is unsupported by the cited documents. On March 26, in response to Thomas's statement "Henry, Mike said you can get us 100m n95 over a 30 day period of time," Huang responded that "we will give it all our efforts here to fight for the

[3] Blue Flame cites evidence that Great Health and Suuchi responded to Blue Flame about their supply on March 26, well after Thomas responded to Wong about Blue Flame's capacity on March 24. Ex. 10 at 110970-71. The evidence Blue Flame cites in support of its statement that Thomas told Wong that Blue Flame "could deliver at least 63 million units within 30 days" also demonstrates that an hour prior to that, Thomas told Wong that Blue Flame could supply only "25 million a month" but that he could "huddle with my team and crunch the math super fast." White Ex. 5 at 200139. There is no record evidence that Thomas communicated with any of Blue Flame's putative suppliers before telling Wong that Blue Flame could deliver 63 million N95 masks within 30 days.

[4] In a footnote (Memo. 4 n.3), Blue Flame describes California's purchase order as "an internal DGS purchase order." Defendants dispute that characterization, which is not supported by the cited evidence.

most scarce resources during crazy times." White Ex. 15 at 212725-26. As an additional material fact, Defendants state that the initial version of Great Health's purchase order sent to Thomas the morning of March 26 did not list the four specific mask models that California required. Ex. 80. In response, Blue Flame's counsel stated he was "very concerned" that Great Health "doesn't have access to the masks we need." Ex. 27 at 202859. The purchase order was modified shortly thereafter to list the four models that California ordered, without any adjustments to the contemplated delivery timeline. Ex. 81.

Defendants do not dispute that Thomas provided DGS Director Daniel Kim with a spreadsheet listing delivery dates and quantities for the shipment of 100 million N95 masks the evening of March 25. As an additional material fact, Defendants state that the delivery schedule was fictitious. Blue Flame counsel Ethan Bearman circulated an initial version of the same spreadsheet using "placeholders" for delivery quantities that showed a delivery of only 58 million masks by April 30. Ex. 24; Ex. 21 (Bearman Tr.) at 192. Just ten minutes later, after conferring with Thomas, Bearman circulated a revised version attached to an email titled "To get to 100MM," showing 100 million masks arriving by April 24. Ex. 25. Less than two hours after that, Bearman circulated yet another version showing dramatically different delivery quantities for the 100 million masks. Ex. 19. Each schedule pretended that millions of N95 masks would arrive from Great Health day after day—amounts that far exceeded those indicated in the "Products Catalogue" that Blue Flame had received from Great Health, which showed an "Allocatable Inventory" of only 470,000 N95 masks and a total "Monthly Capacity" of only 3.5 million N95 masks for the manufacturers of the four specific models specified in California's order. Ex. 20; Ex. 22 (Faulkner Rep.) ¶ 67.

Defendants also dispute Blue Flame's characterization of its delivery schedule insofar as

Blue Flame suggests that there was nothing more than a "goal . . . to deliver the masks as soon as possible." DGS understood Blue Flame to have guaranteed delivery of 63 million masks within 30 days and expected delivery of all 100 million masks in "days or weeks." Ex. 8 (Wong Tr.) at 71-72; Ex. 10 at 110970-71; Ex. 11 (Kim Tr.) at 39. Blue Flame's counsel understood that "Blue Flame had until the end of April" to deliver masks to California. Ex. 106 (Bearman Tr.) at 209.

Defendants do not dispute that Blue Flame placed orders with Great Health and Suuchi for N95 masks (for 100 million and 6 million masks, respectively), but Defendants dispute that those orders provide evidence that Great Health or Suuchi could have supplied N95 masks to Blue Flame. *See* ¶ 3, *supra*. Defendants further note that Blue Flame's order with Great Health contemplated delivery of only 20 million N95 masks in the first month. White Ex. 20. Even if Great Health could have delivered on that schedule, that would have been well short of what was required to fulfill California's order on the agreed schedule.

7. Defendants dispute Blue Flame's characterization of Gula's call to Chain Bridge at 3:27 PM on March 25 to the extent it implies that Chain Bridge already had knowledge of the amount of Blue Flame's incoming wire transfer from California. There is no evidence that Blue Flame informed Chain Bridge prior to that call that it would be receiving a wire transfer in excess of $450 million.

8. Defendants dispute that Williamson intended to limit the California wire's impact on Chain Bridge's capital ratios. Williamson testified that she was "trying to get a handle on what might be the impact" of the incoming wire, but that she "hadn't actually done any calculations or had an opportunity to really analyze any of the impacts," and "after further reflection" she did not "believe it would have had a significant impact." Ex. 101 (Williamson Tr.) at 98. Defendants do not dispute that Brough stated to Schoeppe that "if this is true, we can't hold that money on our

balance sheet. He's going to have to agree to have it go into a CDARS account or to an ICS account." White Ex. 32 at 3:08-3:19.[5] As an additional material fact, Defendants state that Brough made that statement "thinking in the interest of the client" because a client "should want FDIC insurance" "for a sum of that size," and CDARS and ICS are "full FDIC insurance options." Ex. 100 (Brough Tr.) at 104-05.

9. Defendants dispute Blue Flame's characterization that Gula "explained the relevant details concerning the California transaction" to the extent it implies that Gula provided sufficient information for Chain Bridge to complete its due diligence on the transaction. After their call with Gula, Brough and Evinger continued to have "many unanswered questions" about the "legitimacy of the wire." Ex. 100 (Brough Tr.) at 125-26; *see also* Ex. 28 (Evinger Tr.) at 201. Brough and Evinger also on the call requested documentation to support the transaction that was important to verify the transaction's legitimacy, which they never received. Ex. 107 (Evinger Tr.) at 194-95, 202; Ex. 100 (Brough Tr.) at 355. Defendants dispute that Brough and Evinger indicated that the wire's size would pose operational challenges for Chain Bridge, which is not supported by the documents Blue Flame cites. Brough told Gula "[w]ell, we can handle this. We need to make sure that we put you into fully FDIC insured product." Ex. 100 (Brough Tr.) at 244.

10. Defendants do not dispute that Gula attached wire instructions to his email of 6:18 PM ET on March 25. Defendants state that the wire instructions were for "Wingar Industrial Inc.," with a line at the top stating "Great Health Companion Group Ltd Co.," but without any explanation of a relationship between the two entities. White Ex. 37. As an additional material fact, Defendants state that Evinger searched online for Wingar Industrial and learned that the

[5] CDARS refers to the Certificate of Deposit Account Registry Service. *See* https://www.cdars.com/.

company was a cutlery and flatware wholesaler. Ex. 40 (Brough Tr.) at 159-61; *see* Ex. 111 (www.wingar.com). There is no record evidence that Wingar Industrial is affiliated with Great Health.

Defendants dispute that Gula forwarded Evinger and Brough a text message from Wong to Thomas "confirming" that California would be paying Blue Flame in the morning. The document Blue Flame cites is an email with an attached screenshot from John Thomas's cell phone of an email from "Wong, Michael@DGS" that says "Hi John, CA State Controller's Office will be paying you via wire transfer first thing in the morning." It contains no identification of what "DGS" refers to or who Michael Wong was. There was no official insignia designating the email as one sent from the State of California. There was no date on the email to identify the time periods referenced therein. *See* White Ex. 38.

11. Defendants dispute that they did not advise Gula during the call that Blue Flame had provided insufficient information about the transaction with California. Brough and Evinger asked Gula for "further documentation" on Gula's new business, including copies "of any contracts [Gula] had in place with purchasers or sellers." Ex. 42; Ex. 44 at 4464; Ex. 28 (Evinger Tr.) at 202; Ex. 40 (Brough Tr.) at 142-43. Evinger subsequently sent Gula an email stating that Chain Bridge "look[ed] forward to receiving your information related to these contracts." Ex. 45 at 13446. Defendants further state that Brough emailed others at the Bank and said the funds would need to be moved off the balance sheet to "mak[e] sure that we do the right thing for the client" and find an "FDIC insured" option. Ex. 100 (Brough Tr.) at 167.

12. Defendants do not dispute that Thomas told Cole he needed to confirm with manufacturers that he had the funds from California and that the wire transfer was the "initial wire that gets us so we can fill those other orders." As an additional material fact, Defendants state that

Thomas also told Cole on the call that he "kn[e]w this is extraordinary," that he was "dying to know when the wire lands in our account," and that "confidentially, [Blue Flame] ha[s] several billion dollars that we're going to move through over the next like, few weeks," White Ex. 40, all of which raised additional red flags with Chain Bridge. Ex. 103 (Grice I Tr.) at 276; Ex. 53 (Grice Rep.) ¶¶ 93-99.

14. Defendants do not dispute that Claburn emailed Chain Bridge personnel and stated that the wire had been "received and credited to the client's account," but Defendants dispute any implication that the funds were in fact credited to Blue Flame's account. The funds were "memo credited" to Blue Flame's account, reflecting a *pending* transaction that would not become an actual credit until the memo posting was processed overnight during Chain Bridge's nightly batch data processing. Ex. 101 (Williamson Tr.) at 101-02. There is no evidence that funds were ever credited to or deposited into Blue Flame's account.[6]

15. Defendants dispute that funds were "displayed" in Blue Flame's account, which is not supported by the cited deposition testimony or any documentary evidence. Defendants further dispute any implication that the funds were credited to Blue Flame's account. *See* ¶ 14, *supra*.

16. Defendants dispute Blue Flame's description of a 12:02 PM ET call between Cole and Thomas because the cited materials do not support that description. Defendants do not dispute that Cole emailed other Chain Bridge employees, stating that Blue Flame would send out two wires

[6] The activity report for Blue Flame's account shows no history of any credits or debits to Blue Flame's account. Ex. 108. Chain Bridge's general ledger for March 26 shows the funds associated with California's wire transfer deposited into Chain Bridge's Federal Reserve account and leaving that same account when returned to JPMorgan. Ex. 109; Ex. 100 (Brough Tr.) at 319-20; Ex. 101 (Williamson Tr.) at 154-58. The general ledger shows no funds deposited in Blue Flame's checking account on March 26, and "[i]f money was to be deposited into a client's account, it would be reflected on the general ledger" as a credit "to a liability account at the bank." Ex. 100 (Brough Tr.) at 37, 320; *see also* Ex. 101 (Williamson Tr.) at 154-58.

that day. Defendants state that Cole asked whether "[f]unds are available?" White Ex. 55 at 971. Defendants do not dispute that Bearman emailed Cole at Thomas's request. Defendants dispute that Thomas could "confirm Blue Flame's authorization" of outgoing wire instruction. Thomas lacked authority to do so because he never executed Blue Flame's account agreement. Ex. 31 at 555. As an additional material fact, Defendants state that the outgoing wire instructions Bearman provided did not match the outgoing wire instructions that Gula had provided to Brough and Evinger the evening of March 25. *Compare* White Ex. 56, *with* Ex. 45.

17. Defendants dispute Blue Flame's assertion that Chain Bridge's software system showed a "Credit" to Blue Flame's account, because the cited email shows that the "Transaction Description" was "*Memo* Credit." White Ex. 48 at 2673 (emphasis added). Defendants dispute that there were concerns regarding how long California's funds would be on deposit and dispute that the ICS program had a maximum limit of less than one-third the amount of California's wire transfer. As Brough testified based on experience, ICS has a higher limit and is "very flexible with clients" and will "give you far more than that." Ex. 100 (Brough Tr.) at 255. In addition, if necessary, Chain Bridge could have put funds in a CDARS account up to "50 million," or could have "purchased treasury bills, short-term treasury bills, and held them in custody" for Blue Flame. *Id.* at 255-56. Finally, as Blue Flame's own banking expert acknowledged, if Chain Bridge nonetheless had concerns about the wire transfer having an impact on Chain Bridge's balance sheet, Chain Bridge could have simply closed Blue Flame's account and issued Blue Flame a cashier's check for the balance. *See* Ex. 105 (O'Malley Tr.) at 68-69.

18. Defendants do not dispute that at 12:31 PM ET on March 26, Tim Coffey contacted Chain Bridge and informed Evinger that JPMorgan was investigating the wire transfer. As an additional material fact, Defendants state that Coffey told Chain Bridge that JPMorgan had

"concerns of fraud engaged in" California's wire transfer. Ex. 57; Ex. 58 (Coffey Tr.) at 64. Defendants further do not dispute that Evinger told Coffey that Chain Bridge had already placed a hold on the funds. As an additional material fact, Defendants state that Coffey was calling to ask "Chain Bridge to hold on to the funds as there w[ere] concerns about the transaction," Ex. 58 (Coffey Tr.) at 61, and that he asked Evinger "if they could either restrict or hold the funds," *id.* at 66. Defendants dispute that Chain Bridge "falsely stated" that Blue Flame's account had not been credited. *See* ¶ 14, *supra*. Defendants dispute Blue Flame's statement about what information was significant to JPMorgan as not supported by the evidence that Blue Flame cites.

Defendants do not dispute that, at 12:44 PM ET, Rakesh Korpal, an Executive Director of JPMorgan who led JPMorgan's Fraud Payments Control Team (Ex. 47 (Korpal Tr.) at 26), called Chain Bridge and spoke with Evinger and Brough. As an additional material fact, Defendants state that during that call, Korpal told Evinger and Brough that JPMorgan's Global Security and Investigations Team was investigating the wire transfer and had reported that the transaction "does not look right" and that JPMorgan's research was "all leading to not-good places." Ex. 59.

19. Defendants do not dispute that Fee Chang left a voicemail for Evinger in which she stated that the wire transfer was "legitimate." In that call, Chang requested that Evinger call her back to verify the amount of the wire. Ex. 60. Defendants do not dispute that Chang told Brough and Evinger that the wire transfer was a "good transfer." Ex. 61. Evinger asked Chang for "documentation" to support the transfer and told Chang that Chain Bridge wanted to "mak[e] sure that [the] funds were transferred properly" because it was "obviously a sizable amount." *Id.* Chang asked if Evinger wanted to "reach out to our State Treasurer's Office," and Evinger accepted the offer. *Id.* Defendants dispute Blue Flame's argumentative characterization that Chang's statements were sufficient to "confirm[] the legitimacy" of the wire transfer.

20. Defendants do not dispute that Natalie Gonzales and Mark Hariri from the State Treasurer's Office called Evinger and Brough, but Defendants dispute Blue Flame's argumentative characterization of that conversation. Evinger and Brough spoke with the State Treasurer's Office to "confirm that the wire was properly authorized" and that the funds "were intended to go to Blue Flame," Ex. 28 (Evinger Tr.) at 250-51; as part of their due diligence, they "wanted to make sure that [Gonzales and Hariri] were comfortable wiring in the money to the account that had just been opened," Ex. 62 (Gonzales Tr.) at 50-51, 130; Ex. 28 (Evinger Tr.) at 252; *see* Ex. 28 (Evinger Tr.) at 282; Ex. 40 (Brough Tr.) at 283-84. As an additional material fact, Defendants state that Gonzales and Hariri were "surprised" to learn additional facts about Blue Flame, Ex. 28 (Evinger Tr.) at 282; Ex. 40 (Brough Tr.) at 283, and asked Chain Bridge to "wait" to "credit[] the client account" until they could "find out additional information." Ex. 62 (Gonzales Tr.) at 50. Defendants dispute Blue Flame's assertion that Evinger falsely stated that the funds had not been credited to Blue Flame's account. *See* ¶ 14, *supra*.

21. Defendants dispute that JPMorgan requested a recall of the wire transfer based on Korpal's belief that Blue Flame's account had not been credited, because that assertion is not supported by Blue Flame's cited evidence. Defendants dispute Blue Flame's assertion that JPMorgan sent a recall notice based on a request from Chain Bridge. Among other things. Coffey told Chain Bridge at 1:37 PM ET that JPMorgan was "going to be recalling those funds" because JPMorgan had "enough concerns that we feel we need to claw those funds back." Ex. 64.

23. Defendants dispute Blue Flame's argumentative characterization that Brough "finally responded" to Gula's email. Blue Flame is wrong to imply that Chain Bridge did not act responsibly in its investigation of the wire transfer or its communications with Gula. Chain Bridge took a "few hours" to "perform the necessary diligence" on the wire transfer and responded to

Gula's 1:34 PM ET email 20 minutes after it was sent. White Ex. 71; Ex. 103 (Grice I Tr.) at 271-72.

24. & 25. Defendants dispute that Chain Bridge processed "a new payment order on Blue Flame's behalf" to return California's funds to JPMorgan. Chain Bridge returned the California wire transfer in response to JPMorgan's cancellation request. That request was a Fedwire "nonvalue message," which are "not payment orders," and originated with JPMorgan. Ex. 65; Ex. 86, Federal Reserve Operating Circular 6, at ¶ 13.1 (2019). Defendants dispute that Chain Bridge returned (or was preparing to return) funds "in" Blue Flame's account. *See* ¶ 14, *supra*.

**B. Additional Undisputed Facts**

The following additional facts are not in dispute.[7]

1. Blue Flame procured California's order by misrepresenting its capabilities and concealing material facts. Thomas told Yee that Blue Flame had 100 million 3M-manufactured N95 masks immediately available at the Port of Long Beach, that Blue Flame had "almost sold all" of that shipment but was "delivering another 100m units of n95 mask" to "hospitals and a private buyer" in Florida, that Blue Flame would have "100m units every week," and that Blue Flame had direct access to "manufacturers in China." Ex. 12 at 200119, 200121, 200124; Ex. 11 (Kim Tr.) at 36-37. None of those representations were true. Ex. 2 (Thomas Tr.) at 101, 103-04, 119-20, 155.

2. Blue Flame omitted or concealed other key details about its operations from the State of California. It failed to disclose that Blue Flame was incorporated on March 23, that it had no bank account until March 25, that Blue Flame had not delivered any N95 masks to any

[7] For a fuller account of the material undisputed facts demonstrating Defendants' entitlement to summary judgment, Defendants refer to their memorandum in support of their motion for summary judgment against Blue Flame. *See* Opening Memo. 3-15.

customer, that neither principal of Blue Flame had any experience in medical supply importation, and that Blue Flame did not have an office in California. Ex. 11 (Kim Tr.) at 82-84; Ex. 18 (Sturmfels Tr.) at 210-13; Ex. 8 (Wong Tr.) at 120-22; Ex. 16 (Chivaro Tr.) at 127-31.

3. Blue Flame's misrepresentations and omissions were critical to California's decision to do business with Blue Flame. *See, e.g.*, Ex. 16 (Chivaro Tr.) at 73-74, 78, 128, 130; Ex. 11 (Kim. Tr.) at 85.

4. When Gula came to Chain Bridge on March 25 to open an account for Blue Flame, he ignored warnings from Blue Flame's counsel to disclose California's incoming wire (*see* Ex. 32) and instead falsely reported to Chain Bridge that Blue Flame expected 25 incoming domestic wires per month totaling only $75 million, and that Blue Flame was in the "[m]edical consulting" business, rather than an import/export company. Ex. 30; Ex. 31. If Chain Bridge had known that Blue Flame expected a $456 million wire transfer that same day from the State of California, or that Blue Flame's business was the importation and sale of N95 masks, Chain Bridge would not have opened Blue Flame's account without conducting additional due diligence. Ex. 33.

5. After Brough informed Gula by email that Chain Bridge had "received official notice from the sending bank to return the wire" and told Gula to "[p]lease resolve directly with the state of California," Ex. 67 at 650, but before Chain Bridge had returned the funds to JPMorgan, Gula went to Chain Bridge and met with Brough and Evinger around 2:30 PM. Gula apologized for the transaction and did not object to the return of the funds to JPMorgan. Ex. 40 (Brough Tr.) at 305-06; Ex. 110 (Gula Tr.) at 207.

## ARGUMENT

Summary judgment is appropriate when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). As we have previously explained (Opening Memo. 14-30), the undisputed evidence demonstrates that each of Blue Flame's claims fails as a matter of law. Thus, Defendants are entitled to summary judgment in their favor, and Blue Flame's motion should be denied.

## I. Blue Flame Is Not Entitled To Summary Judgment On Its Claim Under UCC Section 4A-404 Of The Uniform Commercial Code (Count I)

Blue Flame contends (Memo. 14) that Chain Bridge is "liable for consequential damages" under UCC Section 4A-404(a) because it "accepted the payment order [JPMorgan] sent on behalf of California but ultimately prevented Blue Flame from accessing the funds despite the impossibility of cancellation." That claim fails—and Chain Bridge is entitled to summary judgment—for each of the reasons explained in our memorandum in support of Defendant' motion for summary judgment. In addition, Blue Flame fails to establish that it ever made a demand for payment from Chain Bridge.

### A. The Cancellation Of The Wire Transfer Nullified Chain Bridge's Acceptance

The premise underlying Blue Flame's Section 4A-404(a) claim is that, because Chain Bridge accepted JPMorgan's payment order transmitting California's wire transfer, Chain Bridge was required to pay California's funds to Blue Flame. *See* Blue Flame Memo. 14-19. But that premise does not support liability against Chain Bridge, because the wire transfer was cancelled. As Blue Flame appears to acknowledge (Memo. 14-19), the cancellation of a payment order nullifies the consequences of acceptance, UCC § 4A-211(e), thereby eliminating the obligation of a beneficiary's bank (here, Chain Bridge) to pay its customer under Section 4A-404(a). Blue Flame nonetheless contends that cancellation of California's wire transfer was not possible under the circumstances of this case. That contention is incorrect.

1. Blue Flame argues that California's wire transfer could not be cancelled because, it says, none of the circumstances for an effective cancellation set forth in UCC Section 4A-211(c)(2) were

present. As noted above, however, "[i]f an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance." UCC § 4A-211(e). Under the plain text of that rule, *any* cancellation of a payment order nullifies the consequences of acceptance—whether or not the conditions for effective cancellation are satisfied.

But even if cancellation must be "effective" within the meaning of UCC Section 4A-211(c) to nullify the consequences of acceptance, that requirement is satisfied here as well. First, Chain Bridge plainly agreed to JPMorgan's cancellation by returning the funds in response to JPMorgan's service message, as was required to make JPMorgan's post-acceptance cancellation effective. *See* UCC § 4A-211(c). Second, the payment order was eligible for effective cancellation because there was "a mistake by a sender in the funds transfer which resulted in the issuance of a payment order . . . that order[ed] payment to a beneficiary not entitled to receive payment from the originator." *Id.* § 4A-211(c)(2)(ii). As we have previously explained, the undisputed evidence establishes both of these requirements as a matter of law: California's wire transfer was sent by "mistake," because California originated the transfer only as a result of having been misled about Blue Flame's bona fides as a PPE supplier, and Blue Flame was "not entitled to receive payment from" California, *id.*, because Blue Flame fraudulently procured California's order. *See* Opening Memo. 16-17.[8]

2. Blue Flame conspicuously makes no effort to refute that California originated the wire

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[8] Section 4A-211(c)(2) provides for effective cancellation based on "a mistake by *a* sender in the funds transfer," UCC § 4A-211(c)(2) (emphasis added), and does not require a mistake by the sender of the particular payment order that is sought to be cancelled. A "funds transfer" is "the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order." *Id.* § 4A-104(a). Here, California was the sender of the payment order to JPMorgan that initiated the wire transfer. Thus, although JPMorgan (rather that California) was the sender of the payment order that Chain Bridge received and which JPMorgan cancelled, California's mistake was a basis for effective cancellation under Section 4A-211(c)(2).

transfer only because it was misled by Blue Flame, or to show that Blue Flame was entitled to receive payment from California despite Blue Flame's misrepresentations and concealment of material facts. Instead, Blue Flame's position is that neither point matters: According to Blue Flame (Memo. 15-16), a post-acceptance cancellation can *never* be effective if "the sender has intentionally sent a payment order containing accurate payment and beneficiary information."

Blue Flame thus argues that Section 4A-211(c)(2)(ii) is limited to cases of mistaken identity, where a payment order "mistakenly orders payment to a beneficiary different from the one the originator intended to pay." Blue Flame Memo. 15 n.6. The only authority Blue Flame can marshal for that atextual limitation on Section 4A-211(c)(2)(ii)'s scope is "Case #3" set forth in the Official Comment to Section 4A-211, which addresses a case of mistaken identity. But the cited comment is clear that this is merely an "example[]" to "illustrate subsection (c)(2)." UCC § 4A-211 cmt. 4. That does not suggest that Section 4A-211(c)(2)(ii)'s generic reference to "mistake" is *limited* to mistaken identity.

3. There is likewise no merit to Blue Flame's suggestion (Memo. 16-18) that permitting cancellation of California's wire transfer would undermine Article 4A's policy goals of finality in funds transfers and avoiding disruption of the contractual obligations of the originator and beneficiary. Whatever the force of those policy interests as a general matter, they have no application in a case like this one, where the beneficiary is not entitled to receive payment because of its own fraud. Under these circumstances, there was no valid contractual obligation to "disrupt," and a misguided focus on "finality" would *disserve* public policy by leaving a wrongdoer with the fruits of its own misconduct. Article 4A cannot be used as "a shield for fraudulent activity" in this manner. *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267, 1276 (11th Cir. 2003).

Blue Flame also overlooks critical policy interests that cut overwhelmingly in the opposite direction, not the least of which is that "[d]etecting, preventing, and reporting COVID-19-related scams and illicit activity is critical to our national security . . . and protecting innocent people from harm." Ex. 77 at 1 (FinCEN Notice). As we have explained (Opening Memo. 18-20), the policy interests at stake were so substantial that Chain Bridge may well have faced regulatory jeopardy if it had refused JPMorgan's cancellation request and had instead paid Blue Flame, in the face of multiple red flags of potential illegality. The fact that Chain Bridge's agreement to honor JPMorgan's cancellation request furthered critical public policies provides additional grounds to conclude that cancellation was permissible under these circumstances.

4. Even Blue Flame does not believe its own wooden account of Chain Bridge's obligations under Section 4A-404(a). While much of Blue Flame's brief proceeds on the assumption that Chain Bridge was required to blind itself to all of the red flags of potential fraud and simply release California's funds to Blue Flame, Blue Flame ultimately concedes that Chain Bridge "could have held the funds while completing its due diligence on Blue Flame's transaction with California." Blue Flame Memo. 26. That concession is fatal to Blue Flame's claim because it demonstrates that Chain Bridge did not act unlawfully in refusing to pay Blue Flame. After all, it is a bank's refusal to pay that triggers liability for damages under Section 4A-404(a). If that decision was lawful, then there is no basis for an award of damages against Chain Bridge.

Blue Flame appears to contend (Memo. 26) that while continuing to *hold the funds* would have been lawful, returning them to JPMorgan was an independent violation of Section 4A-404(a). But Blue Flame offers no argument in support of that contention, and there is no textual or logical basis for treating a bank's holding versus returning the funds differently under a statute that permits recovery only for "damages resulting from the refusal to pay." UCC § 4A-404(a).

### B. Chain Bridge Had "Reasonable Doubt" Concerning Blue Flame's Right To Payment

Blue Flame also asserts (Memo. 22-23) that the undisputed facts negate Chain Bridge's defense that it had "a reasonable doubt concerning the right of [Blue Flame] to payment." UCC § 4A-404(a). Blue Flame has it backwards. The same red flags that triggered Chain Bridge's concerns about potential fraud were sufficient grounds (to say the least) for "reasonable doubt" concerning Blue Flame's right to payment. Thus, Chain Bridge, rather than Blue Flame, is entitled to summary judgment on the "reasonable doubt" defense. *See* Opening Memo. 20 n.10.

Once again, Blue Flame makes no effort to refute that the wire transfer gave rise to multiple substantial red flags of suspicious and potentially fraudulent activity. Nor could it, given that the undisputed evidence shows they were not just red, but crimson. *See* Opening Memo. 18-20.

Instead, Blue Flame insists that those red flags are irrelevant because the "reasonable doubt" defense "does not apply where the beneficiary's bank refuses to make payment due to concerns that its customer is engaged in fraud." Blue Flame Memo. 22. That argument rests entirely on the Official Comment to Section 4A-404(a), which states that the defense "does not apply to cases in which a funds transfer is being used to pay an obligation and a dispute arises between the originator and the beneficiary concerning whether the obligation is in fact owed," including a scenario in which the originator alleges "that the beneficiary is not entitled to payment because of fraud against the originator." UCC § 4A-404 cmt. 3. The comment also states that "[u]nless the payment order has been cancelled pursuant to Section 4A-211(c), there is no excuse for refusing to pay the beneficiary." *Id.*

Blue Flame's reliance on comment 3 is misplaced for at least two reasons. First, the comment's conclusion rests on the premise that "the originator of a funds transfer cannot cancel a payment order to the beneficiary's bank . . . because the originator is not the sender of that order."

UCC § 4A-404 cmt. 3. That rationale is inapplicable here. Chain Bridge received a cancellation request *from JPMorgan*, the sender of the relevant payment order that Chain Bridge had received. Even if this Court ultimately concludes that Chain Bridge's agreement to honor that cancellation request was not effective to nullify Chain Bridge's acceptance of the payment order, there is no question that JPMorgan was the proper party to seek cancellation of the payment order. The cancellation thus supplied grounds for reasonable doubt as to Blue Flame's right to the funds—in a way that an attempted cancellation by the originator of a funds transfer would not.

Second, comment 3 focuses on disputes between "the originator and the beneficiary," and states that the reasonable doubt defense does not apply in the context of "fraud or breach of contract claim[s] *of the originator*." UCC § 4A-404 cmt. 3 (emphasis added). Here, however, Chain Bridge harbored reasonable doubts as to Blue Flame's right to payment based on its *own* suspicions of fraud (informed, in part, by the information Chain Bridge received from JPMorgan and from California officials). In light of specific warnings from regulators about potential fraud related to COVID-19, the multiple red flags presented by the transaction, Blue Flame's misrepresentations to Chain Bridge during account opening, JPMorgan's own concerns of fraud, and JPMorgan's cancellation request, Chain Bridge had ample reason to doubt the legitimacy of the transaction. That, in turn, establishes Chain Bridge's "reasonable doubt" defense under Section 4A-404(a).

### C. Blue Flame's Breach Of Its Obligation Of Good Faith Bars Its Section 4A-404(a) Claim

Blue Flame's claim under UCC Section 4A-404(a) is also independently barred by its failure to act in good faith. As we have previously explained (Opening Memo. 21-22), "[e]very contract or duty within the [UCC] imposes an obligation of good faith in its performance and enforcement," UCC § 1-304, "includ[ing] the exercise of rights created by the [UCC]," *id.* § 1-304 cmt. 2. Accordingly, a party that has breached its obligation of good faith cannot enforce rights created by the UCC, including the alleged obligation under Section 4A-404(a) that Blue Flame seeks to enforce against Chain Bridge here. *See id.* § 1-304 cmt. 1.

Blue Flame failed to act in good faith in at least two ways. *See* Opening Memo. 21-22. First, Blue Flame misrepresented and concealed material aspects of its business, experience, and relationships in procuring an order from California. *See* pp. 14-15, *supra.* Second, Blue Flame misrepresented its anticipated account activity and the nature of its business to Chain Bridge when it sought to open an account, thereby leading Chain Bridge to open an account that it otherwise would not have opened without additional investigation. *See* p. 15, *supra*; Opening Memo. 21-22. Those breaches of Blue Flame's obligation to act in good faith justify summary judgment for Chain Bridge, not Blue Flame, on Count I.

### D. Blue Flame Cannot Establish Damages Resulting From Chain Bridge's Refusal To Pay

As we have previously explained (Opening Memo. 22-27), summary judgment for Chain Bridge is also warranted because Blue Flame has no evidence of damages resulting from Chain Bridge's refusal to pay. California had an unfettered right to terminate its order from Blue Flame, as Blue Flame appears to acknowledge by conceding (Memo. 29) that its contract with California was terminable at will. Thus, Blue Flame could not have forced California to proceed with the transaction over California's objection—and that was true whether or not Blue Flame received California's funds. *See* Opening Memo. 22-24. Moreover, there is no record evidence that Blue Flame would have successfully fulfilled California's order even if Blue Flame had received California's funds. There is no evidence that Blue Flame had any source of supply to fulfill California's order, and Blue Flame's consistent failures to fulfill other customers' orders for N95 masks demonstrate that it could not have fulfilled California's order. *See id.* at 24-26.

Blue Flame attempts to gloss over this failure of proof by requesting only a partial summary judgment that "Chain Bridge is liable for damages in an amount to be proven at trial." Blue Flame Memo. 19. But there is no question that Blue Flame must demonstrate "damages resulting from the refusal to pay" as an element of its claim under Section 4A-404(a). The absence of evidence on this element justifies summary judgment in Chain Bridge's favor and thus requires that Blue Flame's motion be denied.

### E. Blue Flame Did Not Demand Payment From Chain Bridge

Blue Flame is wrong to contend (Memo. 20-21) that the undisputed evidence establishes that it demanded payment from Chain Bridge, as is required to establish liability under Section 4A-404(a). Blue Flame points to instructions that Thomas provided to Chain Bridge by email to send an outgoing wire to Suuchi, but Thomas had no authority to deliver those instructions because he never executed Blue Flame's account agreement. Counterstatement of Material Facts, *supra*, ¶ A.16. Moreover, Thomas's instructions to wire funds to Suuchi contradicted the wire information that Chain Bridge had received from Gula, Blue Flame's only authorized signer, the previous day. *Id.* ¶ A.10. And when Gula learned that Chain Bridge would return California's funds, he did not demand payment; instead he apologized in person for the transaction and did not object. *Id.* ¶ B.5. Accordingly, Blue Flame never made any demand for payment.

## II. Blue Flame Is Not Entitled To Summary Judgment On Its Claim Under UCC Section 4A-204 (Count II)

Blue Flame seeks summary judgment as to liability on Count II of its Complaint, which asserts an alternative claim under UCC Section 4A-204. That claim presumes that the wire transfer was not canceled (Blue Flame Memo. 14), so the effective cancellation here precludes it. Count II also fails on its own terms. Section 4A-204 requires a "receiving bank" to refund its customer when the bank "accepts a payment order issued in the name of its customer as sender" that is either unauthorized and not effective or unenforceable against the customer. UCC § 4A-204(a). It thus covers a situation in which a bank receives and acts on an unauthorized payment order purporting to come from its customer.[9] As we have previously explained, Section 4A-204(a) is inapplicable here because Chain Bridge returned California's funds to JPMorgan in response to JPMorgan's cancellation request. Chain Bridge never received a payment order purporting to come from Blue Flame, so it could not—and did not—accept such a payment order. Accordingly, Chain Bridge is entitled to summary judgment on Count II. *See* Opening Memo. 26-27.

At the motion to dismiss stage, Blue Flame conceded that, "[i]f discovery establishes that" the California wire transfer was returned in response to "a cancellation request made by California's bank, . . . this Count would not survive upon a motion for summary judgment." Dkt. No. 27, at 15 n.8. In an effort to retreat from that correct concession—which plainly dooms Count II—Blue Flame now contends (Memo. 24) that Chain Bridge is liable because it "unilaterally created and accepted an unauthorized payment order on behalf of Blue Flame." But Blue Flame does not point to any payment order that listed Blue Flame as the sender or otherwise purported to come from Blue Flame. Instead, Blue Flame cites only the payment order that Chain Bridge sent to JPMorgan to effectuate the return of California's funds. *See* White Ex. 75. That payment order listed *Chain Bridge* as the sender, not Blue Flame. *See* Ex. 68.[10] Thus, it was not "a payment order

[9] The reported cases addressing Section 4A-204(a) are consistent with its plain text. They uniformly address unauthorized payment orders that a bank *accepts* from someone—usually a person purporting to be the bank's customer or the customer's agent. *See, e.g.*, *Gold v. Merrill Lynch & Co.*, No. 09-318-PHX-JAT, 2009 WL 2132698, at *1 (D. Ariz. July 14, 2009); *Regatos v. North Fork Bank*, 838 N.E.2d 629, 630-31 (N.Y. 2005); *see also Ma v. Merrill Lynch, Inc.*, 597 F.3d 84, 86-87 (2d Cir. 2010) (payment orders for which financial advisor assigned by bank "forged [the customer's] signature . . . and falsely noted that she had confirmed the transfers with [the customer]").

[10] Blue Flame cites a record of the payment order from Chain Bridge's own internal systems, which designates the transfer as "Outgoing" (meaning that Chain Bridge was the sender). White Ex. 75. The record of the payment order from the Fedwire Funds Processor system lists Chain Bridge as the sender. Ex. 68.

*issued in the name of [Chain Bridge's] customer as sender*," UCC § 4A-204(a) (emphasis added), as would be required to establish liability on Count II.

Nor could Chain Bridge "accept" its own payment order by sending it to JPMorgan. "[A] receiving bank other than the beneficiary's bank accepts a payment order when it executes the order." UCC § 4A-209(a). And "[a] payment order is 'executed' by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank." UCC § 4A-301(a). In other words, a bank does not execute the payment order that it issues to the next bank in the funds transfer; rather, the issuance of that conforming payment order to the next bank constitutes execution of the prior "payment order *received by the bank*." *Id.* (emphasis added). Here, as just explained, there was no such prior payment order: Chain Bridge did not receive any payment order in connection with the cancellation of California's wire transfer that it could have accepted, which means that Section 4A-204(a) is inapplicable by its terms.[11]

## III. Blue Flame Is Not Entitled To Summary Judgment On Its Tortious Interference Claims (Counts IV and V)

Blue Flame also seeks summary judgment as to liability on its claims for tortious interference with contract and tortious interference with business expectancy. *See* Memo. 27-30. Summary judgment should be denied on those claims because there is no evidence that Blue Flame had a valid contract or business expectancy with California, that Defendants acted with a wrongful intent to interfere, or that Defendants employed any improper methods. Thus, Defendants—not Blue Flame—are entitled to summary judgment on Blue Flame's tortious interference claims.

### A. Blue Flame Had No Valid Contract Or Business Expectancy

Blue Flame is wrong in contending (Memo. 27) that Blue Flame had a valid contract and

[11] Blue Flame's request for summary judgment on Count II is independently foreclosed by Blue Flame's bad faith misconduct. Compliance with the obligation of good faith is a predicate to enforcement of any duties under the UCC, including Section 4A-204. *See* pp. 21-22, *supra*.

business expectancy with California. As explained above (at 14-15), Blue Flame procured California's order through fraudulent misrepresentations and concealment of material facts. When a plaintiff has "procured the counterparty's consent to the contract by fraud," the contract is not "valid in substance" and the plaintiff accordingly has no "legitimate contractual expectations" warranting protection through a tort claim. Restatement (Third) of Torts: Liability for Economic Harm § 17 cmt. k (2020); *see also, e.g.*, *Hunter v. Holsinger*, No. 5:15-cv-00043, 2016 WL 1169308, at *14 (W.D. Va. Feb. 19, 2016) (contract that is "unenforceable because of fraud . . . could not form the basis of a tortious interference claim"), *report and recommendation adopted*, 2016 WL 1223347 (W.D. Va. Mar. 24, 2016).[12]

### B. Defendants Did Not Act With Any Wrongful Intent To Interfere

Blue Flame contends (Memo. 28-29) that the intent element of its tortious interference claims is established because Defendants knew that interference was "certain or substantially certain to occur as a result" of their actions. *Commerce Funding Corp. v. Worldwide Sec. Servs. Corp.*, 249 F.3d 204, 212-13 (4th Cir. 2001). That is so, Blue Flame urges, because informing California officials that Blue Flame's bank account was a day old and that the company had been founded by a political operative was "reasonably calculated to cause California to re-think its transaction with Blue Flame." Blue Flame Memo. 28.

Blue Flame's argument is the definition of chutzpah. If sharing indisputably true facts about Blue Flame was "substantially certain" to cause California to revisit its decision to do business with Blue Flame, that is so only because *Blue Flame had withheld that information from California*. Blue Flame cites no principle of law and nothing in the evidentiary record to support

[12] Even if Blue Flame had a contract with California that was valid in substance, there is no evidence that Defendants caused any breach of that contract, which was terminable at will by California. *See* Opening Memo. 30.

its mistaken premise that Defendants were required to *assume* that Blue Flame was perpetrating a fraud on the State of California.[13]

**C. Defendants Did Not Employ Improper Methods**

As Blue Flame correctly acknowledges (Memo. 29), its tortious interference claims require proof that Defendants employed "improper methods." *Dunlap v. Cottman Transmission Sys., LLC*, 754 S.E.2d 313, 318 (Va. 2014). But Blue Flame has no proof of that element.

1. In its Complaint, Blue Flame premised its tortious interference claims on allegations that Defendants "unilaterally contacted California officials and accused Blue Flame of fraud, without basis." Compl. ¶¶ 128, 137. But Blue Flame now retreats from that theory, presumably because it is unsupported by any evidence. In particular, there is no evidence that Defendants ever accused Blue Flame of fraud, and the information that Chain Bridge did share with California officials—that Blue Flame's account had been opened the previous day by a political lobbyist—was indisputably true. *See* Opening Memo. 28-29.

Instead, Blue Flame now argues for the first time (Memo. 29-30) that Defendants acted improperly by contacting California officials *at all*, which Blue Flame describes as a departure from "established standards of banking industry practice." But Blue Flame cites no authority for the astonishing proposition that liability for tortious interference may be premised on indisputably true statements made to government officials to help ensure that hundreds of millions of dollars in taxpayer funds were not diverted to a wrongdoer. It should go without saying that Defendants were free to communicate with California officials to verify the wire transfer, and that they were under

[13] On March 27, the FBI visited Dan Kim, Director of California's DGS, "alluded to the fact that the Chinese company was already under investigation," and asked Kim if he "was aware that [Thomas] just formed his company a week ago and the bank account was established two days ago." Ex. 112 (Kim Tr.) at 138, 140. Kim replied, "I was not aware at the time, but I am now aware." *Id*. at 138. But it was Blue Flame's obligation not to conceal that key information.

no obligation to assist Blue Flame in concealing material facts from the State.

Unsurprisingly, Blue Flame's theory has no legal support. Just as communications "between persons on a subject in which the persons have an interest or duty" are privileged against a defamation claim, *Adler v. Virginia Commonwealth Univ.*, 259 F. Supp. 3d 395, 409 (E.D. Va. 2017), *aff'd*, 709 F. App'x 189 (4th Cir. 2018), so too are they insufficient to support a claim for tortious interference, *see Shirvinski v. United States Coast Guard*, 673 F.3d 308, 322 (4th Cir. 2012). Here, Defendants' statements to California officials were privileged because both Chain Bridge and California had a shared interest in investigating the wire transfer to verify its validity. *See Professional Recovery Servs., Inc. v. General Elec. Capital Corp.*, 642 F. Supp. 2d 391, 401 (D.N.J. 2009). Blue Flame cannot overcome that privilege because Defendants' statements were true—not knowingly or recklessly false, malicious, or made in bad faith. *See Cashion v. Smith*, 749 S.E.2d 526, 533 (Va. 2013). It follows that Defendants' diligence communications with California officials were appropriate and rightful, not tortious.

Blue Flame also fails to articulate any connection between the aspect of Defendants' conduct that it now contends was unlawful—Defendants' decision to contact California officials directly—and any alleged interference with the California transaction. Critically, Blue Flame does not contend that there was anything unusual or unlawful about Defendants' diligence communications with JPMorgan, in which Chain Bridge shared the very same information that it shared with California officials. Ex. 59. And it is undisputed that the California officials were also in close contact with JPMorgan regarding the wire transfer. *E.g.*, Ex. 47 (Korpal Tr.) at 21-22; Ex. 66. What difference could it possibly have made whether California learned that Blue Flame was a brand-new entity formed by political operatives from Chain Bridge, or from its own bank, JPMorgan? Blue Flame offers not even a hint.

Finally, Defendants' decision to contact California officials cannot support Blue Flame's tortious interference claims because there is no evidence that this decision violated any "established standard" in the banking industry. *Duggin v. Adams*, 360 S.E.2d 832, 837 (Va. 1987).[14] Testimony by one California official that it was "not typical" or was "unusual" (White Ex. 42 (Gonzales Tr.) at 97-98) to be contacted by a counterparty's bank does not demonstrate an *established* industry standard forbidding that practice. Testimony from Blue Flame's Bank Secrecy Act expert that it is "unusual" to contact a noncustomer or testimony from JPMorgan's expert that this was not "highly usual" also does not demonstrate such an established industry standard. White Ex. 83 (O'Malley Tr.) at 264; White Ex. 82 (Pesce Tr.) at 27-28. By contrast, Defendants' banking expert testified that it is "normal for a bank to contact the counterparty to the wire transfer directly" in circumstances like these, and that in his current role as Chief Compliance Officer at a bank in New York he directs the bank to "call originators" to "understand what a transaction represents" about "once [a] month." Ex. 103 (Grice I Tr). at 291, 294; *see id.* at 292, 294-96. And Chain Bridge's Senior Vice President and Branch Manager Heather Schoeppe testified that it is "pretty standard practice" to "reach[] out to clients on the other side of transactions to verify the details of those transactions." Ex. 102 (Schoeppe Tr.) at 258-59. On this evidentiary record, no reasonable factfinder could conclude that Defendants violated any established industry standard.

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[14] Although Blue Flame is correct that the Virginia Supreme Court has posited that "[m]ethods . . . may be improper because they violate an established standard of a trade or profession," *Duggin*, 360 S.E.2d at 837, we are unaware of any decision of that court upholding liability for tortious interference based on that theory. That theory has also been rejected by the Restatement (Third) of Torts, which requires an "independent and intentional legal wrong" by the defendant to establish liability for tortious interference with economic expectation. Restatement (Third) of Torts: Liability for Economic Harm § 18(b) (2020); *see also id.* cmt. f (explaining that the rules governing interference with economic expectation also govern interference with a contract that is terminable at will). At a minimum, this theory would require extraordinarily compelling evidence of a clearly established industry norm. *See id.* cmt. b (stressing the need to "provide[] potential defendants with clear guidance about where their exposure to liability starts and stops").

2. Blue Flame briefly suggests (Memo. 30) that Defendants employed improper methods by "actively avoid[ing] discussing" California's wire with Blue Flame after it was received. But Blue Flame offers no evidence of any departure from an established industry practice. Blue Flame says only that standard practice would be to request additional information from a customer to address concerns about a transaction. Brough and Evinger did that—and Blue Flame failed to provide the requested documentation. Ex. 42; Ex. 44 at 4464; Ex. 28 (Evinger Tr.) at 202; Ex. 40 (Brough Tr.) at 142-43. Instructing Chain Bridge employees not to contact Blue Flame while Chain Bridge investigated the transaction was consistent with industry standards. Ex. 103 (Grice I Tr.) at 271-72. And in all events, Blue Flame does not articulate any connection between those instructions and any alleged interference with the California transaction.

3. Blue Flame also contends (Memo. 29) that Defendants employed improper methods because their conduct "violated Chain Bridge's obligations under the UCC and Regulation J." That premise is wrong. *See* Opening Memo. 16-22; pp. 16-25, *supra*. In any event, Blue Flame's attempt to bootstrap an alleged violation of Regulation J into claims for tortious interference is preempted by federal law. As the Fourth Circuit has emphasized, Subpart B of Regulation J "preempts any state law cause of action premised on conduct falling within the scope of Subpart B, whether the state law conflicts with or is duplicative of Subpart B." *Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220, 223 (2002). Because Chain Bridge's decision to honor JPMorgan's cancellation of California's wire transfer is plainly "conduct . . . covered under Subpart B," *id.*, Blue Flame cannot pursue common-law claims premised on that decision.

**D. Blue Flame Cannot Establish Damages**

Blue Flame also cannot establish damages resulting from Defendants' alleged tortious interference. *See* Opening Memo. 30. Defendants are entitled to summary judgment on that additional ground, which also requires that Blue Flame's motion be denied.

Date: May 20, 2021

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## CERTIFICATE OF SERVICE

I hereby certify that on May 20, 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:

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