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

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

REPLY MEMORANDUM IN SUPPORT OF THIRD-PARTY PLAINTIFF CHAIN BRIDGE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT AGAINST THIRD-PARTY DEFENDANT JPMORGAN CHASE BANK, N.A.

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JPMorgan attempts to avoid summary judgment as to Chain Bridge's right to indemnification by rewriting UCC Section 4A-211(f). The Court should reject JPMorgan's meritless legal arguments, apply the UCC as written, and grant summary judgment in favor of Chain Bridge on Counts I and II.

First, JPMorgan argues that indemnification is unavailable here because the cancellation of its payment order was not done "by the sender" under Section 4A-211(f). That is so, it says, because *this* cancellation was instead "directed," "requested," and "instigated" *by the receiving bank*, Chain Bridge. But under the UCC, there is no such thing as cancellation of a payment order by the receiving bank—or by anyone other than the sender. Rather, every cancellation is, by definition, a "communication *of the sender* of a payment order." UCC § 4A-211(a) (emphasis added). Nor is there any other legal basis for construing Section 4A-211(f) to depend on the sender's reasons for cancelling its payment order, the receiving bank's motivations for agreeing to the sender's cancellation, or the extent, tone, and sequence of the parties' pre-cancellation discussions on the topic. In any event, the undisputed record does not plausibly support JPMorgan's premise that Chain Bridge "directed the cancellation at every material turn." Indeed, in another forum, JPMorgan concedes that *California* "decided to reverse the payment" and proceeded to "procure[] the reversal of the Wire Transfer," and that JPMorgan dutifully "assisted the State" in accomplishing the reversal. CBB Ex. 96 at 1, 4.

Second, JPMorgan argues that Chain Bridge somehow bargained away its right to indemnification*, sub silentio,* because it did not "include" JPMorgan's indemnification obligation when it agreed to JPMorgan's cancellation request. But that is the exact opposite of what Section 4A-211(f) actually says. The text could not be clearer that senders automatically indemnify receiving banks that agree to the cancellation of accepted payment orders "[u]nless otherwise provided in an agreement of the parties." It is undisputed that JPMorgan and Chain Bridge did not have any agreement to displace or modify Section 4A-211(f)'s default rule.

Third, JPMorgan says that Chain Bridge's losses and expenses arising from Blue Flame's claims are not "a result of the cancellation." Yet Blue Flame's claims assert that Chain Bridge impermissibly returned the wire to JPMorgan in response to its cancellation, instead of paying Blue Flame. That is the end of the matter as far as "causation" goes. JPMorgan nevertheless speculates that Chain Bridge might have returned the half-billion dollars to JPMorgan *even if* JPMorgan had not cancelled its payment order. Or perhaps, JPMorgan supposes, Chain Bridge might have held those funds indefinitely. These unsubstantiated hypotheticals are not sufficient to preclude Chain Bridge from establishing that its losses and expenses on Blue Flame's claims are, in the real world, incurred "as a result of" its agreement to JPMorgan's cancellation.

Finally, and in the alternative, if indemnification is unavailable, then Chain Bridge is entitled to summary judgment on its claim that JPMorgan will be unjustly enriched by any amount of the wire transfer that Chain Bridge is ultimately ordered to pay Blue Flame.

I. Chain Bridge Is Entitled To Summary Judgment On Counts I & II

A. Section 4A-211(f) Applies To The Cancellation

As explained in Chain Bridge's opening memorandum, Chain Bridge is entitled to indemnification by JPMorgan as a matter of law. *See* CBB Mem. in Support of Mot. for Summ. J. ("CBB Br.") (Dkt. No. 123) 12-23. Unless the parties agree to the contrary (which did not happen here, *see* § I.B, *infra*), indemnification applies when "the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender." UCC § 4A-211(f). Chain Bridge was the receiving bank on JPMorgan's payment order, it accepted that payment order, and it later agreed to the sender's cancellation of that order. JPMorgan thus is liable to Chain Bridge "for any loss and expenses, including reasonable attorney's fees, incurred by [Chain Bridge] as a result of the cancellation." *Id.* JPMorgan's arguments to avoid this result are both legally and factually baseless.

1. JPMorgan's opposition to summary judgment, like its own motion (Dkt. No. 113 at 14-21) ("JPMC Br."), depends principally on the up-is-down premise that it was *Chain Bridge* that made the "cancellation request under Article 4A," and that *JPMorgan* "agreed to Chain Bridge's reversal request." JPMC Mem. in Opp. to Summ. J. ("JPMC Opp.") (Dkt. No. 145) 9, 13. JPMorgan contends that, because Chain Bridge supposedly "instigated" and "directed" the cancellation of JPMorgan's payment order, that cancellation was not one done "by the sender," such that Section 4A-211(f) does not apply.

But Article 4A does not provide for two different types of cancellation—one "by the sender" and another "by the receiving bank." As Chain Bridge explained (CBB Br. 17), Section 4A-211 defines cancellation as a "communication *of the sender* of a payment order" that is "transmitted *to the receiving bank*." UCC § 4A-211(a) (emphasis added). In other words, *every* cancellation of a payment order is something done "by the sender." If the sender's cancellation precedes acceptance of the payment order, then it is automatically effective. *Id.* § 4A-211(b). If, however, the receiving bank has already accepted the payment order (as in this case), then the sender's cancellation is effective only if the receiving bank "agrees" to it. *Id.* § 4A-211(c). There is no such thing under the UCC as a receiving bank's cancellation of a sender's payment order, or a sender's agreement to a receiving bank's "cancellation."

JPMorgan nevertheless asserts that "Article 4A recognizes that receiving banks, just like senders, can effect cancellations." JPMC Opp. 11-12. But JPMorgan does not point to any support in the UCC, Regulation J, Operating Circular No. 6 (CBB Ex. 86), the case law, or anywhere else for that proposition, because there is none. Instead, it directs the Court to a separate provision of Article 4A that addresses the circumstances in which receiving banks can unilaterally "reject" a payment order prior to its acceptance. *Id.* at 12 (citing UCC § 4A-210). But rejection is not (as JPMorgan wishes) "just another form of cancellation." *Id.* As Section 4A-210(d) states, but JPMorgan omits, "[a]cceptance of a payment order precludes a later rejection of the order." Accordingly, although receiving banks are authorized to reject (not cancel) a sender's payment order, they can do so only before they have accepted that order. There is no dispute that Chain Bridge automatically accepted JPMorgan's payment order upon its receipt, *see* CBB Br. 13, and so it could not have rejected that payment order under Section 4A-210, let alone "cancelled" it.[1]

Unhappy with that result, JPMorgan complains that Chain Bridge's reliance on the plain language of Section 4A-211(a) is unduly "formalistic." JPMC Opp. 11. Its suggested solution is to *ignore* the definition of "cancellation" in Section 211(a), on the theory that it is "irrelevant" to whether Chain Bridge is entitled to indemnification under Section 211(f). *Id.* That is wrong. The fact that only the *sender* can cancel its payment order (Section 211(a)) precludes JPMorgan's theory that, under Section 211(f), a "cancellation" may or may not be done "by the sender," depending upon who "instigated," "orchestrated," "directed," or "laid the foundation" for the idea.

[1] JPMorgan also looks for support in Section 4A-106(a)'s provision that receiving banks may set cut-off times "for the receipt and processing of payment orders and communications cancelling or amending payment orders." JPMC Opp. 12. But that section confirms that receiving banks only receive and process *senders'* "communications cancelling or amending payment orders." UCC § 4A-106(a). JPMorgan also points to a comment on the UCC's definition of a receiving bank's "funds-transfer business day," in which the commentators explain that "the defined term is limited to the period during which all functions of the receiving bank can be performed, *i.e.*, receipt, processing, and transmittal of payment orders, cancellations and amendments." UCC § 4A-105 cmt 2. That commentary, which clarifies that a receiving bank must be open for all funds-transfer business to be deemed open for any of it, cannot plausibly be understood to contradict Section 4A-211(a)'s explicit language that a cancellation is conveyed only by "[a] communication of the sender of a payment order."

All cancellations are *necessarily* "by the sender." Accordingly, Section 4A-211(f) simply states that when a receiving bank agrees to a cancellation *as it is defined in Section 4A-211(a)*, it is indemnified by the sender. Nothing in the UCC makes the sender's reasons for cancelling its payment order relevant to its indemnification obligation.

JPMorgan's reimagining of Section 4A-211(f)—in which cancellations are not "by the sender" if a receiving bank's "self-interested decision-making" contributes to its agreement (JPMC Opp. 1)—would preclude indemnification in every case. As Chain Bridge has explained, once a receiving bank accepts a payment order, it is under no obligation to agree to the cancellation of that order, and presumably will provide its agreement only when doing so is in its self-interest for one reason or another. CBB Br. 19.

JPMorgan responds by offering up a variety of legal formulations, each intended to reassure the Court that JPMorgan does not propose to do away with the availability of indemnification under Section 211(f) altogether. Thus, it suggests that perhaps Section 211(f) might allow for indemnification to a receiving bank that agrees to a cancellation because it is "appropriate" and justified by "good reasons"—just so long as the receiving bank does not do anything to "seek" such a cancellation. JPMC Opp. 12. Elsewhere, JPMorgan describes its rule as prohibiting indemnification in instances where the receiving bank's own interest in cancellation is "even[]" with that of the sender (*id.* at 16 n.3), or where the receiving bank is anything more than merely "agnostic or reluctant" toward cancellation (JPMC Br. 15, 19). What each of these standards has in common is that (i) they find zero grounding in the text of the UCC; and (ii) they would have courts, on a case-by-case basis, adjudicate exactly *why* a receiving bank agreed to honor a sending back's cancellation. The Court should reject all of this.

Finally, JPMorgan contends that common-law equitable principles should prevent Chain Bridge's indemnification because JPMorgan is not at fault for any injury caused by a cancellation that Chain Bridge "directed." JPMC Opp. 12-13. Section 4A-211(f), however, states an unambiguous default rule in favor of indemnification that intentionally "departs from the common law," "does not require any showing of the elements required to establish common law fraud or unjust enrichment," and does not depend on "any showing of wrongfulness on the part of the sender." *Banca Commerciale Italiana, N.Y. Branch v. Northern Tr. Int'l Banking Corp.*, 160 F.3d 90, 94 (2d Cir. 1998). The UCC drafters purposefully supplanted such fact-specific examinations of comparative fault with a default rule of "absolute liability on the sender of an electronic funds transfer to the receiving bank if the sender cancels a payment order that has already been accepted, even though the receiving bank has freely agreed to the cancellation." *Id.*

2. As explained above (at 4-5), and in Chain Bridge's opening memorandum (CBB Br. 17-19), Chain Bridge's reasons for agreeing to JPMorgan's cancellation have no legal bearing on its right to indemnification under Section 4A-211(f). In any event, JPMorgan badly mischaracterizes the facts surrounding the cancellation.

First, it is not the case that "Chain Bridge asked JPMC 'to issue a recall for the wire.'" JPMC Opp. 13. JPMorgan has by now selectively quoted Evinger's question to Korpal *eight times*, across two briefs, and not even once quoted that question in full. And for good reason. Evinger asked Korpal: "Is there any way for JPMorgan to issue a recall for the wire so that while *you* intervene in this *you* have the funds and feel more comfortable.?" CBB Br. SUF ¶ 9 (emphasis added). That question came in response to Korpal telling Evinger that JPMorgan's customer, California, was still "a bit unsure" about its payment to Blue Flame. CBB Ex. 63 at 0:00-0:02. Evinger's inquiry, about how to proceed to make JPMorgan more comfortable during its ongoing investigation, cannot plausibly be described as a "direction" to JPMorgan to cancel its payment order (which, in any event, JPMorgan would have been entirely welcome to ignore).

Second, it is undisputed that JPMorgan issued a "communication" cancelling its payment order (*see* UCC § 4A-211(a)) in the form of the Fedwire service message it sent to Chain Bridge at 2:05 PM on March 26. Ex. 65; *see* CBB Br. SUF ¶ 12. JPMorgan coded its message as a "request for reversal," and specifically directed Chain Bridge to "please return funds" to JPMorgan. CBB Br. 13-14. That alone is sufficient grounds for summary judgment in Chain Bridge's favor on its claim for indemnification. But to the extent it matters (and it doesn't), JPMorgan's reversal message is not the "sole factual support" (JPMC Opp. 13) for the proposition that JPMorgan cancelled its payment order, and did so for its own good reasons. Chain Bridge's motion also recounts, among other things, Tim Coffey's recorded statement to Chain Bridge's top officers that *JPMorgan* was "going to be recalling those funds" because *JPMorgan* had "enough concerns that we feel we need to claw those funds back." CBB Br. SUF ¶ 10.

Third, Chain Bridge did not "choreograph" the cancellation (JPMC Opp. 1) by its appropriate responses to receiving a massive wire transfer for the benefit of a three-day-old company. *See id.* at 14-15. Chain Bridge placed a temporary hold on the funds, evaluated the wire for red flags of suspicious activity under the Bank Secrecy Act, considered whether Blue Flame might be involved (wittingly or unwittingly) in a fraudulent scheme, and discussed whether a large deposit would have any adverse effects on its balance sheet (it did not[2]). Chain Bridge

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[2] Chain Bridge officials have testified, without contradiction, that a $456 million deposit on March 26, 2020, would not have adversely affected the bank's risk-based capital ratios (which are unaffected by cash the bank holds at the Federal Reserve), its leverage ratio (which is determined quarterly), or any "reserve" requirements (which were reduced to zero percent effective the same day as the wire transfer). *See* CBB Mem. in Opp. to JPMC Mot. for Summ. J. ("CBB Opp.") (Dkt. No. 141) CSUF ¶ 4 & n.2 and pp. 19-20, incorporated here by reference.

ultimately closed Blue Flame's account only after the wire had been reversed. None of that is evidence that Chain Bridge somehow managed to compel JPMorgan, the nation's largest bank, to cancel its payment order.[3]

Finally, JPMorgan's story here bears no resemblance to the story it simultaneously reports in its formal administrative claim against California. *See* CBB Ex. 96. There, JPMorgan insists that its own customer, California—*not Chain Bridge*—was the one that "decided to reverse the payment" to Blue Flame (*id.* at 1), "decided that the Wire Transfer should be reversed" (*id.* at 3), was "eager to obtain a return of the funds in full" (*id.* at 4), "request[ed] that the Wire Transfer be reversed" (*id.*), "decided that the funds should be returned to the State" (*id.*), "procured the reversal of the Wire Transfer" (*id.*), and at the "direction" of which JPMorgan took its "actions concerning the Wire Transfer, including, in particular, the reversal" (*id.* at 5). The fluidity (if you will) of JPMorgan's position on cancellation, based solely on its immediate litigation objective, is all the more reason to reject the far-fetched legal theory it presents here. *Cf. New Hampshire v. Maine*, 532 U.S. 742, 748-51 (2001) (doctrine of judicial estoppel precludes a litigant from taking a contrary position in a separate proceeding because its interests have changed).

B. There Was No Agreement That Provided There Would Be *No* Indemnification

A sender's obligation to indemnify a receiving bank is automatic, under Section 4A-211(f), "[u]nless otherwise provided in an agreement of the parties." As Chain Bridge's motion explains,

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[3] In recounting these and other events (see JPMC Opp. 4-5, 14-15), JPMorgan takes many of the same liberties with documents, testimony, and recorded conversations as it did in its motion for summary judgment. For the reasons we have explained, these additional details are irrelevant to the straightforward question of indemnification that is presented here (and answered by Section 4A-211(f)'s text). Rather than repeating our objections to the ways in which JPMorgan mischaracterizes the record, Defendants incorporate by reference the Counterstatement of Undisputed Facts in Chain Bridge's memorandum in opposition to JPMorgan's motion. CBB Opp. 2-12.

there is no evidence that JPMorgan and Chain Bridge reached any agreement to displace or modify that default indemnification rule. CBB Br. 15-16, 21.

JPMorgan tries to turn that default rule on its head. It would prefer the applicable rule to be that there is *no* indemnification if the parties reach a cancellation agreement that does not "*include* an indemnity obligation." JPMC Opp. 17; *see also id.* at 2 ("[T]here was an agreement between Chain Bridge and JPMC to return the wire, and it did not *include* an indemnification obligation."); *id.* at 16 ("The Parties' Agreement Did Not *Include* Any Obligation By JPMC To Indemnify Chain Bridge"); *id.* ("JPMC and Chain Bridge reached an agreement that did not *include* any express or implied promise to indemnify.") (all emphasis added). For the reasons explained in Chain Bridge's opposition to JPMorgan's motion (CBB Opp. 20-21, incorporated here by reference), that is the opposite of the rule that is actually set forth in Section 4A-211(f).

It could hardly be clearer that parties to a cancelled payment order do not need to *include* the sender's indemnity obligation in their agreement for it to be "part of the bargain." JPMC Opp. 17. Section 4A-211(f) states that obligation for them. The parties can disclaim or modify that default rule "in an agreement," UCC § 4A-211(f), but if their agreement is silent on the issue then the default rule, which requires indemnification, stays in place. JPMorgan inaccurately claims that "Chain Bridge agrees that an 'agreement' between the parties would override any indemnification obligation." JPMC Opp. 16. Instead, the only thing that overrides Section 4A-211(f)'s indemnification obligation *is an agreement to override Section 4A-211(f)'s indemnification obligation*.

There is no disputing that the parties here had no such agreement. JPMorgan acknowledges that it had no written agreement with Chain Bridge to override Section 4A-211(f). JPMorgan's Fedwire reversal message, which Chain Bridge agreed to, did *not* say that there would be "NO

INDEMNITY." The Federal Reserve's authoritative guidance on funds-transfer operations makes clear that, when payment-order senders want to disclaim indemnification, they are advised to do so within their cancellation message by specifically stating the words "NO INDEMNITY." *See* Ex. 86 at ¶ 14.1. JPMorgan did no such thing. Nor did JPMorgan and Chain Bridge reach a "no indemnity" agreement by telephone, or via any other means of communication. All of this is undisputed. *See* JPMC Br. SUF ¶ 49 ("JPMC and Chain Bridge never discussed indemnity").

There is likewise no evidentiary basis for JPMorgan's suggestion (JPMC Opp. 17) that a no-indemnity agreement between Chain Bridge and JPMorgan can be "inferred from other circumstances" and was "evident" to both parties. For this overreaching theory, JPMorgan cites to "[a]n internal Chain Bridge call" that supposedly "supports a reasonable inference" that the parties reached an unwritten, unspoken "agreement" to displace Section 4A-211(f). *Id.* But as Chain Bridge's opposition brief explains (CBB Opp. CSUF ¶¶50-51 & p.21), JPMorgan provides a selective and misleading account of that call. The discussion on that call shows that Chain Bridge correctly understood that it did *not* need a separate "indemnity letter" from JPMorgan to provide it the indemnification right already afforded to it by the text of Section 4A-211(f). That is, it did not need any letter documenting that JPMorgan had "promised any indemnification" (JPMC Opp. 2) because indemnification was guaranteed to Chain Bridge *by law*. In all events, JPMorgan was not even *aware* of that internal Chain Bridge phone call until it obtained the recording in civil discovery. How that could support a finding that there was a meeting of the minds between JPMorgan and Chain Bridge to *foreclose* indemnification is anyone's guess. *See, e.g.*, *Knox Energy, LLC v. Gasco Drilling, Inc.*, 738 F. App'x 122, 124 (4th Cir. 2018) (under Virginia law, "a legally enforceable agreement" requires "the meeting of the minds of the parties").

C. Chain Bridge's Loss And Expenses Are The Result Of The Cancellation

The undisputed facts demonstrate that Chain Bridge's loss and expenses in this litigation are being "incurred . . . as a result of the cancellation." UCC § 4A-211(f). The basis of Blue Flame's claims is that Chain Bridge impermissibly "agree[d] to cancel or amend the payment order," and therefore returned $456 million to JPMorgan instead of paying it to Blue Flame. Compl. ¶ 93. Any judgment that Blue Flame were to obtain on those claims, and the expenses of having to defend against them, are thus being incurred "as a result of" JPMorgan's cancellation within the meaning of Section 4A-211(f).

JPMorgan responds by speculating that, even without its cancellation, Chain Bridge would have unilaterally sent the money back to JPMorgan, or else would have withheld the funds from Blue Flame indefinitely. Based on that speculation, JPMorgan theorizes that Chain Bridge may have ended up with the same loss and expenses, from the same litigation, even if JPMorgan had not cancelled its payment order and taken back possession of the money. But that "unsupported speculation" about what might have happened is not sufficient to defeat a summary judgment motion. *Smith v. Schlage Lock Co.*, 986 F.3d 482, 486 (4th Cir. 2021) (per curiam).

In any case, the grounds on which JPMorgan launches this thought experiment are demonstrably lacking in substance. Chain Bridge was "happy to return the wire" under the circumstances, JPMC Opp. 18, but insisted it would do so only *after* it received an official communication from JPMorgan cancelling its payment order and nullifying Chain Bridge's obligation to pay its customer, *see* CBB Br. SUF ¶ 10. Chain Bridge and JPMorgan were each investigating the transaction, consistent with their obligations under the Bank Secrecy Act, but there is no evidence that Chain Bridge would not have paid Blue Flame if JPMorgan had stood behind its payment order instead of cancelling it. In fact, Chain Bridge's CEO testified that, if

JPMorgan had not cancelled its payment order, then the bank would have consulted with its legal counsel to determine whether to pay the wire to Blue Flame *the next day*. *See* CBB Br. 21-22.

JPMorgan argues (JPMC Opp. 1, 3, 15, 18-19) that Chain Bridge's internal wire transfer policy "required" it to return the wire no matter what JPMorgan said or did. The relevant provision, which JPMorgan never quotes in full, states: "If the Bank notices a discrepancy between the beneficiary account number and beneficiary name, the Bank *reserves the right* to return the wire *although it is not obligated to do so*. If there is any question as to the beneficiary's right to the funds, such as a discrepancy between name and account number, the wire will be returned." JPMC Ex. 10 at 4298 (emphasis added). That internal procedural guidance, which expressly disclaims that the Bank has an "obligation" to do anything, is not a binding and irrevocable legal commitment to return wires even if their sender does not ask the Bank to do so.

D. Equitable Estoppel Does Not Preclude Summary Judgment

JPMorgan argues that its affirmative defense of equitable estoppel provides an independent reason for denying Chain Bridge summary judgment on its indemnification claims, and that, in any event, Chain Bridge "defaulted" on its burden to rebut that defense. JPMC Opp. 22-24. Neither argument has merit.

The initial iteration of JPMorgan's equitable estoppel defense asserted that "Chain Bridge intended to return the wire transfer regardless of JPMC's actions," and that JPMC "justifiably relied on that intent and acted on the basis of it, leading to any alleged damages or losses Chain Bridge sustained." JPMC Ans. & Aff. Defs. (Dkt. No. 64) at 7-8 (Sixth Defense). That merely restates JPMorgan's meritless "causation" defense to Chain Bridge's indemnification claims, and it fails in the guise of an affirmative defense for the same reasons. *See* p. 11, *supra*. JPMorgan later tried to reformulate its equitable estoppel defense, in interrogatory responses that it served at the end of discovery. In that second iteration, JPMorgan describes the defense as being that Chain Bridge led JPMorgan to believe that indemnification was inapplicable, and that it obtained a benefit from the cancellation. *See* JPMC Opp. 22. Those are also contentions, however, that JPMorgan makes to support its defenses on the merits, JPMC Br. 3, 21-26, 28, JPMC Opp. 16-20, 23, and that Chain Bridge has thoroughly rebutted, CBB Br. 21-24, CBB Opp. 20-24.[4]

Recast as an affirmative defense, these theories also fail for the additional reason that, if JPMorgan is liable to Chain Bridge under Section 4A-211(f), then common-law affirmative defenses that try to reverse that result are preempted by Regulation J and the UCC. *See* 12 C.F.R. pt. 210, subpt. B, app. A, cmt. (a) to § 210.25 (Regulation J "supersedes or preempts inconsistent provisions of state law"); UCC § 4A-102 cmt. (UCC Article 4A provides "the exclusive means of determining the rights, duties and liabilities of the affected parties" to a funds transfer); *Banca Commerciale Italiana*, 190 F.3d at 94 (Section 4A-211(f) intentionally "departs from the common law"); *see also* Dkt. No. 32 (9/8/20 Hr'g Tr.) at 7 (dismissing five state-law causes of action as preempted by UCC Article 4A).

JPMorgan therefore pins its hopes on the notion that Chain Bridge has "defaulted" on this affirmative defense. According to JPMorgan, Chain Bridge needed to invoke this affirmative defense by name when it responded to the substance of it, at some length, among its related

[4] JPMorgan implausibly asserts that there is a material dispute over whether Chain Bridge had "credited" the wire transfer to Blue Flame's checking account. Chain Bridge did not, but it makes no difference either way. Blue Flame claims it was entitled to payment, under Section 4A-404(a), because Chain Bridge accepted JPMorgan's payment order. JPMorgan does not dispute that it knew, when it cancelled its payment order, that Chain Bridge had already accepted it. In any event, uncontroverted testimony and documents, including the Chain Bridge's general ledger and Blue Flame's account activity report, establish beyond dispute that funds had been "memo posted" to Blue Flame's account, reflecting only a pending transaction, and would not have been finally credited ("hard posted") to Blue Flame's account until overnight batch data processing took place. Ex. 40 (Brough Tr.) at 194-95; Ex. 101 (Williamson Tr.) at 101-02; Ex. 108 (account activity); Ex. 109 (general ledger).

arguments on the merits. The case that JPMorgan points to as setting that trap for the unwary reached the opposite conclusion, however. In *Veolia Es Special Services, Inc. v. Techsol Chemical Co.*, No. 07-cv-0153, 2008 WL 11380183 (S.D. W. Va. Oct. 14, 2008), the defendant opposed summary judgment on the basis of an affirmative defense that the plaintiff had not addressed in its opening brief. The court nevertheless proceeded to consider that defense on its merits because it was later addressed in the plaintiff's reply brief. *Id.* at *4. This Court need not ignore the legal insufficiency of JPMorgan's equitable-estoppel defense merely because JPMorgan's "Sixth Defense" was not identified by name in Chain Bridge's opening brief.[5]

II. Chain Bridge Is Entitled To Summary Judgment On Count III

Chain Bridge is entitled to summary judgment on its alternative claim of unjust enrichment because, contrary to JPMorgan's argument (JPMC Opp. 20-22), the undisputed evidence establishes each element of that claim as a matter of law. First, Chain Bridge undoubtedly conferred a $456 million benefit on JPMorgan when it returned those funds to it. Its conferral of that benefit was not negated by JPMorgan's later posting of those funds to California's account, which in any event did not remove the funds from JPMorgan's property. *See* CBB Opp. 23-24. Second, JPMorgan undoubtedly knew that Chain Bridge was conferring that benefit on it, having sent Chain Bridge a Fedwire message seeking return of those funds. *See* CBB Br. SUF ¶ 12.

[5] Nor is JPMorgan helped by the general rule that courts "ordinarily" do not address arguments that are raised for the first time in a reply brief. *See* JPMC Opp. 23 (citing *Hamed v. Saul*, 432 F. Supp. 3d 610 (E.D. Va. 2020)). That principle is intended to prevent "unfair[ness]" to a non-movant who lacks the opportunity to address an argument raised by a movant only in its reply brief. *See Hamed*, 432 F. Supp. 3d at 613. Here, by contrast, JPMorgan's carbon-copy affirmative and merits defenses have been thoroughly vetted by both sides' briefs, and JPMorgan's opposition brief argues (unpersuasively) why the equitable estoppel version of that defense should prevent summary judgment.

Third, and finally, JPMorgan's acceptance and retention of that benefit would be inequitable if this Court were to find that JPMorgan was not entitled to cancel its payment order and that the funds had to be paid to Blue Flame. In that event, JPMorgan will have been unjustly enriched in the amount of any returned funds that Chain Bridge is now ordered to pay to Blue Flame. *See* CBB Br. 23-24. JPMorgan's unjust receipt and retention of those funds would, in that scenario, follow from the parties' mutual mistake that any factual prerequisites for payment-order cancellation had been satisfied (including facts to which Chain Bridge was not privy, such as the specific results of JPMorgan's internal investigation and its discussions with its customer). *See id*.

That basis for Chain Bridge's unjust enrichment claim does not state a new "payment-by-mistake" claim not pleaded in the Third-Party Complaint. *See* JPMC Opp. 21. As the Virginia Supreme Court recently explained, "[t]ypical examples of unjust enrichment involve a payment or overpayment under a mistake of fact." *James G. Davis Constr. Corp. v. FTJ, Inc.*, 841 S.E.2d 642, 647 (2020). Nor would any such mutual mistake about whether the factual circumstances permitted cancellation be a mistake of law, which in any event would not preclude recovery for unjust enrichment. *See, e.g.*, *Criterion Ins. Co. v. Fulgham*, 247 S.E.2d 404, 407 (Va. 1978) (recovery upon mistakes of law is permitted where holding otherwise "would enrich" a party "unjustifiably," distinguishing *Newton v. Newton*, 118 S.E.2d 656 (Va. 1961)). It is also not true that JPMorgan has "retain[ed] nothing" (JPMC Opp. 22) because it posted the returned funds to California's account. Funds credited to a depositor's account remain the bank's property, offset by the bank's obligation to pay its depositor according to the account's terms. *See Terry v. Bank of Am., N.A.*, 350 F. Supp. 2d 727, 730 (W.D. Va. 2004) (funds deposited in a customer's bank account remain "the property of the bank"); *Bernardini v. Central Nat'l Bank of Richmond*, 290

S.E.2d 863, 864 (Va. 1982) ("[M]oneys deposited immediately become the property of the bank, and the [bank] becomes debtor of the depositor.").

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For the foregoing reasons, and those stated in our opening memorandum, Chain Bridge's motion for summary judgment against JPMorgan should be granted.

Date: May 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 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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