No. 21-2218 (L), 21-2219

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BLUE FLAME MEDICAL LLC,

Plaintiff-Appellant,

v.

CHAIN BRIDGE BANK, N.A.,

Defendant and Third-Party Plaintiff – Appellee,

JOHN J. BROUGH; DAVID M. EVINGER,

Defendants – Appellees,

v.

JPMORGAN CHASE BANK, N.A.,

Third Party Defendant.

(Caption continued on inside cover)

Appeals from the United States District Court
for the Eastern District of Virginia (No. 1:20-cv-00658-LMB-IDD)

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BLUE FLAME MEDICAL LLC,

Plaintiff,

v.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

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- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21-2218/21-2219 Caption: Blue Flame Medical, LLC v. Chain Bridge Bank, N.A., et al. v. JPMorgan Chase Bank, N.A.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chain Bridge Bank, N.A., John J. Brough, and David M. Evinger
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☑ YES ☐ NO
If yes, identify all parent corporations, including all generations of parent corporations:

Chain Bridge Bancorp, Inc. (Chain Bridge Bank, N.A. only)

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Gary A. Orseck Date: Feb. 7, 2022

Counsel for: Chain Bridge Bank, N.A., et al.

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INTRODUCTION

When the COVID-19 pandemic descended in March 2020, two political consultants—John Thomas and Mike Gula—devised a plan to spin their Rolodexes into gold. Amid a global scramble to secure scarce supplies of N95 face masks and other personal protective equipment (PPE), Thomas and Gula launched Blue Flame Medical LLC and began promising states and localities that Blue Flame had *hundreds of millions* of N95 masks available for immediate purchase and delivery. In reality, Blue Flame had *no* mask inventory to sell, and its principals had *zero* experience procuring and delivering PPE (or anything else, for that matter).

Blue Flame's get-rich-quick scheme unraveled quickly and predictably. The new company took in millions of dollars of N95 mask orders and prepayments from desperate customers, but was able to deliver (belatedly) only a handful of masks. As Blue Flame later admitted to congressional investigators, it had to cancel and refund nearly every order because its brokers were unable to deliver the promised product.

This case is about one of Blue Flame's unhappy customers that—thankfully—managed to get its money back. Just two days after Thomas and Gula incorporated Blue Flame, and only one day after Blue Flame opened its bank account, Blue Flame was able to convince the State of California to place a $609 million order for 100 million non-existent N95 masks, and to immediately wire it a $456.8 million prepaid deposit.

How did a two-day-old company with zero experience in the medical supply business talk the Nation's largest state government into sending it nearly half a billion dollars? Through a series of flagrant falsehoods and by concealing the basic facts about its operations. Blue Flame told state officials that it had 100 million 3M N95 masks sitting at the Port of Long Beach available for immediate delivery. That was untrue. Then Blue Flame claimed to have, alas, sold and successfully delivered those 100 million masks to other buyers. Also untrue. Blue Flame further assured California officials, not to worry, it would have another 100 million masks arriving on the West Coast *every week*. Extremely untrue. Blue Flame then produced an utterly fictitious delivery schedule pledging to put 100 million masks in the State's warehouses within 30 days. All the while, Blue Flame never told California officials that Blue Flame's existence could be measured in mere hours, or that its principals' relevant experience could not be measured at all.

But in the chaotic days of March 2020, desperation crowded out diligence, and so California plowed ahead. Fortunately, California's massive wire transfer to Blue Flame immediately aroused suspicion at California's bank, JPMorgan Chase Bank, N.A., and at Blue Flame's bank, Chain Bridge Bank, N.A. The banks talked with each other, and also with California officials who were shocked to learn that Blue Flame was not what it had led them to believe. As a result, JPMorgan canceled California's wire just two hours after sending it, and recalled the State's funds.

Chain Bridge promptly agreed to that cancellation by returning California's money, which JPMorgan immediately restored to California's account. California, now aware of the truth about Blue Flame, broke off talks with Blue Flame—and began forwarding Blue Flame's communications to the FBI.

This lawsuit is Blue Flame's last-ditch attempt to snatch a huge payday from the ruins of its failed scheme. It alleges that Chain Bridge's decision to honor JPMorgan's wire cancellation violated Uniform Commercial Code provisions governing wire transfers and state law. Blue Flame claims that Chain Bridge must pay it every penny of the $456.8 million canceled wire, plus damages for Blue Flame's supposed lost profits and business opportunities. That is, having never delivered a single N95 mask to California, Blue Flame wants to invoke the UCC to force Chain Bridge to hand over to Thomas and Gula more than half a billion dollars.

This audacious theory is as baseless as it sounds. The district court correctly granted Chain Bridge summary judgment on those claims, which fail both on the law and on the undisputed evidence. The court also correctly granted summary judgment to Chain Bridge on its third-party claim for indemnification from JPMorgan, as provided for in the UCC.

First, the district court correctly concluded that Chain Bridge's return of California's funds, in response to JPMorgan's wire cancellation, did not involve Chain Bridge's *acceptance* of an unauthorized payment order under Section 4A-

204(a) of the UCC. Blue Flame's complaint is not that Chain Bridge impermissibly accepted a payment order issued by someone pretending to be Blue Flame. Rather, Blue Flame's complaint is that Chain Bridge should not itself have *issued* a payment order to honor JPMorgan's wire cancellation. Section 4A-204(a) thus has nothing to do with the undisputed facts of this case.

Second, the district court correctly rejected Blue Flame's claim to damages, under Section 4A-404(a) of the UCC, based on Chain Bridge's decision to honor JPMorgan's wire cancellation request rather than pay Blue Flame. The court reached that conclusion for two independently sufficient reasons: To begin with, California had an unfettered, unilateral right to cancel its order with Blue Flame—at any time, and for its own reasons and convenience. And as soon as California discovered the truth about Blue Flame, it pulled the plug. There is no evidence that California's decision was prompted by the cancellation of the wire, and so Blue Flame's claim that it sustained damages "resulting from" Chain Bridge's determination to honor the cancellation request fails as a matter of law. Moreover, the district court correctly held that nothing but "rank speculation" supports Blue Flame's protestations that, but for the wire cancellation, it would have timely delivered California's 100 million masks.

Third, Blue Flame's UCC claims also fail on the independent and alternative ground that Blue Flame did not act in good faith. Blue Flame tries to cast its principals and their egregious misconduct as merely "distasteful" and not "particularly likeable." But those euphemisms cannot obscure that Blue Flame procured California's wire transfer with blatant misstatements of fact to state officials. Section 1-304 of the UCC imposes "an obligation of good faith" in the "performance and enforcement" of every "contract or duty" subject to the UCC. Blue Flame's breach of that obligation precludes it from invoking the UCC's remedies against Chain Bridge.

Fourth, Blue Flame seeks to revive state law claims that the district court either dismissed as preempted by the UCC regulations on wire transfers or held meritless on the undisputed facts. Blue Flame's arguments are baseless.

Finally, the district court correctly applied the unambiguous text of UCC Section 4A-211(f) to hold that JPMorgan must indemnify Chain Bridge for any losses it incurs in this case, including attorney's fees. Under the straightforward language of Section 4A-211(f), JPMorgan "is liable to [Chain Bridge] for any loss and expenses . . . incurred by [Chain Bridge] as a result of the cancellation." The district court rejected JPMorgan's contrary arguments, reprised here on appeal, as "weak" and "unpersuasive" "attempts to sidestep the text of the regulation."

The district court's careful decision to grant Chain Bridge summary judgment on Blue Flame's claims, and on Chain Bridge's third-party indemnification claim, should be affirmed.

ISSUES PRESENTED

1. Whether the district court erred in concluding that Blue Flame's claims against Chain Bridge and its officers fail as a matter of law.

2. Whether the district court erred in granting summary judgment for Chain Bridge on its claim for indemnification from JPMorgan, where the undisputed evidence shows that Chain Bridge, "the receiving bank" for California's wire transfer, "agree[d] to cancellation . . . by the sender," and no displacement of the default rule in favor of indemnification was "otherwise provided in an agreement of the parties." UCC § 4A-211(f).

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. Blue Flame Procures California's Order For 100 Million N95 Masks Through Misrepresentations And Concealment

1. Blue Flame's principals, John Thomas and Mike Gula, are political consultants. JA3067. When the COVID-19 pandemic began, neither one had "any experience in the field of medical supplies," the "healthcare industry," or "supply chain management." JA527; *see also* JA24; JA539, 542, 559; JA3067. Nevertheless, they concluded that there might be ways to profit from the urgent demand for personal protective equipment (PPE). Thomas and Gula reached out to their network of political contacts and offered referral fees for steering public

contracts to them. *E.g.*, JA568. On March 23, 2020, they formed Blue Flame. JA576.

Despite their lack of experience—and their lack of any actual inventory—on March 25, 2020, John Thomas persuaded California's Department of General Services (DGS) to purchase 100 million N95 masks from Blue Flame, in exchange for hundreds of millions of dollars in public funds. California agreed to the transaction having not asked, and having not been told, what Thomas and Gula actually did for a living.

The terms of this extraordinary transaction were memorialized in California's purchase order and Blue Flame's invoice, which provided a total purchase price of $609.16 million and for pre-payment of 75 percent of that total. JA579; JA581. The purchase order and invoice designated four specific models of N95 masks, each of which is manufactured in China. *Id.* The purchase order also incorporated a set of standard procurement terms set out in a DGS form. JA581. Those standard terms permitted California to issue a "Stop Work Order" requiring Blue Flame to immediately suspend its work on the purchase order. JA1170-71. In addition, California could terminate the purchase order "for the convenience of the State"—that is, based upon a determination that "termination is in the State's interest." JA1165.

California's purchase order specified a delivery date of April 3, 2020, although the parties understood that to be a deadline for an initial shipment of masks, rather than the full quantity. JA581; JA597. During the parties' negotiations, Blue Flame had provided DGS officials with a delivery schedule that contemplated delivery of all 100 million masks by April 24, 2020. JA609. At a minimum, 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." JA592; JA615-16; JA634.

2. Blue Flame procured California's purchase order by misrepresenting its own capabilities and concealing material facts that, once discovered, alarmed California officials and dissuaded them from moving forward with the order.

Blue Flame grabbed California's attention when John Thomas told California State Controller Betty Yee that Blue Flame held 100 million 3M N95 masks at the Port of Long Beach. JA640. Thomas represented that Blue Flame had "almost sold all" of that shipment and was "delivering another 100m units of n95 mask" to "hospitals and a private buyer" in Florida (customers, he said, that "nda's" prevented him from identifying). JA640, 642, 645. But Thomas assured Yee that Blue Flame would have "100m units every week" available for sale to California. JA640. These representations were "important" to Controller Yee, as Blue Flame's purported supply and delivery history went "to the credibility of the vendor." JA667-68. And

Thomas's representations that Blue Flame was "selling so many masks so quickly . . . put[] pressure on the state to get a deal done as soon as possible." JA666.

As the district court observed, not a word of this was true. *See* JA3068. Thomas grudgingly acknowledged at his deposition that Blue Flame never owned or sold any 3M masks stored at the Port of Long Beach, and never delivered 100 million N95 masks to Florida (or anywhere else). JA548, 551.[1]

Thomas made equally brazen misrepresentations to the DGS officials who ultimately approved the transaction. Thomas told DGS Director Daniel Kim and Michael Wong, a DGS contract administrator, that he had "direct access to manufacturers in China," JA633, and referred to his contact, Henry Huang, as his "preferred manufacturer," JA678. As Director Kim explained, he understood that Blue Flame was "operating with a supplier who could manufacture directly as opposed to some middleman." JA637. But that too was false: On Thomas's own

[1] Thomas's misrepresentation about Blue Flame's supply of 100 million N95 masks at the Port of Long Beach allowed him to access the highest levels of California's government with remarkable speed. On March 20, 2020, he related this falsehood to Matthew Littman, one of Blue Flame's "referral partners." JA545; JA656. Littman then enlisted his associate, Stephanie Daily Smith, who had worked as a political fundraiser for Controller Yee. Littman told Smith that Blue Flame had 100 million N95 masks at the Port of Long Beach to sell to California. JA658. Smith immediately contacted Yee and the California Governor's Office, urging them to contact Thomas about his supposed supply of 100 million masks. JA661. Yee personally texted Thomas about the masks, and then—in reliance on what he had hold her—intervened with other California officials to facilitate the transaction. JA646; JA670-72.

account, Huang and his company, Great Health Companion Group (Great Health), did not manufacture N95s themselves, but rather—according to Thomas at least—"contract[ed] out with manufacturers' facilities." JA556. (In fact, there is no admissible evidence that Great Health ever supplied N95 masks to anyone, let alone to Blue Flame.)

Blue Flame concealed from California officials other key facts about its operations. Thomas never mentioned to Controller Yee, DGS officials Kim and Wong, or any other California official (1) that Blue Flame was organized only on March 23; (2) that Blue Flame had no bank account until the morning of March 25; (3) that Blue Flame had never delivered a single N95 mask to anyone; or (4) that neither Thomas nor Gula had any experience in medical supply logistics. JA600-01; JA637; JA671-72; JA689.[2] Those omissions were critical: The undisputed evidence is that if "the controller had thought that [Blue Flame] was not legit, she would not have spent a moment further on this matter." JA671-72. And as DGS Director Kim explained, this information "would have raised alarm bells" if it had been disclosed to DGS. JA637.

3. Blue Flame closed the deal with California on March 25 by sending DGS a delivery schedule purporting to show that Blue Flame would supply 100 million

[2] None of these critical facts appears in Blue Flame's brief, either.

N95 masks to California by April 24, 2020. JA609. The schedule stated that those masks would come from two putative suppliers: 6 million from Suuchi, Inc., a supply chain software, operations, marketing, and sales company that claimed to have recently entered the market to broker for PPE; and the remainder from Great Health, a Chinese company. JA693; *see also* JA696; JA705-06; JA716-17.

Blue Flame's delivery schedule was a work of fiction. The morning of March 25, Thomas told his team that Blue Flame still needed to "source inventory amounts to tell California what we'll be sending them" and needed to "figure out how to write the invoice with flexibility." JA769. That night, Blue Flame's attorney, Ethan Bearman, drew up an initial version of the delivery schedule, using "placeholders" for delivery quantities. JA702; JA772-73. Even those placeholders showed Blue Flame delivering just 58 million masks by April 30—42 million shy of California's order. JA773. But *ten minutes later*, after speaking with Thomas, Bearman circulated to his colleagues a souped-up version—attached to an email titled "To get to 100MM"—this time showing *100 million* masks arriving by April 24. JA775-76; *see also* D. Ct. Doc. 119, at 7; D. Ct. Doc. 149, at 4-5.

Less than two hours after that, Bearman circulated yet another version that listed dramatically different daily delivery quantities. JA692-93. This version was even more fantastical. Indeed, the schedule's *daily* delivery figures frequently exceeded the *monthly* production capacity figures for the manufacturers of the four specific models specified in California's order, according to the product catalog Blue Flame had received from Great Health. JA695-97; JA746-47. Thomas nonetheless forwarded the last of Bearman's made-up schedules to DGS Director Kim, to "instill [in him] a level of trust and confidence" in Blue Flame's "ability to deliver." JA778.

In fact, Blue Flame had no ability to fulfill California's order, as the district court correctly concluded. JA3085-88. Blue Flame had no inventory of N95 masks at the time it accepted the order. JA532. After accepting California's order, Blue Flame placed purchase orders for N95 masks with Great Health and Suuchi, Inc. But there is no evidence that either purported broker could have supplied any N95 masks to Blue Flame. *See* JA3085; pp. 42-50, *infra*.

B. Blue Flame Opens Its Account With Chain Bridge Without Disclosing The Incoming Wire Transfer

On the evening of March 24, Michael Wong of California's DGS informed Thomas that California "would like a PO for 100M" N95 masks. JA612. Thomas alerted his Blue Flame colleagues, with evident surprise, and Bearman immediately observed that Blue Flame did not even "have a bank account for sending [Wong] wiring instructions." JA784-85.

The next day, March 25, Thomas and Gula scrambled to set up their two-day-old business. Gula visited Chain Bridge Bank's office in McLean, Virginia, to open an account for Blue Flame. JA813; JA792-93. Gula, who by then knew of the incoming $456.8 million wire, was warned by Blue Flame's own attorney to alert

Chain Bridge because "[o]dd money moves raise red flags and can hold up transactions." JA822. Ignoring his attorney's advice, Gula did not tell Chain Bridge when opening Blue Flame's account that Blue Flame was expecting an immediate incoming wire of nearly half a billion dollars. Instead, in response to account-opening diligence questions, Gula falsely reported that Blue Flame expected 25 incoming domestic wires per month totaling only $75 million. *See* JA816.

Chain Bridge did not learn about the massive incoming wire until after it had opened Blue Flame's account and given Blue Flame wiring instructions, which Blue Flame then promptly provided to California. JA828-31; JA833-35. Only then did Gula call Chain Bridge and advise that "California is sending an unbelievably large wire transfer in the amount of $450 million." JA3141 [00:15-00:23]. Gula later shared that the purpose of the transfer was to "buy[] 100 million masks from China." JA3143 [12:50-12:55].

Chain Bridge was concerned when it learned of an undisclosed wire transfer of nearly half a billion dollars, earmarked for a days-old enterprise. So Chain Bridge's Chief Executive Officer, John Brough, and its President, David Evinger, called Gula to learn more about the transaction. *See* JA531; JA798. Gula told them that the California deal was his "pay day" and that he would be "unreachable" after the transaction. JA871; JA875; JA2863-64. Brough and Evinger asked Gula to provide documentation about his new business, including contracts that Blue Flame had with purchasers or sellers of PPE. JA799; JA851; JA884; JA899; JA905. But neither Gula nor Thomas ever sent the requested contracts. JA3072.

C. California's Wire Transfer And The Banks' Investigations

On the morning of March 26, 2020, California initiated a wire transfer for more than $456 million to Blue Flame's one-day-old account at Chain Bridge. Within two hours, both JPMorgan and California were pressing for the prompt return of the funds. JPMorgan formally requested a cancellation of the wire transfer, and Chain Bridge accommodated that request by returning the funds to JPMorgan.

1. At 11:21 AM ET, a representative from the California State Treasurer's Office (STO) originated a wire transfer in the amount of $456,888,600, for Blue Flame's benefit, through California's bank, JPMorgan. JA140. The wire tripped JPMorgan's automated payment-control system, on multiple grounds, for suspicious transaction activity. JA920; JA931-33. But JPMorgan nevertheless approved the transfer shortly thereafter. JA935.

At 11:55 AM, Chain Bridge received JPMorgan's payment order transmitting California's wire transfer over the Federal Reserve's Fedwire system. JA937. Minutes later, Gula received an automated email notification that the funds had been received. JA945.

2. Faced with multiple indicia of suspicious activity associated with the wire transfer, Chain Bridge placed a hold on California's funds while it continued to

investigate. JA1017. As part of that investigation, Brough and Evinger spoke with officials from the California STO, who were "surprised" to learn that Blue Flame's founder was a political lobbyist who had opened Blue Flame's account the previous day. JA807, 864. Indeed, they were so surprised by the truth of the matter that they asked Chain Bridge to "wait" to "credit[] . . . the client account" until they could "find out additional information." JA1054.

At the same time, JPMorgan was growing increasingly alarmed about the half-billion-dollar wire it had just released on its customer's behalf. Minutes after the wire left JPMorgan, Rakesh Korpal, a JPMorgan Executive Director who led JPMorgan's Fraud Payments Control Team, opened his own investigation based on concerns of suspicious activity. JA924-25. As part of that investigation, Korpal directed his colleague, Tim Coffey, to "engage Chain Bridge Bank to . . . hold on to those funds . . . as there was concerns about the validity of the transaction." JA1031. Coffey called Chain Bridge and immediately volunteered that JPMorgan had "concerns of fraud" regarding the California wire transfer. JA3137 [00:36-00:38]. In light of those concerns—which JPMorgan had formed independently, before any discussions with Chain Bridge—Coffey sought and obtained confirmation that Chain Bridge would hold the funds pending further investigation. JA1034-35.

The two banks cooperated as they investigated the California wire transfer. Within minutes of JPMorgan's first call to Chain Bridge, Korpal called back and told Brough and Evinger that JPMorgan's "global security investigations team is coming back to me and saying that this does not look right," and that his own research was "all leading to not-good places." JA3133 [02:42-02:50 & 03:13-03:16]. Brough and Evinger answered a series of questions from Korpal about Blue Flame and its account. JA3133 [00:10-02:10, 2:30-02:41, & 04:26-04:31]. And Korpal told them that he would contact the JPMorgan banker who worked with California to discuss further. JA3133 [02:12-02:30].

Korpal shared an update from California an hour later, when he spoke again with Brough and Evinger. By that point, California was clued in to what Blue Flame was (and was not), and Korpal explained that California was "unsure" about the transaction. JA3155 [00:00-00:04]. In response, Evinger asked whether JPMorgan wanted to "issue a recall for the wire, so that while you intervene in this you have the funds and feel more comfortable?" JA3135 [00:05-00:14]. Korpal responded that he was comfortable with Chain Bridge "holding the money right now," JA3135 [00:15-00:18], but asked for "a few more minutes" to determine JPMorgan's next steps, JA3135 [00:30-00:32].

D. JPMorgan Cancels The Wire Transfer And Chain Bridge Agrees To Return California's Funds

With its investigation "leading to not-good places," JA3133 [03:13-03:16], JPMorgan, in plain English, canceled California's wire transfer. Korpal instructed Coffey to "call Chain Bridge Bank and confirm that we're going to recall the funds."

JA245. Coffey did so at 1:37 PM, telling Brough and Evinger:

> We're going to be recalling those funds, okay? We have enough concerns that we feel we need to claw those funds back. Do you need a recall message from us, or what are you looking for from us?

JA3136 [00:06-00:17]. Evinger responded that Chain Bridge would like "official communication from JPMorgan to us to recall the funds." JA3136 [00:18-00:21]. Coffey said he would send a Fedwire message "in the next couple of minutes" and thanked Chain Bridge for a "great job." JA3136 [00:30-00:38]. Coffey asked Chain Bridge to return the wire "as quickly as you can," JA3136 [00:47-00:49], because, as he explained later, he "need[ed] to get word out to senior management that the situation has been taken control of," JA1040.

JPMorgan followed up with the official communication Chain Bridge had required to formally confirm JPMorgan's cancellation of California's wire transfer. At 2:05 PM, JPMorgan sent a Fedwire service message to Chain Bridge requesting reversal of the California wire transfer. JA1065. The message was coded in the Fedwire system as a "request for reversal"—that is, a request by JPMorgan to "reverse a Fedwire funds transfer." JA1354. In the next hour, JPMorgan twice called Chain Bridge to make sure the recall was in progress. JA928.

At 3:21 PM, Chain Bridge honored JPMorgan's cancellation request by returning $456,888,600 to JPMorgan, noting that the return was being done "PER

YOUR REQUEST." JA1076. By 4:02 PM, JPMorgan had posted the amount of the wire transfer to California's account at JPMorgan. JA142.

E. California Decides Not To Do Business With Blue Flame

While Chain Bridge and JPMorgan were discussing the legitimacy of the wire transfer, California officials independently "requested the funds be recalled," telling JPMorgan that they "were not comfortable with the due diligence" conducted on the Blue Flame transaction. JA916. The California officials delivered that request by approximately 2:00 PM. JA917.[3] A representative from STO asked JPMorgan to reach out to the bank and check on the recall, and she followed up with Chain Bridge as well. JA141-42; JA1070.

California officials later conveyed their appreciation for JPMorgan's quick action in obtaining the return of California's funds. Once the funds were transferred back to California's account at JPMorgan, STO officials told JPMorgan that they were "extremely grateful for [JPMorgan's] intervention," "leadership," and the "steps [it] took to get this money recovered." JA1371-72. California State Treasurer Fiona Ma wrote directly to JPMorgan's Chairman and CEO, Jamie Dimon, to offer her "personal thanks for the bank's efforts and the dedication of" the JPMorgan

[3] Blue Flame now contends (Br. 23) that no non-hearsay evidence "indicate[s] that California was involved in this recall request at all." In the district court, however, Blue Flame agreed that California "STO officials informed [JPMorgan] . . . that they were not comfortable with the diligence completed on Blue Flame and that they wished to recall the funds." D. Ct. Doc. 149, at 11.

employees involved in "assist[ing] us in reversing the payment and protecting public money." JA1374. JPMorgan has since filed an official claim for indemnification from California, explaining that JPMorgan had acted "on behalf of, at the direction of, and/or for the benefit of" California after California "decided to reverse the payment." JA1380, 1384. As JPMorgan described, California had "concerns about the vendor" and was "eager to obtain a return of the funds in full." JA1380, 1383.

In the weeks following the wire's reversal, Blue Flame repeatedly tried to entice California to move forward with a purchase of N95 masks, this time *without* requiring prepayment. JA562; JA653-54; JA1105-06; JA1108-12; JA1116-18. On March 27, Controller Yee told Thomas that his multiple deceptions had created a "credibility issue" for him and Blue Flame. JA654.[4] California officials began forwarding Blue Flame's communications to the FBI. *E.g.*, JA2713; JA2716. The State's procurement official, Michael Wong, testified that he broke off discussions with Blue Flame because Blue Flame had provided unreliable information. JA604. California thus reaffirmed the State's decision not to purchase from Blue Flame. *Id.*

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[4] Even at this point, Blue Flame did not come clean with California. On March 27, Thomas told Yee that he had "come up with a work around for the product I have in route." JA653. He also told Kim that "[o]ur product is on its way to you." JA1117. As the district court observed, "[t]here is no evidence in the record that any product was actually en route at that time." JA3078 n.13.

F. Blue Flame Fails To Fulfill Other Orders For N95 Masks

Between March 30 and April 9, 2020, by its own account, Blue Flame obtained at least 13 orders from other federal, state, or local governments for a total quantity of 2.82 million N95 masks (and a variety of other PPE items). JA1123-28; *see also* JA749-50. As Blue Flame acknowledged in a response to congressional investigators, it was able to fulfill only a single order for 96,000 N95 masks (purchased for Chicago by an anonymous buyer) by June 22, 2020. JA1128.[5]

Before Congress, Blue Flame ascribed its failure to fulfill these orders to the fact that the Chinese government had, by then, severely restricted the export of N95 masks. JA1121. Blue Flame further explained that supply-chain disruptions, including "evolving market conditions" and "product shortages," were at fault for its inability to deliver masks to its customers—not anything to do with Chain Bridge's actions. *Id.*; *see also* JA749-50, 766-67.

II. PROCEEDINGS BELOW

A. Blue Flame filed a ten-count complaint against defendants Chain Bridge, Brough, and Evinger on June 12, 2020. JA19-53. Blue Flame asserted two claims

[5] Blue Flame notes (Br. 24) that it ultimately delivered 1.55 million N95 masks to Maryland. But Blue Flame did not deliver a single mask to Maryland until October 2020—months after the June 30, 2020, delivery deadline for that transaction. JA1123; JA2726. That belated delivery thus offers no evidence that Blue Flame could have delivered masks to California on the expedited timeline it had promised.

alleging violations of the UCC provisions governing Fedwire transfers, as well as a series of state law claims.

The district court, Leonie M. Brinkema, J., granted in part defendants' motion to dismiss Blue Flame's complaint. In particular, the district court dismissed five of Blue Flame's state law claims on preemption grounds. *See* JA54 (dismissing claims for conversion, fraud, constructive fraud, negligence, and breach of contract); *see also* JA43-52.

Chain Bridge thereafter filed a third-party complaint against JPMorgan, asserting claims for indemnification under UCC Section 4A-211(f) and, in the alternative, a claim for unjust enrichment. JA113-21.

B. Following fact and expert discovery, all parties filed cross-motions for summary judgment. The district court entered summary judgment in defendants' favor on each of Blue Flame's claims and entered summary judgment in favor of Chain Bridge on its Section 4A-211(f) claim for indemnification from JPMorgan.

1. With respect to Blue Flame's claim under UCC Section 4A-404(a), the district court began by rejecting Chain Bridge's argument that it was not required to release California's funds to Blue Flame because JPMorgan had canceled its payment order upon discovering California's mistake in having ordered it. JA3081-83. The district court concluded that any fraud by Blue Flame in the underlying transaction with California was not the sort of "mistake" that would make

JPMorgan's cancellation effective under UCC Section 4A-211(c), which governs cancellation of a payment order. *See* JA3082-83.[6]

The district court held that Blue Flame's Section 4A-404(a) claim fails as a matter of law because Blue Flame could not "establish that it sustained any damage" from the return of California's funds. JA3083. As the district court explained, that conclusion is supported by "two equally compelling arguments." *Id.* First, the "unrebutted evidence" established that, "once California officials became aware of Blue Flame's recent creation and the fact that its owners were lobbyists, [California] immediately asked for the wire transfer to be cancelled and the funds returned, and was no longer interested in dealing with Blue Flame." JA3084. As the district court observed, there was no reason that California's decision not to move forward with Blue Flame would have been different "even if the funds were held in Blue Flame's account instead of being returned promptly to California's bank." *Id.* There was simply no "evidence that California, which was equipped with the power to terminate work on its contract with Blue Flame at any time, would have continued to do business with the plaintiff had Chain Bridge not reversed the payment." JA3088.

[6] Although Chain Bridge respectfully disagrees with the district court's reading of UCC Section 4A-211(c), it does not challenge that conclusion on appeal.

Second, the district court held that there was "no basis beyond rank speculation on which a reasonable factfinder could find that Blue Flame was capable of fulfilling its order to California." JA3088. The court noted that Blue Flame's track record with other customers offered no evidence that it could have fulfilled California's gargantuan order, and that Blue Flame's purchase orders and reseller agreements with its "purported suppliers" were not evidence "that the orders would have been, or could have been, filled by the suppliers." JA3085. Nor did those suppliers even propose to provide masks on "schedules suggesting that the products would arrive in time to satisfy the representations that Blue Flame made to California." *Id.* In sum, the district court concluded, the "uncontested facts establish that Chain Bridge's return of the wire transfer did not damage plaintiff in any respect." JA3088.

The district court then held that Blue Flame's claim under UCC Section 4A-204(a) fails as a matter of law. JA3088-89. The court noted that Blue Flame sought to premise liability on the payment order that Chain Bridge had generated to accomplish the return of California's funds to JPMorgan. JA3089. But Section 4A-204(a) is inapplicable to that transaction, the court held, because "that payment ordered was 'issued' by Chain Bridge, not 'accepted' by Chain Bridge, which is the conduct that the regulation covers." JA3089; *see* UCC § 4A-204(a) (imposing liability when a bank "accepts a payment order issued in the name of its customer as sender," under specified circumstances).

Finally, the district court held Blue Flame's claims for tortious interference with contract and business expectancy fail as a matter of law. JA3090-91. The court held that Blue Flame's failure to proffer evidence of damages dooms those claims. JA3091. In addition, the court held that they fail because of "issues with the validity of the contractual relationship and business expectancy between Blue Flame and California given Blue Flame's apparent initial misrepresentations to California authorities," and because there is insufficient evidence for a jury to find that defendants had an "intent to disturb" Blue Flame's business relationships. JA3090.[7]

2. After resolving Blue Flame's claims, the court turned to Chain Bridge's motion for summary judgment on its claims for indemnification from JPMorgan under UCC Section 4A-211(f). As the court observed, its rejection of Blue Flame's claims "moots [Chain Bridge's] claim for reimbursement of any damages," but there "remain[ed] the issue of whether JPMorgan must reimburse Chain Bridge for its attorney's fees and expenses incurred in this litigation." JA3092.

[7] In a ruling that Blue Flame does not challenge on appeal, the district court granted summary judgment on Blue Flame's defamation claim because there was no evidence that defendants made any false statements to California officials. JA3091-92. That claim has been abandoned. *See, e.g.*, *United States v. Al-Hamdi*, 356 F.3d 564, 571 n.8 (4th Cir. 2004).

The district court held that the undisputed facts establish JPMorgan's liability to indemnify Chain Bridge for losses and expenses resulting from the cancellation, including those attorney's fees and litigation expenses.[8] The court rejected as "unpersuasive" JPMorgan's argument that Section 4A-211(f) is inapplicable because, in JPMorgan's view, Chain Bridge had sought cancellation of the wire transfer. JA3093. As the court explained, "the regulation does not impose any requirements regarding the receiving bank's motivations at all." JA3093-94. The court also rejected JPMorgan's argument that the parties had reached an agreement to exclude indemnification, explaining that JPMorgan's argument "incorrectly reverses the requirements of the regulation" by "suggest[ing] that the parties needed to have agreed upon indemnification." JA3094. Indemnification is available, the court held, because there is "no evidence in the record of a communication between Chain Bridge and JPMorgan indicating an agreement to displace the default rule of automatic indemnity." JA3095. Finally, the district court dismissed as "weak" JPMorgan's argument that Chain Bridge's litigation expenses did not result from JPMorgan's cancellation, noting that "this civil action undoubtedly resulted from the

[8] The district court ordered additional briefing on the amount of indemnified fees and expenses to be awarded to Chain Bridge from JPMorgan. JA3096. As Chain Bridge and JPMorgan recently reported to the district court, their dispute as to the amount of JPMorgan's indemnification obligation has now been resolved through a negotiated settlement. *See* D. Ct. Doc. 219.

reversal of the wire transfer" and there is no evidence that Chain Bridge would have returned California's funds without JPMorgan's cancellation. JA3096.

SUMMARY OF ARGUMENT

I. A. Summary judgment was proper on Blue Flame's claim under UCC Section 4A-204(a) because Chain Bridge did not "accept[] a payment order issued in the name of [Blue Flame] as sender." UCC § 4A-204(a). Instead, Chain Bridge returned California's wire transfer in response to JPMorgan's cancellation request, which was not a payment order and was not issued in Blue Flame's name.

B. The district court correctly granted summary judgment on Blue Flame's claim under Section 4A-404(a) because, for two independent reasons, Blue Flame fails to proffer evidence from which a reasonable jury could find that it suffered "damages resulting from [Chain Bridge's] refusal to pay." UCC § 4A-404(a). The district court correctly concluded that Blue Flame had no proof of damages resulting from the reversal of the wire transfer because California officials decided not to move forward with the transaction immediately when they learned the basic facts that Blue Flame had concealed from them, and then did not waver from that decision. JA3084-85, 3088. The district court was also correct that Blue Flame offered "no basis beyond rank speculation on which a reasonable factfinder could find that Blue Flame was capable of fulfilling its order to California." JA3088. Blue Flame cannot demonstrate error in either conclusion, and Blue Flame's newly minted argument that it was not required to demonstrate damages after all should be rejected because it was not raised below and is foreclosed by Section 4A-404(a)'s plain text in any event.

C. Even if this Court were to disagree with the district court's rationale for rejecting the UCC claims, Blue Flame's bad-faith misconduct in procuring California's order supplies an alternative ground for affirmance. Blue Flame's fraudulent inducement is plainly inconsistent with the UCC's "obligation of good faith." UCC § 1-304. Blue Flame's breach of that obligation thus "makes unavailable" the alleged payment rights that Blue Flame seeks to enforce against Chain Bridge here. *Id.* § 1-304 cmt. 1.

D. The district court correctly concluded that Blue Flame's state law claims fail as a matter of law.

1. The district court correctly held that several of Blue Flame's state law claims are preempted by Subpart B. Blue Flame's challenge to the cancellation of California's wire transfer is governed by UCC Sections 4A-211 and 4A-404(a); it thus plainly implicates "conduct falling within the scope of Subpart B," and any "conflict[ing]" or "duplicative" state law claims cannot be maintained. *Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220, 223 (4th Cir. 2002). Moreover, Blue Flame's inability to prove damages provides an alternative ground for affirmance even if this Court were to disagree with the district court's preemption ruling.

2. The district court correctly granted summary judgment on Blue Flame's tortious interference claims. First, those claims are foreclosed by Blue Flame's inability to prove damages. *See* JA3091. In addition, Blue Flame's fraud in procuring California's order means that its contractual rights and business expectancies were not "valid in substance," and hence could not support claims for tortious inference. Restatement (Third) of Torts: Liability for Economic Harm § 17 cmt. k (2020). The district court was also correct that a reasonable jury could not find that defendants had any intent to disturb Blue Flame's business relationship with California by sharing *indisputably true* information with California officials. *See* JA3090-91.

II. The district court correctly granted summary judgment for Chain Bridge on its claim for indemnification from JPMorgan under UCC Section 4A-211(f). Chain Bridge was "the receiving bank" for California's wire transfer, and it "agree[d] to cancellation . . . by the sender," JPMorgan. UCC § 4A-211(f). The parties did not agree to depart from the default statutory rule of indemnification, so JPMorgan "is liable to [Chain Bridge] for any loss and expenses . . . incurred by [Chain Bridge] as a result of the cancellation." *Id.* The district court correctly rejected JPMorgan's attempts to sidestep Section 4A-211(f)'s plain text as legally meritless and unsupported by the record.

ARGUMENT

This Court reviews the district court's grant of summary judgment de novo. *Ray Commc'ns, Inc. v. Clear Channel Commc'ns, Inc.*, 673 F.3d 294, 299 (4th Cir. 2012). It asks whether, in light of the record adduced by the parties in the district court, "there is no genuine dispute as to any material fact" and the moving party is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also id.* at 247-48 ("[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact."). The district court's dismissal of Blue Flame's state law claims is likewise reviewed de novo. *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020).

As demonstrated below, Blue Flame's challenges to the district court's decision are without merit. The district court correctly concluded that Blue Flame's claims fail as a matter of law. The district court also correctly held that Chain Bridge is entitled to judgment as a matter of law on its claim for indemnification from JPMorgan. The district court's judgment should accordingly be affirmed.

I. THE DISTRICT COURT'S JUDGMENT DISMISSING BLUE FLAME'S CLAIMS SHOULD BE AFFIRMED

A. The District Court Correctly Entered Summary Judgment For Chain Bridge on Blue Flame's Claim Under UCC Section 4A-204(a) Because Chain Bridge Did Not Accept A Payment Order "Issued In The Name Of Its Customer As Sender"

1. Count II of Blue Flame's complaint asserts a claim against Chain Bridge under UCC Section 4A-204, which 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 (under Section 4A-202) or unenforceable against the customer (under Section 4A-203). UCC § 4A-204(a). As the district court correctly concluded, that provision is inapplicable here because there is no evidence that Chain Bridge ever received a payment order purporting to come from Blue Flame, let alone accepted such a payment order. *See* JA3088-89.

The UCC defines a "payment order" as "an instruction of a sender to a receiving bank transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary," with certain additional qualifications. UCC § 4A-103(a)(1). A "receiving bank" is "the bank to which the sender's instruction is addressed," and the "sender" is "the person giving the instruction to the receiving bank." *Id.* § 4A-103(a)(4), (5). A receiving bank "accepts a payment order when it executes the order," *id.* § 4A-

209(a), which it does by issuing a *separate* payment order "intended to carry out the payment order received by the bank," *id.* § 4A-301(a).

These definitions demarcate Section 4A-204(a)'s limited scope. Because the statute applies only when a bank "accepts a payment order issued in the name of its customer as sender," UCC § 4A-204(a), to recover under Section 4A-204(a) a plaintiff must demonstrate that the defendant bank effectuated a funds transfer in response to an instruction that purported to come from the bank's customer, *see id.* § 4A-103(a)(1). Here, as the district court correctly concluded, there is no evidence that Chain Bridge ever received any such instruction.

The historical record on this point is entirely undisputed: Chain Bridge returned the California wire transfer to JPMorgan in response to JPMorgan's cancellation request. That request was transmitted via a Fedwire "nonvalue message" (not a payment order) that came from JPMorgan (not from Blue Flame). *See* JA1065.[9] Chain Bridge decided to accommodate JPMorgan's request, and it did so by initiating a new wire transfer to accomplish the return of California's funds to JPMorgan. The payment order that Chain Bridge issued to JPMorgan clearly stated

[9] In the Fedwire system, messages bearing the subtype code "01" for "request for reversal," as JPMorgan's message did here, are treated as "Nonvalue Messages" because they "do not generate an accounting entry by the Fedwire Funds Service system." Federal Reserve Banks Operating Circular No. 6, at ¶ 13.1 (2019) (reprinted at JA1288). Nonvalue Messages "are not Payment Orders." *Id.*

that Chain Bridge was returning California's funds "PER YOUR REQUEST," JA2214—that is, per *JPMorgan's* request—not in response to an instruction from Blue Flame.[10] Indeed, Blue Flame does not contend that, when Chain Bridge initiated the new wire transfer to return California's funds, it was acting on any instruction purporting to come from Blue Flame. Chain Bridge thus did not "accept[] a payment order issued in the name of its customer as sender," UCC § 4A-204(a), and it is not liable under Section 4A-204(a)'s plain text.

2. Blue Flame's contrary argument rests on a baffling mischaracterization of the undisputed facts. The lynchpin of Blue Flame's argument is an internal Chain Bridge record of the wire transfer returning the funds to JPMorgan, which Blue Flame declares to be a "payment order, in the name of Blue Flame as sender." Blue Flame Br. 22; *see also id.* at 34. But that is simply not what the cited record says, as is evident from the portion that Blue Flame reprints at page 22 of its brief. The record lists Blue Flame as the *originator* of the funds transfer, not as the sender of the payment order. JA2216. Moreover, the record lists *JPMorgan* as the "Receiving Bank"— not Chain Bridge, as would necessarily have been the case if it reflected a payment order from Blue Flame (as sender) to Chain Bridge (as a receiving bank).

[10] Chain Bridge's payment order also used an "02" subtype code, reflecting a "reversal" of California's wire transfer in response to JPMorgan's "request for reversal." JA2214; *see also* JA1343-44.

Id. And although it does not expressly designate a sender, Chain Bridge's role as the sender of the payment order is obvious from the designation of the record as an "Outgoing" wire transfer. *Id.*[11]

The record of the same payment order from the Fedwire system confirms the parties' roles. The Fedwire record, excerpted below, lists Chain Bridge as the "Sender" and JPMorgan Chase as the "Receiver." Again, Blue Flame is listed as the originator—not as the sender of the payment order.

[11] Blue Flame was more forthright in its district court briefing, where it described the very same document as "a payment order identifying Blue Flame *as the 'originator.'*" D. Ct. Doc. 149, at 26 (emphasis added). Blue Flame has abandoned that characterization on appeal, presumably because it is incompatible with Blue Flame's theory that Chain Bridge "accept[ed] a payment order issued in the name of its customer *as sender*." UCC § 4A-204(a) (emphasis added).

Fedwire Appended Information

Message Disposition {1100}:	30 P R 2
Receipt Time {1110}:	0326 1521 FT01
OMAD {1120}:	20200326 B1QGC01R 059760 0326 1521 FT01

Basic Information

Sender Supplied Information {1500}:	30 578A4AM2 P
Sender ABA {3100}:	056009479 CHAIN BRIDGE BANK
Receiver ABA {3400}:	021000021 JPMORGAN CHASE
Amount {2000}:	456,868,600.00
Type/Subtype Code {1510}:	1002
IMAD {1520}:	20200326 MMQFMPCZ 000009
Previous Message Identifier {3500}:	20200326B1QGC06C006570
Business Function {3600}:	CTR - Customer Transfer Transaction Type:
Sender Reference Number {3320}:	2693100086JO
Reference for Beneficiary {4320}:	ATS OF 20/03/26

Originator Information

Originator {5000}	
ID Code:	D - DDA Account Number
Identifier:	[redacted]7459
Name:	BLUE FLAME MEDICAL LLC
Address Line 1:	US
Originator to Beneficiary Information {6000}	
Line 1:	BY ORDER OF DEPARTMENT OF GENERAL
Line 2:	SERVICES

JA2214.

In sum, the discovery materials merely confirm the undisputed point that Chain Bridge accomplished the return of California's funds by sending a payment order to JPMorgan in response to JPMorgan's cancellation request. There is no evidence of what would actually be required to establish liability under Section 4A-204(a)—namely, that Chain Bridge took that step in response to an instruction purporting to come from its customer, Blue Flame. *See* UCC § 4A-204(a).

3. Blue Flame's attacks on the district court's reasoning are misplaced.

First, Blue Flame insists (Br. 36) that the district court engrafted an atextual limitation on Section 4A-204(a)'s scope by stating that the statute "actually covers payment orders that a bank accepts from a third party pretending to be the bank's customer." JA3089. But that observation merely summarizes the logical import of Section 4A-204(a)'s text, which imposes liability only when the bank "accepts a payment order issued in the name of its customer as sender." UCC § 4A-204(a). The statute is implicated only when the bank acts on an instruction purporting to come from its customer. Section 4A-204(a) does not apply when a bank generates *its own* payment order to initiate a wire transfer, without receiving instructions from another party purporting to be its customer.[12]

[12] The district court cited defendants' motion to dismiss, which observed that the reported cases addressing Section 4A-204(a) are consistent with the statute's text because 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." D. Ct. Doc. 19, at 11 (second emphasis added). It is difficult to hypothesize such a scenario that would not involve "a third party pretending to be the bank's customer," JA3089, but if one were to arise the district court's observation should not be read as foreclosing liability. The key point, for present purposes, is

Second, Blue Flame contends (Br. 36-37) that the district court erred in concluding that Chain Bridge did not "accept" the very payment order that Chain Bridge issued to JPMorgan to effectuate the return of California's funds. But there is no basis in Article 4A for Blue Flame's unexplained suggestion that Chain Bridge could "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) (emphasis added). 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.[13]

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that Section 4A-204(a) is not applicable when a bank has not accepted any instruction purporting to come from its customer.

[13] Blue Flame conceded this straightforward point in its brief at the motion to dismiss stage: "If discovery establishes that Defendants accomplished their unauthorized return of the funds by accepting a cancellation request made by

Contrary to Blue Flame's contention (Br. 37), there is no logical inconsistency between the district court's observation that Chain Bridge returned California's funds in response to JPMorgan's cancellation request and the district court's conclusion that California's wire transfer could not be effectively canceled under UCC Section 4A-211. Whether or not the cancellation was *effective*, it is beyond dispute that Chain Bridge returned California's funds in response in JPMorgan's cancellation request. That *request* from *JPMorgan* was not an *instruction* that purported to come from *Blue Flame*, as would be required to establish liability under Section 4A-204(a). *See* pp. 30-32, *supra*.

Moreover, Blue Flame's reading of Section 4A-204(a) makes no sense because it would impose liability on a receiving bank even when it agrees to an *effective* cancellation under UCC Section 4A-211, which may occur after the bank has released payment to the beneficiary. *See* UCC § 4A-211(c)(2).[14] If Blue Flame

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California's bank, Blue Flame agrees that this Count would not survive upon a motion for summary judgment." D. Ct. Doc. 27, at 15 n.8. As the district court observed, "[t]hat is precisely what the evidence in the record shows: that JPMorgan sent a 'request for reversal' asking Chain Bridge to 'PLS RETURN FUNDS[.]'" JA3089 (second alteration in original).

[14] Blue Flame incorrectly suggests (Br. 37) that the district court held that California's wire could not be effectively canceled because the funds had already been credited to Blue Flame's account. Rather, the court held that Blue Flame's misrepresentations to California did not lead to a "mistake" permitting effective cancellation. *See* JA3082-83; pp. 21-22, *supra*. Chain Bridge respectfully disagrees with the district court's conclusion that Chain Bridge credited the wire transfer to

were correct that reversing a wire transfer in response to a cancellation request amounts to the acceptance of an unauthorized payment order in violation of Section 4A-204(a), then the beneficiary would be entitled to a refund in *every* such case, making it impossible for a bank ever to accommodate a cancellation request. That untenable result is avoided, however, by recognizing that a bank that issues a payment order in response to a cancellation request is not liable under Section 4A-204(a) because it has not accepted a payment order issued in the name of its customer as sender. *See* pp. 30-32, *supra*.

B. The District Court Correctly Entered Summary Judgment In Chain Bridge's Favor On Blue Flame's Claim Under UCC Section 4A-404(a) Because Blue Flame Has No Evidence Of Damages Resulting From Chain Bridge's Refusal To Pay

Blue Flame separately challenges (Br. 40-55) the district court's grant of summary judgment on Blue Flame's claim under UCC Section 4A-404(a). That provision states that, if a "beneficiary's bank accepts a payment order," but "refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages." UCC § 4A-404(a).

Blue Flame's account, but that conclusion is irrelevant because the UCC plainly contemplates cancellation even after payment to a beneficiary, let alone the preliminary step of crediting an account. *See* UCC § 4A-211(c)(2).

The district court held that summary judgment was warranted because Blue Flame fails, for two separate reasons, to establish damages, as Section 4A-404(a) requires. Blue Flame has no persuasive response to either point, each of which independently supports summary judgment in Chain Bridge's favor.

1. Upon Learning The Truth About Blue Flame, California Determined Not To Move Forward With Its Order

Blue Flame's attempt to establish damages founders on the undisputed point that, within hours of initiating the wire transfer, California officials decided not to proceed with the transaction. Indeed, as the district court observed, California officials reached that conclusion *immediately* when they first "became aware of Blue Flame's recent creation and the fact that its owners were lobbyists." JA3084. At that point, they asked Chain Bridge not to release the funds to Blue Flame. JA803-04; JA1054. Later on March 26, California officials eagerly supported reversal of the wire transfer, urging JPMorgan "to reach out to the Chain Bridge Bank and see where the wire-recall is in the process." JA1070. California repeatedly reaffirmed its decision "not to deal further with" Blue Flame. JA3084; *see* pp. 18-19, *supra*.

The district court's rejection of Blue Flame's damages theory thus does not rest on "a chain of inferences *against* Blue Flame" or "a supposition that a particular series of events would have taken place." Blue Flame Br. 46. Nor did it somehow implicate "a complex web of hypothetical future events." *Id.* at 48. It merely required the district court to examine the undisputed historical facts: When

California learned the truth about Blue Flame, it declined to move forward with its order, and then it never wavered from that decision. Because California had an unfettered contractual right to terminate its contract with Blue Flame—a conclusion that Blue Flame does not challenge on appeal—there is no basis to conclude that anything would have been different if Chain Bridge had released California's funds to Blue Flame, rather than returning them to JPMorgan.

In fact, it is Blue Flame's contrary argument (Br. 46-48) that proceeds from a chain of "speculation" and "conjecture" of the sort that is insufficient to avoid summary judgment. *JKC Holding Co. LLC v. Washington Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). For instance, Blue Flame posits (Br. 47) that California might have agreed to move forward if, by the time California learned the true facts that Blue Flame had concealed, Chain Bridge had already wired a portion of California's funds to Blue Flame's purported mask brokers. In other words, Blue Flame suggests that, by the time its concealment came to light, the ball would have been rolling—and Blue Flame could have demonstrated progress towards fulfilling the order that might have dissuaded California from refusing to move forward. But Blue Flame points to nothing in the record to support that speculation.

In any event, Blue Flame's speculation is logically irrelevant, because Chain Bridge was under no obligation to facilitate an immediate wire transfer at Blue

Flame's direction.[15] Indeed, Blue Flame acknowledged in the district court that Chain Bridge was not required to wire California's funds out to Blue Flame's supposed brokers immediately, and thus before California learned the truth about Blue Flame. As a new customer, Blue Flame was subject to Chain Bridge's Funds Availability Disclosure providing that "[f]unds from wire[] transfers . . . will be available on the first business day *after* the day of your deposit." JA2839 (emphasis added). Blue Flame also conceded (D. Ct. Doc. 149, at 21) that Chain Bridge could have continued to hold California's funds while conducting additional due diligence, and was under no obligation to wire any of those funds to Blue Flame's mask brokers. As Blue Flame acknowledged (*id.* at 21 & n.18), a "receiving bank" generally "has no duty to accept a payment order," UCC § 4A-209 cmt. 3, meaning that Chain Bridge was not required to accept a payment order from Blue Flame directing a wire transfer to either of its supposed brokers.

The district court was therefore correct in holding that, for purposes of Blue Flame's damages theory, the relevant counterfactual was one in which "the funds were *held* in Blue Flame's account instead of being returned promptly to California's bank," JA3084 (emphasis added), not one in which Chain Bridge immediately

[15] Blue Flame's speculation is also factually unsupportable, since Blue Flame presented no evidence that it *ever* could have supplied California's order, let alone evidence that Suuchi could have shipped masks to California immediately upon receipt of payment. *See* pp. 42-50, *infra*.

processed Blue Flame's request for an outgoing wire transfer. And that holding, in turn, dooms Blue Flame's damages theory. California had already learned the truth about Blue Flame—and decided not to proceed with the transaction—well before there was any basis for Blue Flame to insist that California's funds had to be released to it or to its brokers. Because any resulting damages arose *before* a payment right could have ripened, Blue Flame adduced no evidence of "damages resulting from [Chain Bridge's] refusal to pay." UCC § 4A-404(a).

2. Blue Flame Proffered No Evidence That It Could Have Fulfilled California's Order

Blue Flame likewise fails to identify any error in the district court's conclusion that Blue Flame offered "no basis beyond rank speculation on which a reasonable factfinder could find that Blue Flame was capable of fulfilling its order to California." JA3088.

1. Blue Flame first observes (Br. 50-51) that it had placed purchase orders with two purported mask brokers, Suuchi and Great Health. As the district court correctly explained, however, the fact that Blue Flame had placed those orders was not evidence "that the orders would have been, or could have been, fulfilled by the suppliers." JA3085.

As Blue Flame acknowledges, it faced a "global scrum for PPE" in March 2020. Blue Flame Br. 2; *see also id.* at 11 ("demand was rising and supply was uncertain"). Under the extraordinarily chaotic conditions that prevailed at the time, a vendor's willingness to accept an order for a certain quantity of N95 masks conveyed little more than a hope that it would actually have the masks available to supply. Indeed, Blue Flame's own experience after the California transaction confirms that proposition: Blue Flame was consistently unable to fulfill other customers' orders for N95 masks, despite placing its own orders with its supposed supply chain. As Blue Flame acknowledged to congressional investigators, its failures to fulfill other orders were caused by Great Health's inability to supply the masks that Blue Flame had ordered, as well as by Chinese export restrictions and other market and supply-chain disruptions. *See* p. 20, *supra*.[16]

Blue Flame nonetheless insists (Br. 50) that Suuchi had a supply of six million N95 masks that were ready to ship immediately. But the only evidence Blue Flame cites for that proposition is its purchase order and reseller agreement with Suuchi, *see id.* at 11, 50, which say nothing about any masks being available to ship immediately, and the deposition testimony of John Thomas, *see id.* at 11, who could

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[16] Blue Flame contends (Br. 52) that the failure of the California transaction caused Blue Flame's inability to fulfill other orders, by depriving it of working capital and by damaging its reputation. But there is no evidence to support that assertion. Blue Flame repeatedly failed to fulfill orders even when its customers had fully prepaid (so that a supposed lack of "working capital" was irrelevant), and Blue Flame was forced to refund multiple orders *before* the failure of the California transaction became public (demonstrating that "reputational damage" played no role). *E.g.*, JA37; JA1123-28; JA1255-56. The truth is that, as Blue Flame told Congress, Blue Flame was simply unable to secure the supply it needed to fulfill its customers' orders. JA1123-28.

articulate no basis in his own personal knowledge to support his assertion that "Suuchi had six million masks in live inventory available to ship immediately." JA1557. There was thus no admissible evidence from which a jury could find that Suuchi was prepared to fulfill Blue Flame's order. *See* Fed. R. Evid. 602.

Blue Flame's reliance (Br. 51) on supposed assurances about Great Health's supply capacity that it received from Henry Huang, Great Health's CEO, shortly before California's order is also misplaced. Whatever assurances Blue Flame claims to have received from Huang are inadmissible hearsay, which is insufficient to avoid summary judgment. *See* Fed. R. Civ. P. 56(c)(1)(B); *Maryland Highways Contractors Ass'n v. Maryland*, 933 F.2d 1246, 1251 (4th Cir. 1991).

2. Contrary to Blue Flame's contentions (Br. 53-54), the district court did not err in excluding the thirteenth-hour declaration from Huang that Blue Flame filed with its summary judgment opposition or in concluding, in the alternative, that the declaration did not support Blue Flame's damages case.

a. Blue Flame argues (Br. 53) that the district court was obliged to consider Huang's declaration because Rule 56 provides that a party may rely on "affidavits or declarations" at summary judgment. Fed. R. Civ. P. 56(c)(1)(A). But courts retain authority to reject a party's attempts to end-run the ordinary discovery process by securing a declaration from a witness who has chosen to "ma[ke] himself unavailable for discovery." *Dedvukaj v. Equilon Enters., L.L.C.*, 301 F. Supp. 2d

664, 668 (E.D. Mich. 2004), *aff'd*, 132 F. App'x 582 (6th Cir. 2005). As courts have recognized, it is inherently unfair when "one party has been in continued contact with non-party affiants but the other party has been denied the ability to question their statements." *Henry v. Outback Steakhouse of Fla., LLC*, No. 15-cv-10755, 2017 WL 1382292, at *2 (E.D. Mich. Apr. 18, 2017).[17] Indeed, allowing a witness who has refused to participate in discovery to parachute into a case only at summary judgment, in order to "give unchallenged affidavit testimony[,] . . . would clearly violate the purpose of discovery." *McKellar v. State Farm Fire & Cas. Co.*, No. 14-cv-13730, 2016 WL 304759, at *8 (E.D. Mich. Jan. 26, 2016).

The district court was therefore correct in concluding that "basic fairness" (JA3086 n.11) precludes any consideration of Huang's declaration. Defendants had subpoenaed Huang's deposition in December 2020, but Huang refused, citing limitations imposed by Chinese law. JA2844-45. At the end of discovery, defendants learned that Blue Flame's John Thomas had been in contact with Huang—his "very good friend[]," JA2853—and that as a result Huang was considering traveling outside of China to give testimony at Blue Flame's request.

[17] *See also, e.g.*, *Cambridge Literary Props., Ltd. v. W. Goebel Porzellanfabrik G.m.b.H. & Co. Kg.*, No. CV 00-10343-NG, 2006 WL 8458370, at *1 (D. Mass. Mar. 14, 2006); *Bumpas v. Ryan*, No. 3:07-cv-0766, 2013 WL 2418258, at *2 (M.D. Tenn. June 3, 2013); *Lucas v. Jolin*, No. 1:15-cv-108, 2016 WL 2853576, at *8 (S.D. Ohio May 16, 2016).

JA2843. Defendants repeatedly asked to be included in any discussions regarding Huang's potential deposition, and followed up with a further subpoena to Huang for the production of relevant documents, which were never provided. JA2841-43. When Huang responded, he advised that he was "currently still in China and will be for the near future." JA2841.

Huang's declaration confirms that he *chose* not to participate in discovery: As Huang acknowledged, he could have left China to attend a deposition, and he would have been permitted to return. JA2607. He did not do so (according to his untested declaration, at least) because of the quarantine restrictions he would have encountered upon returning to China. *Id.*[18] Moreover, Huang's declaration fails to explain why he was willing and able to provide a declaration to assist Blue Flame, but refused defendants' document subpoena. Huang's evident partisanship thus further confirms that any consideration of his untested declaration by the district court would have been profoundly unfair.

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[18] In some cases, courts have observed that the declarant was not only absent during the discovery period but also was unlikely to be available for trial. *E.g.*, *Dedvukaj*, 301 F. Supp. 2d at 668. Here, Huang's declaration asserted that he "intend[s] to testify at the trial of this action, if needed." JA2607. But that assertion makes no difference, given that Huang attributed his choice not to make himself available to quarantine restrictions in China and his own work responsibilities. *Id.* There were (and are) no assurances as to when the Chinese government might loosen those restrictions or when Huang's responsibilities might change in a way that would lead Huang to choose to attend trial.

b. Even setting aside the procedural irregularities that justified the district court's exclusion of Huang's declaration, the declaration would still fail to advance Blue Flame's case because it did not "set out *facts* that would be admissible in evidence." Fed. R. Civ. P. 56(c)(4) (emphasis added). It is well settled that "summary judgment affidavits cannot be conclusory." *Evans v. Technologies Applications & Serv. Co.*, 80 F.3d 954, 962 (4th Cir. 1996). Thus, a declarant's "unsupported assertions" will not be considered, *id.*, and "statements of mere belief must be disregarded," *Tavery v. United States*, 32 F.3d 1423, 1426 n.4 (10th Cir. 1994).

Yet that is all Huang offered here. For example, Huang asserted that Great Health "had the ability to obtain 100 million units of the N95 mask models specified by California as they were manufactured." JA2609.[19] But Huang offered no facts as to how Great Health would have accomplished this massive task. He did not identify any source of supply for the masks he claims he would have found. Nor did he

[19] Even Huang could not bring himself to endorse Blue Flame's farfetched tale that it would have fulfilled California's order within 30 days. Instead, Huang's declaration claims that Great Health could have supplied 100 million N95 masks to Blue Flame within three months. JA2611-12. In *real time* Huang had advised Blue Flame that it "would be *impossible* to fulfill" an order for more than 10 million masks "given the number of people that all want it." JA1218 (emphasis added). Huang noted that "most" of China's limited supply was consumed by "existing long term contracts dating back to February"—that is, well before California's late-March order. *Id.*

articulate any plan for the massive increase in production that would have been required to fulfill California's order. In short, Huang's declaration offered only unsupported assertions of Huang's own views about Great Health's capabilities. Because the declaration did not "set out facts that would be admissible in evidence," Fed. R. Civ. P. 56(c)(4), it was not entitled to any weight at summary judgment.

3. On appeal, Blue Flame hardly defends the outlandish proposition that it could have fulfilled California's order for 100 million N95 masks on anything like the expedited timeline contemplated by the parties' agreement. Instead, Blue Flame argues (Br. 50) that the real question, for purposes of summary judgment, was whether Blue Flame could have delivered *just one* N95 mask to California, which Blue Flame suggests would establish that it suffered at least some damages from Chain Bridge's refusal to pay. But that argument was not pressed below in opposition to defendants' summary judgment motion, and it was made only in passing in Blue Flame's reply in support of its own motion for summary judgment. *See* D. Ct. Doc. 159, at 20 & n.33. Having failed to develop any partial-performance argument below, Blue Flame can hardly fault the district court for focusing its attention on Blue Flame's patent inability to supply the 100 million N95 masks that it promised to deliver to California.[20]

[20] Blue Flame contends (Br. 24-25, 47) that California's willingness to extend certain deadlines in a different mask-supply contract, with BYD, suggests that

In any event, Blue Flame's argument misunderstands the parties' respective burdens at summary judgment. Chain Bridge was not required to establish that Blue Flame could not conceivably have suffered any damages at all. *See Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 885 (1990) ("Rule 56 does not require the moving party to *negate* the elements of the nonmoving party's case."). Rather, once Chain Bridge had "discharged" its summary judgment burden by "pointing out to the district court . . . that there is an absence of evidence to support the nonmoving party's case," it was *Blue Flame's* burden, as the plaintiff, to proffer evidence from which a reasonable jury could find that it suffered damages. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). And Blue Flame could not meet that summary judgment burden by relying only on bare "speculation or conjecture." *JKC Holding Co.*, 264 F.3d at 465; *see also Ash v. United Parcel Serv., Inc.*, 800 F.2d 409, 411-

California would have accepted a partial or belated delivery from Blue Flame. But Blue Flame did not invoke California's supposedly "accommodating approach" with BYD (Br. 47) until its reply brief in support of a post-argument motion to file supplemental authorities regarding Henry Huang's declaration—and even then, only in a footnote. *See* D. Ct. Doc. 174, at 5 n.4. The district court rejected Blue Flame's motion—declining to "reopen[] the issue for further argument," JA3086 n.11—in a ruling that Blue Flame does not challenge on appeal. Accordingly, Blue Flame's contention is not preserved. In any event, Blue Flame fails to explain how California's willingness to accept certain delays from BYD, a global manufacturing conglomerate, would bear on California's disposition toward Blue Flame, a two-day-old company without any manufacturing capabilities or source of supply. *See, e.g.*, Reuters, *UPDATE 1-Electric Car Maker BYD Says Profits Up as Becomes Leading Mask Maker*, Aug. 28, 2020, https://perma.cc/APZ3-6FU3 (describing BYD's operations).

12 (4th Cir. 1986) (per curiam) ("[S]peculation is not sufficient to defeat a summary judgment motion.").

But Blue Flame offered nothing more than "rank speculation." JA3088. As explained above, there was no admissible evidence that Blue Flame's purported supply partners actually had *any* N95s available from which Blue Flame could have fulfilled even a portion of California's order. There was accordingly no basis on which a reasonable jury could find that Blue Flame suffered damages "resulting from [Chain Bridge's] refusal to pay." UCC § 4A-404(a).

3. *Blue Flame Was Required To Establish Damages Resulting From Chain Bridge's Refusal To Pay*

After devoting page after page of its brief to an (unsuccessful) attempt to establish damages "resulting from [Chain Bridge's] refusal to pay," UCC § 4A-404(a), Blue Flame closes with the puzzling assertion (Br. 54-55) that no such proof was required after all, because the district court should have required Chain Bridge to pay the amount of the wire transfer to Blue Flame even if Blue Flame suffered no damages.

But Blue Flame never presented that theory to the district court. To the contrary, Blue Flame's complaint sought lost profits and reputational damages "caused" by Chain Bridge's alleged violation of Section 4A-404(a); it did not seek to recover the amount of California's wire transfer. JA40; *compare with* JA43 (seeking "a refund of the full amount of the payment order" under Section 4A-

204(a)). Indeed, Blue Flame *expressly disclaimed* any argument that the amount of the wire transfer supplied the measure of damages under Section 4A-404(a). At oral argument on the parties' summary judgment motions, Blue Flame's counsel explained that "the measure of damages for Count 1 [under Section 4A-404(a)] is foreseeable damages," and argued that Blue Flame could recover only for "lost profit and . . . lost business opportunity." JA3034, 3036. Blue Flame's counsel contrasted that theory with Blue Flame's claim under Section 4A-204(a), as to which the "measure of damages" was "return of th[e] money," that is, "rescission back to the customer of that amount that the bank improperly took." JA3034-35. Particularly in light of Blue Flame's express waiver before the district court, there would be no justification for this Court to depart from its usual rule that "issues raised for the first time on appeal generally will not be considered." *Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993) (collecting cases); *see also Ballengee v. CBS Broad., Inc.*, 968 F.3d 344, 351 (4th Cir. 2020) (same).

In any event, Blue Flame's new reading of Section 4A-404(a) is wrong. By its plain terms, Section 4A-404(a) limits a plaintiff's recovery to "damages resulting from the refusal to pay." UCC § 4A-404(a). Blue Flame points to nothing in the text of the statute that would authorize additional recovery—beyond any damages resulting from the refusal to pay—for the amount of the wire transfer itself.

C. Blue Flame's Failure To Act In Good Faith Independently Bars Blue Flame's UCC Claims

Blue Flame's claims under Sections 4A-204(a) and 4A-404(a) of the UCC are also barred because of Blue Flame's breach of its obligation, under Section 1-304 of the UCC, to act in good faith in connection with the wire transfer. Chain Bridge advanced that argument below (*see* D. Ct. Doc. 119, at 21-22, 28 n.17), but the district court did not reach it because the court rejected Blue Flame's UCC claims on other grounds. If this Court were to disagree with the district court's rationale for dismissing the UCC claims, however, Blue Flame's bad-faith misconduct here (which its counsel coyly refers to as "American capitalism in its rawest form," Blue Flame Br. 2) would supply an alternative ground for affirmance. *E.g.*, *Hodgin v. UTC Fire & Sec. Americas Corp*., 885 F.3d 243, 251 (4th Cir. 2018); *Jackson v. Kimel*, 992 F.2d 1318, 1322 (4th Cir. 1993).

1. Section 1-304 provides that "[e]very contract or duty within the [Uniform Commercial Code] imposes an obligation of good faith in its performance and enforcement." UCC § 1-304. The "'[p]erformance and enforcement' of contracts and duties within the Uniform Commercial Code include the exercise of rights created by the Uniform Commercial Code." *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 obligations under Sections 4A-204(a) and 4A-404(a) that Blue Flame has sought to enforce against Chain Bridge. *See id.* § 1-304 cmt. 1

(breach of good faith obligation will "make[] unavailable, under the particular circumstances, a remedial right or power").

Here, Blue Flame's lack of good faith is evident from the misrepresentations and concealment it used to procure California's order. *See* pp. 8-12, *supra*. Blue Flame's fraudulent inducement is incompatible with the concept of good faith, which requires "honesty in fact and the observance of reasonable commercial standards of fair dealing." UCC § 1-201(b)(20).

In the district court, Blue Flame sought to avoid that straightforward conclusion by arguing that its fraud in the underlying transaction with California did not demonstrate any breach of its "obligation of good faith in . . . enforcement" of rights created by the UCC. *See* D. Ct. Doc. 149, at 23-24, 25 n.23. But that argument ignores the undeniable linkage between Blue Flame's fraud and the UCC payment right it sought to enforce against Chain Bridge. Indeed, Blue Flame's lawsuit seeks to enforce a payment right against Chain Bridge that is attributable to its fraudulent transaction with California, even though the underlying fraud would provide a defense to a claim brought against California.[21] Section 1-304's requirement of good

[21] In its briefing below, Blue Flame invoked this Court's non-precedential, per curiam decision in *Synovus Bank v. Tracy*, 603 F. App'x 121 (2015), but that decision is inapt. There, this Court concluded that the plaintiff bank had not engaged in fraud. *See id.* at 125-26. Thus, it had no occasion to decide whether a plaintiff can insist on literal compliance with the UCC when the result would be to give effect to the plaintiff's own fraud.

faith precludes exactly this sort of bad-faith opportunism, where a party asserts that wooden, literal compliance with Article 4A requires a court to give effect to a fraud. As the Eleventh Circuit has emphasized—in specific reliance on the UCC's good-faith obligation—"[i]t could hardly have been the intent of the drafters to enable a party to succeed in engaging in fraudulent activity, so long as it complied with the provisions of Article 4A." *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267, 1276 (11th Cir. 2003).[22]

2. In the district court, Blue Flame also made a token effort to dispute Chain Bridge's argument that it had failed to act in good faith. *See* D. Ct. Doc. 149, at 25. And here, Blue Flame tries to spin all of this as nothing more than rough-and-tumble commerce—"not necessarily pretty"—as practiced by a couple of plucky upstarts. Blue Flame Br. 2. But Blue Flame's version bears no resemblance to the undisputed record.

[22] Blue Flame attempted to distinguish *Regions Bank* on the ground that it involved preemption of a state law claim, rather than a claim for violating the UCC. *See* D. Ct. Doc. 149, at 23 n.20. But that was simply a result of the case's procedural posture: The defrauded party brought a claim to recover funds from the bank that had received a wire transfer, and the court held that Article 4A could not serve "as a shield for fraudulent activity." 345 F.3d at 1276. If anything, the principle announced in *Regions Bank* applies with added force here because Blue Flame asked the district court to put its imprimatur on Blue Flame's own fraud. *Cf. United States v. $3,000 in Cash*, 906 F. Supp. 1061, 1066-67 (E.D. Va. 1995) ("It is well settled that courts will not permit anyone to reap the benefits of a contract or an agreement, the carrying out of which involves his complicity in any fraudulent act[.]") (internal quotation marks omitted).

First, Blue Flame cannot explain away Thomas's repeated misrepresentations to Controller Yee. Thomas told Yee that Blue Flame (i) had 100M N95 masks; (ii) had "almost sold all" of them; (iii) was "delivering another 100m units of n95 mask[s]" to additional customers; and (iv) would have "100m units every week" available for sale. JA640, 642, 645. Not a word of that was true. *See* JA548, 551. Those misrepresentations were critical to Yee, JA666-68, who then interceded with the Governor's office to promote Blue Flame, referred Blue Flame to California's DGS, and expedited and facilitated the State's warrants authorizing an unprecedented *prepayment* wire to Blue Flame. JA2872-73; *see also* JA2881-82 (describing coordination between DGS and Controller's Office regarding payment to Blue Flame). Approval from the Governor's office—not just DGS—was ultimately required for the wire transfer to proceed. *See* JA2886.

Thomas also made false representations directly to the DGS personnel who were negotiating with Blue Flame regarding California's order. He falsely claimed that Blue Flame had connections with "manufacturers" in China, and DGS relied on that misstatement. *See* pp. 9-10, *supra*; JA2889; JA2892. He sent DGS a fictitious delivery schedule that contemplated delivery of 100 million N95 masks within 30 days. *See* pp. 10-12, *supra*. And he told DGS that Blue Flame "cages the money" for PPE transactions, JA2879, conveying the false impression that Blue Flame had held money to pay manufacturers on behalf of other customers. In fact, there were no other customers, and Blue Flame did not yet even have a bank account in which to "cage" money.

Finally, Blue Flame argued that it had no obligation to volunteer basic information regarding its own background and experience to California—including the fact that the company was formed only days earlier, had no relevant expertise, and had never delivered a single N95 mask to anyone. *See* D. Ct. Doc. 149, at 4. But it was surely a "basic assumption" of the transaction that Blue Flame was a bona fide vendor of PPE, and because Thomas knew that California was mistaken on this point, he had a duty to correct that mistake. *See* Restatement (Third) of Torts: Liability for Economic Harm § 13(c) (2020). Indeed, Blue Flame effectively conceded the point below, by arguing that Chain Bridge's informing California officials of these very facts "was reasonably calculated to cause California to re-think its transaction with Blue Flame." D. Ct. Doc. 128, at 28. It cannot be that the *omission* was immaterial, but the *disclosure* was significant. Moreover, Thomas was under an obligation to disclose these facts to correct the misleading impression created by his own statements that depicted Blue Flame as an experienced PPE vendor. *See* Restatement (Third) of Torts: Liability for Economic Harm § 13(c) (2020); *Paradise Wire & Cable Defined Benefit Pension Plan v. Weil*, 918 F.3d 312, 318 (4th Cir. 2019).

D. The District Court Correctly Held That Blue Flame's State Law Claims Fail As A Matter Of Law

1. The District Court Correctly Dismissed Blue Flame's Claims For Conversion, Fraud, Constructive Fraud, Negligence, And Breach Of Contract

a. The district court dismissed Blue Flame's claims for conversion, fraud, constructive fraud, negligence, and breach of contract at the pleading stage, holding that those claims are foreclosed by the "strong doctrine of preemption" that this Court has announced for "state causes of action that essentially overlap or dovetail" with the provisions of Article 4A that govern Fedwire transfers. JA60. Article 4A is expressly incorporated into federal law through Subpart B of Regulation J to "provide[] rules to govern funds transfers through . . . Fedwire." 12 C.F.R. § 210.25. The Federal Reserve's official commentary to Subpart B explicitly addresses preemption:

> [R]egulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart B of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart B of this part, such as Article 4A, as enacted in any state, as it applies to parties to funds transfers through Fedwire whose rights are not governed by subpart B of this part.

12 C.F.R. pt. 210, subpt. B, app. A, cmt. to § 210.25. And this Court has emphatically held that Subpart B "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 (4th Cir. 2002) (emphasis added). Thus, whether "a state law claim is preempted by Regulation J turns on whether the challenged conduct in the state claim would be covered under Subpart B as well." *Id.*

On appeal, Blue Flame challenges the district court's preemption ruling, arguing that the dismissed state law claims should have been allowed to proceed on the theory that a bank's issuance of a payment order that its customer has not authorized is not conduct governed by Article 4A and so is not subject to preemption. *See* Blue Flame Br. 39-40. Blue Flame predicts (Br. 40) that the "upshot" of the district court's preemption ruling "will be that banks can wire money out of their customers' accounts willy-nilly by drawing up their own unauthorized payment orders." But that concern would have force only if the district court's ruling were extended to cases, unlike this one, where a bank wired money out of a customer's account *without* having received a cancellation request. Here, Chain Bridge's decision to withhold payment from Blue Flame and accommodate JPMorgan's cancellation request was governed by Sections 4A-211 and 4A-404(a) of the UCC. *See* pp. 21-23, 38-51, *supra*. It thus plainly implicates "conduct falling within the scope of Subpart B," and any "conflict[ing]" or "duplicative" state law claims were properly held preempted. *Eisenberg*, 301 F.3d at 223.

The district court never suggested that preemption would immunize a bank from state law liability for initiating a wire transfer from its customer's account under circumstances that do not involve conduct—such as cancellation of a wire transfer—that is governed by, and potentially subject to liability under, Article 4A. And in this case, the district court's preemption ruling plainly did not license any "willy-nilly" escape from consequences for Chain Bridge. Chain Bridge's conduct was subjected to searching inquiry under Section 4A-404(a). The district court held (correctly) that Blue Flame cannot establish liability under that provision, but Blue Flame's failure of proof under Article 4A's standards offers no basis to conclude that state law may augment liability for "conduct falling within the scope of Subpart B." *Eisenberg*, 301 F.3d at 223.

b. Even if the district court's preemption analysis was erroneous, moreover, that conclusion would not justify reversal of the district court's judgment because Blue Flame's failure to establish damages furnishes an alternative ground for affirmance. For each of the state law claims at issue, Blue Flame's complaint articulated the same theory of damages that Blue Flame asserted under UCC Section 4A-404(a)—*viz*, that the defendants' allegedly improper conduct had caused damages "including, among other harms, [Blue Flame's] lost profits for the transaction with California, lost future business opportunities with California and other customers, and reputational damage as a result of the subsequent media coverage of the incident." JA40 (Section 4A-404(a) claim); JA44-45 (conversion); JA50 (negligence); JA52 (breach of contract); *see also* JA48 (tying damages for alleged fraud to "loss of all profits associated with the transaction with California and other lost business"); JA50 (same for constructive fraud).

In other words, the state law claims that were dismissed on the pleadings were "based on the same unsubstantiated theory and suffer from the same lack of proof" as Blue Flame's claim under Section 4A-404(a), which was properly dismissed at summary judgment. *Belville v. Ford Motor Co.*, 919 F.3d 224, 236 n.9 (4th Cir. 2019). Thus, even if those state law claims "had survived the Rule 12(b)(6) challenge, they would not have survived the district court's summary judgment rulings because all contain the same failure of proof." *Id.* The judgment may be affirmed on that basis, without reaching the merits of the district court's preemption ruling. *See id.*; *see also Terry v. Perdue*, No. 20-2016, 2021 WL 3418124, at *2 n.2 (4th Cir. Aug. 5, 2021) (per curiam) (dismissal of claim under Rule 12(b)(6) could be affirmed based on plaintiff's deposition testimony in connection with other claims); *Stanciel v. Gramley*, 267 F.3d 575, 579-80 (7th Cir. 2001) (allegedly erroneous pre-trial dismissal of defendants was harmless, within the meaning of Civil Rule 61, where the plaintiff could not "point to any relevant legal or factual differences" between dismissed defendants and other defendants who were found not liable at trial).

2. *Summary Judgment Was Proper On Blue Flame's Tortious Interference Claims*

Blue Flame briefly contends (Br. 55-56) that the district court erred in granting summary judgment on Blue Flame's claims for tortious interference with contract and business expectancy. That contention is incorrect.

As Blue Flame acknowledges (Br. 55), the district court held that Blue Flame's tortious interference claims fail because the undisputed facts demonstrate that Blue Flame could not establish damages. JA3091. Because the district court's conclusion that Blue Flame fails to establish damages was correct, *see* pp. 39-50, *supra*, summary judgment was properly granted on the tortious inference counts. Indeed, Blue Flame does not articulate any separate theory of damages for its tortious interference claims, and it appears to concede that rejection of its challenge to the district court's damages ruling would require affirmance. *See* Blue Flame Br. 55.

Blue Flame's challenges to the district court's additional reasons for rejecting the tortious interference claims also lack merit. Blue Flame contends (Br. 55) that the district court erred in holding that the claims fail because of "issues with the validity of the contractual relationship and business expectancy between Blue Flame and California." JA3090. But that holding was manifestly correct. As the district court observed, Blue Flame's relationship with California was based on "apparent initial misrepresentations to California authorities" regarding Blue Flame's ability to supply 100 million 3M N95 masks from the Port of Long Beach. *Id.* More broadly, Blue Flame procured California's order through fraudulent misrepresentations and concealment of material facts. *See* pp. 8-12, 54-56, *supra*. 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). And although Blue Flame observes (Br. 55) that the parties stipulated that California had "agreed to purchase 100 million N95 masks from Blue Flame," JA139, there was no stipulation that this agreement was "valid in substance," as would be required to support Blue Flame's tortious inference claims.

Blue Flame separately contends (Br. 56) that the district court erred in holding that a reasonable jury could not find that defendants had acted with an intent to disturb Blue Flame's business relationship with California. *See* JA3090-91. But the premise of that argument—which Blue Flame glosses over on appeal, but made explicit below—is that defendants acted with a wrongful intent because their statements to California officials were "substantially certain" to lead California to revisit its decision to purchase from Blue Flame. D. Ct. Doc. 128, at 28-29 (quoting *Commerce Funding Corp. v. Worldwide Sec. Servs. Corp.*, 249 F.3d 204, 212 (4th Cir. 2001)). That 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*. To state the obvious, no principle of law required defendants to *assume* that Blue Flame was perpetrating a fraud on California that their truthful statements would reveal.

II. THE DISTRICT COURT CORRECTLY HELD THAT CHAIN BRIDGE IS INDEMNIFIED BY JPMORGAN

The district court correctly held that JPMorgan must indemnify Chain Bridge's losses and expenses, including attorney's fees, resulting from JPMorgan's cancellation of its payment order to Chain Bridge. As the court explained, that outcome follows from a straightforward application of UCC Section 4A-211(f) to undisputed facts. The court thus rejected JPMorgan's "attempts to sidestep the text of the regulation" as being "weak," "unpersuasive," and "incorrect[]." JA3093-94, 3096.

A. JPMorgan's Liability For Indemnification Is Established By Undisputed Facts And The Plain Text Of UCC Section 4A-211(f)

1. Section 4A-211 of the UCC governs the cancellation of wire transfers. It sets rules for what happens when a sender (here, JPMorgan) cancels its payment order to a receiving bank (here, Chain Bridge), either before or after the receiving bank has accepted the sender's payment order. Prior to a receiving bank's acceptance, the sender generally has a unilateral right to cancel its payment order. UCC § 4A-211(b). After acceptance, by contrast, the sender's "cancellation . . . is

not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank." *Id.* § 4A-211(c).

When cancellation occurs after acceptance, as happened here, Section 4A-211(f) provides the receiving bank a right to indemnification by the sender:

> Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

The UCC's official commentary underscores that a receiving bank that honors the sender's cancellation request is entitled to indemnification without regard for the circumstances that underlie the sender's cancellation request: "If a receiving bank agrees to cancellation or amendment under subsection (c)(1) or (2), it is *automatically* entitled to indemnification from the sender under subsection (f)." UCC § 4A-211 cmt. 5 (emphasis added). This "indemnification provision recognizes that a sender has no right to cancel a payment order after it is accepted by the receiving bank," and that, as a consequence, "[i]f the receiving bank agrees to cancellation, it is doing so as an accommodation to the sender and should not incur a risk of loss in doing so." *Id.*; *see* JA3092-93.

Section 4A-211(f)'s indemnification right thus marks an intentional "depart[ure] from the common law" to afford broad and automatic protection to a receiving bank that agrees to cancellation of a payment order following acceptance. *Banca Commerciale Italiana, N.Y. Branch v. Northern Tr. Int'l Banking Corp.*, 160 F.3d 90, 94 (2d Cir. 1998). It obviates any need to establish "the elements required to establish common law fraud or unjust enrichment" by instead "impos[ing] *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.* (emphasis added).

2. As the district court held, the undisputed facts establish Chain Bridge's right to indemnification as a matter of law.

First, JPMorgan sent Chain Bridge a payment order for California's wire transfer at 11:55 AM on March 26, 2020. JPMorgan Br. 11 (citing JA140 ¶¶ 15-16; JA254). There is no dispute that Chain Bridge immediately accepted that payment order. In the Fedwire system, acceptance of a wire is automatic. The transmittal of a payment order results in an immediate credit to the receiving bank's account at the Federal Reserve, which causes the receiving bank's near-instantaneous, automatic acceptance of the payment order. *See* UCC §§ 4A-209(b)(2), 4A-403(a)(1).

Second, after JPMorgan and Chain Bridge officials discussed the concerns identified by their respective investigations, JPMorgan's Tim Coffey reached out to

Chain Bridge, at 1:37 PM, and told it that JPMorgan would be "recalling those funds" because "[w]e have enough concerns that we feel we need to call those funds back." JPMorgan Br. 14 (citing JA3136 at 0:06-0:14). Coffey asked Chain Bridge what it needed from JPMorgan to make that happen, and Chain Bridge said that it required an "official communication from JPMorgan to us [*i.e.*, Chain Bridge] to recall the funds" sent "over the Fedline platform." *Id.* at 15 (citing JA3136 at 0:18-0:26).

Soon after, at 2:05 PM, JPMorgan sent Chain Bridge a Fedwire message that JPMorgan coded as its "request for reversal." JPMorgan Br. 15 (citing JA142 ¶ 29; JA390; JA467). The message stated "PER REM REQ PLS RETURN FUNDS"—meaning "per remitter's request please return funds." JA1065; *see also* JA1343; JA1354-55. JPMorgan's recall message referenced JPMorgan's 11:55 AM payment order, by that order's unique system identifier, as the one that JPMorgan was asking Chain Bridge to return. *Id.*

JPMorgan's 2:05 PM Fedwire message can be understood only as a "communication of the sender of a payment order cancelling . . . the order." UCC § 4A-211(a). The message requested that Chain Bridge return the wired funds rather than pay them to Blue Flame as JPMorgan's original payment order had directed. Under Section 4A-211(a), that is a cancellation. *See Banca Commerciale Italiana, N.Y. Branch v. Northern Tr. Int'l Banking Corp.*, 160 F.3d 90, 92-93 (2d Cir. 1998) (request that a receiving bank "refund" funds is a cancellation of payment order); *Cumis Ins. Soc'y, Inc. v. Citibank, N.A.*, 921 F. Supp. 1100, 1103, 1105 (S.D.N.Y. 1996) (request for return of funds). Indeed, JPMorgan's own wire-transfer expert agreed that JPMorgan's 2:05 PM message was a communication cancelling a payment order "of the type described in 4A-211(a)." JA1357.

Third, Chain Bridge agreed to JPMorgan's cancellation request by returning the funds to JPMorgan via a 3:21 PM Fedwire message. JPMorgan Br. 15 (citing JA142 ¶ 32; JA412); JA1076. Chain Bridge's message was unmistakably clear that it was returning the funds in response to JPMorgan's cancellation. Chain Bridge stated that it was "RTNG YR IMAD"—meaning "returning your IMAD," with "IMAD" referring to the 11:55 AM payment order's unique identifier, and that Chain Bridge was doing so "PER YOUR REQUEST"—meaning in response to JPMorgan's 2:05 PM request for reversal. *Id.*; *see also* JA1344.

Finally, the parties made no agreement to displace Section 4A-211(f)'s default indemnification obligation. As JPMorgan's Tim Coffey testified, "[t]he word 'indemnity' was never mentioned by either party, be it [JPMorgan] or Chain Bridge," JA1044, and JPMorgan concedes (Br. 41) that the cancellation proceeded "without any express discussion of indemnity." Nor did JPMorgan's 2:05 PM cancellation message state the phrase "NO INDEMNITY," which payment-order senders ordinarily include in cancellation messages if they intend to disclaim indemnification liability. *See, e.g.*, *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267, 1272 (11th Cir. 2003) (sender's recall message to beneficiary's bank expressly specified "no indemnity"). The Federal Reserve's official guidance for Fedwire transfers, Federal Reserve Banks Operating Circular No. 6, expressly warns banks that "[b]y requesting cancellation or amendment of a Payment Order, the sender may be liable under Section 4A-211 of Article 4A *unless* the request states 'NO INDEMNITY.'" JA1288 (emphasis added).

These facts were undisputed in the district court, and are each recited in JPMorgan's brief. They conclusively demonstrate every element of Section 4A-211(f): JPMorgan's cancellation of its payment order after Chain Bridge's acceptance; Chain Bridge's agreement to return funds in response to that cancellation; and the lack of any "agreement of the parties" that "otherwise provided" for indemnification. The district court thus correctly held that JPMorgan is liable to Chain Bridge under Section 4A-211(f). JA3096.

B. The District Court Correctly Rejected JPMorgan's Attempts To Evade Its Indemnification Obligation

JPMorgan reprises here the same three arguments it made below. First, it contends that Section 4A-211(f) does not apply here because *Chain Bridge*, not JPMorgan, canceled JPMorgan's payment order because (JPMorgan says) Chain Bridge "requested," "sought," and "directed" that cancellation. The district court correctly held that argument to be foreclosed by Section 4A-211(f)'s clear text. Second, JPMorgan contends that although the subject of indemnification was never *discussed*, Chain Bridge *silently* reached an agreement with JPMorgan to abandon its automatic indemnification right. But the district court found no evidence—and there is none—that the parties came to such an agreement, whether by speech, conduct, or otherwise. Finally, JPMorgan contends that Chain Bridge's loss and expenses from this litigation did not result from its cancellation. The district court appropriately dispensed with that "weak" and unsupported speculation as blinking the reality that "this civil action undoubtedly resulted from the reversal of the wire transfer." JA3096.

1. JPMorgan's Argument That Chain Bridge "Requested And Directed" The Cancellation Is Both Irrelevant And Without Support In The Record

a. JPMorgan tries to avoid indemnification principally by arguing the up-is-down premise that "*Chain Bridge* canceled the wire," not *JPMorgan*. JPMorgan Br. 26 (emphasis added); *see also id.* at 2 (Chain Bridge "canceled the order itself"). It contends that Section 4A-211(f) does not apply to a cancellation that is in any way "sought," "requested," or "directed" by a receiving bank, because such a cancellation is done "by the receiving bank" and not "by the sender." Br. 30.

But there is no such thing as the receiving bank cancelling the sender's payment order; only the sender can cancel its own payment order. Section 4A-

211(a) explicitly defines "cancellation" as "[a] communication *of the sender* of a payment order . . . transmitted *to the receiving bank*" (emphasis added); *see also* UCC § 4A-211(b) (addressing when "a communication *by the sender* cancelling or amending a payment order" is effective prior to the order's acceptance) (emphasis added). In other words, *every* cancellation of a payment order is done by "the sender of a payment order."

JPMorgan tries (Br. 31-32) to avoid Section 4A-211's dispositive language by pointing instead to Section 4A-210, which allows a receiving bank to "reject" a payment order. "A rejection," JPMorgan suggests, "is just another form of cancellation." *Id.* That is flat wrong. A receiving bank can reject a payment order *only before it is accepted*. Though JPMorgan omits to mention it in its brief, Section 4A-210(d) is explicit that a receiving bank's "[a]cceptance of a payment order precludes a later rejection of the order." There is no dispute that Chain Bridge immediately and automatically accepted JPMorgan's payment order the moment the wired funds arrived in Chain Bridge's account at the Federal Reserve. It could not have rejected JPMorgan's payment order, let alone "canceled" it.[23]

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[23] JPMorgan also looks for support (Br. 31-32) in Section 4A-106(a)'s provision that receiving banks may set cut-off times for their "receipt and processing of payment orders and communications cancelling or amending payment orders." But that provision just confirms that receiving banks only receive and process *senders'* "communications cancelling or amending payment orders." JPMorgan also points to a comment on the UCC's definition of a receiving bank's "funds-transfer business

JPMorgan also argues—counterfactually—that Chain Bridge "could have" reversed JPMorgan's payment order over Fedwire unilaterally even if JPMorgan had not sent its 2:05 PM cancellation message. JPMorgan Br. 32. Even if that were possible (and there is considerable doubt about that[24]), it would not invite the "absurd result" that a sender would have to indemnify a receiving bank that initiates a wire reversal over Fedwire that the sender "did not even know . . . was coming." *Id.* Again, Section 4A-211(a) is clear that a cancellation is *always* "[a] communication of the sender of a payment order." So whatever JPMorgan's hypothetical contemplates, it is not a cancellation and so could not trigger the receiving bank's automatic indemnification.

b. The district court correctly rejected JPMorgan's related, fallback argument that Chain Bridge's alleged subjective motivations for honoring JPMorgan's

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day," in which the commentors 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."

[24] To argue for the possibility of receiving bank's unilateral wire reversal, JPMorgan's cites, without explanation, a table of Fedwire message codes in a 2011 reference guide, and a training manual for a 2002 version of Fedwire's software program. JPMorgan Br. 32. Those sources do not appear to support JPMorgan's unilateral-reversal hypothetical, and in any event they provide no support for JPMorgan's interpretation of Article 4A.

cancellation removed these circumstances from Section 4A-211(f)'s ambit. JA3093. Contrary to JPMorgan's repeated assertions (Br. 2, 6, 7, 27, 36) nothing in the UCC even hints at JPMorgan's proposed rule that a receiving bank must prove it was a "reluctant" participant in the cancellation in order to be indemnified. Section 4A-211(f), the district court observed, "does not impose any requirement that the receiving bank accommodate the sender's cancellation request solely to benefit the sender." JA3093. "In fact, the regulation does not impose any requirements regarding the receiving bank's motivations at all." JA3093-94. JPMorgan's contrary arguments are just "attempts to sidestep the text of the regulation." JA3094.

The district court was correct. As the Second Circuit has explained, Section 4A-211(f) "imposes *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." *Banca Commerciale*, 160 F.3d at 94 (emphasis added).

JPMorgan wants none of this. According to its proposed reading of Section 211(f), courts must instead engage in a case-by-case examination of the receiving bank's subjective motivations to determine whether Section 211(f) applies. The proffered support for that a-textual (and a-sensible) proposition? The official commentary to Section 211, which observes that "a sender has no right to cancel a payment order after it is accepted by the receiving bank," such that "[i]f the receiving bank agrees to cancellation, it is doing so as an accommodation to the sender and it should not incur a risk of loss in doing so." UCC § 4A-211 cmt. 5. According to JPMorgan, that comment means that the receiving bank is indemnified *only* if the court finds, as a factual matter, that the receiving bank honored the cancellation request solely to "accommodate" the sender's interest, rather than its own.

But that is not what the comment says. It simply makes the point that receiving banks are under no obligation to return accepted funds to senders, and so their agreement to do so *always* amounts to an accommodation to the sender. As the district court recognized, "a receiving bank will still be 'accommodating' a sending bank, even if cancellation serves the receiving bank's own interests." JA3094.

Moreover, JPMorgan's brief nowhere even mentions—let alone grapples with—the immediately preceding sentence in the same official comment. There, the commentators explained that, under Section 4A-211(f), when "a receiving bank agrees to cancellation or amendment under subsection (c)(1) or (2), it is *automatically* entitled to indemnification from the sender under subsection (f)." UCC § 4A-211 cmt. 5 (emphasis added). That automatic-ness of indemnification cannot be squared with JPMorgan's strained reading of either the comment or the provision. *See* JPMorgan Br. 26-27 (explaining that the official comments "'may . . . be useful in interpreting Article 4A,'" quoting *Donmar Enters., Inc. v. Southern Nat'l Bank of N.C.*, 64 F.3d 944, 948 (4th Cir. 1995)). In short, nothing in Section

4A-211(f), or its commentary, says that a receiving bank must be motivated only, or even principally, to accommodate the sender.[25]

The district court also correctly rejected JPMorgan's reliance on common-law principles of comparative fault to excuse its indemnification obligation. It held that "Section 4A-211(f) clearly displaces a traditional common law analysis by creating a default rule for risk allocation which parties can only alter through agreement." JA3094. The Second Circuit has likewise concluded that Section 4A-211(f)'s default rule purposefully "departs from the common law" and does not require the receiving bank to make "any showing of wrongfulness on the part of the sender." *Banca Commerciale*, 160 F.3d at 94. JPMorgan is thus mistaken (Br. 28, 36-37) that a receiving bank's indemnification, under Section 211(f), should turn on a series of unstated, fact-specific elements that it seeks to import from the common law but that are nowhere found in the provision's text.

c. Although Chain Bridge's supposed motivations and interests have no bearing on its indemnification right, JPMorgan also mischaracterizes the undisputed facts when it asserts that Chain Bridge "directed the cancellation at every material

[25] The result is no different where a sender's cancellation of its payment order is the result of what JPMorgan calls a "joint decision" between the sender and the receiving bank. JPMorgan Br. 26, 34 n.5. Indeed, under Section 4A-211(c), *every* cancellation of an accepted payment order *requires* a "joint decision," because the receiving bank must agree to it.

turn." Br. 32. Shortly after sending the wire transfer, JPMorgan initiated contact with Chain Bridge to report JPMorgan's own "concerns of fraud," and to ask Chain Bridge to place a temporary hold on the funds. JA3074 (citing audio recording at JA3137). JPMorgan then warned Chain Bridge that its own investigation was "all leading to not-good places" and that JPMorgan's Global Investigations Team thought the transaction "does not look right." JA3075 (citing audio recording at JA3133). And when JPMorgan's Tim Coffey called Chain Bridge at 1:37 PM the same day, he told Chain Bridge that *JPMorgan* was "recalling those funds" because "*we* have enough concerns that *we* feel *we* need to claw those funds back." JA3136 [00:06-00:13] (emphasis added). The notion that Chain Bridge orchestrated all of this is baseless.[26]

It is also flatly contradicted by JPMorgan's own statements in support of its indemnification claim against California for any sums that JPMorgan pays Chain Bridge. As the district court pointed out—with considerable understatement—

[26] JPMorgan's theory of Chain Bridge's motive for supposedly "directing" the cancellation is also baseless. JPMorgan obliquely contends that the wire transfer had somehow threatened "the bank's own viability" and caused "dismay and concern" over the bank's "capital ratios." JPMorgan Br. 1, 9. But Chain Bridge officials 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 the amount of cash the bank holds at the Federal Reserve), its leverage ratio (which is determined as a quarterly average), or any "reserve" requirements. *See* JA846; JA1158; JA2347; JA2364.

"JPMorgan's claims in this litigation that Chain Bridge directed the cancellation appear to be in tension with its claims in state agency proceedings in California." JA3093 n.13. In those proceedings, JPMorgan has emphatically asserted that *California*—not Chain Bridge—"sought the reversal of the Wire Transfer." *Id.* (citing JA1386). In fact, JPMorgan's claim against California goes on to explain that *California* "decided to reverse the payment," "decided that the Wire Transfer should be reversed," "request[ed] that the Wire Transfer be reversed," and "procured the reversal of the Wire Transfer." JA1380, 1382-83. And JPMorgan even admits that it acted "on behalf of, at the direction of, and/or for the benefit of" *California* when it took "actions concerning the Wire Transfer, *including, in particular, the reversal*." JA1384. (emphasis added). JPMorgan brushes aside, as "immaterial," its contradictory admissions that it canceled the wire at California's direction (Br. 35 n.6), but these statements were properly before the district court and reflect JPMorgan's own refutation of its unsupportable position in this appeal.

2. Chain Bridge And JPMorgan Did Not Agree To Displace Section 211(f)'s Indemnification Provision

Indemnification is automatic, under Section 4A-211(f), unless "otherwise provided in an agreement of the parties." The district court thus recognized that, for JPMorgan "[t]o avoid indemnification, there would have to be an agreement to override the default rule." JA3094. The court correctly held that there is no evidence that Chain Bridge and JPMorgan had any such agreement. JA3095.

There is no dispute that Chain Bridge and JPMorgan had no discussion whatsoever, let alone a written agreement, to override Section 4A-211(f). JPMorgan Br. 41.[27] Federal Reserve Operating Circular No. 6, the Federal Reserve's authoritative and *legally superseding* guidance on Fedwire operations, *see* UCC § 4A-107, states that, when payment order senders want to disclaim indemnification, they are advised to do so in their cancellation message, by stating the words "NO INDEMNITY." JA1288. JPMorgan did no such thing. *See* JA1065.

JPMorgan nevertheless contends (Br. 30-46) that the district court misapplied the law by failing to consider whether an agreement between Chain Bridge and JPMorgan to override Section 4A-211(f) can somehow be divined from the circumstances. Not so. The district court explicitly acknowledged that, under the UCC, an "agreement" can be "inferred from other circumstances, including a course of performance, course of dealing, or usage of trade." JA3094 (quoting UCC § 1-201(b)(3)). And it correctly held that there is no such evidence here.

JPMorgan contends (Br. 40-41) that because (1) both parties understood that Chain Bridge "had its own strong motivations for preventing Blue Flame from accessing the funds," and (2) JPMorgan canceled the wire "without any express

[27] JPMorgan offers that the parties "never *explicitly* addressed indemnity" (Br. 16, emphasis added) as if to suggest that maybe they at least *implicitly* addressed it. But there is no evidence that the topic was addressed between the parties in any way, shape, or form.

discussion," it therefore was "readily apparent" to both sides that "no indemnification was necessary, appropriate, sought or expected."

That is a non-sequitur. First, for purposes of determining whether the parties *agreed*, as Section 211(f) requires, to displace the default rule of indemnification, it is irrelevant whether Chain Bridge was itself motivated to return the funds. Second, it makes no difference whether one or both sides subjectively believed that no indemnification was "necessary, appropriate, sought or expected." All that matters is whether there was an agreement, however expressed. There is no evidence of one, as the district court unsurprisingly concluded.

JPMorgan also emphasizes (Br. 41-42) an *internal* Chain Bridge phone call as supposedly demonstrating the parties' agreement, *sub silentio*, to override Section 4A-211(f). On that call, a Chain Bridge wire-operations employee asked Brough and Evinger whether Chain Bridge would be "getting an indemnity letter from [JPMorgan]." JA3140 [01:20-01:25]. Evinger explained that "you're going to get a service bureau message through Fedline . . . a recall," and instructed the employee to return the wire by the same means. JA3140 [01:26-01:42]. Evinger's unrebutted deposition testimony was that Chain Bridge "didn't view there was a need for an indemnification [letter] based on the recall because the recall had the indemnification built in." JA3095 (citing deposition testimony at JA804). That understanding was plainly correct; Section 4A-211(f) provided indemnification to

Chain Bridge without it needing any "indemnification guarantee from JPMC." JPMorgan Br. 3.[28]

More to the point, the district court correctly held that nothing said during this internal phone call provides evidence that Chain Bridge and JPMorgan had reached any "meeting of the minds" on indemnification. Contrary to JPMorgan's argument (Br. 43), the district court did not rule that internal discussions can *never* suggest the existence of an external agreement, but rather it held that *this* discussion provided no such evidence. *See* JA3095; *see also Knox Energy, LLC v. Gasco Drilling, Inc.*, 738 F. App'x 122, 124 (4th Cir. 2018) (a party attempting to "establish[] the existence of a legally enforceable agreement" must proffer evidence of a "meeting of the minds of the parties").

Finally, JPMorgan asserts (Br. 42-43) that there *must* have been a no-indemnity agreement between the parties because Brough and Evinger instructed their team to return the wire before they knew whether JPMorgan's cancellation message would say "NO INDEMNITY." According to JPMorgan, Chain Bridge insists that "no indemnity" disclaimers are "customary" in all cancellation messages,

[28] JPMorgan mocks Evinger's testimony (Br. 45) that he knew, in March 2020, that Chain Bridge was entitled to automatic indemnification. But JPMorgan's attack on Evinger misses the point: The UCC's default rule applies whether or not Chain Bridge (or JPMorgan) even knew it existed. What matters is whether the parties agreed to displace the default rule in favor of indemnification. They did not.

and so Brough and Evinger "had every reason to believe" (Br. 17) that JPMorgan's cancellation message would contain such a disclaimer. And since Brough and Evinger did not express concern that JPMorgan's forthcoming cancellation message might include a "no indemnity" disclaimer, it follows (in JPMorgan's view) that the parties already must have agreed that there would be no indemnification.

But neither Chain Bridge, nor anyone else in the case, has ever said that "NO INDEMNITY" disclaimers are commonplace in all Fedwire cancellation messages. Rather, the evidence (including the Federal Reserve's Operating Circular No. 6) is that written, "no indemnity" disclaimers are customary only *when the parties want to override Section 4A-211(f)*. Brough and Evinger, after multiple calls with JPMorgan in which indemnification was *never even discussed*, had absolutely no reason to expect JPMorgan to spring a "no indemnity" disclaimer on them at the last minute.

3. ***Chain Bridge's Loss And Expenses Resulted From JPMorgan's Cancellation***

The district court did not err by holding that "this civil action undoubtedly resulted from the reversal of the wire transfer," and thus that any loss or expense incurred by Chain Bridge, including attorney's fees, was caused by the cancellation and is indemnified under Section 4A-211(f). JA3096. Chain Bridge agreed to JPMorgan's cancellation of its payment order by returning $456.8 million to JPMorgan instead of paying Blue Flame. And then Blue Flame promptly turned around and sued Chain Bridge for impermissibly agreeing to "cancel or amend the payment order." JA40. Such claims are squarely among the "substantial risks" that a "beneficiary's bank" incurs by "agreeing to cancellation," at the expense of "alienat[ing] its customer, the beneficiary, by denying the customer the funds." UCC § 4A-211 cmt. 5. And although Blue Flame's claims have now been dismissed, any judgment that Blue Flame could have obtained, as well as Chain Bridge's expenses in litigating this action, were incurred "as a result of" JPMorgan's cancellation.

JPMorgan responds by speculating (Br. 47-50) that Chain Bridge *might* have denied payment to Blue Flame even if JPMorgan had not canceled the wire. JPMorgan further hypothesizes that, in the counterfactual universe, Chain Bridge would have either unilaterally returned the funds to JPMorgan, or held them indefinitely (or, at least, long enough to allegedly interfere with Blue Flame's supposed supplier relationships). In this telling, Blue Flame would have sued Chain Bridge no matter what JPMorgan did.

The district court correctly concluded that JPMorgan's no-causation argument is "weak" and unavailing. JA3096. As the district court observed, there is "zero evidentiary basis for JPMorgan's speculation that Chain Bridge would have returned the funds without a cancellation by JPMorgan." *Id.* Rather, the undisputed evidence demonstrates that Chain Bridge insisted on receiving an official communication from JPMorgan cancelling its payment order, before Chain Bridge would return the funds. JA3136 [00:18-00:22]. And although JPMorgan and Chain Bridge were both investigating the wire transfer, consistent with their Bank Secrecy Act obligations (*see* JA975-1004), there is no evidence that Chain Bridge would have sent the funds back to JPMorgan even if JPMorgan had resolved its suspicions, stood by its payment order, and declined to cancel it.

JPMorgan also argues (Br. 34, 50-51) that Chain Bridge's internal wire transfer policy "required" it to return the wire no matter what JPMorgan did or said. That is wrong. 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." JA226 (emphasis added). That internal guideline—which expressly disclaims the Bank's obligation to do anything—did not compel Chain Bridge to return the wire.

Nor is there any non-speculative basis for JPMorgan's supposition that Chain Bridge would have continued to withhold payment from Blue Flame in the absence of a cancellation. In fact, Brough's unrebutted testimony was that Chain Bridge would have held the wired funds only until its investigation was complete, and then consulted legal counsel to determine whether to pay Blue Flame as soon as the next day. JA857, 860-61. JPMorgan contends (Br. 49-50) that Chain Bridge's unwillingness ever to pay Blue Flame can be inferred from its closure of Blue Flame's account, but that happened only *after* JPMorgan had asserted that its own fraud concerns about Chain Bridge's customer merited cancelling its payment order. JA142 (¶ 31); JA416-18.

Speculating even further, JPMorgan contends (Br. 50) that Blue Flame would have brought this litigation even if Chain Bridge *had* paid Blue Flame the next day, because Blue Flame now contends that it needed *immediate* access to the funds to meet supplier requirements and fulfil California's order. But JPMorgan cannot explain what motivation Blue Flame would possibly have to sue Chain Bridge in the hypothetical situation JPMorgan posits—one in which, after all, Blue Flame would have been left in possession of more than *$456 million* of California's money. In any case, Chain Bridge's funds availability policy, which Blue Flame received at account opening, clearly stated that wired funds would not be available until the next business day. JA2839.

CONCLUSION

The judgment of the district court should be affirmed.

Dated: February 7, 2022

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Under Federal Rule of Appellate Procedure 34(a) and Fourth Circuit Rule 34(a), defendants respectfully request that the Court hold oral argument in these appeals. In light of the number of issues that have been raised by Blue Flame and JPMorgan, defendants submit that oral argument would aid the Court in its decisional process.

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Fed. R. App. P. 32(g)(1), this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) as enlarged by the Court's Order of January 5, 2022 (Doc. 36).

1. Exclusive of the portions of the brief exempted by Fed. R. App. P. 32(f), this brief contains 19,996 words.

2. This brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font. I have relied upon the word count feature of this word processing system in preparing this certificate.

Dated: February 7, 2022

/s/ Donald Burke
Donald Burke

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, I will electronically file the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: February 7, 2022

/s/ Donald Burke
Donald Burke