EXHIBIT 119

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

- - - - - - - - - - - - - - - X

BLUE FLAME MEDICAL LLC, :

Plaintiff, :

v. : Civil Action No.

CHAIN BRIDGE BANK, N.A., : 1:20-cv-00658

JOHN J. BROUGH and DAVID M. :

EVINGER, :

Defendants. :

______________________________ :

CHAIN BRIDGE BANK, N.A., :

Third-Party Plaintiff, :

v. :

JPMORGAN CHASE BANK, N.A., :

Third-Party Defendant. :

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Remote Deposition

Thursday, March 4, 2021

Deposition via Zoom of RICHARD J. CHIVARO, a 30(b)(6) witness herein, called for examination by counsel for Defendants/Third-Party Plaintiff in the above-entitled matter, pursuant to notice, the witness being duly sworn by MARY GRACE CASTLEBERRY, a Notary Public in and for the State of Maryland, taken at 9:39 a m. PST, Thursday, March 4, 2021, and the proceedings being taken down by Stenotype by MARY GRACE CASTLEBERRY, RPR, and transcribed under her direction.

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time period; is that correct?
A. Three calls, yes.
Q. And does seeing this text chain refresh your memory as to the substance of any of those calls?
A. No.
Q. Did Blue Flame require prepayment for any portion of the N95 mask sale?
MS. PORTER: Objection. Lack of foundation. Exceeds the scope.
THE WITNESS: That was the initial understanding, yes, that they were requiring prepayment.
BY MS. ESBROOK:
Q. Did that understanding change at any point in time?
A. Yes. I believe that he, Mr. Thomas, later came back and changed the fact that they did not need the prepayment, that they could do it with a period of time, kind of an open book account kind of situation where the state would receive the product and then have a certain number of days to inspect it

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and then make the payment.
Q. For the contract that the state actually entered into with Blue Flame, do you know whether prepayment was required?
MS. PORTER: Objection. Lack of foundation. Exceeds the scope.
THE WITNESS: I do not.
BY MS. ESBROOK:
Q. Does the state normally prepay vendors on procurement contracts?
MS. PORTER: Objection. Lack of foundation. Exceeds the scope.
THE WITNESS: No. Normally it's prohibited.
BY MS. ESBROOK:
Q. Was it allowed at the end of March 2020 to prepay vendors?
MS. PORTER: Objection. Exceeds the scope.
THE WITNESS: I believe it was. It was a determination made by the governor that he had the emergency authority, emergency powers to order the

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state to make purchases on a prepayment basis. And I do know that that was one of the discussion items that the controller had with Mr. Thomas on March 23rd. And that was a telephone call, that she indicated that the governor's office had agreed to prepayment of the amounts to vendors for this purpose.
BY MS. ESBROOK:
Q. Okay. And in this March 23rd telephone call that you mentioned --
A. Yes.
Q. -- what else did Ms. Yee and Mr. Thomas discuss, if anything?
A. That's the only thing she communicated to me that they discussed.
Q. And how did Ms. Yee learn -- excuse me.
A. I was just going to say she learned of this prepayment authorization by the governors at sometime prior to that, that -- I think around the 21st or the 22nd, they were -- the governor's office was meeting with his Office of Emergency Services and Department of General Services and the controller on

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the issue of whether prepayment was possible for purchasing of PPE.
And up to that point, the Department of General Services had taken the position that based on the contracts law in California, public contracts code, prepayments were prohibited. The governor, under his emergency authority, decided to waive any government code sections or public contract code provisions that prohibited prepayment and allowed them to proceed. I don't know if that helps or not, but that's kind of what happened.
BY MS. ESBROOK:
Q. Thank you. That is helpful.
Did the controller's office understand the prepayment authorization to be made in order to contract with Blue Flame Medical specifically?
MS. PORTER: Objection.
THE WITNESS: It was -- go ahead.
MS. PORTER: Lack of foundation. Scope.
THE WITNESS: It was not done for -- for Blue Flame specifically.
BY MS. ESBROOK:

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Q. Okay. And I'm going to turn to Defendant's Exhibit 94, the text thread from Ms. Yee's phone. And I'm going to turn to -- one moment, please -- the page Bates numbered SCO1538.

And Mr. Chivaro, I would direct your attention to this text from, I believe, Ms. Yee to Mr. Thomas on March 22nd at 11:06 p.m., and Ms. Yee says, "I will get my folks working on how to facilitate prepayment. Thank you, John. Get some rest."

Do you see that?

A. I do.

Q. And if we just scroll down a little bit, Mr. Thomas on March 23rd writes back and says, "I was just calling to brainstorm about how to get passed this 30-day payment issue."

MS. PORTER: Objection. Mischaracterizes the thread. Omits information between those two texts.

BY MS. ESBROOK:

Q. All right. Let me just rephrase. I'll just stick with that one message, Mr. Chivaro, in

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which Ms. Yee says, on March 22nd on page SCO1538, "I will get my folks working on how to facilitate prepayment."

Do you see that?

A. I do.

Q. And I think you told me that at some point around this time, the governor's office does end up allowing authorization for prepayment on vendor contracts, correct?

A. Correct.

Q. Do you know why the controller's office wanted to get involved in facilitating prepayment?

MR. MITCHELL: Object to the form.

THE WITNESS: Again, Mr. Thomas did seem to insist on prepayment as a requirement to get the masks.

BY MS. ESBROOK:

Q. Okay. And --

A. And the controller had communicated that to me, that they wanted prepayment and we looked at the issue. The legal office looked at the issue to determine whether prepayment was possible. We had

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concluded it was not --

MS. PORTER: I want to remind Mr. Chivaro, it seems like we're getting close to information that might be protected by the attorney-client privilege. And I'm instructing you not to answer with regard to anything that would be privileged information.

THE WITNESS: Okay. That's it. I have nothing further to add then.

BY MS. ESBROOK:

Q. Okay. That's fine. I just want to direct your attention to one other text on this that same night, March 22nd. So the earlier message we looked at was 11:06 p.m. I'm just going back a half hour on the page Bates stamped SCO1537, a text message from Ms. Yee to Mr. Thomas, March 22nd at 10:26.

And Ms. Yee says, "Without invoking my name, ask him if there is anything that can be done to authorize prepayment. 'Can't OES or the controller figure out a way for prepayment to happen in an emergency?' BTW, what is Michael's full name and position? Thanks."

Do you see that?

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A. I do.

Q. Okay. And I realize I did not read you the text prior to that, but I will show you now, Mr. Thomas, two messages prior said, "I'm texting with Michael now." And do you understand that Michael to be the same person referred to in the text I just read to you referred to as him --

A. That would be Michael -- Michael Wong, yes.

Q. And Michael Wong is an employee in the Department of General Services; is that right?

A. He's in charge of procurement for General Services, correct.

Q. Okay. And do you know why Ms. Yee is asking Mr. Thomas not to invoke her name?

A. Yes, I do. At the time, as I just indicated, the governor was meeting with General Services, Office of Emergency Services and the controller's office to determine whether or not prepayments were possible.

At the time this was issued at 3/22 10:26 p.m., the controller was getting a little ahead of the curve and she did not want to seem to be taking a position one way or the other with respect to this issue. Rather, she's told them that without invoking her name, he should raise the question. The governor had not come to a decision at that point yet as to whether prepayment would be allowed. She just did not want to be speaking out of turn at this time, so she asked that her name not be invoked.

Q. And when you say, "The controller was getting a little ahead of the curve," what do you mean by that?

A. Yes. Well, the governor had not made his decision yet. But she knew the decision was imminent one way or the other.

Q. Okay. And in her text, when she writes in quotes, "Can't OES or the controller figure out a way for prepayment to happen in an emergency," she is telling Mr. Thomas what to say to the governor's office there; is that correct?

A. Yeah. She knew that was the question under consideration by the governor.

Q. And was the controller's office involved

in the decision to authorize prepayment?

MS. PORTER: Objection. Vague.

THE WITNESS: The controller participated in the discussion as -- but again, it was a decision of the governor, not the controller.

BY MS. ESBROOK:

Q. And the discussion you're referring to is the discussion --

A. Whether or not OES or the controller could authorize prepayment in an emergency.

Q. I see. And in those discussions that Ms. Yee participated in about whether or not to authorize prepayment, did she discuss Blue Flame's offer to sell masks to the state of California?

MS. PORTER: Objection to the extent it calls for a deliberative process and --

THE WITNESS: She had -- she had given that information to Daniel Kim at General Services.

BY MS. ESBROOK:

Q. Okay. And maybe I -- I'm sorry. Go ahead.

A. And I think that the reply was, as you

stated, that OES had determined that prepayment was not possible. And that was communicated to Mr. Thomas. But that was all before the governor made his decision.

Q. I see. So the discussion that you're referring to is not -- was not a discussion with the governor's office?

MR. MITCHELL: Object to the form.

THE WITNESS: No, it was with the governor's office at first. She did not communicate to the governor's office that Blue Flame wanted prepayment, but I think that the governor's office got that information directly from either OES or Daniel Kim at DGS.

BY MS. ESBROOK:

Q. And did Ms. Yee speak to anyone at the Department of General Services about her feelings on prepayment?

MS. PORTER: Objection to the extent it calls for a deliberative process. Objection to form.

THE WITNESS: She did have a conversation about this with Mr. Kim.

BY MS. ESBROOK:

Q. And again, without getting into any deliberative process privilege issues, can you relay what Ms. Yee told Mr. Kim in that conversation?

MS. PORTER: Objection. Exceeds the scope.

THE WITNESS: The only thing she communicated to Mr. Kim was that this prepayment seemed to be a prerequisite for the masks to be delivered.

BY MS. ESBROOK:

Q. And by a prerequisite for the masks to be delivered, are you referring to Blue Flame's masks?

A. Yes.

Q. Did the controller's office authorize warrants for any other PPE purchases that required prepayment in March or April 2020?

MS. PORTER: Objection. Exceeds the scope.

THE WITNESS: At the time, we only paid the two vendors. So it was Epic and Blue Flame. So there were not any others under consideration at that