APPENDIX

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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2218

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.

No. 21-2219

BLUE FLAME MEDICAL LLC,

Plaintiff,

v.

CHAIN BRIDGE BANK, N.A.,

Defendant and Third-Party Plaintiff – Appellee,

JOHN J. BROUGH; DAVID M. EVINGER,

Defendants,

v.

JPMORGAN CHASE BANK, N.A.,

Third-Party Defendant – Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge (1:20-cv-00658-LMB-IDD)

Argued: October 27, 2022 Decided: March 20, 2023

Before AGEE and HARRIS, Circuit Judges, and Lydia K. GRIGGSBY, United States District Judge for the District of Maryland, sitting by designation.

Affirmed by unpublished opinion. Judge Griggsby wrote the opinion, in which Judge Agee and Judge Harris joined.

ARGUED: Eric Franklin Citron, GOLDSTEIN & RUSSELL, P.C., Bethesda, Maryland; Alan E. Schoenfeld, WILMER CUTLER PICKERING HALE AND DORR LLP, New York, New York, for Appellants. Gary Andrew Orseck, KRAMER LEVIN NAFTALIS & FRANKEL LLP, Washington, D.C., for Appellee. **ON BRIEF:** Albinas J. Prizgintas, Washington, D.C., Margarita Botero, Denver, Colorado, Marissa W. Medine, WILMER CUTLER PICKERING HALE AND DORR LLP, New York, New York, for Appellant JPMorgan Chase Bank, N.A. Kathleen Foley, GOLDSTEIN & RUSSELL, P.C., Bethesda, Maryland, for Appellant Blue Flame Medical LLC. Matthew M. Madden, Donald Burke, ROBBINS, RUSSELL, ENGLERT, ORSECK, & UNTEREINER LLP, Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit.

GRIGGSY, United States District Judge for the District of Maryland, sitting by designation:

This appeal involves the collapse of an agreement to obtain face masks for the State of California during the early days of the COVID-19 pandemic. Defendant and Third-Party Plaintiff-Appellee Chain Bridge Bank ("Chain Bridge") withheld and returned certain funds wired to the bank account of Plaintiff-Appellant Blue Flame Medical LLC ("Blue Flame") in order to purchase face masks for shipment under its contract with California. Thereafter, Blue Flame filed a complaint asserting violations of U.C.C. §§ 4A-204(a) and 4A-404 against Chain Bridge, and state law claims for tortious interference with a contract, tortious interference with a business expectancy, conversion, fraud, constructive fraud, negligence, defamation and breach of contract against Chain Bridge and its President, David M. Evinger ("Evinger"), and Chief Executive Officer, John J. Brough ("Brough") (collectively, "Defendants"). JA19-53. Chain Bridge then filed a third-party complaint against California's bank, Third Party Defendant-Appellant, JPMorgan Chase Bank, N.A. ("JPMorgan"), asserting claims for indemnification under U.C.C. § 4A-211(f) and for unjust enrichment. JA113-22.

The district court dismissed five of Blue Flame's state law claims on preemption grounds. JA54; JA61. After the parties filed cross-motions for summary judgment on the remaining claims, the district court entered summary judgment in Defendants' favor on each of Blue Flame's remaining claims and entered

summary judgment in favor of Chain Bridge on its claim for indemnification from JPMorgan. JA3066-3099. The district court held that: (1) Blue Flame's U.C.C. § 4A-404(a) claim failed as a matter of law, because. Blue Flame could not establish that it sustained any damage from the return of California's funds; (2) Blue Flame's U.C.C. § 4A-204(a) claim also failed as a matter of law, because that statute is not applicable to the payment order that Chain Bridge generated to facilitate the return of California's funds; (3) Blue Flame's claims for tortious interference with the contract and with business expectancy also failed as a matter of law, because Blue Flame did not proffer any evidence of damage resulting from the return of California's funds; (4) Blue Flame's defamation claim similarly failed as a matter of law, because there is no evidence in the record to show that Defendants made any false statements about Blue Flame or its principals; and (5) the undisputed material facts established JPMorgan's liability to indemnify Chain Bridge under U.C.C. § 4A-211(f) for the loss and expenses resulting from the cancellation of the payment order wiring California's funds to Blue Flame. JA3083-96.

We agree with the district court that Blue Flame's U.C.C. § 4A-204(a) claim fails as a matter of law, because that provision is not applicable to the payment order that Chain Bridge generated for the return of California's funds. In addition, we agree with the district court that Blue Flame's U.C.C. § 4A-404(a) claim fails as a matter of law, because Blue Flame cannot establish that it sustained any damage from

the return of California's funds and that Blue Flame's claims for tortious interference also fail as a matter of law, because Blue Flame did not establish a valid contract with California. We also agree with the district court that the undisputed material facts of this case establish JPMorgan's liability to indemnify Chain Bridge under U.C.C. § 4A-211(f) for its loss and expenses resulting from the cancellation of the payment order wiring California's funds to Blue Flame.

For the reasons below, we affirm.

I.

Blue Flame's principals, John Thomas ("Thomas") and Mike Gula ("Gula"), are political consultants. JA3067. When the COVID-19 pandemic began in late 2019, neither Thomas nor Gula had "any experience in the field of medical supplies," the "healthcare industry," or "supply chain management." JA3067; JA527. Nevertheless, in February 2020, Thomas and Gula decided to turn their attention to "connecting . . . medical supply companies with buyers." JA2496. To that end, on March 23, 2020, they formed Blue Flame. JA576.

Three days before Blue Flame's certificate of formation was filed, an acquaintance of Thomas contacted California's State Controller, Betty Yee, on Thomas' behalf, about California's interest in purchasing face masks from Thomas and Gula. JA660-61. Through Yee, Thomas and Gula were put in touch with California's Department of General Services

("DOS"), the entity responsible for contracting with vendors for supplies. JA639-654.

In anticipation of receiving a purchase order from California for the purchase of face masks, Gula went to the McLean, Virginia office of Chain Bridge to open a bank account for Blue Flame on March 23, 2020. JA3070. Based on the forms Gula completed, Chain Bridge opened an account in Blue Flame's name and provided Gula with instructions for wiring funds to the account. JA95-112.

On March 25, 2020, two days after Blue Flame's formation, DOS issued Blue Flame a purchase order for 100 million N95 face masks, in four specified models, for a total price of $609,161,000.00, 75% of which was required to be pre-paid to Blue Flame. JA578-581. The purchase order includes a provision allowing California to "terminate performance of work under this Contract for its convenience . . . if [DOS] determines that a termination is in the State's interest." JA1165; JA3068. The purchase order also includes an initial delivery date of April 3, 2020 for the masks. JA3068.

At approximately 3:30 PM on March 25, 2020, Gula called Chain Bridge's Senior Vice President and Branch Manager, Heather Schoeppe ("Schoeppe"), to inform her that "the state of California is sending an unbelievably large wire transfer in the amount of $450 million." JA3070; JA139-40. The record shows that the anticipated wire transfer into Blue Flame's account raised concerns within Chain Bridge. JA3070.

After her conversation with Gula, Schoeppe called Chain Bridge's Chief Financial Officer, Joanna Williamson ("Williamson"), to ask whether it would be feasible to accept a wire transfer for $450 million. JA1836; JA3071. Williamson acknowledged that it was a large sum, but told Schoeppe "we'll do whatever we need to do" to accommodate it. JA3071. Williamson also told Schoeppe that a deposit of that size would affect the bank's balance sheet and "capital ratios," but without more analysis, or more information about how long the funds would remain in the account, she was not sure whether the impact would be negative. *Id*.

On March 26, 2020, at 11:21 AM ET, a representative from the California State Treasurer's Office originated a wire transfer in the amount of $456,888,600 for Blue Flame's benefit through California's bank, JPMorgan. JA140; JA3073. The outgoing wire transfer triggered an alert in JPMorgan's "roll payment guardian application," which screens for suspicious transaction activity. JA920. An agent for JPMorgan contacted California to verify approval for the wire transfer, which California confirmed. *Id*.

The timeline for what occurred next is central to the parties' dispute in this appeal. At 11:55 AM on March 26, 2020, Chain Bridge received the incoming wire transfer, which was credited to Blue Flame's account. JA936-37. At 11:57 AM, Gula received an automated "Incoming Wire Confirmation" informing him that $456,888,600.00 had been received on Blue Flame's behalf. JA944-45.

Because officials at Chain Bridge remained concerned about the transaction, Evinger ordered that a hold be placed on the funds at 12:07 PM. JA1016-17. JPMorgan also had concerns about the wire transfer. As a result, JPMorgan's Executive Director, Rakesh Korpal ("Korpal") asked his colleague Tim Coffey ("Coffey") "to call Chain Bridge Bank to determine if they knew the beneficiary of the funds and what the disposition of the transactions or the funds were at that point." JA925.

Coffey called Chain Bridge at approximately 12:30 PM and asked to speak to someone in either the wire transfer or fraud departments, relaying that JPMorgan had "concerns of fraud" related to the Blue Flame transaction. JA1023; JA3074. At 12:44 PM, Korpal also called Chain Bridge and spoke with Brough and Evinger, explaining JPMorgan's concern that the "amount seems to be quite high for the supplies that they're purportedly paying for." JA1047; JA3074.

Chain Bridge and JPMorgan also consulted with California about the wire transfer. At 12:51 PM, Fee Chang ("Chang"), an employee of DOS called Chain Bridge and "confirm[ed]" that the wire transfer was "legitimate." JA1048; JA3075. At 12:55 PM, Brough and Evinger called Chang to ask for "documentation to support . . . that funds were transferred properly." JA1049; JA3075. Chang replied that the funds had been transferred by the California State Treasurer's Office, and she referred Brough and Evinger to Natalie Gonzalez, whom Chang stated was "in charge of the transfers." *Id*. At 1:19 PM, Natalie Gonzalez and Mark

Hariri of the California State Treasurer's Office called Brough and Evinger to discuss the transfer of funds to Blue Flame's account. JA1054; JA3075.

Shortly thereafter, at 1:34 PM, Brough and Evinger again spoke with Korpal. JA1062; JA3076. During this call, Evinger asked: "Is there any way for JPMorgan to issue a recall for the wire, so that while you intervene in this you have the funds and feel more comfortable?" *Id.* Korpal responded:

> Well, I feel comfortable that you're holding the money right now. I can issue a recall. But I don't think you and I want to get onto the front page of the *Wall Street Journal,* especially if this is a legitimate transaction.

Id. Korpal instead asked for "a few more minutes" to determine a course of action. *Id*.

Minutes later, at 1:37 PM, Coffey called Evinger and Brough to explain:

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

JA1063; JA3076. In response, Chain Bridge asked for an official communication from JPMorgan, over the Fedline platform, requesting a recall of the funds. *Id*.

At 2:05 PM, JPMorgan sent a message to Chain Bridge *via* the Fedwire Funds Processor ("Fedwire") officially asking for the return of California's funds. JA1064-65; JA3077. At 3:21 PM, Chain Bridge

returned the funds to JPMorgan, noting in the accompanying Fedwire message that the action was taken "PER YOUR REQUEST." JA1075-76; JA3077. The funds were posted to California's JPMorgan account by 4:02 PM. JA142; JA3077.

Sometime after JPMorgan requested the return of the funds, but before California learned the funds had already been returned, California also "requested the funds be recalled." JA916. Once the funds were back with California, a DOS employee emailed various California employees, stating, "Funds are with [the State Treasurer's Office]. After further discussion we won't be moving forward with the vendor." JA1079.

Thereafter, Blue Flame tried to continue its negotiations with California. JA3078. But California's DOS representative declined to enter into a new agreement with Blue Flame and began forwarding all Blue Flame correspondence to the Federal Bureau of Investigation.[1] JA2712-14. Although California never

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[1] On April 8, 2021, Congressional Representative Katie Porter of the 45th District of California wrote to the Principal Deputy Inspector General of the Department of Health and Human Services about concerns of "potential price gouging regarding personal protective equipment during the COVID pandemic," identifying Blue Flame as a "potentially costly and burdensome middleman." JA36; JA3078. Blue Flame subsequently provided a response to congressional investigators that included a list of all contracts, orders, or agreements that Blue Flame entered into with federal, state, or local governments or governmental entities, for medical supplies or equipment. JA1119-29. This list shows that, of the 24 entities identified by Blue Flame, the company only filled two orders. *Id*.

explicitly canceled the purchase order, Gula stated that it "was clear" that the "deal was canceled by [California's] actions." JA561.

Following the termination of its purchase order with California, Blue Flame filed a complaint in the United States District Court for the Eastern District of Virginia asserting claims under U.C.C. §§ 4A-204(a) and 4A-404 against Chain Bridge, and various state law claims against Chain Bridge, Evinger and Brough. JA19-53. The district court dismissed Blue Flame's state law claims for conversion, fraud, constructive fraud, negligence and breach of contract on federal law preemption grounds. JA54.

After Chain Bridge filed a third-party complaint against JPMorgan, asserting claims for indemnification under U.C.C. § 4A-211(f) and for unjust enrichment, all parties filed cross-motions for summary judgment. JA113-21. The district court entered summary judgment in Defendants' favor on each of Blue Flame's remaining claims and entered summary judgment in favor of Chain Bridge on its § 4A-211(f) claim for indemnification from JPMorgan. JA3066-103.

The district court concluded with regard to Blue Flame's U.C.C. § 4A-404(a) claim, 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 U.C.C. § 4A-211(c). JA3082-83. Nonetheless, the district court held that Blue Flame's U.C.C. § 4A-404(a) claim failed as a matter of law, because Blue Flame could not

"establish that it sustained any damage" from the return of California's funds. JA3083.

The district court also held that U.C.C. § 4A-204(a) is not applicable to the payment order that Chain Bridge generated to facilitate the return of California's funds to JPMorgan, because this payment order was "issued" by Chain Bridge, rather than "accepted" by Chain Bridge. JA3089. The district court further held that Blue Flame's tortious interference claims failed as a matter of law, because Blue Flame did not proffer evidence of any damage resulting from the return of California's funds. JA3090. Blue Flame's defamation claim also failed as a matter of law, because the district court found that there is no evidence in the record to show that Defendants made any false statements about Blue Flame or its principals. JA3090-91.

As a final matter, the district court held that there was "no evidence in the record of a communication between Chain Bridge and JPMorgan indicating an agreement to displace the default rule of automatic indemnity" under U.C.C. § 4A-211(f). JA3095. Accordingly, the district court concluded that the undisputed material facts established JPMorgan's liability to indemnify Chain Bridge under U.C.C. § 4A-211(f). JA3092-96.

Blue Flame and JPMorgan each filed timely notices of appeal.

On appeal, Blue Flame raises three challenges to the district court's decision. First, Blue Flame challenges the district court's decision that U.C.C.

§ 4A-204(a) imposes no liability on Chain Bridge for withholding and returning California's funds to JPMorgan. Second, Blue Flame challenges the district court's decision that its state law claims are preempted, insofar as these claims were directed at Chain Bridge's alleged falsification of the payment order generated to return California's funds. Third, Blue Flame argues that the district court erred in entering summary judgment on its U.C.C. § 4A-404(a) and tortious interference claims and finding that it suffered no damage from Chain Bridge's conduct. For its part, JPMorgan challenges the district court's determination that Chain Bridge is entitled to indemnification under § 4A-211(f).

II.

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). The Court asks whether, considering 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). The district court's dismissal of Blue Flame's state law claims is also reviewed *de novo*. *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020).

III.

A.

We agree with the district court that Blue Flame cannot prevail on its U.C.C. § 4A-204(a) claim against Chain Bridge. In Count II of the complaint, Blue Flame asserts a claim under that statute related to Chain Bridge's decision to return California's funds to JPMorgan. This provision provides, in relevant part, that:

> If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund.

U.C.C. § 4A-204(a).

To prevail on its U.C.C. § 4A-204(a) claim, Blue Flame must show that Chain Bridge, in the capacity of a receiving bank, accepted a payment order issued in Blue Flame's name as sender, to return California's funds. We agree with the district court that Blue Flame cannot make this showing for several reasons.

First, the record shows that the payment order generated to return California's funds was issued—rather than accepted—by Chain Bridge, at the request of JPMorgan. This payment order states that Chain Bridge is returning California's funds pursuant to JPMorgan's request. JA2214 (Chain Bridge's Fedwire message to JPMorgan stating that the action was taken "PER YOUR REQUEST."). The record also makes clear that JPMorgan is identified as the "receiving bank" for this payment order. JA2216. Given this, the undisputed evidence in the record shows that Chain Bridge did not accept the payment order generated to return California's funds in the capacity of a receiving bank.

Second, the undisputed record evidence makes clear that the payment order returning California's funds was not issued in the name of Blue Flame as sender. Rather, the record evidence shows that Blue Flame is identified as the "originator" of the funds transfer for this payment order. JA2216.[2]

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[2] Blue Flame argues that § 4A-204(a) applies even though the purchase order does not list Blue Flame as the sender, because Chain Bridge purported to accept a payment order naming it as the original sender of the funds transfer when the bank issued the payment order to JPMorgan and debited California's funds from its account. Blue Flame asserts that a funds transfer requires two payment orders—one from the customer to its bank ordering a payment and a second from the customer's bank to the

Given this, we agree with the district court that the undisputed record evidence shows that Chain Bridge did not accept the payment order returning California's funds in the capacity of a receiving bank, and that this payment order was not issued in the name of Blue Flame as sender. Accordingly, we affirm the district court's decision to grant summary judgment in Defendants' favor on Blue Flame's U.C.C. § 4A-204(a) claim.

B.

We also agree with the district court that Blue Flame's state law claims for conversion, fraud, constructive fraud, negligence and breach of contract are preempted by Article 4A of the Uniform Commercial Code ("Article 4A"). In Counts III, VI, VII, VIII, and X of the complaint, Blue Flame asserts that these state law claims against Chain Bridge relate to

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beneficiary actually sending the money. So, when Chain Bridge issued a payment order to JPMorgan's bank it was necessarily purporting to accept a payment order from Blue Flame and was fulfilling its duty to issue the second. This argument is without merit. What occurred here was not a funds transfer, but a cancellation, albeit an ineffective one. A cancellation does not require two payment orders, only "a communication of the sender of a payment order cancelling or amending the order . . . transmitted to the receiving bank . . . and the receiving bank's "agree[ment] to the cancellation of amendment." U.C.C. § 4A-211(a). Chain Bridge did not purport to fulfill a payment order from Blue Flame but complied with JPMorgan's refund request. To hold otherwise would mean that a bank violates U.C.C. § 4A-204(a) every time it complies with a cancellation and that cannot be true. Section 4A-204(a) is simply inapplicable to this situation.

the return of California's funds to JPMorgan *via* Fedwire. JA43 (alleging that Defendants had no legal justification to remove funds wired by California from Blue Flame's account); JA47-52 (alleging that Defendants decided to undo the transaction and closed Blue Flame's account without reason and the bank had no right to return funds paid to Blue Flame). The district court appropriately dismissed these claims, because they are foreclosed by the "strong doctrine of preemption" for "state causes of action that essentially overlap or dovetail" with the provisions of Article 4A. JA60.

The Federal Reserve Act gives the Board of Governors of the Federal Reserve System ("the Federal Reserve") the authority to promulgate "regulations governing the transfer of funds and charges . . . among Federal reserve banks and their branches." 12 U.S.C. § 248-1; *see also id.* § 248(i) (allowing the Federal Reserve to make "all rules and regulations necessary to enable" it to effectively perform its duty to safeguard Federal Reserve money). Pursuant to that authority, the Federal Reserve promulgated Regulation J Subpart B to "govern funds transfers through the Fedwire Funds Service." 12 C.F.R. § 210.25(a). Subpart B expressly incorporates the provisions of Article 4A, which similarly governs funds transfers. *Id.* In addition, the Federal Reserve's official commentary to Subpart B addresses preemption and provides, in relevant part, that:

> [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 such state law may apply to parties to funds transfers through the Fedwire Funds Service whose rights and obligations are not governed by subpart B of this part.

12 C.F.R. pt. 210, subpt. B, app. A, cmt. to § 210.25.

We held in *Donmar Enterprises, Inc. v. Southern National Bank of North Carolina,* that Regulation J preempts any state law cause of action premised on conduct falling within the scope of Subpart B, whether the state law conflicts with, or is duplicative of, Subpart B. 64 F.3d 944, 949–50 (4th Cir. 1995). In *Eisenberg v. Wachovia Bank, N.A.*, we also held that determining if a state law claim is preempted by Regulation J turns on whether the challenged conduct in the state law claim would also be covered under Subpart B. 301 F.3d 220, 223 (4th Cir. 2002).

The challenged conduct that gives rise to Blue Flame's state law claims here falls within the scope of Article 4A and, therefore, Subpart B. Blue Flame challenges Defendants' decision to return California's funds to JPMorgan *via* Fedwire—specifically alleging that Defendants had no right to "undo the transaction," JA48, "remove the funds," JA44, and "return the funds," JA52, and contesting their failure to "process the wire transfer," JA50. But U.C.C. § 4A-211 governs the cancellation or amendment of

payment orders, and explains what is necessary for a cancellation to be "effective." U.C.C. § 4A-211. U.C.C. § 4A-404 also addresses the obligation of the beneficiary's bank to pay the beneficiary once the bank accepts a payment order on the beneficiary's behalf. As we discuss below, this statute also provides a remedy—consequential damages—if the bank refuses to pay the beneficiary, absent effective cancellation. U.C.C. § 4A-404(a). These provisions directly cover Chain Bridge's decision to withhold and return California's funds *via* Fedwire pursuant to JPMorgan's refund request. In fact, as will also be discussed below, the district court concluded that JPMorgan's refund request was not an effective cancellation and Chain Bridge, therefore violated § 4A-404(a), by failing to pay Blue Flame, confirming our conclusion this statute envelops the challenged conduct.

Accordingly, we agree with the district court that Blue Flame's state law claims for conversion, fraud, constructive fraud, negligence and breach of contract relate to conduct that falls within the scope of Subpart B, and we affirm the district court's holding that these claims are, therefore, preempted. *Eisenberg*, 301 F.3d at 223; *see also* U.C.C. § 4A-102 cmt. (Article 4A preempts other law "in any situation covered by [its] particular provisions").

C.

We also agree with the district court that Blue Flame has not established damages to support its U.C.C. § 4A-404(a) claim, because the record evidence

shows that California would have canceled its contract with Blue Flame even if its funds had not been returned to JPMorgan *via* the Fedwire transfer.

The district court concluded that, although Chain Bridge violated § 4A-404(a) by returning California's funds to JPMorgan, Blue Flame could not establish that it sustained any damages from the return of these funds. JA3083. The district court reached this conclusion for two independent reasons.

First, the district court found that the evidence showed that California would have ended its relationship with Blue Flame even if Chain Bridge had released the funds, because Blue Flame could not fulfill the contract. JA3083-84. Second, the district court also found that there was no evidence in the record that Blue Flame would have successfully fulfilled California's order, even if Blue Flame had received the funds. JA3085. Because we agree that the record evidence shows that California would have canceled its contract with Blue Flame, even if its funds had not been returned, we affirm the district court's grant of summary judgment on this claim.

We first observe that California had the right to terminate its contract with Blue Flame for convenience. The record shows that California's purchase order with Blue Flame allows the State to terminate the order "for its convenience," if termination is "in the State's interest." JA1165. The purchase order also requires that, upon notice of termination, Blue Flame must stop work on the order. JA1165.

The record evidence also shows that, once California officials became aware of Blue Flame's origins, California immediately asked for its funds back. Notably, the record shows that almost immediately after the wire transfer was sent to Chain Bridge, JPMorgan reached out to California officials to inform them of Blue Flame's new creation and lack of experience. JA920. Chain Bridge had a similar conversation with California officials within an hour of receiving the wire transfer. JA1048-49; JA1054. The record also shows that JPMorgan initiated a fraud investigation regarding the wire transfer and that Chain Bridge promptly put a hold on the wired funds upon receipt. JA920; JA1016. Shortly thereafter, Chain Bridge returned California's funds to JPMorgan. JA1075-76.

The record evidence also makes clear that California did not intend to proceed with its contract with Blue Flame. After learning of Blue Flame's origins, California promptly "requested the funds be recalled," without knowing that JPMorgan had already received its funds back. JA0916; JA1079. The record also shows that, on the same day that California's funds were returned to JPMorgan, a California Department of General Services employee sent an email to multiple California employees stating that: "Funds are with [the State Treasurer's Office]. After further discussion we won't be moving forward with the vendor." JA1079. While California never explicitly canceled the purchase order with Blue Flame, Mike Gula testified that it "was clear" that the "deal was canceled by [California's] actions." JA0561.

This testimony is substantiated by other evidence in the record showing that, following the return of its funds, California declined Blue Flame's further attempts at negotiation and sent Blue Flame's correspondence to the FBI. JA2712-14. Given this, the record evidence shows that California would have terminated its contract with Blue Flame before Blue Flame could have filled any orders for face masks.

Lastly, the record evidence also makes clear that California would have requested the return of its funds before the funds would have been released to Blue Flame. Chain Bridge's CEO, John J. Brough, testified that Chain Bridge had an internal policy for new customer accounts that allowed it to hold funds transfers for one day after receipt. JA188. Pursuant to this policy, Chain Bridge would have held California's funds until the next day, if the bank had not returned the funds to JPMorgan.[3] JA191-92. As discussed above, the record evidence makes clear that, within this time frame, California would have requested the return of its funds and decided not to move forward with its contract with Blue Flame. JA916; JA1079. Accordingly, Blue Flame would not have had the opportunity to fill any part of California's order, because California would have canceled the contract and Blue Flame would have been required to

[3] At his deposition, Chain Bridge's CEO, John J. Brough, testified that Chain Bridge would have held the relevant funds until the next day regardless of JPMorgan's recall, pursuant to the bank's policy. JA191-92.

immediately stop work on the purchase order pursuant to the contract's terms. JA1165.

Because the evidence shows that California would have ended its relationship with Blue Flame, even if Chain Bridge had released its funds, we affirm the district court's decision that Blue Flame cannot establish damages for its U.C.C. § 4A-404(a) claim.[4]

We also find Blue Flame's argument that it is entitled to recover the amount of California's wire payment as damages under U.C.C. § 4A-404(a) to be unpersuasive. Blue Flame argues that Chain Bridge was required to pay it the full amount of California's wire transfer, because JPMorgan's cancellation of the wire transfer was not effective and U.C.C. § 4A-404(a) requires a bank to pay the beneficiary, absent an effective cancellation. Appellant's Br. at 54-55. This statute provides that: "[t]he right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement." U.C.C. § 4A-404(c).

Blue Flame argues that the statute establishes both a right to receive payment and its damages in this case. We disagree.

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[4] Blue Flame argues that the district court prematurely granted summary judgment on its damages claim, because there is a genuine issue of material fact in dispute regarding whether it could have completed the purchase order with California. Appellant's Br. at 49-54. But, there is no material dispute of fact in the record as to whether California would have canceled the contract. Accordingly, we need not address whether Blue Flame had the capability to fill the contract to resolve this claim.

We read this statute to simply recognize a beneficiary's right to payment and the right of the beneficiary to recover any damages resulting from a bank's refusal to make a payment. But we find no statutory right in § 4A-404(a) to receive the amount of the payment itself as damages, regardless of whether the beneficiary incurred actual consequential damages.

In fact, the plain language of § 4A-404(a) provides that, if the bank refuses to pay, "the beneficiary may recover damages *resulting* from the refusal[.]" U.C.C. § 4A-404(a) (emphasis supplied). The official comments to the statute confirm our reading of the statute and state that a refusal to pay the beneficiary "may result in *consequential* damages." *Id.* § 4A-404 cmt. 3 (emphasis supplied). Given this, we conclude that Blue Flame is not entitled to receive the amount of California's funds as damages under U.C.C. § 4A-404(a), absent proof of actual damages caused by the return of these funds. Accordingly, we affirm the district court's grant of summary judgment on this claim.

D.

We also affirm the district court's dismissal of Blue Flame's tortious interference claim, because Blue Flame has not established a valid contract with California. Blue Flame argues that California's decision to back out of its contract with Blue Flame, after receiving calls from Chain Bridge, shows that Chain Bridge interfered with its contract and business expectancy. Appellant's Br. at 56. The district court

granted summary judgment in Defendants' favor on these claims for three independent reasons.

First, the district court found that there were issues with the validity of the contractual relationship and business expectancy between Blue Flame and California, given Blue Flame's "apparent initial misrepresentation to California authorities." JA3090. Second, the district court found insufficient evidence to conclude that Chain Bridge had an "intent to disturb" the business relationship between Blue Flame and California. JA3090-91. Lastly, the district court found insufficient evidence in the record to show that Blue Flame could have fulfilled California's order and that California would not have cancelled the contract and insisted on the return of its funds. JA3091.

Because we agree that Blue Flame has not established a valid contractual relationship with California in this case, we affirm the district court's grant of summary judgment on Blue Flame's tortious interference claims.

To prevail on a tortious interference claim based upon interference with a contract or business expectancy, Blue Flame must show, among other things, the existence of a valid contract or business expectancy. *Chaves v. Johnson*, 335 S.E.2d 97, 102 (Va. 1985). The record shows that Blue Flame did not argue that it had a valid contractual relationship with California before the district court. JA11. Rather, Blue Flame argued that the parties stipulated that there was an agreement and that this stipulation

established a valid contractual relationship. JA11; *see also* Appellant's Br. at 55.

The record evidence makes clear, however, that the parties stipulated only that there was an agreement between Blue Flame and California. JA139. Accordingly, there is no stipulation in the record that this agreement was valid. JA139.

Blue Flame argues on appeal that reversal of the district court's decision is, nonetheless, required, because the district court failed to properly address the validity of its contract with California. Blue Flame's Reply Br. at 27. But, by failing to raise this issue before the district court, or in its opening brief, Blue Flame has waived this argument. *See Belk, Inc. v. Meyer Corp.*, 679 F.3d 146, 153 n.6 (4th Cir. 2012) (concluding the appellant waived an argument "by inadequately presenting the challenge in its opening brief"); *see also* Fed. R. App. P. 28(a)(8). Accordingly, we affirm the district court's dismissal of Blue Flames' tortious interference claims, because Blue Flame has not established a valid contractual relationship with California.[5]

E.

As a final matter, we agree also with the district court that JPMorgan is obligated to indemnify Chain

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[5] Because we conclude that Blue Flame fails to establish a valid contract with California, we need not reach Blue Flame's argument that the district court erred by entering summary judgment in favor of Chain Bridge on its U.C.C. § 4A-404(a) and tortious interference claims.

Bridge for the loss and expenses resulting from the return of California's funds under U.C.C. § 4A-211(f). This provision provides that:

> 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 fundstransfer 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.

U.C.C. § 4A-21l(f). The official comments to U.C.C. § 4A-211 also explain that:

> 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). The indemnification provision recognizes that a sender has no right to cancel a payment order after it is accepted by the receiving bank. If 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.

Id. at cmt. 5.

The record evidence shows that Chain Bridge accepted the payment order wiring California's funds to Blue Flame's account in the capacity of the receiving bank. JA936-37. Shortly thereafter, Chain Bridge agreed to return these funds to JPMorgan, at JPMorgan's request. JA2214. Because the record evidence shows that Chain Bridge, in the role of the receiving bank, accepted the payment order wiring California's funds to Blue Flame, and that Chain Bridge subsequently agreed to the cancellation of this payment order at JPMorgan's request, U.C.C. § 4A-211(f) governs the parties' obligations with regards to indemnification.

On appeal, JPMorgan advances the same three arguments that it unsuccessfully raised before the district court to argue that it has no obligation to indemnify Chain Bridge under § 4A-211(f). Namely, that: (1) § 4A-211(f) is not applicable, because Chain Bridge cancelled the payment order wiring California's funds to Blue Flame's account for its own reasons; (2) the parties agreed that JPMorgan would not indemnify Chain Bridge, displacing automatic indemnification; and (3) Chain Bridge cannot establish that its claimed loss and expenses were caused by JPMorgan's conduct. We find these arguments unpersuasive.

First, as discussed above, the record evidence makes clear that JPMorgan cancelled the payment order wiring California's funds when it sent a message to Chain Bridge *via* Fedwire asking for the return of these funds. JA1064-65. We also agree with the district court that U.C.C. § 4A-211(f) does not impose

any requirement that Chain Bridge accommodate this cancellation request solely to benefit JPMorgan. There is no language within § 4A-211(f) that requires the receiving bank to have a certain subjective motivation when accepting cancellation. In fact, as the commentary to § 4A-211(f) notes, when a receiving bank agrees to a cancellation, it does so "as an accommodation to the sender" and is "*automatically* entitled to indemnification," because a receiving bank is never required to agree to cancellation once it has accepted the original payment order. U.C.C. § 4A-211(f) cmt. 5 (emphasis added). The use of the word "automatically" in the official comment to this statute also suggests that indemnification is certain, regardless of the circumstances. [6] Given this, JPMorgan is not relieved of its obligation to indemnify Chain Bridge under U.C.C. § 4A-211(f), even if Chain

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[6] JPMorgan argues that common law indemnification principles apply and support its argument. Notably, the Uniform Commercial Code provides that "[u]nless displaced by the particular provisions of [the U.C.C.], the principles of law and equity . . . supplement its provisions." U.C.C. § 1-103(b). Under common law indemnification principles, an indemnitee whose liability is "technical, passive or secondary" can shift "the burden for the entire loss . . . to the indemnitor whose actual fault caused the injury." *White v. Johns-Manville Corp*., 662 F.2d 243, 249–50 (4th Cir. 1981). Where an indemnitee "active[ly]" caused the injury, "an essential predicate to the[] right to indemnification is necessarily missing." *Id.* at 250. However, we conclude that the § 4A-211(f) displaces common law principles by allowing for automatic indemnification. *See Banca Commerciale Italiana v. N. Trust Int'l Banking Corp.*, 160 F.3d 90, 94 (2d Cir. 1998) (noting that § 4A-211 does not require the plaintiff to meet common law indemnification elements).

Bridge had its own reasons for agreeing to the cancellation of the payment order.

Second, JPMorgan's argument that the parties reached an agreement to displace the automatic indemnification default rule under U.C.C. § 4A-211(f) is unsubstantiated. JPMorgan correctly observes that it would not be obligated to indemnify Chain Bridge if the parties agreed to displace this default rule. But, JPMorgan's reliance upon an internal Chain Bridge phone call to show that Chain Bridge and JPMorgan reached such an agreement is misplaced.[7] We agree with the district court that this internal phone call among Chain Bridge employees does not establish a meeting of the minds between Chain Bridge and JPMorgan regarding indemnification. In fact, JPMorgan was not even aware of the conversation until this litigation ensued. JA3094; *see also* U.C.C. § 1-201(b)(3) (an agreement could include a "bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade").

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[7] During this internal phone call, a Chain Bridge employee (Claudia Mojica-Guadron) asked, "Are we getting an indemnity letter from [JPMorgan]?" Evinger or Brough responded: "They're sending a recall notice through Fed[Line] . . . just return it to the same place it came from." JA346. Another Chain Bridge employee then asked, "Claudia, you mentioned the indemnity letter, is that part of the procedures usually?" Mojica-Guadron replied: "Normally you want to get that from the other bank, just because, and in this case because we credited the customer's account." Evinger or Brough then cut in and said: "It's okay, don't worry about it . . . It is what it is." *Id*.

Finally, we agree with the district court that this litigation is evidence of the loss and expenses that Chain Bridge has incurred due to JPMorgan's request for the return of California's funds. Accordingly, we affirm the district court's decision that JPMorgan must indemnify Chain Bridge under U.C.C. § 4A-211(f).

IV.

For the reasons set forth herein, we affirm the district court's grant of summary judgment in Defendants' favor on Blue Flame's U.C.C. § 4A-204(a) claim and Blue Flame's state law claims for conversion, fraud, constructive fraud, negligence and breach of contract. We also affirm the district court's grant of summary judgment in favor of Defendants on Blue Flame's U.C.C. § 4A-404 and tortious interference claims. Lastly, we affirm the district court's grant of summary judgment in Chain Bridge's favor on its claim that JPMorgan is obligated to indemnify Chain Bridge under U.C.C. § 4A-211(f).

AFFIRMED.

APPENDIX B

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

BLUE FLAME MEDICAL LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CHAIN BRIDGE BANK, N.A., et al.,	)	
	)	
Defendants.	)	
	)	1:20-cv-658
	)	(LMB/IDD)
CHAIN BRIDGE BANK, N.A.,	)	
	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	
JPMORGAN CHASE BANK, N.A.,	)	
	)	
Third Party Defendant.	)	

MEMORANDUM OPINION

Before the Court are the motion for summary judgment of defendants Chain Bridge Bank, N.A. ("Chain Bridge"), its Chief Executive Officer, John

Brough ("Brough"), and its President David Evinger ("Evinger") against plaintiff Blue Flame Medical LLC ("Blue Flame" or plaintiff") [Dkt. No. 118]; plaintiff Blue Flame's cross-motion for partial summary judgment motion against defendants [Dkt. No. 127]; third-party plaintiff Chain Bridge's summary judgment motion against third-party defendant JPMorgan Chase Bank, NA ("JPMorgan") [Dkt. No. 122]; and JPMorgan's cross-motion for summary judgment against Chain Bridge [Dkt. No. 112]. For the reasons that follow, defendants' motion for summary judgment against plaintiff Blue Flame will be granted, and plaintiff Blue Flame's motion will be denied. Additionally, third-party plaintiff Chain Bridge's motion for summary judgment against third-party defendant JPMorgan will be granted, and JPMorgan's cross-motion for summary judgment will be denied, leaving the amount of attorney fees and litigation expenses owed to Chain Bridge by third-party defendant JPMorgan as the only issue remaining to be resolved.

I. FACTUAL BACKGROUND

Before the onset of the COVID-19 pandemic, John Thomas ("Thomas") and Michael Gula ("Gula") were political consultants. As of late 2019 and early 2020, Thomas and Gula had no "experience in the field of medical supplies," no "specialized training or certifications relating to supply chain management," and no "specialized training or certifications in the

healthcare industry," Def. Ex. 1 (Gula Tr.), 25:6-18[1]; nevertheless, in February of 2020, Thomas and Gula decided to tum their attention from political consulting to "connecting ... medical supply companies with buyers." Pl. Ex. 85 (Bearman Tr.), 53:12-14. Email records indicate that in March of 2020, Thomas and Gula were seeking out possible contracts, including by paying referral fees to various industry contacts. Def. Ex. 4 (March 17, 2020 email labeled "Current contracts 3.17"). On March 23, 2020, Thomas and Gula formed Blue Flame Medical LLC by filing a Certificate of Formation with the Delaware Secretary of State. Def. Ex. 5.

A. The California Negotiations

On March 20, 2020—before Blue Flame's certificate of incorporation was filed—California's State Controller, Betty Yee, was contacted by an acquaintance of John Thomas who had fundraised for her in the past, and who sent her a text message relating: "I received this text from John Thomas a lobbyist involved in stimulus: [']I have 1 00mil 3m masks sitting here at the Port. Of Long Beach. Can you reach out to newsoms [sic] people?[']" Def. Ex. 15; see also [Dkt. No. 119] at 5 n.3.[2] Yee contacted Thomas to discuss whether he was in a position to supply N95

[1] Chain Bridge's exhibits ("Def. Ex.") have been filed at Docket Numbers 130, 131, and 142. Blue Flame's exhibits ("Pl. Ex.") have been filed at Docket Numbers 132 and 150.

[2] There is no evidence in the record that either Thomas or Blue Flame had 100 million 3m masks in the Port of Long Beach at that, or any, time.

masks to the state of California, see Def. Ex. 12, and through Yee, Thomas and Gula were put in touch with California's Department of General Services ("DOS"), the entity responsible for contracting with vendors for supplies. Id. at 200123. At his deposition, Thomas conceded that Blue Flame never sold any of the 100 million masks he claimed to have had available at the Port of Long Beach, and although he insisted that there were "imminent" deals to move that many masks, he was unable to "specifically recall" any of them. Def. Ex. 2 (Thomas Tr.), 101:1-103-1. On March 25, 2020, only two days after Blue Flame's formation, DOS issued Blue Flame a purchase order for a total of 100 million N95 masks in four specified models, for a total price of $609,161,000.00, 75% of which was required to be pre-paid. Def. Exs. 6-7 (Blue Flame Invoice; DOS Purchase Order). The purchase order incorporated the terms included in Form GSPD – 401 Non-IT Commodities, see Def. Ex. 7, which included a provision allowing California to "terminate performance of work under this Contract for its convenience ... if [DOS] determines that a termination is in the State's interest." Def. Ex. 79 at 123(a). The purchase order also included a delivery date of April 3, 2020, although DOS contract administrator Michael Wong ("Wong") clarified at his deposition that DOS only expected an initial delivery on April 3. Def. Ex 7; Def. Ex. 8 (Wong Tr.), 108:21-109:7 (explaining that a failure to make an initial delivery by April 3 would have been considered a breach of the contract). Wong also testified that, based on representations by Blue Flame, DOS expected at least 63 million N95 masks to be delivered no later than within 30 days, id. at 71:18-

72:8 (citing Def. Ex. 10), and then-Director of DOS Daniel Kim ("Kim") testified that Blue Flame had indicated that the entire order of 100 million N95 masks would be delivered to California within "days or weeks." Def. Ex. 11 (Kim Tr.), 39:6-14.

At 11:46 PM on March 25, 2020—the same day that DOS submitted its purchase order to Blue Flame—Thomas sent Kim and Wong a message that included "a list of rough delivery timelines" for the 100 million N95 masks. Def. Ex. 9. Thomas explained that he had "[s]pent some time talking to [his] main manufacturer, Henry Huang," and that he told Huang that if they "deliver on time and [do] what we said we[']d do," they might establish a good relationship with California for later orders. Thomas represented that Huang "moved Heaven and Earth to steal from neighboring factories and promised to deliver the full order from his shop alone ... You'll see on my chart the delivery dates are early." Id. The chart indicated that the first million N95 masks would be delivered on April 2, 2020 and that the entire shipment would be delivered no later than April 24, 2020. Id.

At his deposition, Kim was asked whether, at the time when the purchase order was submitted, he was aware that Blue Flame had only existed for two days, was not registered to conduct business in California, had not yet delivered any N95 masks to any customers, and had opened its bank account only the day before. Def. Ex. 11 (Kim Tr.), 82:20-85:8. Kim testified that he was unaware of those facts, and that if he had known that information when negotiating

with Thomas and Gula, it would have "raised alarm bells." Id.

B. The Chain Bridge Bank Account

On March 23, 2020, in anticipation of receiving California's purchase order, Gula went to the McLean, Virginia office of Chain Bridge to open a bank account for Blue Flame. To open the account, Gula filled out an Account Agreement form on which he represented that the nature of Blue Flame's business was "[m]edical consulting." Def. Ex. 31 (Account Agreement). He also estimated that the average amount the account would receive in domestic and foreign wire transfers per month would total $100,000,000, and the average amount wired out of the account monthly would be $25,000,000. Def. Ex. 30.[3] Based on the forms Gula completed, Chain Bridge opened an account in Blue Flame's name, and provided Gula with instructions for wiring funds to the account. Def. Exs. 34-35; see also Pl. Exs. 24-25.

At around 3:30 PM[4] on March 25, 2020, Gula called Chain Bridge's Senior Vice President and Branch Manager Heather Schoeppe ("Schoeppe") to

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[3] Early on the same morning that Gula visited Chain Bridge to set up the account, Blue Flame's attorney Ethan Bearman cautioned him: "Odd money moves raise red flags and can hold up transactions. Be VERY CLEAR with the bank that we have gigantic orders coming in from the State of California and we will provide documentation of the order." Def. Ex. 32. Gula responded, "Got it." Id.

[4] The times of phone calls are included in Dkt. No. 130 and Pl. Ex. 62.

inform her that "the state of California is sending an unbelievably large wire transfer in the amount of $450 million." Def. Ex. 37 (audio recording). Gula asked Schoeppe to call or email him "the second" that the wire transfer from California hit his account, which Schoeppe agreed to do. Id. At around 6:15 PM that same day, Schoeppe called Gula back to ask for more information about the incoming wire. Def. Ex. 38 (audio recording). Specifically, she asked what the purpose of the wire transfer was, to which Gula responded that "we're buying 100 million masks for the State of California from China." She also asked when Blue Flame would likely wire the funds out of the account. Gula said that he did not know exactly when the funds would be wired out, and speculated that it would probably not be all at once, because he thought they would pay some unspecified entity in China as the masks were manufactured. Gula told Schoeppe he would have a better idea of how long the money would be in the account the next day. Id.

After her conversation with Gula, Schoeppe called the bank's Chief Financial Officer Joanna Williamson ("Williamson"), to ask whether it would be feasible to accept a wire for $450 million. Pl. Ex. 30 (audio recording). Williamson acknowledged that it was a large sum, but told Schoeppe "we'll do whatever we need to do" to accommodate it. Id. Williamson also told Schoeppe that a deposit of that size would affect the bank's balance sheet and "capital ratios," but without more analysis or more information about how long the funds would remain in the account, she was not sure whether the impact would be negative. Id.

Next, Schoeppe reported to Chain Bridge's Chief Executive Officer, defendant Brough, and its President, defendant Evinger, explaining to them that Gula had "been calling all day" and summarizing her conversations with him. Def. Ex. 39 (audio recording). Either Evinger or Brough—it is unclear who from the recording—promptly Googled Gula, and found a report about a deal for 1 million masks, but did not find any report of a deal involving 100 million masks. Evinger or Brough then said, if Gula was telling the truth about the size of the wire, "we can't hold that money on our balance sheet," and Gula would need to agree to an arrangement that would spread the funds out over various accounts. Id. Evinger or Brough affirmed that "on a normal day" the bank "would do" a transaction of the size that Gula had described, but then observed that this was "kind of a weird transaction." During the call, Schoeppe looked up Blue Flame and learned that it had only been founded the day before, and after some discussion, Evinger or Brough opined that it was "unbelievable" that a two-day old business had been awarded a $450 million-contract from the State of California.

Evinger and Brough next called Gula directly. That call was not recorded and there is disagreement over exactly what was said, compare [Dkt. No. 119] at ¶ 14 with [Dkt. No. 149] at ¶ 14; however, the parties agree that Evinger and Brough asked Gula for documentation showing that the deal with California was legitimate. It is undisputed that Blue Flame never sent Chain Bridge the requested documentation. See id.; Def. Ex. 45; Pl. Ex. 84. The parties also agree that

Evinger and Brough informed Gula that a deposit of $450 million would not be covered by FDIC insurance, and that the funds would need to be placed into "sweep-accounts" spread out over multiple institutions, also referred to as the "ICS Program." See Pl. Ex. 84. On her earlier call with Williamson, Schoeppe had stated that she planned to prepare the paperwork needed to keep the funds in separate accounts, and after their call with Evinger and Brough, they likewise instructed employees to go ahead and prepare the ICS Program paperwork. Pl. Ex. 59.[5]

At 6:17 PM on March 25, 2020, Brough emailed Gula: "Just one question. Did you send any money to China or others as a 'fee' for these transactions?" Pl. Ex. 37; Def. Ex. 45. Gula responded, "[N]o, we have not sent the money to [C]hina but when we do this is where we are sending it," and included instructions for wiring funds to Wingar Industrial, Inc. Id. at 13448. Wingar Industrial, Inc. is evidently the United States-based affiliate of Great Health Companion, the Chinese company from whom Blue Flame intended to source the majority of the masks for California's order, see Pl. Ex. 95 at ¶ 28; however, when Evinger searched for Wingar Industrial, Inc. online, he could find only that it was a "cutlery company," which "raised more

[5] After the wire transfer had been received from California's bank and credited to Blue Flame's account, Chain Bridge's employees learned that "the ICS program has a maximum limit of $125 mil." Pl. Ex. 59 (email from Senior Vice President and Commercial Banking Manager Mike Richardson).

red flags" for Chain Bridge. Def. Ex. 40 (Brough Tr.), 159:18-160:2.

C. The Payment Reversal

On March 26, 2020, at 11:21 AM ET, a representative from the California State Treasurer's Office originated a wire transfer in the amount of $456,888,600, for Blue Flame's benefit, through California's bank, third-party defendant JPMorgan. [Dkt. No. 96] at ¶ 15 (Stipulation of Uncontested Facts). Rakesh Korpal, a JPMorgan Executive Director and the leader of JPMorgan's Fraud Payments Control Team, testified that the outgoing wire triggered an alert in the "roll payment guardian application[,] which is screening for suspicious transaction activity." Def. Ex. 47 (Korpal Tr.), 44:3-6. As a result of the alert, an agent for JPMorgan contacted the bank's California clients to verify approval for the transaction, which California confirmed. Id. at 44:7-14. At 11:55 AM, Chain Bridge received the incoming wire, which was credited to Blue Flame's Account. See Def. Ex. 50; Pl. Ex. 59 at 663-664 (email from Chain Bridge Operations Associate Rick Claburn reporting to management that the "wire has been received and credited to the client's account"). At 11:57 AM, Gula received an automated "Incoming Wire Confirmation" informing him that $456,888,600.00 had been received on Blue Flame's behalf. Def. Ex. 52.

Because Chain Bridge officials remained concerned about the transaction, at 12:07 PM, only ten minutes after Chain Bridge received the transfer,

Evinger ordered that a hold be placed on the funds. Def. Ex. 55. Meanwhile, Korpal was attempting to gather more information about the transaction from California officials, "given the value of the transaction." Def. Ex. 47 (Korpal Tr.), 61:10-22. Although an official in the California State Treasurer's Office confirmed the details of the transaction to Korpal, he asked his colleague Tim Coffey ("Coffey") "to call Chain Bridge Bank to determine if they knew the beneficiary of the funds and what the disposition of the transactions or the funds were at that point." Id. at 62:11-18. Coffey called Chain Bridge at approximately 12:30 PM and asked to speak to someone in either the wire transfer or fraud departments, relaying that JPMorgan had "concerns of fraud" related to the Blue Flame transaction. Def. Ex. 57 (audio recording). Coffey testified that he was put in touch with Evinger, who he remembers telling him that Chain Bridge had "similar suspicions" and "had already been engaged in holding on to the funds at that time." Pl. Ex. 63 (Coffey Tr.), 64:19-65:7.[6]

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[6] In Blue Flame's opposition brief, it argues that during this call Evinger "falsely stated that Chain Bridge had not credited Blue Flame's account," and that "[t]hat statement was significant since JPMC believed (mistakenly) that the funds could be returned without Blue Flame's authorization as long as they had not been credited to Blue Flame's account." [Dkt. No. 149] at ¶ 21. This characterization is not consistent with the portions of

At 12:44 PM, Korpal called Chain Bridge and spoke with Brough and Evinger, explaining JPMorgan's concern that the "amount seems to be quite high for the supplies that they're purportedly paying for" and asking Chain Bridge, "Is it a new account or a well-established business?" Def. Ex. 59 (audio recording). Brough explained: "The money went into an account that is brand new, it was opened by an existing client, he's been a client for about 10 years. He's a lobbyist." Id. Brough recounted his and Evinger's conversations with Gula the previous day, and told Korpal, "We asked him a number of questions—he had answers to all the questions, of course." Id. Brough and Evinger said they had had

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Coffey's deposition transcript that Blue Flame cites: Coffey testified that he learned from Evinger that a hold had already been placed on the funds, but Coffey does not testify that Evinger told him that the funds had not yet been credited to Blue Flame's account. See Pl. Ex. 63 at 64-66. On the other hand, Korpal testified that "Tim [Coffey] and I spoke with" Chain Bridge and "[t]hey confirmed that the transaction had not been credited to Blue Flame Medical's account." Pl. Ex. 44 (Korpal Tr.), 63:3-9. In the recorded calls between Korpal, Brough, and Evinger, neither Brough nor Evinger makes any statement that the funds had not yet been credited to Blue Flame's account. See Def. Exs. 59, 63 (audio recordings). As a result, there does not appear to be any non-hearsay evidence in the record that Chain Bridge told Coffey or Korpal that the funds had not yet been credited to Blue Flame's account while they were being held for investigation; however, as discussed below, there was testimony that Chain Bridge later represented to California's State Treasurer's Office that the funds had not been credited to Blue Flame's account before JPMorgan recalled the funds. See Def. Ex. 62 (Gonzalez Tr.), 50:11-15.

difficulty contacting anyone in California's state government who was able to verify the transaction, and Korpal told them that he planned to "get in touch with the banker for the State of California" to ask for additional details about the transaction, because JPMorgan's Global Investigations Team was "coming back to [him] and saying, this does not look right either," and because his own research was "all leading to not-good places." Id.

At 12:51 PM, Fee Chang—an employee of California's Department of General Services—called Chain Bridge in response to a voicemail that Chain Bridge had left on the department's main telephone line. Def. Ex. 60 (audio recording). In the voicemail, Chang "confirm[ed]" that the transfer was "legitimate," but asked Chain Bridge to call her back to confirm the exact amount of the transfer. Id. At 12:55 PM, Brough and Evinger called Chang to ask for "documentation to support ... that funds were transferred properly." Def. Ex. 61 (audio recording). Chang replied that the funds had been transferred by the California State Treasurer's Office, and referred Brough and Evinger to Natalie Gonzalez, whom Chang stated was "in charge of the transfers." Id.

At 1:19 PM, Natalie Gonzalez and Mark Hariri of the California State Treasurer's Office called Brough and Evinger to discuss the transfer of funds to Blue Flame's account. Gonzalez testified at her deposition that she and Hariri "were told by Chain Bridge Bank, that the account had just been opened the day previously by a lobbyist." Def. Ex. 62 (Gonzalez Tr.), 53:12-14. Gonzalez also recalled "the president of the

bank" telling her that the funds had not "been credited to the client account at that time," and in response she and Hariri asked Chain Bridge to "wait until [they could] find out additional information" from the Department of General Services. Id. at 49:12, 50:11-15. During her deposition, when Gonzalez was asked whether Evinger or Brough (who she did not remember being on the call) had told her anything about Blue Flame other than "that the account had just been opened the day previously by a lobbyist," she said no, they had not. Id. at 53:6-16.

At 1:34 PM, Brough and Evinger again spoke with Korpal. Def. Ex. 63 (audio recording). During that call, Evinger asked, "Is there any way for JPMorgan to issue a recall for the wire, so that while you intervene in this you have the funds and feel more comfortable?" Korpal responded, "Well, I feel comfortable that you're holding the money right now. I can issue a recall. But I don't think you and I want to get onto the front page of the Wall Street Journal, especially if this is a legitimate transaction." Id. Korpal asked for "a few more minutes" to determine a course of action, and Evinger and Brough responded that they looked forward to hearing back from him. Id.

Just minutes later, at 1:37 PM, Korpal's colleague, Coffey called Evinger and Brough to explain, "We're going to be recalling those funds, OK? We have enough concerns that we feel we need to call those funds back. Do you need a recall message from us, or what are you looking for from us?" Def. Ex. 64 (audio recording). Chain Bridge asked for an official communication from JPMorgan, over the Fedline platform, requesting a

recall of the funds. Id. Korpal testified at his deposition that he made the decision to recall the funds from Chain Bridge, Pl. Ex. 44 (Korpal Tr.), 79:14-19, and that at the time he was under the impression that the funds were properly subject to recall, because Coffey had told him that the funds had not yet been credited to Blue Flame's account. Id. at 38:14-40:9, 62:8-64:2.

At 1:55 PM, Chain Bridge notified Gula that it had "received official notice from the sending bank to return the wire," and advised Gula to "resolve [the matter] directly with the state of California." Def. Ex. 67. At 2:05 PM,[7] JPMorgan sent a message to Chain Bridge via the Fedwire Funds Processor, officially asking for the return of the funds. Def. Ex. 65. According to Korpal, the actual recall of the funds corresponded with a 2:00 PM request from the California State Treasurer's Office that JPMorgan recall the funds, because the Office was "not comfortable" with the Department of General Service's due diligence. Def. Ex. 47 (Korpal Tr.), 21:11-22:17.[8]

At approximately 2:30 PM, Gula came to Chain Bridge to speak to Brough and Evinger. Brough

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[7] Plaintiff quibbles that Chain Bridge's records show the recall occurring at 1:45 PM, see [Dkt. No. 149] at ¶ 28 (citing Pl. Ex. 70); however, it is not clear what service or application generated the record to which plaintiff cites, and the Fedwire message itself states "Create Time: 2020-03-26 14:05:47.902." Def. Ex. 65.

[8] Later that evening, Gonzales asked JPMorgan "to reach out to Chain Bridge Bank and see where the wire-recall is in the process" Def. Ex. 66.

testified that Gula apologized for the transaction and did not object to the return of funds. Def. Ex. 40 (Brough Tr.), 305:10-22. In his deposition, Gula explained that he did not "ask them ... not to return the money to California or its bank" because Chain Bridge "didn't ask. They just took it," and because he was under the impression that Chain Bridge "had already stolen the money out of my account." Pl. Ex. 1 (Gula Tr.), 208:18-20, 209:6-7. At 3:21 PM, Chain Bridge returned the funds to JPMorgan, noting in the accompanying Fedwire message that the action was taken "PER YOUR REQUEST." Def. Ex. 68. The funds posted to California's JPMorgan account by 4:02 PM. [Dkt. No. 96] at ¶ 34.

D. The Feasibility of Fulfilling the California Contract

On March 26, 2020—the same day that the wire transfer was reversed—the deputy director of the Department of General Services announced in an internal email that the "wire transfer was processed on STO's [California State Treasurer Office's] end but not completed. Funds are with STO. After further discussion we won't be moving forward with the vendor." Pl. Ex. 76. On March 27, 2020, Thomas reached back to Betty Yee, California's State Controller who was Thomas's first contact in the state government. Thomas messaged Yee, "I'm sure you heard about my bank bouncing payment hours after it went through. Unbelievable. However, I've come up with a work around for the product I have in route."

Def. Ex. 12 at 200132.[9] Yee responded that Thomas needed to communicate directly with General Services Director Daniel Kim, that he should "cease to keep [Yee] in the loop," and that he had a "credibility issue" that he needed to solve. Id. at 200133.

Blue Flame tried to continue negotiating with the Department of General Service's Contract Administrator Wong, but Wong declined to enter into a new agreement with Blue Flame and began forwarding all Blue Flame correspondence directly to the FBI. Pl. Exs. 108, 109.

On April 8, Congressional Representative Katie Porter of the 45th District of California wrote to the Principal Deputy Inspector General of the Department of Health and Human Services about concerns of "potential price gouging regarding personal protective equipment during the COVID pandemic," identifying Blue Flame as a "potentially costly and burdensome middleman." [Dkt. No. 1] at ¶ 81. In a letter dated June 22, 2020, responding to congressional investigators, Blue Flame provided a "list of all contracts, orders, or agreements that Blue Flame has entered into with federal, state, or local governments or governmental entities for medical supplies or equipment." Def. Ex. 73 at 163508. Of the 24 entities listed, Blue Flame only filled two orders: one for 96,000 N95 masks purchased for Chicago by an anonymous buyer on April 16, 2020, for which 100,000 masks were delivered on May 26, 2020, Id. at 163513;

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[9] There is no evidence in the record that any product was actually en route at that time.

Pl. Ex. 112, Schedule A at 5; and an order for 1.55 million N95 masks purchased by Maryland. Pl. Ex. 111. The Maryland order, placed on April I, 2020, was initially cancelled after Blue Flame encountered issues with its supplier, Great Health Companion Group, which informed Blue Flame that "it could not deliver the masks because of the actions of the Chinese Government." Def. Ex. 73 at 163508. Blue Flame ultimately reached a settlement agreement with Maryland on October 9, 2020, under which it delivered the 1.55 million masks. Pl. Ex. 111. Blue Flame has not identified any other order or contract for N95 masks that it was able to fulfill.

II. PROCEDURAL HISTORY

On June 12, 2020, Blue Flame filed a Complaint alleging ten counts against the defendants under federal and state law, five of which were dismissed on September 8, 2020. [Dkt. Nos. 1, 31]. In the remaining counts, Blue Flame alleges that Chain Bridge violated the Uniform Commercial Code ("UCC"), as incorporated in Federal Reserve Regulation J, § 4A-404(a) (Count I) and § 4A-204(a) (Count 11); and that all defendants committed tortious interference with a contract (Count IV), tortious interference with a business expectancy (Count V), and defamation (Count IX). On September 29, 2020, defendants filed their answer asserting a counterclaim against Blue Flame to recover their attorneys' fees, based on the Terms and Conditions governing Blue Flame's bank account; however, the Court granted a motion to dismiss that counterclaim on November 11, 2020. [Dkt. Nos. 38, 67]. On October 13, 2020, Chain Bridge

filed a third-party complaint against JPMorgan, seeking indemnification under Regulation J or under a theory of unjust enrichment, which JPMorgan answered on November 16, 2020. [Dkt. No. 43, 64]. After engaging in discovery, each party has filed one or more motions for summary judgment; the motions have been fully briefed and oral argument has been held. For the reasons discussed in open court and in this Memorandum Opinion, defendants' motions for summary judgment will be granted as to plaintiff Blue Flame and third-party defendant JPMorgan. Plaintiff Blue Flame's cross-motion for partial summary judgment and JPMorgan's cross-motion for summary judgment will be denied.

III. DISCUSSION

A. Standard of Review

A court must grant summary judgment where "there is no genuine issue as to any material fact and ... the movant is entitled to judgment as a matter of law." Norfolk S. Ry. Co. v. City of Alexandria, 608 F.3d 150, 156 (4th Cir. 2010) (quoting Fed. R. Civ. P. 56). Where there are cross-motions for summary judgment, a court must "consider and rule upon each party's motion separately to determine whether summary judgment is appropriate as to each." Monumental Paving & Excavating, Inc. v. Penn. Mfrs. Ass'n Ins. Co., 176 F.3d 794, 797 (4th Cir. 1999).

B. Blue Flame's Claims against Chaing Bridge, Brough, and Evinger

A. Count I (UCC § 4A-202(a))

Plaintiff alleges that Chain Bridge violated UCC § 4A-404(a) by returning the wired funds to JPMorgan after crediting the funds to plaintiff's account. Section § 4A-404(a) provides that: "if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order."[10] To make out a claim under UCC § 4A-404(a), Blue Flame must show that Chain Bridge accepted a payment order, and then failed to pay the amount of the order to Blue Flame, the beneficiary. Unlike at the dismissal stage, defendants no longer argue that Chain Bridge did not "accept" a payment order on Blue Flame's behalf, and evidence in the record establishes that the funds were "accepted" because they were credited to Blue Flame's account. See Def. Ex. 50; Pl. Ex. 59 at 663-664 (email from Chain Bridge Operations Associate Rick Claburn reporting to management that the "wire has been received and credited to the client's account"); Def. Ex. 52. Instead, defendants argue that although the payment was initially accepted, they should not face liability for its return because JPMorgan cancelled the payment. This argument relies on § 4A-211(e), which provides: "A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation

[10] Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e)

based on the acceptance." Whether a cancellation order can trump an acceptance depends on whether the cancellation is "effective":

> (c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.
>
> …
>
> (2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator.

Id. at § 4A-211(c)(2). In other words, to effectively cancel after accepting the order, (1) Chain Bridge must agree to the cancellation, and (2) the cancellation must be made to correct for one of the specified mistakes: a duplicate order, a misstated beneficiary, or an erroneous amount. Although Chain Bridge did agree to return the funds, none of the specified mistakes

applies. Therefore, defendant Chain Bridge's obligation to its customer, Blue Flame, cannot be nullified through the cancellation process.

Defendants try to argue that 211(c) is irrelevant, because § 4A-211(e) broadly provides that "any" cancellation of a payment order—not just an "effective" cancellation—"nullifies the consequences of acceptance." [Dkt. No. 119] at 17. This argument lacks textual support, and defendants do not cite any cases that follow their strained reading of the regulation.

Defendants try to avoid this conclusion by arguing that the cancellation was effective under § 4A-211(c) because the wire transfer was a "mistake" given that "California originated the funds transfer only as a result of having been misled about Blue Flame's bona fides as a PPE supplier." [Dkt. No. 119] at 17. Although this may be true regarding the underlying transaction between California and Blue Flame, the banking regulations at issue govern only the transfer of funds. Therefore, in the context of banking regulations, a mistake must be one made by the sending bank in the course of effecting a transfer. The only case cited by defendants actually makes this clear. In CFTC v. Rust Rare Coin Inc., 469 F. Supp. 3d 1211 (D. Utah 2020), the court found that a mistake in the underlying transaction should not be conflated with the mistakes governed by the regulation:

> Mr. Jacobson does not argue that the transfer was unauthorized. Instead, he contends that because RRC was defrauding its investors

> (including Mr. Jacobson), it was a "mistake" to transfer funds to RRC.
>
> There is no authority supporting this interpretation of mistake. This situation is simply not covered by the three types of mistakes identified in Subsections (i) through (iii) of the statute. Subsections (i) and (iii) involve mistakes regarding the amount of the transfer (e.g. the correct amount was accidentally sent twice or more money was sent than the transferor intended). Subsection (ii) involves a mistake regarding the identity of the transferee. Mr. Jacobson did not make a mistake regarding either the amount of the transfer or the identity of the transferee.
>
> Mr. Jacobson urges the court to embrace a broader interpretation of Subsection (ii), arguing that the words "not entitled to receive payment" imply more than just mistaken identity. The court disagrees. The official comments to the U.C.C. clearly explain that "not entitled," in this context, refers to a mistaken identity.

Id. at 1218 (citing UCC § 4A-211 cmt. 4). Although not binding on this Court, CFTC highlights the strict scope of the banking regulations. These regulations create default rules that allocate the risk of loss between banking entities and their customers for problems that happen during fund transfers. The regulations do not govern the underlying transactions

that result in those fund transfers, which may have problems of their own. Accordingly, Chain Bridge cannot rely on problems with the underlying transaction to escape its obligation to its customer under the banking regulations.

Although defendant Chain Bridge violated § 4A-404(a) by returning the wire to JPMorgan after the wire had been credited to Blue Flame's account, summary judgment is still appropriate in defendant's favor because plaintiff cannot establish that it sustained any damage from that return. Section 4A-404(a) of the UCC provides relief only if a violation results in foreseeable damages to the plaintiff: "If the bank 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...." The UCC does not provide for, and Blue Flame has not claimed, statutory damages for a violation of § 4A-404(a). Instead, in Count I plaintiff seeks "its 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." See Complaint, [Dkt. No. 1] at 197.

Defendants offer two equally compelling arguments establishing that Blue Flame cannot prove the damages it claims. First, defendants argue that even if Chain Bridge had released the disputed funds to Blue Flame on March 26, 2020, California would

have ended its relationship with Blue Flame, resulting in the return of the funds, because the evidence in this record unequivocally shows that plaintiff could not fulfill the contract. [Dkt. No. 119] at 22. In opposition, Blue Flame urges that this "argument omits Defendants' essential role in causing California not to proceed with the transaction," and that "[t]he very fact that California sent prepayment in the first place—before Defendants interfered—demonstrates conclusively that California had agreed to proceed with the transaction." [Dkt. No. 149] at 13.

There is unrebutted evidence in this record that, independent of any action by any defendant, JPMorgan began a fraud investigation concerning the wire transfer within minutes of Chain Bridge's receipt of the wire, and once California officials became aware of Blue Flame's recent creation and the fact that its owners were lobbyists, it immediately asked for the wire transfer to be cancelled and the funds returned, and was no longer interested in dealing with Blue Flame. Def. Ex. 62 (Gonzalez Tr.), 53:12-14; Pl. Ex. 76. Examples of California's decision not to deal further with plaintiff include Thomas's March 27, 2020 efforts to revive the deal by reaching out to Controller Yee, which were met with no interest, and Yee telling Thomas that his company had a "credibility issue" they would need to resolve. Def. Ex. 12 at 200132-133. Similarly, Blue Flame's April 2020 negotiations with the Department of General Services to reach another agreement were rejected, and the California administrator with whom Thomas was negotiating ultimately began forwarding his correspondence with

Blue Flame to the FBI. Pl. Exs. 108, 109. The "credibility issues" Blue Flame faced would not have been avoided if Chain Bridge had credited the funds to Blue Flame's account when they were first received, because California officials would still have had reason to investigate Blue Flame's credibility even if the funds were held in Blue Flame's account instead of being returned promptly to California's bank. In fact, under its purchase order, California could "terminate performance of work under this Contract for its convenience if ... [the Department of General Services] determines that a termination is in the State's interest." Def. Ex. 79 at ¶ 23(a).

Chain Bridge's second persuasive argument concerning damages is that "there is no record evidence that Blue Flame would have successfully fulfilled California's order even if Blue Flame had received California's funds." [Dkt. No. 119] at 24. According to Blue Flame's own representations to Congress, it was able to fill only two orders for N95 masks, both much smaller than the order placed by California and neither within the time frame that Blue Flame provided to California. Pl. Ex. 112, Schedule A at 5; Pl. Ex. 111; Def. Ex. 73 at 163513.

The so-called "ample evidence" which Blue Flame claims establishes that it could have met California's order proves no such thing. [Dkt. No. 149] at 14. First, Blue Flame argues that it "had signed and executed agreements in place with two suppliers, confirming its ability to supply the N95 masks," id.; however, the evidence cited for this claim is only the purchase orders and reseller agreements that Blue Flame

submitted to its purported suppliers, Suuchi Inc. and Great Health Companion. Pl. Exs. 19, 20, 21, 22. The documents evidence only that Blue Flame placed orders for the masks to fulfill California's purchase order, not that the orders would have been, or could have been, filled by the suppliers. Moreover, neither the purchase orders nor the reseller agreements included delivery schedules suggesting that the products would arrive in time to satisfy the representations that Blue Flame made to California. Compare Pl. Ex. 19 (Suuchi Inc. agreement stating delivery date was "based on time from funds clearing" and that other shipping instructions were "TBD"); Pl. Ex. 20 (Great Health Companion agreement stating that "Seller will fulfill within 40 days from the time payment is received and cleared" but that the masks would "be shipped in tranches as often and as soon as available"); with Def. Ex. 8 (Wong Tr.), 108:21-109:7 (DOS expecting first delivery of masks no later than April 3, 2020); Def. Ex. 9. (Thomas representing that all masks would be delivered "early" and no later than April 24, 2020).

Blue Flame's opposition also mischaracterizes the assurances it had received from its largest supplier, Great Health Companion. Blue Flame claims that it had "received confirmation from Henry Huang, the CEO of its primary supplier [Great Health Companion], ... that [it] would be able to deliver 100 million masks to California within 30 days, provided prepayment was made." [Dkt. No. 149] at 14 (citing Pl. Exs. 15, 2). Plaintiff's Exhibit 15 is a series of text messages between Thomas and Huang, in which

Thomas wrote: "Henry, Mike said you can get us 100m n95 over a 30-day period of time." Far from confirming that to be the case, Huang only responded: "John, we will give it all our efforts here to fight for the most scare [sic] resources during crazy times." Pl. Ex. 15 at 212725-26; see also Pl. Ex. 2 at 201:7-202:21 (Thomas deposition transcript in which Thomas inaccurately characterizes the text conversation with Huang). Twelve days after defendants filed their Motion for Summary Judgment, [11] Blue Flame filed a sworn

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[11] On August 3, 2021, five days after oral argument on the motions for summary judgment, plaintiff Blue Flame filed a Motion for Leave to File Supplemental Authorities [Dkt. No. 170] in which it provided case law to support its argument that Huang's late-filed declaration should be considered. Specifically, Blue Flame explained that the attached caselaw showed that Huang's inability to "comply with either Defendants' or Plaintiff's efforts to take his deposition" was due to both the COVID-19 pandemic and Chinese law and should not disqualify his declaration from the Court's consideration. [Dkt. No. 171] at 3-4. In reply, defendants pointed out that none of the cited decisions is actually "recent," and argued that plaintiff's effort was "in substance a post-argument sur-reply" about accepting Huang's late-filed declaration, over which the parties had already argued. [Dkt. No. 173] at 1. Defendants persuasively distinguished the cited opinions from the facts of this case, arguing that "[b]asic fairness" precludes consideration of the declaration because Huang's "evident partisanship" for his friends at Blue Flame would make his testimony "fertile grounds for cross-examination[.]" Id. at 1-2. Ultimately, the Court agrees that this issue has already been fully argued with sufficient authority, and none of the supplemental authority offered is new or relevant enough to justify reopening the issue for further argument. Accordingly, the Court will deny the motion, by an Order to accompany this Memorandum Opinion.

declaration by Huang—which Blue Flame characterizes as "confirm[ing]" that Great Health Companion "had the capacity to supply the 100 million masks California purchased." [Dkt. No. 149] at 14; Pl. Ex. 95. Chain Bridge strongly objected to the Court considering that declaration, as it was filed after the close of discovery, during which defendants had been unable to depose Huang. The Court agrees that the declaration should not be considered, because it was not produced during discovery and defendants were not able to depose Huang. Even if it were considered, the declaration is not particularly helpful to plaintiff. Although Huang attests in that declaration that his company had the capacity to fill the order at some point, the paragraphs in that declaration not cited by Blue Flame acknowledge that Huang's company would not have been able to satisfy the full order in the time frame that Thomas gave to California officials. Moreover, Huang only "believed," but did not know for sure, that prepayment would have made it easier for him to supply the masks. Pl. Ex. 95 at ¶ 26.

Finally, the declaration is inconsistent with other evidence on the record. For example, the statement claiming that Huang's company had the ability to fill Blue Flame's California order is flatly contradicted by the email Huang sent Blue Flame on April 7, 2020, in which he warned that "[t]here are only a set number of n95 masks throughout the country being produced every day[,] most of which are existing long term contracts dating back to February," and that there "is infinite demand but limited supply." Def. Ex. 83. Huang concluded: "See orders for 10-50M n95 here is

there, however that would be impossible to fulfill given the number of people that all want it. I do not wish for blue flame to commit to something it will have a hard time delivering on." Id. (emphasis added). Huang's April 7 warning to Blue Flame that it would not be able to fill orders of even 10-50 million masks thoroughly undercuts any suggestion in Huang's late-filed declaration that his company would have been able to fill an order for 100 million masks in the time period that Blue Flame gave to California officials. Additionally, the uncontested record showed how few of its orders plaintiff was able to fulfill and that its biggest sale involved only 1.55 million, not 100 million, masks delivered in October 2020, not April 2020. These uncontested facts establish that Chain Bridge's return of the wire transfer did not damage plaintiff in any respect. What damaged plaintiff was its unrealistic promise that it could deliver the large quantities of N95 masks in a short amount of time.

The evidence in the record makes clear that there is no basis beyond rank speculation on which a reasonable factfinder could find that Blue Flame was capable of fulfilling its order to California, nor is there any 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. Accordingly, summary

judgment will be granted in defendant's favor on Count I.[12]

B. Count II (UCC § 4A-204(a))

UCC § 4A-204(a) provides that:

> If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment[.]

Blue Flame alleges that Chain Bridge violated this provision because "in complying with California's request to return the funds, the Bank issued a new payment order on behalf of Blue Flame which was neither authorized by Blue Flame nor effective as Blue Flame's order." Complaint [Dkt. No. 1] at ¶ 110. Although Blue Flame characterizes this provision as providing a cause of action based on payment orders issued by a bank, id. at ¶ 109; [Dkt. No. 149] at 26,

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[12] Blue Flame offered some argument and evidence supporting the general proposition that large orders create an incentive among suppliers to work harder to prioritize satisfying such orders. That argument and the proffered evidence fails to recognize the unique supply problems that existed in the early months of the pandemic and do not change the clear evidence that Huang was not able to supply the masks in the quantity and time frame Blue Flame proposed.

§ 4A-204(a) actually covers payment orders that a bank accepts from a third party pretending to be the bank's customer. See Motion to Dismiss [Dkt. No. 19] at 11-12 (citing Gold v. Merrill Lynch & Co., No. 09-318-PHX-JAT, 2009 WL 2132698, at *1 (D. Ariz. July 14, 2009) (payment orders from plaintiffs retirement account that his wife "had completed ... by forging [plaintiffs] signature"); Regatos v. North Fork Bank, 838 N.E.2d 629, 630-31 (N.Y. 2005) (payment order "from someone [the bank] believed to be [its customer]," when the bank did not follow agreed-upon security procedures); Ma v. Merrill Lynch, Inc., 597 F.3d 84, 86-87 (2d Cir. 2010)).

In its opposition brief at the motion to dismiss stage, Blue Flame conceded: "If discovery establishes that Defendants accomplished their unauthorized return of the funds by accepting a cancellation request made by California's bank, Blue Flame agrees that this Count would not survive upon a motion for summary judgment." [Dkt. No. 27] at 15 n.8. That is precisely what the evidence in the record shows: that JPMorgan sent a "request for reversal" asking Chain Bridge to "PLS RETURN FUNDS[.]" Def. Ex. 65. Blue Flame's opposition to summary judgment tries to walk back its previous concession, now arguing that because the reversal of funds was accomplished through a payment order generated by Chain Bridge without Blue Flame's authorization, § 4A-204(a) applies, [Dkt. No. 149] at 26; however, that payment order was "issued" by Chain Bridge, not "accepted" by Chain Bridge, which is the conduct that the regulation covers. Accordingly, § 4A-204 does not apply to the

reversal of funds at all, and summary judgment will be granted in defendant's favor on Count II.

C. State Law Claims

Respectively, Counts IV and V allege that all defendants tortiously interfered with Blue Flame's contract and business expectancy. Virginia has adopted the Restatement (Second) of Torts definition of tortious interference. DurretteBradshaw, P.C. v. MRC Consulting, L.C., 670 S.E.2d 704, 706 (Va. 2009). The prima facie elements of these torts are: "(I) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferor; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted." Chaves v. Johnson, 335 S.E.2d 97, 102 (Va. 1985). If the contract is at will or only a business expectancy is alleged, the plaintiff must also prove that the "defendant employed improper methods." Dunlap v. Cottman Transmission Sys., LLC, 754 S.E.2d 313, 318 (Va. 2014). Blue Flame argues that Chain Bridge's violation of the banking regulations qualifies as "improper methods," thereby satisfying this element.

Satisfying one element is not sufficient to prevail on these claims. First, there are 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. Specifically, Gula sent Yee a

text stating, "I have 100 3m masks sitting here in the Port of Long Beach." Def. Ex. 15; see also [Dkt. No. 119] at 5 n.3. Moreover, given the warnings from Blue Flame's Chinese supplier about the difficulty of obtaining large quantities of N95 masks, the Blue Flame contract with California contained statements that were at best naive, and at worst, knowingly false, which undercuts the validity of Blue Flame's business relationship with California.

Second, there is insufficient evidence upon which a reasonable factfinder could conclude that the alleged interferor, Chain Bridge, had an "intent to disturb" the business relationship. There is no evidence that defendants shared information about Blue Flame with California officials for any reason other than to avoid potential liability themselves. See UCC § 4A-201 (requiring banks transferring funds to use commercially reasonable methods to prevent fraud).

Finally, because damages are an essential element of both tortious interference claims, these counts fail for the same reason that Count I failed: there is insufficient evidence in this record from which a reasonable factfinder could conclude that Blue Flame could have fulfilled California's order and that California would not have cancelled the contract and insisted on a return of the funds in that event. Accordingly, summary judgment will be granted to defendants on Counts IV and V.

In the remaining claim, Count IX, plaintiff seeks damages on a theory of defamation. In Virginia, defamation requires "I) publication, 2) of an actionable

statement, 3) with the requisite intent." Schaecher v. Bouffault, 772 S.E.2d 589, 594 (Va. 2015) (internal citation omitted). An actionable statement must be both defamatory and objectively false; "statements of opinion are generally not actionable because such statements cannot be objectively characterized as true or false." Jordan v. Kollman, 612 S.E.2d 203, 206 (Va. 2005). Summary judgment is appropriate as to this claim because there is no evidence in the record that defendants made any false statements regarding Blue Flame or its principals. Natalie Gonzalez, the California official to whom Brough and Evinger spoke directly, testified conclusively that the only statement defendants made to her about Blue Flame was "that [its] account had just been opened the day previously by a lobbyist." Def. Ex. 62 (Gonzalez Tr.), 53:6-16. That the account had been opened the previous day is not contested, Def. Exs. 34-35; see also Pl. Exs. 24-25, and Blue Flame has alleged, and therefore does not contest, that its principals "recently began their careers in the medical supply industry, but they each have had distinguished, award-winning careers in the political consulting industry." [Dkt. No. 1] at ¶ 22. The semantic distinction between "political consultant" and "lobbyist" is not so vast as to be legally actionable.

Blue Flame does not argue that any one statement by defendants was false; instead, it argues that "Defendants' narrow focus on the truth of their individual statements ignores that their comments, taken as a whole, plainly were made to raise concerns that Blue Flame's agreement with California was somehow fraudulent." [Dkt. No. 149] at 29. Although

defamation may at times be established by insinuation, the simple (and true) statement that Gula was a lobbyist who opened his bank account the day before does not present such a case. Accordingly, because Blue Flame concedes that defendants' statements were true, summary judgment will be granted in defendants' favor on Count IX.

C. Chain Bridge's Claim for Indemnification by JPMorgan

In its third-party complaint, Chain Bridge seeks indemnification from JPMorgan under UCC § 4A-211(f) for any damages awarded against it, as well as for the attorneys' fees and costs it incurred in defending this litigation. Although granting Chain Bridge's Motion for Summary Judgment moots its claim for reimbursement of any damages, there remains the issue of whether JPMorgan must reimburse Chain Bridge for its attorney's fees and expenses incurred in this litigation. [Dkt. No. 123] at 2.

UCC § 4A-211(f) provides:

> (f) 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 official comments to this provision explain that:

> 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). The indemnification provision recognizes that a sender has no right to cancel a payment order after it is accepted by the receiving bank. If 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.

Id. at cmt. 5. Both parties agree that this section covers the reversal of funds, but they interpret it differently. Chain Bridge argues that because there was no "agreement of the parties" to the contrary, and because as the "receiving bank" it agreed to cancellation following an acceptance of the funds, JPMorgan is automatically required to indemnify it for "any loss and expenses, including reasonable attorney's fees." JPMorgan advances several arguments to support its claim that it does not have to indemnify Chain Bridge: 1) Chain Bridge "sought and obtained the wire's cancellation," and Chain Bridge should not be allowed to "insur[e] itself for its own conduct," [Dkt. No. 113] at 2; 2) "the parties' discussions and course of conduct" evidenced an

agreement between the parties that JPMorgan would not be liable for indemnification, id.; and 3) Chain Bridge cannot prove that its "loss and expenses" were incurred "as a result" of JPMorgan's cancellation. Id.

The first of these arguments—that JPMorgan is not liable for indemnification because Chain Bridge "directed" the transfer—is unpersuasive, as the text of the UCC does not impose any requirement that the receiving bank accommodate the sender's cancellation request solely to benefit the sender.[13] In fact, the regulation does not impose any requirements regarding the receiving bank's motivations at all. JPMorgan attempts to sidestep the text of the regulation by placing heavy emphasis on the comment, which explains that a receiving bank is not required to cancel a transfer after the funds have been accepted, and that as a result, any cancellation can be considered "an accommodation to the sender." UCC § 4A-211 cmt. 5. It does not follow from this description that the cancellation must have benefited the sending bank equally or more than the receiving bank: because cancellation is not required, a receiving

[13] 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 that the state is liable to indemnify JPMorgan for any losses because "the Agencies and Employees [of the state of California] originated the Wire Transfer, notwithstanding a deviation from normal vetting procedures; they sought the reversal of the Wire Transfer; and they benefited from the reversal of the Wire Transfer—obtaining the return of funds in full and choosing not to go through with the Blue Flame transaction, without suffering any loss[.]" Def. Ex. 96 at 7.

bank will still be "accommodating" a sending bank, even if cancellation serves the receiving bank's own interests. The only case law that JPMorgan cites to bolster its interpretation of the regulation are common law precedents discussing the general policy behind indemnification; however, as JPMorgan concedes, reference to the common law is only appropriate "[u]nless displaced by the particular provisions of" the UCC. [Dkt. No. 113] at 15 (citing UCC § 1-103(b)). 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.

JPMorgan next argues that the parties displaced the default rule, because they "reached an agreement, through their discussions and course of conduct, about how to handle the wire" which "did not include any indemnity obligation." [Dkt. No. 113] at 22. JPMorgan incorrectly reverses the requirements of the regulation when it suggests that the parties needed to have agreed upon indemnification; the UCC provides for indemnification as a default. To avoid indemnification, there would have to be an agreement to override the default rule. Such an agreement could include a "bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade[.]" UCC § 1-201(b)(3).

JPMorgan cites an internal Chain Bridge phone call as evidence of Chain Bridge having agreed not to seek indemnification. During this call, as Evinger and Brough prepared employees for a cancellation order

from JPMorgan, an employee (Claudia Mojica-Guadron) asked, "Are we getting an indemnity letter from [JPMorgan]?"[14] Evinger or Brough responded: "They're sending a recall notice through Fed[Line] ... just return it to the same place it came from." JPM Ex. 23 (audio recording). Another employee then asked, "Claudia, you mentioned the indemnity letter, is that part of the procedures usually?" Mojica-Guardon replied: "Normally you want to get that from the other bank, just because, and in this case because we credited the customer's account." Evinger or Brough then cut in and said: "It's okay, don't worry about it. ... It is what it is." Id. Evinger testified in his deposition that he and Brough "didn't view there was a need for an indemnification based on the recall because the recall had the indemnification built in, and we viewed JPMorgan, you know, as our counterparty," Def. Ex. 28 (Evinger Tr.), 261:12-17.

An agreement between Chain Bridge and JPMorgan to change the default rule would require a meeting of the minds between Chain Bridge and JPMorgan about indemnity at the time of the alleged agreement, not simply an internal discussion at Chain Bridge bank about potential liabilities. 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. JPMorgan is a sophisticated banking entity well-

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[14] In fact, the employee asked if they would be getting an "indemnity letter from Chase," but she was clearly referring to JPMorgan.

aware of the banking regulations and perfectly capable of executing agreements to reallocate risk. JPMorgan did not do so in this case.

This conclusion is not meant to punish or criticize JPMorgan. In fact, JPMorgan's quick and thorough investigation of potential fraud is commendable. The bank went above and beyond for its customer, California, by bringing to the customer's attention several problems with the underlying contract. JPMorgan can work out with California, in the separate proceeding in California, how to allocate its losses.

Finally, JPMorgan argues that Chain Bridge's litigation expenses are not "a result of the cancellation." [Dkt. No. 113] at 24-25. This argument is weak as this civil action undoubtedly resulted from the reversal of the wire transfer, and, as Chain Bridge correctly argues, "there is zero evidentiary basis for JPMorgan's speculation that Chain Bridge would have returned the funds without a cancellation by JPMorgan." [Dkt. No. 123] at 21.

IV. CONCLUSION

For the reasons stated in open court and in this memorandum, defendants' Motion for Summary Judgment against plaintiff Blue Flame [Dkt. No. 118] and Chain Bridge's Motion for Summary Judgment against Third Party Defendant JPMorgan [Dkt. No. 122] will be GRANTED; Blue Flame's Motion for Partial Summary Judgment [Dkt No. 127] and Motion for Leave to File Supplemental Authorities [Dkt. No. 170] and JPMorgan's Motion for Summary Judgment

[Dkt. No. 112] will be DENIED; and Chain Bridge and JPMorgan will be directed to submit a briefing schedule regarding the amount of attorneys' fees and expenses to be awarded to Chain Bridge if they are unable to resolve the issue within 14 days.

An Order reflecting these decisions will be issued with this Memorandum Opinion.

Entered this 23rd day of September, 2021.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BLUE FLAME MEDICAL LLC,	)	
	)	
Plaintiff,	)	
	)	Civil No. 20-658
v.	)	
	)	
CHAIN BRIDGE BANK, N.A., et al.,	)	Alexandria, Virginia
	)	September 8, 2020
Defendants.	)	
	)	

TRANSCRIPT OF MOTION HEARING
VIA TELEPHONE CONFERENCE
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: PETER HUGH WHITE, ESQ.
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Washington, D.C. 20005

For the Defendants: GARY A. ORSECK, ESQ.
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Court Reporter: PATRICIA A. KANESHIRO-MILLER, RMR, CRR

Proceedings Reported by stenotype shorthand.

Transcript produced by compter-aided transcription.

PROCEEDINGS

(9:38 a.m.)

THE COURT: Are the parties on the line for Blue Flame Medical, LLC, versus Chain Bridge Bank? We're a little bit early, but are you all there yet?

MR. WHITE: Your Honor, this is Pete White from Schulte Roth for the plaintiff. I am here.

THE COURT: All right. How about for the defendants?

MR. ORSECK: Good morning, Your Honor. This is Gary Orseck from Robbins Russell for the defendants.

THE COURT: How do you spell your last name, please?

MR. ORSECK: O-R-S-E-C-K.

THE COURT: Mr. Orseck, you're going to be the main spokesperson for the defendants?

MR. ORSECK: That's right.

THE COURT: All right. Then we have everyone who we need online.

So this is, as I said, Blue Flame Medical, LLC, versus Chain Bridge Bank, et al., 20-CV-658.

Gentlemen, we are on the record. I have a court reporter with me, so it is going to be very important to state your name before you speak so that we can attribute the correct statements to the correct people.

All right. This is the defendant's motion to dismiss the 10-count complaint that's been filed in this case, and before we get into the discussion, I just wanted to ask you, Mr. Orseck, how in the world do you prove any damages if any of these claims do go forward given the information that was in Exhibit A attached to the defendant's motion to dismiss, which is a detailed discussion -- and it is on your part, it is a statement attributable to Blue Flame -- of the inability of Blue Flame to deliver the N-95 masks to other states after California? In other words, to me, one of the arguments that is most telling is the argument that only a few days or weeks after this California transaction which fell through, that your client, Blue Flame, was unable to deliver any masks to the State of Maryland. And so I don't understand how there

could possibly be -- even if there were liability on any of these claims -- how there could possibly be any damages that you could point to in this case. After this transaction fell through with California, number one, you were able to continue to get contracts with other states and with other entities for the products; and number two, not because of your fault -- I recognize the realities of what was going on here -- but you were unable to deliver any significant quantities of these masks. And as I understand it, the deal with California was for millions of these N-95 masks.

So where are your damages in this case, Mr. Orseck?

MR. WHITE: You addressed that question to Mr. Orseck, but he represents defendants.

THE COURT: I'm sorry. Mr. White.

MR. WHITE: I thought you meant that one for me. Your Honor, part of the problem here is reliance on information outside the complaint is inappropriate, and this is exactly why. It is a factual matter. There are 1.55 million masks on their way to be delivered to Maryland right now. They were delivered on time. We expect them to be accepted by Maryland. The status of that situation at the time of the letter that was sent, leave aside whether the letter is appropriate for consideration at this point, but the status of things at that time are not set in stone. The fact of the matter is they were able to accomplish that delivery. They're in the process of accomplishing that delivery. 1.55 million masks are on their way to Maryland right now on a boat. So it really shows the extent to which

plaintiffs are trying to rely on stuff that is not in the complaint to defeat the well-stated claims in the complaint because those aren't before the Court at this point. Obviously, as you know, damages is premature at this point, but there is no possibility of damages. I understand the Court's concern. The reality is the actions by Chain Bridge Bank here caused -- and the evidence will show when we get to trial -- the actions by Chain Bridge Bank caused very significant consequential damages; and the inappropriate, clearly inappropriate cancellation under the U.C.C. of money that had been placed into the beneficiary's account without the beneficiary's consent caused incredible consequential damages to plaintiffs. So the reality is they were able to pull the Maryland deal out of the ditch, but it became so much more difficult because of what defendants here did, and that's what damages are all about. There were significant consequential damages as a result of the improper conduct of Chain Bridge Bank, which both violated Federal Reserve Regulation J, which incorporates the U.C.C., the Court is aware, expressly violated that, but also tortiously interfered with the contract with California and their business expectancy and defamed them.

THE COURT: All right. Again, you're correct, the damages are not the issue directly in front of the Court right now, but I always, when I get a motion to dismiss, want to start talking with counsel wisely about what a case is truly worth because if portions of the complaint do survive the motion to dismiss, then everyone has to think about the realities of the litigation. I must say, based upon everything that I

read, including the exhibits that were attached to the motions, it did strike me as though this is a case where whether there would be any damages was going to be a very significantly open question.

But anyway, let's get to the motion that is before us. The defendant has moved to dismiss all 10 of these counts. You have briefed the issues extensively, and I'm not going to hear a whole lot of argument. But, Mr. White, you do have to address this argument about preemption because the defendant has correctly argued that there is a strong doctrine of preemption where there are state causes of action that essentially overlap or dovetail the U.C.C. claims, and that would affect several of your state causes of action. You want to address that, please.

MR. WHITE: I would be happy to, Your Honor. The defense takes a --

THE COURT: Mr. White, we're having trouble hearing you because we are having so many people signing in. Can you speak louder, please.

MR. WHITE: My apologies, Your Honor.

The defense tried to have both sides of the issue. They want to pick and choose -- this is Peter White again -- that want to pick and choose the parts of the U.C.C. that apply. They at some point say that the U.C.C. does not apply. Obviously, it can't be preempted if it does not apply. The general preemption argument is that there are state law claims, and tortious interference of contract is a clear one, that go beyond what the U.C.C. governs. Defamation is another very obvious one, as well, as is breach of

contract in this context. The breach of contract here was the agreement, the accounts agreement, and their conduct is not covered by the preemptive -- their conduct was outside of the U.C.C. That means that it is beyond the preemptive conduct. The tortious interference claim in particular, Your Honor, that is the one that I think is most clearly beyond the scope of any preemption by the U.C.C. because there is an external contract involved. I don't think the plaintiffs even seriously make the argument that the tortious interference claim is preempted. I think that argument is best made as to the breach of contract and negligence claims. But the tortious interference claim, because it deals with a contract and a business expectancy entirely outside of the relationship that the U.C.C. governs, that is clearly not preempted.

THE COURT: All right. Well, you have basically answered my question because I agree with you that counts 4, 5, and 9 -- that is, the two tortious interference counts and the defamation count -- raise sufficient issues beyond what is involved in the U.C.C. claims, that they're not preempted. But certainly count 3, which is conversion, counts 6 and 7, which are for fraud and constructive fraud, count 8, which is for negligence, and count 10, breach of contract, it seems to me are definitely preempted, so I'm going to grant the motion to dismiss as to those counts.

And the other issue that I want to hear discussed is, you've raised two counts under the U.C.C. The second count has to do, as I understand it, with your theory that the defendants violated the U.C.C. by returning the payment that had been sent to them

from California. Right? That they basically issued -- they had accepted -- they basically accepted a payment order to pay out. And I'm not sure that's exactly how you've pled the case, first of all, from a technical pleading standpoint. But why do you need count 2 if you have count 1?

MR. WHITE: For a couple of reasons, Your Honor. Number one, the damages calculations are different under the private causes of action. Number two, I guess in a certain -- if the facts come up in a certain way, they could become alternative. But the theory under count 2, it is clear that the money came into the account or was accepted under the U.C.C. That is not an issue now, it is not going to be an issue later. So the money was in that account. That money was being transferred out of the account. The only way that that could really happen is by a payment order issued out of that account. If it turns out that the way that it was issued out of the account and back to California's account at JP Morgan, that's a payment order that is not authorized by the beneficiary. That's the core of the count 2 claim, Your Honor. It is unclear, frankly, from the documentation that was attached, which I don't think is appropriate for the Court to consider at this point, but even if the Court considers it, all that talks about is a request. It doesn't talk about what mechanism was used. We have stated enough facts to entitle discovery to determine whether legally what was done was a payment order out of the beneficiary's account, Blue Flame's account, without Blue Flame's consent because clearly they did not consent. And if that occurred, that is the count 2 liability.

THE COURT: All right.

MR. ORSECK: If I may respond on count 2?

THE COURT: Go ahead.

MR. ORSECK: Yeah, Mr. White is skipping past the key operative language of Section 204(a), which in order to impose liability requires that the payment order be, quote, "issued in the name of the bank's customer as sender." All of the cases that apply Section 204(a) are instances where a third party either forges the customer's name or purports to act in the name of the customer and sends a payment order to the bank that is either unauthorized or not effective. So Mr. White is asserting that the return of the money from my client, from Chain Bridge Bank, was not authorized – I understand that's the pleading -- but they don't plead that the payment order was issued in the name of the sender. To the contrary, multiple times in the complaint -- and I can point you to paragraphs 72, 77, 78, and 110 -- the theory here is that in response to our allegedly improper communication to the State of California, California issued a request that the money be returned. And there is no authority, either in the text or in any of the caselaw that has been cited or in any caselaw that we have found at all that applies Section 204(a) in that instance. I think the reason that the plaintiff has tacked on that count is because in that count, and in that count alone, they seek as damages enforcement of the entire payment. So, in other words, they're asking that we be liable for the $456 million that was in the original wire. For reasons you alluded to at the outset,

I think this entire suit is seeking a massive windfall, but none nearly so much as count 2, for which there is just no statutory basis.

THE COURT: But wouldn't you agree that at this stage, which is just the motion-to-dismiss stage, the plaintiff is correct that we would need to look at some of the evidence to see exactly how these various wire transactions were delineated. And I'm a little concerned about dismissing this count at this point without a little bit of discovery. It seems to me that because the case is being pared down by today's rulings, you ought to be able to focus on what I think everybody agrees are sort of the key points of the discovery. For example, exactly what was said by the bank officials to the California people. As you know, your argument about the defamation claim is that you were either stating an opinion, which would not be actionable under a defamation theory, or you had basically -- it was a legal obligation on your part, frankly, that you had a privilege to be able to make these statements to the California authorities as a responsible bank. And that would, it seems to me, play a little bit into counts 1 and 2, as well.

I'm reluctant to dismiss count 2 at this point. Again, I think there are significant problems with this case. As I said, I don't really see at the end of the day how the plaintiff is going to be able to recoup damages, especially because, as I said, there is no evidence at least right now, and there is no claim really in the complaint, that the plaintiff was unable to get further contracts to sell these products. In our conversation today apparently Maryland didn't cancel the contract.

So even after all this problem, they're still apparently in business.

So what I'm going to do today is I'm going to go ahead and grant the motion to dismiss in part and dismissing the state law claims that I designated earlier on the basis of preemption. So as I said, counts 3, 6, 7, 8, and 10 are out. I'm going to let counts 1, 2, 4, 5, and 9 go forward, five counts go forward. And we will see how the case works itself out. I, however, strongly recommend that both sides think very quickly about whether this case should go forward and whether or not you might want to try to talk to a mediator to see if you can settle this because I think the discovery might get a little bit expensive, and they're might be some difficulties, because obviously there are going to be state officials from California who are going to have to be deposed.

Is Blue Flame Medical, LLC, still in business, Mr. White?

MR. WHITE: Yes, Your Honor.

THE COURT: So, obviously, it has got another bank to work with it, and it has contracts, you indicated, still going forward; correct?

MR. WHITE: Your Honor, actually -- I know that their account was terminated at Chain Bridge Bank; I do not know their current banking arrangement.

THE COURT: They must have a bank someplace or they wouldn't be able --

MR. WHITE: They must, Your Honor. I just don't know what it is.

THE COURT: So one representation that I got in one of the papers I was reading, if in fact, for example, Blue Flame was representing to the California authorities that all these masks were sitting in a warehouse in Long Beach -- I mean, that was mentioned in one of the pleadings -- you know, obviously, that wasn't the case. Now, maybe that statement wasn't made; I don't know. I guess the people in California with whom they were dealing would know about it. But as I read the complaint, you all started talking to the California people in early March. This company wasn't even formed until March 23rd. The account gets opened on March 25th. This wire transfer occurs on March 26th. The timing is quite incredible, especially when you look at the amount of money that was involved. What? $456 million. I mean, there are all sorts of strange issues in this case, and I think wise parties ought to think about evaluating the case more realistically.

But at this point, as I said, I'm going to let those counts go forward, and that's my ruling for today.

So if you do need to work with a magistrate judge on this case, Judge Davis is the magistrate assigned, and of course there are lots of private mediators out there, as well.

All right, gentlemen, thank you for calling in.

(Adjourned at 9:58 a.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Patricia A. Kaneshiro-Miller, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Patricia A. Kaneshiro-Miller

PATRICIA A. KANESHIRO -MILLER

September 9, 2020

APPENDIX D

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

–

BLUE FLAME MEDICAL LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:20-cv-658
	)	(LMB/IDD)
CHAIN BRIDGE BANK, N.A., et al.,	)	
	)	
Defendants.	)	

ORDER

For the reasons stated during a telephone conference held on the record with attorneys for all parties present, defendants' Motion to Dismiss [Dkt. No. 18] is GRANTED IN PART and DENIED IN PART; and it is hereby

ORDERED that Counts III, VI, VII, VIII, and X of plaintiff's Complaint [Dkt. No. 1] be and are DISMISSED.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 8th day of September, 2020.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

APPENDIX E

12 U.S.C. § 248 (Enumerated powers) provides, in relevant part:

…

(i) Requiring bonds of agents; safeguarding property in hands of agents

> To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money, or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this chapter, and make all rules and regulations necessary to enable said board effectively to perform the same.

…

(j) Exercising supervision over reserve banks

> To exercise general supervision over said Federal reserve banks.

…

(o) The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 1821(c)(9) of this title.

…

12 U.S.C. § 342 (Deposits; exchange and collection; member and nonmember banks or other depository institutions; charges) provides:

Any Federal reserve bank may receive from any of its member banks, or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided,* Such nonmember bank or trust company or other depository institution maintains with the Federal Reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further,* That nothing in this or any other section of this chapter shall be construed as prohibiting a member or nonmember bank or other depository institution from making

reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

12 U.S.C. § 464 (Checking against and withdrawal of reserve balance) provides:

The required balance carried by a member bank with a Federal Reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Board of Governors of the Federal Reserve System, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities.

12 C.F.R. § 210.25 provides, in relevant part:

(a) Authority and purpose. This subpart provides rules to govern funds transfers through the Fedwire Funds Service, and has been issued pursuant to the Federal Reserve Act—section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), and paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j))—and other laws and has the force and effect of federal law. This subpart is not a funds-transfer system rule as defined in Section 4A–501(b) of Article 4A.

(b) Scope.

(1) This subpart incorporates the provisions of Article 4A set forth in appendix A of this part. In the event of an inconsistency between the provisions of the sections of this subpart and appendix A of this part, the provisions of the sections of this subpart shall prevail. In the event of an inconsistency between the provisions this subpart and section 919 of the Electronic Fund Transfer Act, section 919 of the Electronic Fund Transfer Act shall prevail.

…

12 C.F.R. § Pt. 210, Subpt. B, App. A, cmt. to § 210.25 provides, in relevant part:

The Commentary provides background material to explain the intent of the Board of Governors of the Federal Reserve System (Board) in adopting a particular provision in the subpart and to help readers interpret that provision. In some comments, examples are offered. The Commentary constitutes an official Board interpretation of subpart B of this part. Commentary is not provided for every provision of subpart B of this part, as some provisions are self-explanatory.

Section 210.25—Authority, Purpose, and Scope

(a) Authority and purpose. Section 210.25(a) states that the purpose of subpart B of this part is to provide rules to govern funds transfers through the Fedwire Funds Service and recites the Board's rulemaking authority for this subpart. Subpart B of this part is Federal law and is not a "funds-transfer

system rule" as defined in section 4A–501(b) of Article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix A of this part. Certain provisions of Article 4A may not be varied by a funds-transfer system rule, but under section 4A–107, regulations of the Board and operating circulars of the Federal Reserve Banks supersede inconsistent provisions of Article 4A to the extent of the inconsistency. In addition, regulations 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 such state law may apply to parties to funds transfers through the Fedwire Funds Service whose rights and obligations are not governed by subpart B of this part.

(b) Scope. (1) Subpart B of this part incorporates the provisions of Article 4A set forth in appendix B of this subpart. The provisions set forth expressly in the sections of subpart B of this part supersedes or preempt any inconsistent provisions of Article 4A as set forth in appendix B of this subpart or as enacted in any state. The official comments to Article 4A are not incorporated in subpart B of this part or this Commentary to subpart B of this part, but the official comments may be useful in interpreting Article 4A. Because section 4A-105 refers to other provisions of the Uniform Commercial Code, e.g., definitions in Article 1 of the UCC, these other provisions of the

UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, from time to time, are also incorporated in subpart B of this part. Subpart B of this part applies to any party to a Fedwire funds transfer that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank for a payment order sent to a Federal Reserve Bank. Other parties to a funds transfer are covered by this subpart to the same extent that this subpart would apply to them if this subpart were a "funds-transfer system rule" under Article 4A that selected subpart B of this part as the governing law.

…

U.C.C. § 4A-102 (Subject Matter) provides:

Except as otherwise provided in Section 4A-108, this Article applies to funds transfers defined in Section 4A-104.

OFFICIAL COMMENTS

Article 4A governs a specialized method of payment referred to in the Article as a funds transfer but also commonly referred to in the commercial community as a wholesale wire transfer. A funds transfer is made by means of one or more payment orders. The scope of Article 4A is determined by the

definitions of "payment order" and "funds transfer" found in Section 4A-103 and Section 4A-104.

The funds transfer governed by Article 4A is in large part a product of recent and developing technological changes. Before this Article was drafted there was no comprehensive body of law--statutory or judicial--that defined the juridical nature of a funds transfer or the rights and obligations flowing from payment orders. Judicial authority with respect to funds transfers is sparse, undeveloped and not uniform. Judges have had to resolve disputes by referring to general principles of common law or equity, or they have sought guidance in statutes such as Article 4 which are applicable to other payment methods. But attempts to define rights and obligations in funds transfers by general principles or by analogy to rights and obligations in negotiable instrument law or the law of check collection have not been satisfactory.

In the drafting of Article 4A, a deliberate decision was made to write on a clean slate and to treat a funds transfer as a unique method of payment to be governed by unique rules that address the particular issues raised by this method of payment. A deliberate decision was also made to use precise and detailed rules to assign responsibility, define behavioral norms, allocate risks and establish limits on liability, rather than to rely on broadly stated, flexible principles. In the drafting of these rules, a critical consideration was that the various parties to funds transfers need to be able to predict risk with certainty, to insure against risk, to adjust operational and

security procedures, and to price funds transfer services appropriately. This consideration is particularly important given the very large amounts of money that are involved in funds transfers.

Funds transfers involve competing interests--those of the banks that provide funds transfer services and the commercial and financial organizations that use the services, as well as the public interest. These competing interests were represented in the drafting process and they were thoroughly considered. The rules that emerged represent a careful and delicate balancing of those interests and are intended to be the exclusive means of determining the rights, duties and liabilities of the affected parties in any situation covered by particular provisions of the Article. Consequently, resort to principles of law or equity outside of Article 4A is not appropriate to create rights, duties and liabilities inconsistent with those stated in this Article.

U.C.C. § 4A-104 (Funds Transfer—Definitions) provides, in relevant part:

…

OFFICIAL COMMENTS

…

3. … The function of banks in a funds transfer under Article 4A is comparable to the role of banks in the collection and payment of checks in that it is essentially mechanical in nature.

…

U.C.C. § 4A-204 provides:

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

…

OFFICIAL COMMENTS

1. With respect to unauthorized payment orders, in a very large percentage of cases a commercially reasonable security procedure will be in effect. Section 4A-204 applies only to cases in which (i) no commercially reasonable security procedure is in effect, (ii) the bank did not comply with a commercially reasonable security procedure that was in effect, (iii) the sender can prove, pursuant to Section 4A-203(a)(2), that the culprit did not obtain confidential security information controlled by the customer, or (iv) the bank, pursuant to Section 4A-203(a)(1) agreed to take all or part of the loss resulting from an unauthorized payment order. In each of these cases the bank takes the risk of loss with respect to an unauthorized payment order because the bank is not entitled to payment from the customer with respect to the order. The bank normally debits the customer's account or otherwise receives payment from the customer shortly after acceptance of the payment order. Subsection (a) of Section 4A-204 states that the bank must recredit the account or refund payment to the extent the bank is not entitled to enforce payment.

…

U.C.C. § 4A-211 (Cancellation and Amendment of Payment Order) provides, in relevant part:

…

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective un-

less the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

…

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

…

OFFICIAL COMMENTS

1. This section deals with cancellation and amendment of payment orders. It states the conditions under which cancellation or amendment is both effective and rightful. There is no concept of wrongful cancellation or amendment of a payment order. If the conditions stated in this section are not met the attempted cancellation or amendment is not effective.

If the stated conditions are met the cancellation or amendment is effective and rightful. The sender of a payment order may want to withdraw or change the order because the sender has had a change of mind about the transaction or because the payment order was erroneously issued or for any other reason. One common situation is that of multiple transmission of the same order. The sender that mistakenly transmits the same order twice wants to correct the mistake by cancelling the duplicate order. Or, a sender may have intended to order a payment of $1,000,000 but mistakenly issued an order to pay $10,000,000. In this case the sender might try to correct the mistake by cancelling the order and issuing another order in the proper amount. Or, the mistake could be corrected by amending the order to change it to the proper amount. Whether the error is corrected by amendment or cancellation and reissue the net result is the same. This result is stated in the last sentence of subsection (e).

…

4. With respect to a payment order issued to the beneficiary's bank, acceptance is particularly important because it creates liability to pay the beneficiary, it defines when the originator pays its obligation to the beneficiary, and it defines when any obligation for which the payment is made is discharged. Since acceptance affects the rights of the originator and the beneficiary it is not appropriate to allow the beneficiary's bank to agree to cancellation or amendment except in unusual cases. Except as provided in subsection (c)(2), cancellation or

amendment after acceptance by the beneficiary's bank is not possible unless all parties affected by the order agree. Under subsection (c)(2), cancellation or amendment is possible only in the four cases stated.

…

U.C.C. § 4A-404 (Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary) provides, in relevant part:

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank 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, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

…

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the

beneficiary is notified of the rule before initiation of the funds transfer.

…