EXHIBIT 8

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

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

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Remote Deposition

Tuesday, January 19, 2021

Videotaped Deposition via Zoom of MICHAEL WONG, a witness herein, called for examination by

Page 2

counsel for Defendant/Third-Party Plaintiff in the above-entitled matter, pursuant to notice, the witness being duly sworn by MARY GRACE CASTLEBERRY, a Notary Public in and for the District of Columbia, taken at 1:01 p m. EST, Tuesday, January 19, 2021, and the proceedings being taken down by Stenotype by MARY GRACE CASTLEBERRY, RPR, and transcribed under her direction.

Page 3

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Page 4

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Page 5

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Page 22

next day, that I received their information.
Q. Mr. Wong, we're going to mark two exhibits. The way this works is my colleague, Mr. Ferguson, is going to put PDFs into the Zoom chat function and they will show up as an exhibit and then you can download and open them on your screen. We'll go slowly the first time and then hopefully we'll all get the hang of it.
MR. MADDEN: But Zach, I need you to remind me what the next exhibit number is.
MR. FERGUSON: Sorry. The next exhibit is 61.
MR. MADDEN: Okay. So we're going to take, Zach, what's tab 27 and mark that as Exhibit 61. And then at the same time, we're going to mark a document that's Bates labeled BFM 200135 as Exhibit 62.
(Defendant's Exhibit Nos. 61 and 62 were marked for identification.)
MS. PORTER: Excuse me, Counsel, I note that I am in the process of downloading Exhibit 61, but Exhibit 62 is showing a network disconnect. I'm

Page 23

going to retry it at this time, but it says the file does not exist.
MR. MADDEN: Well, we'll certainly make sure everyone has it. I'm actually having the opposite problem on my end. I'm unable to get Exhibit 61, but I was able to get Exhibit 62.
MS. PORTER: I think that Mr. Ferguson reloaded 62. I'm trying it now and it is downloading now.
MR. MADDEN: Great.
BY MR. MADDEN:
Q. Mr. Wong, just let me know when you've been able to download and open both documents and I'll wait to make sure everyone else has had the same luck.
A. I have both Exhibit 61 and Exhibit 62 open.
Q. Thank you.
MS. PORTER: Mr. Madden, if I may interject, please.
MR. MADDEN: Of course.
MS. PORTER: Just to note, I note that

Page 24

these documents, or at least 62, is designated confidential and 61 is also designated confidential. I just wanted to remind you that we have not executed the protective order that your office sent over to our office.
MR. MADDEN: Understood. Thank you. Under the protective order in this case, witnesses can see documents that they authored, sent, received or were copied on. And so I don't believe that will be an issue, at least as far as my examination is concerned today.
MS. PORTER: Very good. Thank you.
BY MR. MADDEN:
Q. Mr. Wong, first start by looking at Exhibit 62, which is a series of screenshotted text messages. Do you see those?
A. Yes, sir.
Q. And we'll go through them, but just for starters, if you could page through them on your screen. Do you recognize this text chain?
A. Yes. This was the conversation I had with Mr. Thomas.

Page 25

Q. And you'll see at the bottom of the first page and the subsequent pages, there are two what we call Bates numbers. One starts CBB, which reflects that Chain Bridge produced it in this litigation. Above that is a number that says CAL-DGS and continues. That reflects that the state of California, specifically the Department of General Services, produced this document subject to a public records request.
Does that make sense?
A. Yes, sir.
Q. My question is just whether you recognize these screenshots as having come from your own phone.
A. I only recognize Exhibit 61 as my screenshots. I've never seen Exhibit 62, but the text messages look familiar.
Q. I apologize. I've been flipping the numbers in my head. So Exhibit 61 are the screenshots, not Exhibit 62, correct?
A. Yes, sir.
Q. Sorry. And that's the one that was produced by California's Department of General

Page 26

Services that you recognize as having come from your phone, correct?
A. Yes, sir.
Q. Okay. Then Exhibit 61 -- hold on.
Exhibit 62 then is a compilation of those same text messages produced to us by Blue Flame in this litigation. Do you see that?
A. Yes, sir.
Q. You're welcome to flip back and forth between Exhibit 61 and 62. I will represent to you that to the best of my knowledge, they reflect the same text. I'm going to focus on Exhibit 61 for convenience today, but if at any time you want to look at the screenshots that are in Exhibit 60- -- I got it wrong again. Strike that.
I'm going to focus my attention on Exhibit 62 today, which is the text version. If at any time you want to go back and look at Exhibit 61, which are the screenshots, just let me know and that's fine.
Does that sound fair?
A. Sure.
Q. Okay. All right. So starting with the

Page 27

top message which is dated March 22, 2020 at 7:44 p.m., do you see that?
A. Yes, sir.
Q. Mr. Thomas writes to you, "Hi, Michael, I just left you a voicemail." Do you see that?
A. Yes, sir.
Q. Do you recall the substance of Mr. Thomas' voicemail?
A. I do not remember what exactly that voicemail said.
Q. Had you, prior to his voicemail, reached out to him by phone or email or otherwise?
A. I don't remember exactly if it was an email or a phone call first, but I did reach out to him.
Q. Okay. He writes, "It's John Thomas with Blue Flame Medical. We have direct from our manufacturers whatever COVID supplies you need and can get them to you quickly. I'm available 24/7. When is a good time to talk? Thanks." And then -- and then there's some replies.
If you look down to the middle of the

Page 28

page, there is a message from Mr. Thomas at 8:32 p.m.
Do you see that one?
A. Yes, sir.
Q. Sorry, the first message at 8:32 p.m.?
A. Yes, sir.
Q. Okay. And Mr. Thomas writes, "Yes, I have" -- you ask him before that if he has N95 masks and he replies, "Yes, I have loads of N95 masks."
Do you see that?
A. Yes, sir.
Q. And was it important to you that Mr. Thomas and Blue Flame Medical had access to loads of N95 masks?
A. Yes. We were looking specifically for N95 masks.
Q. And why specifically N95 masks?
A. That was a request that was given to us by the governor's office of emergency services.
Q. You had asked at 8:27 p.m. if the manufacturer's requiring 100 percent prepayment.
Do you see that?
A. Yes, sir.

Page 29

Q. What does that mean?
A. What that means is what we encountered is that most suppliers were requesting that the state pay for the full amount of the purchase price upfront before receiving the goods, and we typically do not prepay for goods in a normal procurement.
Q. And when you say you typically don't prepay for goods in a normal procurement, do you mean that the state of California, under normal circumstances, only pays for goods upon delivery and receipt?
A. Yes, that is correct.
Q. And -- strike that. Mr. Thomas replies at 8:32 and 30 seconds p.m., "Yes, everyone requires prepayment, but" -- all capitals -- "you have 48 hours to inspect and reject and we'll refund you back 100 percent."
Do you see that?
A. Yes, sir.
Q. What did you understand that to mean?
A. My understanding is that, yes, we would have to prepay for the goods, but we had a 48-hour

Page 30

period to inspect and reject the delivery and that would mean that we would receive 100 percent of the funds back to the state.

Q. And in a circumstance where the state of California is being asked to prepay for goods, was that rejection right an important term?

A. Yes, I believe it is, especially with the refund.

Q. What do you mean by that?

A. I believe it was important for the state to be able to recoup the full amount of the purchase if we deemed the delivery unacceptable or we rejected acceptance.

Q. And did you understand there to be any conditions or limitations on the state of California's ability to inspect or reject goods within 48 hours of delivery from Blue Flame Medical?

A. No. The only limitation would be the time frame of 48 hours.

Q. Mr. Thomas continues in the same text message, "I do have a supplier who can get you a shipment in three days." Do you see that?

Page 31

A. Yes, sir.

Q. Was Mr. Thomas' representation that Blue Flame Medical could deliver N95 masks within three days significant to you?

A. What do you mean by significant?

Q. Sure. I'll rephrase.

Was Mr. Thomas' representation to you that he could get you a shipment of N95 masks within three days important to you in your negotiations with Mr. Thomas?

A. Yes, that was important.

Q. Was it a reason you continued to negotiate with him?

A. Yeah, that is the reason why I continued negotiation.

Q. Your text chain continues. And then on the next page -- on the top of the next page, ending in Bates Number 136, you discuss having a telephone call the following morning. Do you see that?

A. Yes.

Q. Do you recall whether you spoke to Mr. Thomas the next day?

Page 32

A. I don't remember for sure if I called him or not. I don't remember.

Q. About how many times in March 2020 did you speak to Mr. Thomas?

A. Phone conversations? I want to say only a few times to the best of my knowledge. Most of our correspondence was either done via text or via email.

Q. Okay. Continuing down the text chain, at the bottom of the same page, now it's March 23rd, 2020 at 4:37 p.m., you write to Mr. Thomas that you're still working on the payment issues. What were the payment issues?

A. The payment issue was whether or not the state would be willing to do 100 percent prepayment or if that was ability to negotiate on how much was prepaid.

Q. And did you have an understanding at this time as to whether the amount that had to be prepaid was negotiable with Blue Flame Medical?

A. Yes, I was under the assumption that we could negotiate the amount.

Q. And did you have an understanding that the

Page 33

prepayment terms were largely dictated by Blue Flame Medical suppliers?

A. That was my assumption.

Q. Did Mr. Thomas ever tell you in words or substance that the prepayment terms he was passing on to Blue Flame Medical were what his suppliers were requiring of him?

A. I believe he said that it was the suppliers that were -- or the manufacturers that were requesting the prepayment.

Q. In the same text message at 4:37 p.m., you continue, "Can you email me product lists with quantities and specification sheets?"

Do you see that?

A. Yes, sir.

Q. And what prompted you to ask for those things?

A. All N95 masks that the state was to purchase had to be vetted by the Department of Public Health and their experts to ensure that they met the adequate filtration standards. So that's what the specification sheets would show, and those would get

Page 42

kinds of products they are offering to sell the state of California, is that something that's important to you as a procurement officer?

A. Yes.

Q. And did Mr. Thomas ever tell you in your conversations and text messages how long Blue Flame Medical had been selling N95 masks?

A. To the best of my knowledge, he never mentioned how long they had been doing business as medical suppliers.

Q. Did Mr. Thomas, in the course of your text messages or phone conversations, ever tell you whether Blue Flame Medical had ever sold an N95 mask before?

A. To the best of my knowledge, he had mentioned previously that he was working with other state governments and local governments selling similar types of PPE.

Q. And based on those communications with Mr. Thomas, did you have an understanding that Blue Flame Medical had completed sales and deliveries to some of those customers?

Page 43

A. I don't recall exactly if he said that all of the orders were complete. He never -- I don't remember if he said that they were complete or if they were in the process of it.

Q. Let's look at a document that's been previously marked as Exhibit 18.

MR. MADDEN: This is tab 50, Zach.

BY MR. MADDEN:

Q. Just let me know when you have that up, Mr. Wong.

A. I have Exhibit 18 up.

Q. Okay. Just to orient you, if you look at the page with the Bates number that ends in 975 on to the following page, 976, you'll see the email we were just speaking about in Exhibit 12.

Do you see that?

A. Yes, I have 975 up now.

Q. Okay. And you see the email we were just speaking about that's Exhibit 12?

A. Yes, sir.

Q. And then if you go up the email chain, so later in time, you reply to Mr. Thomas at 6:52 p.m.

Page 44

And then on the page that ends in 974, Mr. Thomas replies to you at 9:43 p.m. on March 23rd.

Do you see that email?

A. Yes, sir.

Q. Mr. Thomas promises to send you spec sheets and then he continues, "We can do a 75 percent prepayment and the balance upon receipt."

Do you see that?

A. Yes, sir.

Q. What did you understand that to mean?

A. I understood that to mean we would have to pay for 75 percent of the purchase amount before the goods were shipped.

Q. And he continues, "I have to give them prepayment." Who did you understand "them" to be?

A. I assumed them meaning the manufacturers.

Q. And so did you understand from this that Mr. Thomas was required to prepay his manufacturers 75 percent of the purchase price?

A. Yes, sir, that's my assumption.

Q. And is that what you understood at the time?

Page 45

A. Yes, sir.

Q. And then Mr. Thomas continues, "You have the 48-hour inspection period or you can reject the goods and you get a refund."

Do you see that?

A. Yes, sir.

Q. And that's consistent with the 48-hour inspection period we discussed earlier, correct?

A. Yes, sir.

Q. He then tells you in this email that he "just got word from my lead manufacturer that we need to place an order for 100 million N95 masks or they will sell them to the UK."

Do you see that?

A. Yes, sir.

Q. Did you understand there was sort of a clock on these offers from Blue Flame Medical?

A. I understood the urgency, yes.

Q. And that put pressure on you and your office to act quickly with respect to Blue Flame Medical's offer; is that correct?

A. Yes, sir.

Page 46

Q. In the next paragraph of the email, Mr. Thomas writes, "I'm happy to show you the text messages back and forth to this manufacturer."

Do you see that?

A. Yes, sir.

Q. Did Mr. Thomas in fact ever show you the text messages back and forth to this manufacturer on or about March 23rd?

A. No, he never showed me those text messages.

Q. And then Mr. Thomas continues, "We literally have nine hours to make this call on the masks. I strongly encourage you to move on this one."

Do you see that?

A. Yes, sir.

Q. And again, you understood from this that there was time pressure on the state of California to agree or reject Blue Flame Medical's offer to produce -- excuse me, to supply N95 masks, correct?

A. Yes, sir.

Q. Okay. If you'll return now, Mr. Wong,

Page 47

to -- see if I get this right this time -- Exhibit 62, which is the text version of the text messages. And just let me know when you're there.

A. I have it up.

Q. So we're sort of just continuing in time. The last email we looked at was from 9:43 p.m. Pacific. If you look at the text chain on the page that ends in page 137, there is a message from Mr. Thomas to you at 9:50 p.m.

Do you see that one?

A. Yes, sir.

Q. He mentions he just sent you a reply. You understood that to refer to the email you had received that we just looked at?

A. Yes, sir.

Q. And then Mr. Thomas writes, "Urgent though, my lead supplier said he's about to presell 100 mil of his N95s to the UK. I want us to lock it down."

Do you see that?

A. Yes, sir.

Q. Again, you understood Mr. Thomas to be

Page 48

putting pressure on you to make a decision quickly on the 100 million N95 masks he was offering, correct?

A. Yes, sir.

Q. Did the pressure to act quickly under these circumstances prevent you from doing any diligence or other activities you would normally do in your role as a procurement officer?

A. Are we comparing this procurement to a traditional, normal procurement?

Q. Yes, sir.

A. Yes. The situations were different.

Q. Okay. And how so?

A. I've -- well, to name a couple of them. One, we don't have the time to conduct customer references, for example. So in a traditional procurement, we would ask a supplier to give us references for three other entities that they've done business with and we have means of contacting those references to see what types of purchases that they've executed with the contractor or the supplier. And in an emergency procurement, we don't have the time to conduct those.

Page 49

Q. Anything else?

A. I mean, that's probably one of the more significant ones.

Q. And does the inability to conduct customer references put an added emphasis on the supplier's own representations about their business?

A. Yes.

Q. Okay. If you continue down the text chain, there's -- excuse me, there's a text message from you to Mr. Thomas at 9:57 p.m.

Do you see that one?

A. Yes, sir.

Q. You write, "How much partial deposit? I need to have each manufacturer vetted before we can execute." Do you see that?

A. Yes, sir.

Q. What did you mean when you wrote, "I need to have each manufacturer vetted before we can execute"?

A. That refers to the specification sheets that we would send over to the Department of Public Health for vetting.

Page 50

Q. And then Mr. Thomas replies at 10:47 p.m., "That's fine. Ten to 15 percent for a large order depending on the manufacturer. These are well established manufacturers."

Do you see that?

A. Yes, sir.

Q. And what did you understand Mr. Thomas to mean when he said 10 to 15 percent for a large order depending on the manufacturer?

A. My understanding was that in that case, the deposit or the prepayment would be 10 to 15 percent.

Q. And that's 10 to 15 percent of the purchase price?

A. Yes, of the total purchase amount.

Q. Okay. At 10:49 p.m., you ask -- you write, "I would like to see specification and certification sheets for the product and proposed payment terms."

Do you see that?

A. Yes, sir.

Q. We've talked about the specification and

Page 51

certification sheets. What proposed payment terms were you looking for from Mr. Thomas?

A. We needed to know, one, what the total order amount would be, and then how much is required in terms of a prepayment.

Q. Okay. Just a second. Sorry. And did Mr. Thomas -- do you recall whether Mr. Thomas sent you specification and certification sheets?

A. To the best of my memory, we did not receive them.

MR. MADDEN: Zach, let's mark what's at tab 33, please.

(Defendant's Exhibit No. 63 was marked for identification.)

BY MR. MADDEN:

Q. For the record, we've marked Exhibit 63 a document beginning with Bates number BFM 116128. And Mr. Wong, just let me know when you have it up.

MS. PORTER: Excuse me, Mr. Madden. I think we're having a network disconnect issue again. I'm seeing an informational note that says this file is -- Mr. Ferguson just sent it again. Let me try

Page 52

again.

MR. MADDEN: Thanks.

MS. PORTER: No, I'm still having problems downloading it.

MR. MITCHELL: Ms. Porter, this is Jason Mitchell. I'll observe that in prior depositions, we have run into the same issue, but if you click download again, it will often go through. So I would suggest giving that a try.

MS. PORTER: All right. Thank you, everybody. I do have it up now.

THE WITNESS: I have Exhibit 63 up as well.

BY MR. MADDEN:

Q. Okay. Exhibit 63 is an email from Mr. Thomas to you on March 24th at 1:34 p.m. Pacific in the afternoon. Do you see that? Is that what you're looking at?

A. Yes, sir.

Q. I believe there is an attachment to the email as well. Mr. Thomas writes to you, "To be transparent, here's our inventory list for one of my

Page 53

many manufacturers."

Do you see that?

A. Yes, sir.

Q. What did you understand Mr. Thomas to mean when he said "to be transparent"?

A. I understood that as he was showing us what his stock of inventory that he could supply would be.

Q. You understood that he was conveying that he was trying to be open and transparent and honest with you?

A. Yes, sir.

MS. PORTER: Objection. Misstates testimony.

BY MR. MADDEN:

Q. Did Mr. Thomas -- he writes, "One of my many manufacturers." Did Mr. Thomas tell you which manufacturer this was?

A. To the best of my memory, he never identified specifically which manufacturers they were.

Q. Did Mr. Thomas tell you whether this

Page 66

mean when he said 2 million out the door and to you within 8 days?

A. I understood that to mean that we would receive 2 million N95 masks within 8 days delivered --

Q. And that's -- sorry. Go ahead.

THE WITNESS: -- to the state of California.

BY MR. MADDEN:

Q. Okay. That was going to be my question. I'm sorry I cut you off.

THE REPORTER: I'm sorry, could you repeat the answer? I didn't hear the very beginning of it.

THE WITNESS: I understood that text message to mean that the state of California would receive 2 million N95 masks delivered to the state within eight days.

BY MR. MADDEN:

Q. And then Mr. Thomas writes, "He can deliver you 25 million a month." You understood the "he" to be Henry?

A. Yes, that's what I assumed.

Page 67

Q. So you understood Mr. Thomas to be representing to you that a single manufacturer working with Blue Flame Medical could deliver to the state of California 25 million N95 masks within a month; is that correct?

A. Yes.

MS. PORTER: Objection. Misstates the testimony.

BY MR. MADDEN:

Q. Mr. Thomas asked you a question and then you write back, "Initially let's shoot for 100M."

Do you see that?

A. Yes, sir.

Q. And that stands for 100 million masks, correct?

A. Yes.

Q. And were you basing that number on the representations from Mr. Thomas that he had access to 100 million masks?

A. Yes. From the initial inventory sheet that we received, he said he had 100 million.

Q. If Mr. Thomas hadn't represented to you

Page 68

that he had 100 million masks, you wouldn't have shot for 100 million masks; is that fair to say?

MS. PORTER: Objection. Calls for speculation.

MR. MADDEN: I'll strike it. It's a terrible question.

Okay. I'm going to move back to the emails, but we've been going about an hour and 15 minutes, so I'm happy to take a short break if anyone needs it. Otherwise, I'm also happy to plow ahead.

MS. PORTER: Let's take a break, please.

MR. MADDEN: For five or 10 minutes? And I'll see y'all soon. Thanks.

THE VIDEOGRAPHER: Off the record at 2:14.

(Recess.)

THE VIDEOGRAPHER: We are now back on the record. The time is 2:26 p m.

BY MR. MADDEN:

Q. Thank you, Mr. Wong. And again, just a reminder that if and when you need a lunch break in a little bit, just maybe the next break will be lunch, just let us know. We'll follow your lead.

Page 69

A. Sure.

Q. So now I want to turn back to what's been marked as Exhibit 18, which are the email chain we've been looking at.

A. Yes, sir. I have it up.

Q. And again, we're sort of continuing along chronologically. If you could look at the email on page 970 that Mr. Thomas sends at 4:02 p.m. and just let me know when you're there.

A. Okay. I have it up.

Q. Great. Mr. Thomas writes, "Michael, here's what we can do," and then there's a list. Is that where you are?

A. Yes, sir.

Q. Okay. The first item on the list reads, "2 million units - ready in three days - arrive to California on day 7 - Henry."

Do you see that?

A. Yes, sir.

Q. And you understood that to be the same Henry we've been discussing who was a manufacturer working with Blue Flame Medical?

Page 70

A. Yes, that's what I inferred.
Q. And then on the next page, the next item on the list reads, "6 million units - ready immediately - have to ship - SU."
Do you see that?
A. Yes, sir.
Q. And did you know who or what SU was?
A. I do not.
Q. Do you recall whether Mr. Thomas ever identified SU to you?
A. To the best of my knowledge, no, he never identified that.
Q. And this item where it reads 6 million units ready immediately, did you understand that to mean the 6 million units were already manufactured and ready to go out the door?
A. Yes.
Q. And then the next line down, it reads, "25-30 million units - delivered within 30 days - Henry." Do you see that?
A. Yes, sir.
Q. And again, you understood that to be the

Page 71

same Henry?
A. Yes, sir.
Q. And you understood this to be telling you that Henry could deliver somewhere between 25 and 30 million N95 masks within 30 days to the state of California, correct?
A. Yes, sir.
Q. And then lastly, the fourth item on the list, "25 additional units within 30 days - SU." I assume you understood the two SUs to refer to the same entity, correct?
A. Yes, that's what I assumed.
Q. And same thing. You understood Mr. Thomas to be telling you that SU could deliver 25 million N95 masks to the state of California within 30 days, correct?
A. Yes, sir.
Q. Okay. He then writes, "We can deliver 63 million masks within 30 days for sure."
Do you see that?
A. Yes, sir.
Q. You understood this to be a guarantee that

Page 72

Blue Flame Medical could deliver to California 63 million masks within 30 days, right?
A. Yes, sir.
Q. And the 63 million, it appears to add up -- the 2 million, the 6 million, the 30 million and the 25 million in the list above.
Does that look right to you?
A. Yes, that looks about right.
Q. And if you'll just follow the math along with me, as far as Henry is concerned, you're getting in this proposal the 2 million units, plus 25 to 30 million units, correct?
A. Yes, sir.
Q. So total from Henry is somewhere between 27 and 32 million N95 masks within 30 days, correct?
A. Yes, sir.
Q. And then the rest of the 63 million were coming from SU, as you understood it; is that right?
A. Yes, sir.
Q. And that was, as Mr. Thomas put it, for sure, right?
A. Yes.

Page 73

Q. The next line down in Mr. Thomas' email, he writes, "I assume you cannot accept KN95s."
Do you see that?
A. Yes, sir.
Q. And what's a KN95 mask?
A. A KN95 is different than an N95, but the particulars of it, that's outside of my expertise.
Q. And was it in fact the case that California could not accept KN95 masks from Blue Flame Medical at this time?
A. Yes, that's correct.
Q. And then further down in the email, Mr. Thomas writes, "I can source the other 37 million, but I need to hear back from my other manufacturers before I can quote exact capacities."
Do you see that?
A. Yes, sir.
Q. Other than what's written here, did Mr. Thomas ever tell you how he was going to go about sourcing the other 37 million masks?
A. To the best of my recollection, no, that's the only definitives.

Page 74

Q. And again, other than what's written here, did Mr. Thomas tell you who his other manufacturers were from which he was going to source the other 37 million masks?

MS. PORTER: Objection. Asked and answered.

BY MR. MADDEN:

Q. You can answer, Mr. Wong.

A. No, he did not identify manufacturers.

Q. In the next email up in the chain at 4:11 p.m., which starts on page 969 but continues on to 970, you confirm that, "We can only accept the approved N95 masks," and then in parentheses, "Specifically the model numbers I texted you."

What did you mean by that?

A. I'm sorry, which page was that on?

Q. Sure. The email begins -- your 4:11 p.m. begins on page 969, but then it quickly carries over to page 970.

A. Okay. I have it up.

Q. And my question was, you write, "Yes, we can only accept the approved N95 masks," and then in

Page 75

parentheses, "Specifically the model numbers I texted you." And what did you mean by that?

A. Those were the four model numbers that I put in the text message.

Q. And your point was they had to be those four model numbers, not some other N95 masks, correct?

A. Yes.

Q. Did you know whether those four models were NIOSH, N-I-O-S-H, certified?

A. I don't recall off the top of my head. That was a Department of Public Health expertise.

Q. Do you know whether it was a requirement of the Department of Public Health that N95 masks procured by the state be NIOSH certified?

MS. PORTER: Objection. Calls for speculation.

BY MR. MADDEN:

Q. I'm just asking if you know. If you don't, that's fine.

A. I don't remember.

Q. Okay. If California had received from

Page 76

Blue Flame Medical masks that were not the four specific models that you had identified, it could have rejected those masks, correct?

MS. PORTER: Objection. Calls for speculation. You may answer.

THE WITNESS: If they weren't the products, yeah, we would reject them.

BY MR. MADDEN:

Q. All right. And then if you turn back to page 969, as the conversation continues, Mr. Thomas writes to you on March 24th at 4:40 p.m. -- skipping past the first paragraph, he writes, "Regarding cost, pricing is volatile, but the range is from $3.80-$4.80 plus shipping, handling and tax for the N95s."

Do you see that?

A. Yes, sir.

Q. And you understood the range from $3.80 to $4.80 to be a range for the per mask price that he was offering; is that right?

A. Yes.

Q. And did Mr. Thomas ever provide you any

Page 77

basis for that price range?

A. What do you mean by basis for the pricing?

Q. Yeah. Did he explain that pricing to you in any way, shape or form?

A. No, other than that was a unit price.

Q. Did he discuss that price range with you?

A. No.

Q. Did he negotiate it with you?

A. To the best of my knowledge, it was never negotiated.

Q. Did you have an understanding at the time as to how Mr. Thomas was determining the per mask price that Blue Flame Medical would charge the state of California?

A. The question is if I understood how Blue Flame is pricing the units?

Q. Correct.

A. I didn't know how it was pricing it, no.

Q. Did Mr. Thomas ever tell you whether Blue Flame Medical had a pricing policy?

A. No, not that I recall.

Q. Did Mr. Thomas or anyone else associated

Page 78

with Blue Flame ever explain to you what pricing policy, if any, Blue Flame Medical had?

MS. PORTER: Objection. Vague as to pricing policy.

BY MR. MADDEN:

Q. You can answer.

A. I didn't know the pricing policy, no.

Q. All right. You reply on the next page, 968, at 4:45 p.m. to say, "Got it. Can we execute on this today?" And Mr. Thomas replies at 4:51, "Yes, absolutely," and then asks, "Want me to put together a PO?"

Do you see that?

A. Yes, sir.

Q. What did you understand him to mean by PO?

A. A PO would be a purchase order.

Q. Is that the same as an invoice?

A. Yes.

Q. And then he writes, "If you give me an hour or so I can find the 100 mil order."

Do you see that?

A. Yes, sir.

Page 79

Q. And at this point, you were seeking from Blue Flame Medical an invoice for a purchase of 100 million N95 masks; is that right?

A. Yes, sir.

Q. And again, that was based on Mr. Thomas' prior representations that he had access to 100 million N95 masks he could ship immediately, correct?

A. Yes.

Q. Now, on the very first page of the exhibit, page 967, you reply at 7:03 p.m., "Yes, we would like a PO for 100M." That's 100 million?

A. Yes, sir.

Q. And that you meant 100 million N95 masks in the model numbers you had specified, correct?

A. Yes, sir.

Q. And then you write, "I'll work on the 75 percent payment piece first thing in the morning."

Do you see that?

A. Yes, sir.

Q. And what did you mean by that?

A. I would have to discuss with my boss how we would do the 75 percent prepayment.

Page 80

Q. And you understood at this time that it was necessary to do the transaction that the state of California prepay 75 percent of the total amount of any order from Blue Flame Medical, correct?

A. Yes.

Q. And Mr. Thomas nor anyone else at Blue Flame Medical ever told you otherwise; is that right?

A. That's correct.

Q. Did you understand whether the 75 percent prepayment applied to taxes?

A. I believe sales tax is incorporated when we issue the purchase order.

Q. Did Mr. Thomas or anyone else associated with Blue Flame Medical ever explain to you why the state of California had to prepay 75 percent of the sales tax?

A. No, he never explained specifically 75 percent prepayment of sales tax.

Q. Do you recall discussing with Mr. Thomas the idea that California may handle some of the shipping on this order itself?

A. Yes, I remember.

Page 81

Q. And what do you recall about that?

A. When we received the invoice, the quote for the shipping was so high that we were considering finding other means to ship the product back to California.

Q. And what were some of the means you were considering just generally?

MS. PORTER: Objection. Deliberative process.

BY MR. MADDEN:

Q. Okay. The idea is you were -- California was considering handling some of the shipping on its own instead of through Blue Flame, correct?

A. Correct.

Q. And if California handled some of the shipping on its own, do you understand that the shipping costs would be decreased?

A. Yes.

Q. And did Mr. Thomas ever explain to you -- strike that.

Did Mr. Thomas or anyone else associated with Blue Flame ever explain to you why the state of

Page 82

California had to prepay 75 percent of the shipping costs?

A. No, that was never explained.

Q. Okay. We're going to flip back again to Exhibit 62, which are the text messages, if you would.

A. Sure.

Q. Just give me a minute to find my own place. Okay. We're at page Bates number ending 139 and specifically I was going to start with the text message from Mr. Thomas at 7:59 a.m.

A. Okay.

Q. Are you there?

A. Yes, sir.

Q. You're faster than I am. Okay.

Mr. Thomas writes to you, "Morning, Michael, looking forward to closing this first transaction this morning."

Do you see that?

A. Yes, sir.

Q. He asks you about next steps and thanks you for your help. Did you -- do you recall speaking

Page 83

to Mr. Thomas around this time, the morning of March 25th?

A. I don't remember.

Q. I've asked you about a number of specific phone calls, but I think you've said you recalled generally speaking with Mr. Thomas by phone more than once, correct?

A. I believe so.

Q. What, if anything, do you remember about those telephone conversations?

A. To the best of my knowledge, it was just reiterating what was conveyed either in the text messages or in the emails.

Q. Am I right that you don't recall Mr. Thomas conveying to you any additional information other than what's also conveyed in writing?

A. That's correct.

Q. Oh, there it is. The next message down at 10:30 --

MS. PORTER: Excuse me.

MR. MADDEN: I'm sorry. I'm sorry,

Page 84

Counsel, am I speaking over you? I'm sorry.

MS. PORTER: No. I'm sorry. No, Mr. Madden, you were not.

BY MR. MADDEN:

Q. Okay. The message at 10:35 a.m., do you see that one?

A. Yes, sir.

Q. He writes, "Michael, sorry to be annoying, but I've got everything ready on my side and the inventory set aside."

What did you understand Mr. Thomas to mean by he had the inventory set aside?

A. I believe that meant all of the masks that we had previously discussed.

Q. The masks you had previously discussed meaning -- meaning what?

A. The total 100 million quantity that we were looking at.

Q. And then Mr. Thomas had those 100 million masks set aside for the state of California as of 10:35 a.m. on March 25th.

Was that your understanding?

Page 85

A. Yes.

Q. Did you understand, based on this and your other discussions with Mr. Thomas, that Blue Flame Medical had purchase orders in place from suppliers for those 100 million masks?

MS. PORTER: Objection. Ambiguous. Purchase orders as to who?

MR. MADDEN: Yeah, I'll try it again.

BY MR. MADDEN:

Q. When Mr. Thomas told you that Blue Flame Medical had inventory set aside for California's purchase, did you understand that to mean that Blue Flame Medical had purchased 100 million masks from manufacturers for California?

A. I assume that meant that he had 100 million available to deliver to California.

Q. You -- just a second. Okay. And he writes at the end of that message, "Anything I can do to help speed things up on your side?"

Do you see that?

A. Yes, sir.

Q. And that you understood to convey a

Page 102

A. Yes, sir.
Q. And the amount reflected there is $95.2 million; is that correct?
A. Yes, sir.
Q. And is this the shipping costs that you had discussed with Mr. Bearman?
A. Yes, sir.
Q. And that's the one that you had conveyed to Mr. Bearman was too high. Do I have that right?
MS. PORTER: Objection.
THE WITNESS: Yes, sir.
BY MR. MADDEN:
Q. And did Mr. Bearman or anyone else at Blue Flame Medical offer to reduce the shipping costs in this invoice for this transaction?
A. No, they never said they would reduce it.
Q. And then the balance due line reads $609,161,000. Do you see that?
A. Yes, sir.
Q. And Blue Flame Medical had conveyed to you, am I right, that the state of California was required to pay 75 percent of that amount to secure

Page 103

the transaction; is that correct?
A. Yes, sir.
Q. And again, you understood that to be a requirement imposed on Blue Flame Medical by its manufacturers to secure inventory; is that right?
A. Yes, sir.
Q. Do you recall, after receiving this invoice, discussing or negotiating any of these terms with anyone from Blue Flame Medical?
A. The only negotiation would have been if we covered the shipping or if the state of California was able to ship the products ourselves, then that amount would be removed.
Q. But as far as this invoice goes, Blue Flame Medical was requiring a 75 percent prepayment of the $95.2 million shipping cost, correct?
A. Yes, the 75 percent was the total order amount.
Q. Right. Including the shipping costs?
A. Yes, sir.
Q. And also including the taxes, correct?
A. Yes, sir.

Page 104

Q. Did Mr. Thomas or Mr. Bearman or anyone else associated with Blue Flame Medical tell you that Blue Flame Medical's main supplier was requiring a prepayment from Blue Flame Medical of only $66 million on a first tranche of masks?
A. No, I was never told that.
Q. If you had known that fact, would you have authorized a payment of -- a prepayment of $456 million to Blue Flame Medical?
MS. PORTER: Objection. Calls for speculation.
BY MR. MADDEN:
Q. You can answer.
A. I don't know what direction I would have been given from my executives.
Q. Did Mr. Thomas ever offer to you to do this transaction as an open book deal in which you would be able to see Blue Flame Medical's costs and markup?
A. I've never heard of the term "open book."
Q. Just more generally, did Mr. Thomas or anyone else from Blue Flame Medical offer to share

Page 105

with you Blue Flame Medical's costs and markup information?
A. No, they did not.
Q. In any event, no one from Blue Flame Medical ever sent you that information, correct?
A. That is correct.
MR. MADDEN: Zach, let's do Exhibit 43, please.
BY MR. MADDEN:
Q. And just for the record, I'm showing the witness what has been previously marked as Exhibit 43, which is a document Bates numbered BFM 95501.
MS. PORTER: Matt, if I can ask you to pause, please. I'm waiting for the potential to download.
MR. MADDEN: Of course.
MS. PORTER: It says network disconnect again.
MR. MADDEN: Just let me know when you're ready.
MS. PORTER: I would ask Mr. Ferguson to send Exhibit 43 again. I don't seem to be able to

Page 106

get it open.
THE WITNESS: I have Exhibit 43 open.
MS. PORTER: Thank you, Mr. Ferguson for resending. Thank you to Mr. Madden for pausing. I now have 43 open.
MR. MADDEN: Zoom depositions are fun, aren't they?
BY MR. MADDEN:
Q. Okay. Mr. Wong, you see there's an authorizing signature on Exhibit 43 towards the bottom of the page?
A. Yes, sir.
Q. Is that your signature?
A. Yes, it is.
Q. And what is Exhibit 43?
A. Exhibit 43 is a state of California purchase order.
Q. And specifically, this purchase order is for the 100 million masks from Blue Flame Medical, correct?
A. Yes, sir.
Q. And you see at the top it's dated March

Page 107

25th, 2020?
A. Yes, sir.
Q. Was that the date the purchase order was completed?
A. Yes, sir.
Q. Under taxable subtotal, you'll see the same $476 million and then it lists sales tax -- I'm sorry, the same $476 million we saw in the invoice and also the same -- the same sales tax. Do you see those?
A. Yes, sir.
Q. Unlike the invoice, there's not a shipping cost listed on the purchase order. Why is that?
A. To the best of my recollection, we were still hoping that we would be able to find other means to ship the products.
Q. And by that, you mean that California would handle some of the shipping on its own as we discussed earlier?
A. Yes, sir.
Q. And again, if it did its own shipping, your understanding was it wouldn't have to pay Blue

Page 108

Flame Medical's shipping costs, right?
A. Yes, sir.
Q. Do you see there's a line for shipping instructions in the middle of the document?
A. Which section are you looking at, sir?
Q. Yeah. It's roughly in the middle of Exhibit 43, there's a line labeled shipping instructions, just above the terms and conditions.
A. Yes, sir.
Q. You see that now?
A. Yes, sir.
Q. It has a required delivery date of April 3rd, 2020. Do you see that?
A. Yes, sir.
Q. Did that convey that some or all of the masks being ordered were required to be delivered by April 3rd?
A. Yes, sir.
Q. And what was your understanding of that requirement as related to this purchase order?
A. At least the initial shipment of the masks should have been received by April 3rd. I believe

Page 109

that's the eight days from the issuance of the purchase order.
Q. And was it your understanding that if an initial shipment of masks was not delivered by April 3rd, that would have been a breach of your agreement with Blue Flame Medical?
A. Yes, sir.
MS. PORTER: Objection. Calls for a legal conclusion.
BY MR. MADDEN:
Q. And then next to the required delivery date, there's a checkmark for FOB destination.
Do you see that?
A. Yes, sir.
Q. And what does that signify?
A. Freight on board destination.
Q. And what does that -- what does that mean?
A. The legal meaning of it I don't know myself.
Q. And then a little further down the page, do you see there's a section for procurement methods?
A. Yes, sir.

Page 110

Q. And the box that's checked is for exempts. Do I have that right?
A. Yes, sir.
Q. And what did that mean with respect to this purchase order?
A. The procurement method was exempt because it was an emergency purchase.
Q. And what did it mean to say that this was exempt?
A. Essentially meant that we did not have to competitively bid this procurement because of the emergency declaration.
Q. And that means that some of the processes and procedures that would apply to competitively bid procurements aren't applied to this one; is that right?
MS. PORTER: Objection. Calls for a legal conclusion.
BY MR. MADDEN:
Q. You can answer.
A. Yes, that's correct.
Q. After filling out and completing and

Page 111

signing the purchase order that's Exhibit 43, what do you do with it? What did you do with it?
A. We sent it to the supplier.
Q. The supplier being Blue Flame Medical?
A. Correct.
Q. All right. Sorry. Just give me one second.
MR. MADDEN: Can we mark, Zach, what's at tab 70, please. We are marking as Exhibit 65 an email that begins with Bates number BFM 111148.
(Defendant's Exhibit No. 65 was marked for identification.)
BY MR. MADDEN:
Q. And then just let me know when you're ready.
A. I have Exhibit 65 up.
Q. Great. No one's claiming otherwise.
So Mr. Wong, if you'll start with the bottom email in the chain that's on page 149, you'll just see that's the same email we were looking at where Mr. Thomas conveys to you Blue Flame Medical's invoice. Do you see that?

Page 112

A. Yes, sir.
Q. And then on the first page of Exhibit 65, you reply at 3:13 p.m. on March 25th, "Hi John, CA state controller's office will be paying you via wire transfer first thing in the morning."
Do you see that?
A. Yes, sir.
Q. And how did you obtain that understanding, that the California state controller's office would be paying Blue Flame Medical by wire transfer the next morning?
A. That was told to me by my boss.
Q. And that's Ms. Shell?
A. Yes, sir.
Q. And then Mr. Thomas replies at 3:24 p.m. Pacific, he writes, "Thank you, Michael. If you have the order or any additional documentation that'll make my life easier."
Do you see that?
A. Yes, sir.
Q. Did you discuss with Mr. Thomas why having the order or additional documentation for the

Page 113

transaction would make his life easier?
A. I don't know what that's referring to.
Q. He didn't tell you why he needed additional documentation for the transaction?
A. No, he did not.
Q. After receiving the invoice and telling Mr. Thomas that the controller's office would pay by wire transfer, do you recall speaking with Mr. Thomas about the wire transfer?
A. I don't recall speaking to him over the phone, no.
MR. MADDEN: Let's also, Zach, mark tab 74. We'll mark as Exhibit 66 a one-page document bearing Bates number BFM 116341.
(Defendant's Exhibit No. 66 was marked for identification.)
MS. PORTER: Mr. Madden, if I can just ask, how much time do you think you will need for this line of questioning? I'm just going to try to anticipate when a good time to break for lunch may be.
MR. MADDEN: Good question. Just one

Page 114

second. Right after this exhibit would be -- would be good. The next -- the next line is, you know, probably another 20 minutes or so.

MS. PORTER: Okay. Mr. Wong, would a break after this line of questioning with regard this exhibit work for you for lunch?

THE WITNESS: Yeah, that works.

BY MR. MADDEN:

Q. Great. Let me know when you have Exhibit 66.

A. I have Exhibit 66 up.

Q. Exhibit 66 is an email from Mr. Thomas to you on March 25th at 3:24 p.m. Pacific copying -- excuse me, blind carbon copying others.

Mr. Thomas starts by writing to you, "Great chatting with you today." Do you see that?

A. Yes, sir.

Q. And other than what you've already testified, does that refresh any recollection about any conversations you had by phone with Mr. Thomas on March 25th?

A. I don't recall a phone conversation with

Page 115

him.

Q. And then he writes in the next sentence, "Just a reminder to send me those documents as soon as possible so I can move things along on my side."

Do you see that?

A. Yes, sir.

Q. Does that spark any recollection of discussing with Mr. Thomas that he needed documents from you in order to move things along on his side?

A. I don't recall what he's referring to.

MR. MADDEN: Okay. I think now's a good time for a lunch break. How long would you -- how long would you like?

THE WITNESS: Thirty, 45.

MS. PORTER: Forty-five minutes.

MR. MADDEN: Great. So shortly after 4:00 Eastern, 1:00 Pacific, if my math is right.

THE VIDEOGRAPHER: Off the record at 3:26.

(Whereupon, at 3:26 EST p.m., the deposition in the above-entitled matter was recessed, to reconvene at 4:11 p.m., this same day.)

Page 116

AFTERNOON SESSION

(4:11 p m.)

THE VIDEOGRAPHER: We are now on the record. The time is 4:11 p.m.

EXAMINATION BY COUNSEL FOR DEFENDANT/THIRD-PARTY PLAINTIFF (RESUMED)

BY MR. MADDEN:

Q. Hi, Mr. Wong. I hope you had a nice lunch.

We're going to start back at Exhibit 62, the text messages again, if you could open -- open that document back up.

A. Okay.

Q. And just to situate you because of the lunch break, we're focusing on later in the day on March 25th after you had received an invoice from Blue Flame Medical. And now I want to direct your attention to the page ending with the Bates number 143 of Exhibit 62 and the second message on the page, March 25th at 8:31 p.m.

A. Okay.

Q. Great. Mr. Thomas writes, "Just spoke

Page 117

with Dan Kim." Do you see that?

A. Yes, sir.

Q. Do you know whether you were on that call between Mr. Thomas and Mr. Kim?

A. I was not.

Q. And did Mr. Kim relate to you the substance of his call with Mr. Thomas?

A. No, he did not.

Q. Mr. Thomas continues, "I'm cranking out a rough timing and amount deadline for you and Dan tonight." Do you see that?

A. Yes, sir.

Q. Was that something you requested?

A. No, that was not requested by me.

Q. Do you have an understanding as to whether Mr. Kim requested that of Mr. Thomas?

A. That I don't know.

Q. All right. So further down the same page, there's a message at 11:49 p.m. Mr. Thomas writes, "Know you're snoozing, but just wanted to make sure you knew to wire to Heritage Bank. Heard there was some confusion on DGS side, so wanted to be clear the

Page 118

email Ethan Bearman sent is Blue Flame's bank here in Virginia."

Do you see all that?

A. Yes, sir.

Q. Do you recall any confusion as to where California was going to wire payment to Blue Flame Medical?

A. I'm not aware of any confusion.

Q. Do you remember being told at some point in time that the funds could be wired to an account held at Heritage Bank?

A. No, I don't recall.

Q. Okay. Now we're going to put in the chat, assuming my colleague, Mr. Ferguson, has joined us, which I probably should have checked, we're going to put in the chat what's been previously marked as Exhibit 25.

A. Okay. I have Exhibit 25 up.

Q. Exhibit 25 is an email and three attachments. The attachments are screenshots of a text chain, although I think the screenshots may be out of order, so we'll work through them in what

Page 119

appears to be their natural order.

But my first question is whether you recognize the text chain that is the attachments to Exhibit 25.

MS. PORTER: Excuse me, Mr. Madden, I just want to remind you since we've had the lunch break now, I do note that Exhibit 20 that I'm looking at does have confidential in the lower left-hand corner and just as a reminder, we have not executed the confidentiality agreements as part of the protective order that's operative here.

MR. MADDEN: Thank you.

THE WITNESS: I don't recognize these text messages.

BY MR. MADDEN:

Q. Do you believe you're not the Michael on the top of these pages?

A. To the best of my knowledge, I don't recall having a group text message with Director Kim and John Thomas.

Q. Okay. Then you can put Exhibit 25 to the side. Consistent with the protective order, if you

Page 120

would delete it, I would appreciate that. Just from your -- just from your computer.

A. Sure.

Q. You're aware that at some point in time, California initiated a $456.8 million wire transfer to Blue Flame Medical, correct?

A. Yes, sir.

Q. And that occurred sometime the morning of March 26th. Is that your understanding?

A. Yes, I believe that's the date.

Q. And did you know at the time that the wire transfer had been initiated by California?

A. Yes.

Q. As of the time of that wire transfer, did you know that Blue Flame Medical had existed for only two days?

A. I did not know that.

Q. At the time of that wire transfer, did you know that Blue Flame Medical had opened its bank account only the prior day?

A. I did not know that.

Q. As of the time of that wire transfer, did

Page 121

you know that Blue Flame Medical owned no inventory of N95 masks?

A. I did not know that.

Q. As of the time of the wire transfer, did you know that Blue Flame Medical had never delivered N95 masks to any customer?

A. I did not know that.

Q. At the time of the wire transfer, did you know that Mr. Thomas with whom you'd been communicating had no experience in medical supply logistics?

MR. MITCHELL: Objection. Misstates the evidence.

BY MR. MADDEN:

Q. You can answer.

A. I did not know that.

Q. Did you know at the time of the wire transfer that Mr. Thomas' business partner, Michael Gula, had no experience in medical supply logistics?

A. I did not know that.

Q. At the time of the wire transfer, did you know that Mr. Thomas and his business partner,

Page 122

Michael Gula, were predominantly political consultants?
A. I did not know that.
Q. At the time of the wire transfer, did you know that Blue Flame Medical was not registered to conduct business in the state of California?
A. I recall looking in the secretary of state's database for their business registration and I did not find it.
Q. At the time of the wire transfer, did you know that Blue Flame Medical had no office in the state of California?
MR. MITCHELL: Objection. Misstates the evidence.
BY MR. MADDEN:
Q. You can answer.
A. I did not know that.
Q. If Mr. Thomas or anyone affiliated with Blue Flame Medical had explained those things to you, do you think you would have signed a purchase order for 100 million N95 masks from Blue Flame Medical?
MS. PORTER: Objection. Calls for

Page 123

speculation. You may respond.
BY MR. MADDEN:
Q. You can answer.
A. Would it impact my decision? Maybe.
Q. It certainly could have impacted your decision as you sit here today, correct?
A. It could have, yes.
Q. Did there come a time when you learned that the $456.8 million wire transfer had been returned to the state of California?
A. Yes.
Q. And did you discuss that return with anyone?
A. I was notified by my boss or my deputy director, Angela Shell, that there was an issue with the transfer.
Q. Did Ms. Shell say anything else?
A. At that time, she did not.
Q. Okay. How about at other times?
A. Later on we -- we found out that the transfer was returned to the state of California.
Q. And did you learn anything else about that

Page 124

return?
A. No, I didn't know any of the details of the return.
Q. At any time in March or April of 2020, did you ever speak with anyone at Chain Bridge Bank?
A. No, I did not.
Q. And during the same time period, did you speak with anyone at the state of California's bank, JPMorgan Chase, concerning this transaction?
A. No, I did not.
Q. Okay. Or concerning the wire transfer? Same answer?
A. I did not.
Q. Okay. Moving ahead now to March 27the, so we're skipping ahead to the next day and thereafter, did anyone tell you in words or substance that after the wire had been returned, Blue Flame Medical offered to sell masks to the state of California without any prepayment and instead only on payment upon receipt?
A. Not that I recall.
Q. Would that have been surprising to you as

Page 125

of March 27th, 2020?
MS. PORTER: Objection. Calls for speculation.
BY MR. MADDEN:
Q. You can answer.
A. It would have been surprising, yes.
Q. And why is that?
A. To go from one day having a 75 percent prepayment to the next day having no prepayment, that's a significant change in the payment terms.
Q. Right. Mr. Thomas had been pretty firm with you, had he not, that 75 percent prepayment was required, correct?
A. Yes, that's correct.
MR. MITCHELL: Objection. Misstates the evidence.
BY MR. MADDEN:
Q. If you had come to learn that Blue Flame Medical, on or about March 27th, was now offering to deliver masks with no prepayment, would that have caused you to question Mr. Thomas' credibility?
MS. PORTER: Objection. Calls for

Page 126

speculation.
BY MR. MADDEN:
Q. You can answer.
A. Yeah, it would -- it would be concerning.
MR. MADDEN: Zach, can we mark tab 297, please.
MR. FERGUSON: Just as an FYI, it's a pretty big file, so it's taking a while to upload.
MR. MADDEN: Ah. Sorry about that.
(Defendant's Exhibit No. 67 was marked for identification.)
BY MR. MADDEN:
Q. While everyone is waiting, for the record, Exhibit 67 is an email bearing Bates number CBB 2291, among other Bates numbers, through CBB 2312. And I assume it's still downloading, but let me know when you have it ready, please.
A. Okay. I have Exhibit 67 up.
Q. Okay.
MR. MADDEN: Anybody else I should wait for?
MR. MITCHELL: Counsel, it's still

Page 127

downloading for me if you wouldn't mind waiting just 30 more seconds.
MR. MADDEN: Yep.
MR. MITCHELL: Okay. I have it up. Thank you.
MR. MADDEN: Okay.
BY MR. MADDEN:
Q. Mr. Wong, Exhibit 67 is an email to you from Mathew Littman on Friday, April 3rd, 2020. Who is Mr. Littman?
A. I believe Mr. Littman was a representative of Blue Flame that was still trying to complete the order for the 100 million N95s that we initially were discussing with Mr. Thomas.
Q. And did you ever speak with Mr. Littman by telephone?
A. I believe I had maybe only one or two phone conversations with Mr. Littman.
Q. What do you recall of those?
A. I believe we asked if there was still a possibility of purchasing the same 100 million N95 masks and if there were any changes to the pricing or

Page 128

the payment terms.
Q. And at the moment of those conversations, as far as you knew, the state of California was still interested in purchasing 100 million N95 masks from Blue Flame Medical?
A. At the time, yes.
Q. And this is after the wire transfer to Chain Bridge Bank had been returned to California; that's right?
A. Yes.
Q. And why were you asking Mr. Littman about pricing?
A. I just wanted to verify that the price didn't change.
Q. And what did Mr. Littman tell you about that?
A. I don't recall exactly without having to go through this email.
Q. Okay. Well, let's -- let's take a look then. Mr. Littman writes, "It was good to speak with you today."
And that's consistent with your

Page 129

recollection that you had a telephone conversation with Mr. Littman, correct?
A. Yes, sir.
Q. Yeah. He lists four mask model numbers. Those are the same that had appeared in the March 25th invoice from Blue Flame Medical, correct?
A. Yes, sir.
Q. They were still offering to provide the same masks, right?
A. Yes, sir.
Q. In the second bullet point below the model numbers, Mr. Littman writes, "New pricing has increased over 30 percent, but we will honor our prior price for this first order."
Do you see that?
A. Yes, sir.
Q. And he goes on, "So that puts it at the old cost per mask of $4.76 plus tax and shipping."
You understood Mr. Littman to be offering California the same price terms for the same masks here on April 3rd, correct?
MS. PORTER: Objection. The term "same

Page 138

No, he never said that.
BY MR. MADDEN:
Q. He just told you that the price had gone up to 4.99?
A. Yes.
Q. In the next paragraph, Mr. Thomas writes, "Due to market constraints, it will take us 60 to 90 days to deliver all 100 million masks."
Do you see that?
A. Yes, sir.
Q. During your conversations with Mr. Thomas in March, did he ever tell you then that it would take 60 to 90 days to deliver 100 million masks?
A. No, not that I recall. Everything was laid out in the previous email of the estimated times.
Q. And during March, had anyone associated with Blue Flame Medical told you that it would take 60 to 90 days to deliver all 100 million masks?
A. No, they did not.
Q. Back in March when you were communicating with Mr. Thomas and others, was it your understanding

Page 139

that the 100 million masks would be delivered significantly sooner than 60 to 90 days?
MR. MITCHELL: Objection. Vague.
BY MR. MADDEN:
Q. You can answer.
A. Yes, we assumed it would be faster than 60 to 90 days.
MR. MADDEN: Okay. Zach, let's mark 309, please.
(Defendant's Exhibit No. 68 was marked for identification.)
BY MR. MADDEN:
Q. Exhibit 68 will be an email from Mr. Thomas to you, Mr. Wong, Bates numbered beginning BFM 113888.
A. I have Exhibit 68 up.
Q. Okay. And we're going to start at the back with an email from you to Mr. Thomas at 8:03 a.m. on Friday, April 10th. Do you see that?
A. Friday, April 10th at 8:03 a.m.
Q. Yes. Are you there?
A. Yes, sir.

Page 140

Q. You write, "Just to recap from our call yesterday," which would be April 9th. Do you recall speaking to Mr. Thomas on April 9th?
A. I don't recall the details of the call, but I assume I called him.
Q. Do you recall that you spoke to Mr. Thomas more than once during this period following the return of the wire transfer?
A. I don't remember exactly how many calls I had with Mr. Thomas or anyone from Blue Flame or representing Blue Flame.
Q. All right. And you continue, "We originally had a quote for 3M N95 masks for $4.76."
Do you see that?
A. Yes, sir.
Q. And that's your best understanding of what Mr. Thomas had provided to you during your negotiations with him during March, correct?
A. Yes, sir.
Q. And then you go on to say, "But I think you mentioned yesterday that the masks are not 3M."
Do you see that?

Page 141

A. Yes, sir.
Q. Do you remember Mr. Thomas telling you that the masks Blue Flame Medical was prepared to provide California were not manufactured by 3M?
A. I recall that that was a conversation we had because the initial inventory sheet that we received specifically labeled 3M branded 1860 N95 masks. And then over the phone, he said that they were not 3M.
Q. And when he told you over the phone that the masks were not 3M, did that surprise you?
A. Yes.
Q. And that's because you had been led to believe that you were talking about 3M masks, correct?
A. That's correct.
MR. MITCHELL: Objection. Misstates the evidence.
BY MR. MADDEN:
Q. Mr. Thomas replies in the next email at 8:43 in the morning on April 10th and in the first paragraph of his email at the top of the page ending

Page 142

891, he writes, "To clarify, at no point did we suggest that we could supply 100 million 3M manufacturer brand masks."

Do you see that?

A. Yes, sir.

Q. Is that a true statement?

MS. PORTER: Objection. Are you asking Mr. Wong to verify that Mr. Thomas made the statement or are you asking whether -- I'm sorry. Ambiguous.

MR. MADDEN: No, sorry, I'll make it clearer.

BY MR. MADDEN:

Q. Mr. Thomas writes, "At no point did we suggest that we could supply 100 million 3M manufacturer brand masks."

As far as Mr. Thomas' communications with you go, Mr. Wong, was that a true statement?

A. No. Because from the initial inventory sheet that I received, it specifically had 3M branded N95 respirators on the inventory sheet.

Q. And then in the next email in the chain, now on page 889, at 10:13 a.m., that's what you tell

Page 143

Mr. Thomas; is that right?

A. Yes, sir.

Q. And after that, you say, "Moreover, in an email to my colleagues on March 20, 2020, you indicated that you have specifically 3M brand N95 masks."

Do you see that?

A. Yes, sir.

Q. To what email were you referring, if you know?

A. I don't recall specifically, but I believe that was the email to Bill Simonson.

Q. Okay. And then you continue, "All of our conversations and correspondence were predicated on the products being 3M brand."

Do you see that?

A. Yes, sir.

Q. And that was your best belief as of April 10th, 2020, wasn't it?

A. Yes, sir.

Q. And finally you write, "We must be absolutely certain on the goods we are purchasing if

Page 144

we execute an order," correct?

A. Yes, sir.

Q. You needed to make sure that California was getting what it thought it was paying for, right?

A. Yes, sir.

Q. And if it didn't get what -- if California didn't get what it thought it was paying for, it could return and reject the goods, correct?

MS. PORTER: Objection. Calls for speculation. You may respond.

THE WITNESS: If it wasn't the products that were agreed upon, we would have rejected the delivery.

BY MR. MADDEN:

Q. Mr. Thomas replies to you -- now flipping back, you see he replies at 12:28 p.m. on April 10th and then again on Monday, April 13th and then again on Wednesday, April 15th.

Do you see that series of emails?

A. Yes, sir.

Q. Did you have any other conversations with Mr. Thomas at or after this time?

Page 145

A. Not that I recall.

Q. Did you have any conversations with anyone at Blue Flame Medical at or after this time, meaning after your email on April 10th?

A. Not that I recall.

Q. Why not?

A. After the last correspondence that we had, I believed that it wasn't a viable option to pursue.

Q. That a mask order from Blue Flame Medical was not a viable option?

A. Yes.

Q. And why did you not believe Blue Flame Medical to be a viable option to provide N95 masks to the state of California?

A. I believe the discrepancy between the -- initially seeing that they were 3M branded masks and then on or about April 10th and then they're saying that they're not 3M branded masks, we weren't comfortable pursuing an order with them.

Q. Anything else?

A. No, that's it.

Q. Did your lack of comfort with pursuing an

Page 146

order with Blue Flame Medical have anything to do with anything that Chain Bridge Bank had said to the state of California, to your knowledge?

A. No, I had no correspondence with Chain Bridge Bank.

Q. Okay. You can -- I was going to say you can put that aside, but, again, it's electronic, so you can close it out.

Okay. Mr. Wong, are you aware that on or about April 7th, 2020, California executed a purchase order to obtain 300 million N95 masks from a subsidiary of BYD?

A. I don't remember specifically, but that was not a purchase order that I executed.

Q. Did you participate in the execution of other purchase orders for N95 masks on behalf of the state of California in and around the spring of 2020?

A. Yes, I executed other purchase orders.

Q. And did all of the suppliers for those purchase orders deliver masks in full and on time?

A. I can't speak to every single order that we had and every delivery that was made.

Page 147

Q. As the procurement officer on the transaction, what do you believe to be the current status of California's 100 million mask order from Blue Flame Medical?

A. I believe that order was terminated.

Q. Was there any fallout within state government, to your knowledge, over the transaction with Blue Flame Medical?

MS. PORTER: Objection. Vague as to fallout.

BY MR. MADDEN:

Q. Answer if you can.

A. I don't know what you mean by fallout.

Q. Sure. Was anyone, to your knowledge, reprimanded within the California state government in connection with the Blue Flame Medical transaction?

MS. PORTER: Objection. Calls for speculation.

BY MR. MADDEN:

Q. Just to your knowledge.

A. Not that I know of.

Q. Other than the conversations we've already

Page 148

discussed today, do you remember any other discussions you had with John Thomas, Ethan Bearman, Mike Gula or anyone else associated with Blue Flame Medical?

MS. PORTER: Objection. Compound and vague. You can respond.

BY MR. MADDEN:

Q. You can answer.

A. I never had any correspondence with Mike Gula. The only individuals that I had correspondence with was Mr. Thomas, Mr. Bearman and Mr. Littman, and those were all covered in what we discussed today.

MR. MADDEN: If now is a convenient time for a two-minute break. I can check through my notes. I may be -- I may be finished or very close to it and then we can pass the witness to counsel for the other parties. Does that work?

MS. PORTER: Very good.

THE WITNESS: Ten minutes, fine.

THE VIDEOGRAPHER: Off the record at 4:55.

(Recess.)

THE VIDEOGRAPHER: We are now back on the

Page 149

record. The time is 5:11 p.m.

BY MR. MADDEN:

Q. Mr. Wong, we're going to put back in the chat what's been previously marked as Exhibit 25. Just let me know when you have that. I think you deleted it. So let me know when you have it back in front of you.

A. I apologize for my dog. Yes, I have Exhibit 25.

Q. No worries. If you look at the attachments to the email that are in Exhibit 25, if you could take a look at the second page, then the third page and then flip back to the first page, I believe that's the order the text messages are actually, you know, in real life.

Read through with as much time as you need and just tell me if you recognize the text chain that's in these pages.

MS. PORTER: I'm sorry, what was the order again? The second, first, third?

MR. MADDEN: Second, third, first.

MS. PORTER: Second, third, first.