

1 James B. Hicks, SBN 109117  
 Gary W. Park, SBN 173390  
 2 Matthew D. Moran, SBN 197075  
**HICKS | PARK LLP**  
 3 824 Wilshire Boulevard, Suite 300  
 Los Angeles, CA 90017  
 4 Tel: (213) 612-0007 / Fax: (213) 612-0373  
 E-mail: [gpark@hicksparklaw.com](mailto:gpark@hicksparklaw.com)

5 Lawrence A. Callaghan, SBN 53258  
 6 **TUCKER, ELLIS & WEST LLP**  
 135 Main Street, Suite 700  
 7 San Francisco, CA 94105  
 Tel: (415) 617-2225 / Fax: (415) 617-2409  
 8 E-mail: [larry.callaghan@tuckerellis.com](mailto:larry.callaghan@tuckerellis.com)

9 Attorneys for Plaintiff  
 ING Bank, fsb

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13  
 14 ING BANK, FSB,

15 Plaintiff,

16 vs.

17 BAIMBA JOHN, an individual,

18 Defendant.

19 BAIMBA JOHN, an individual,

20 Third-Party Plaintiff,

21 vs.

22 J.P. MORGAN CHASE, DAVID  
 23 BUNIN, AND DOES 1 TO 20,  
 INCLUSIVE,

24 Third-Party Defendants.  
 25  
 26  
 27  
 28

**Case No. 5:09-cv-1467 PVT**

(Assigned to Hon. Patricia V. Trumbull)

**STIPULATED PROTECTIVE  
 ORDER REGARDING  
 CONFIDENTIAL MATERIAL**

AS MODIFIED BY THE COURT (SEE PARAGRAPH 10)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**1. STIPULATION**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties, plaintiff ING Bank, fsb (“Plaintiff” or “ING”) and defendant J.P. Morgan Chase (“Chase”), through their respective undersigned counsel of record, and defendant Baimba John (“John”) (together with Chase, “Defendants”), hereby stipulate to and petition the Court to enter the following Stipulated Protective Order Regarding Confidential Material (the “Protective Order”). The parties acknowledge that this Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the Court to file material under seal.

**2. DEFINITIONS**

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter. This Protective

1 Order does not restrict the dissemination of information if gained from other  
2 sources.

3           2.3 “Confidential” Information or Items: information (regardless of  
4 how generated, stored or maintained) or tangible things that qualify for protection  
5 under standards developed under F.R.Civ.P 26(c) and include documentation of  
6 corporate and personal financial information, private or proprietary information and  
7 trade secrets.

8           2.4 Receiving Party: a Party that receives Disclosure or Discovery  
9 Material from a Producing Party.

10           2.5 Producing Party: a Party or non-party that produces Disclosure  
11 or Discovery Material in this action.

12           2.6 Designating Party: a Party or non-party that designates  
13 information or items that it produces in disclosure or in responses to discovery as  
14 “Confidential”.

15           2.7 Protected Material: any Disclosure or Discovery Material that is  
16 designated as “Confidential”.

17           2.8 Outside Counsel: attorneys who are not employees of a Party.

18           2.9 House Counsel: attorneys who are employees of a Party.

19           2.10 Counsel (without qualifier): Outside Counsel and House  
20 Counsel (as well as their support staffs).

21           2.11 Expert: a person with specialized knowledge or experience in a  
22 matter pertinent to the litigation who has been retained by a Party or its counsel to  
23 serve as an expert witness or as a consultant in this action and who is not a past or a  
24 current employee of a Party or of a competitor of a Party and who, at the time of  
25 retention, is not anticipated to become an employee of a Party or a competitor of a  
26 Party. This definition includes professional jury or trial consultant retained in  
27 connection with this litigation.

1           2.12 Professional Vendors: persons or entities that provide litigation  
2 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
3 demonstrations; organizing; storing, retrieving data in any form or medium; etc.)  
4 and their employees and subcontractors.

5           **3. SCOPE**

6           The protections conferred by this Protective Order cover not only Protected  
7 Material (as defined above), but also any information copied or extracted therefrom,  
8 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
9 conversations, or presentations by parties or counsel to or in court in or other  
10 settings that might reveal Protected Material. The protections conferred by this  
11 Protective Order also cover information exchanged in discovery and pre-trial  
12 proceedings, including but not limited to documents produced, interrogatory  
13 answers, responses to requests for admission, deposition testimony, exhibits,  
14 declarations in support of motion papers, initial disclosures, and briefs (including  
15 those prepared for mediation or settlement purposes).

16           **4. DURATION**

17           Even after the termination of this litigation, the confidentiality obligations  
18 imposed by this Protective Order shall remain in effect until a Designating Party  
19 agrees otherwise in writing or a court order otherwise directs.

20           **5. DESIGNATING PROTECTED MATERIAL**

21           5.1 Exercise of Restraint and Care in Designating Material for  
22 Protection. Each Party or non-party that designates information or items for  
23 protection under this Protective Order must take care to limit any such designation  
24 to specific material that qualifies under the appropriate standards. A Designating  
25 Party must take care to designate for protection only those parts of material,  
26 documents, items, or oral or written communications that qualify — so that other  
27 portions of the material, documents, items, or communications for which protection  
28

1 is not warranted are not swept unjustifiably within the ambit of this Protective  
2 Order.

3 Mass, indiscriminate, or routineized designations are prohibited.  
4 Designations that are shown to be clearly unjustified, or that have been made for an  
5 improper purpose (e.g., to unnecessarily encumber or retard the case development  
6 process, or to impose unnecessary expenses and burdens on other parties), expose  
7 the Designating Party to sanctions.

8 If it comes to a Party's or a non-party's attention that information or  
9 items that is designated for protection do not qualify for protections at all, or do not  
10 qualify for the level of protection initially asserted, that Party or non-party must  
11 promptly notify all other parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise  
13 provided in this Protective Order (see, e.g., second paragraph of section 5.2(a),  
14 below), or as otherwise stipulated or ordered, material that qualifies for protection  
15 under this Protective Order must be clearly so designated before the material is  
16 disclosed or produced. Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from  
18 transcripts of depositions or other pretrial or trial proceedings), that the Producing  
19 Party affix the legend "CONFIDENTIAL" at the top of each page that contains  
20 protected material or on the first page of a multi-page document. If only a portion  
21 or portions of the material on a page qualifies for protection, the Producing Party  
22 also must clearly identify the protected portion(s) (e.g., by making appropriate  
23 markings in the margins) and must specify, for each portion, the level of protection  
24 being asserted (i.e. "CONFIDENTIAL").

25 A Party or non-party that makes original documents or materials  
26 available for inspection need not designate them for protection until after the  
27 inspecting Party has indicated which material it would like copied and produced.

1 During the inspection and before the designation, all of the material made available  
2 for inspection shall be deemed "CONFIDENTIAL". After the inspecting Party has  
3 identified the documents it wants copied and produced, the Producing Party must  
4 determine which documents, or portions thereof, qualify for protection under this  
5 Protective Order; then, before producing the specified documents, the Producing  
6 Party must affix the appropriate legend (i.e. "CONFIDENTIAL") at the top of each  
7 page that contains Protected Material. If only a portion or portions of the material  
8 on a page qualifies for protection, the Producing Party also must clearly identify the  
9 protected portions(s) e.g., by making appropriate makings in the margins) and must  
10 specify, for each portion, the level of protection being asserted (i.e.  
11 "CONFIDENTIAL").

12 (b) A Party may designate as "CONFIDENTIAL" the whole  
13 or a portion of any deposition testimony, regardless by whom given, that contains or  
14 discloses protected material. The Party so designating any portion of a deposition  
15 may do so on the record at the deposition or, within twenty (20) days of receipt of  
16 the deposition transcript, shall serve a written statement on the Parties and the court  
17 reporter specifying the portions of the deposition to be designated  
18 "CONFIDENTIAL". Any portion not so designated shall not be entitled to the  
19 protections of this Protective Order; however, the entire transcript shall be deemed  
20 "CONFIDENTIAL" prior to the expiration of this 20 day period. If a document  
21 designated as "CONFIDENTIAL" is used as an exhibit at a deposition, that  
22 document and the deposition concerning it shall be deemed "CONFIDENTIAL"  
23 regardless of whether a Party makes any formal designation thereof.

24 Transcript pages containing Protected Material must be  
25 separately bound by the court reporter, who must affix to the top of each such page  
26 the legend "CONFIDENTIAL".  
27  
28

1 This Paragraph 5.2(b) also governs deposition testimony  
2 designations of Protected Material by a non-party Producing Party.

3 This Paragraph 5.2(b) is subject to the broader language of  
4 Paragraph 5.3, infra. To the extent possible, however, all Parties and non-parties are  
5 expected to comply with the twenty (20) day time frame for designation of Protected  
6 Material.

7 (c) for information produced in some form other than  
8 documentary, and for any other tangible items, that the Producing Party affix in a  
9 prominent place on the exterior of the container or containers in which the  
10 information or item is stored the legend “CONFIDENTIAL”. If only portions of the  
11 information or item warrant protection, the Producing Party, to the extent  
12 practicable, shall identify the protected portions, specifying whether they qualify as  
13 “CONFIDENTIAL”.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an  
15 inadvertent failure to designate qualified information or items as “Confidential”  
16 does not, standing alone, waive the Designating Party’s right to secure protection  
17 under this Protective Order for such material. If material is appropriately designated  
18 as “Confidential” after the material was initially produced, the Receiving Party, on  
19 timely notification of the designation, must make reasonable efforts to assure that  
20 the material is treated in accordance with the provisions of this Protective Order.  
21 Correction of status and notice thereof shall be made in writing, accompanied by  
22 substitute copies of the Protected Material appropriately marked “Confidential”.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Unless a prompt challenge to a  
25 Designating Party’s confidentiality designation is necessary to avoid foreseeable  
26 substantial unfairness, unnecessary economic burdens, or a later significant  
27 disruption or delay of the litigation, a Party does not waive its right to challenge a  
28

1 confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3           6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
4 Designating Party's confidentiality designation must do so in good faith and must  
5 begin the process by conferring directly (in voice-to-voice dialogue; other forms of  
6 communication are not sufficient) with counsel for the Designating Party. In  
7 conferring, the challenging Party must explain the basis for its belief that the  
8 confidentiality designation was not proper and must give the Designating Party an  
9 opportunity to review the designated material, to reconsider the circumstances, and,  
10 if no change in designation is offered, to explain the basis for the chosen  
11 designation. A challenging Party may proceed to the next stage of the challenge  
12 process only if it has engaged in this meet and confer process first.

13           6.3 Judicial Intervention. A Party that elects to press a challenge to a  
14 confidentiality designation after considering the justification offered by the  
15 Designating Party may file and serve a motion under the appropriate Local Rule that  
16 identifies the challenged material and sets forth in detail the basis for the challenge.  
17 Each such motion must be accompanied by a competent declaration that affirms that  
18 the movant has complied with the meet and confer requirements imposed in the  
19 preceding paragraph and that sets forth with specificity the justification for the  
20 confidentiality designation that was given by the Designating Party in the meet and  
21 confer dialogue.

22           The burden of persuasion in any such challenge proceeding shall be on  
23 the Designating Party. Until the Court rules on the challenge, all parties shall  
24 continue to afford the material in question the level of protection to which it is  
25 entitled under the Producing Party's designation.



1           7.     **ACCESS TO AND USE OF PROTECTED MATERIAL**

2           7.1     Basic Principles. A Receiving Party may use Protected Material  
3 that is disclosed or produced by another Party or by a non-party in connection with  
4 this case only for prosecuting, defending, or attempting to settle this litigation. Such  
5 Protected Material may be disclosed only to the categories of persons and under the  
6 conditions described in this Protective Order. When the litigation has been  
7 terminated, a Receiving Party must comply with the provisions of Paragraph 11,  
8 below (FINAL DISPOSITION).

9           Protected Material must be stored and maintained by a Receiving Party  
10 at a location and in a secure manner that ensures that access is limited to the persons  
11 authorized under this Protective Order.

12           7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless  
13 otherwise ordered by the court or permitted in writing by the Designating Party, a  
14 Receiving Party may disclose any information or item designated  
15 “CONFIDENTIAL” only to:

16                     (a)     the Receiving Party’s Outside Counsel of record in this  
17 action, as well as employees of said Counsel to whom it is reasonably necessary to  
18 disclose the information for this litigation and who have signed the “Agreement to  
19 Be Bound by Protective Order” that is attached hereto as Exhibit A;

20                     (b)     the officers, directors, and employees (including House  
21 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
22 litigation and who have signed the “Agreement to Be Bound by Protective Order”  
23 (Exhibit A);

24                     (c)     experts (as defined in this Order) of the Receiving Party to  
25 whom disclosure is reasonably necessary for this litigation and who have signed the  
26 “Agreement to Be Bound by Protective Order” (Exhibit A);

27                     (d)     the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to  
2 whom disclosure is reasonably necessary for this litigation and who have signed the  
3 “Agreement to Be Bound by Protective Order” (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom  
5 disclosure is reasonably necessary and who have signed the “Agreement to Be  
6 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony  
7 or exhibits to depositions that reveal Protected Material must be separately bound by  
8 the court reporter and may not be disclosed to anyone except as permitted under this  
9 Protective Order.

10 (g) the author of the document or the original source of the  
11 information.

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
13 **PRODUCED IN OTHER LITIGATION.**

14 If a Receiving Party is served with a subpoena or an order issued in other  
15 litigation that would compel disclosure of any information or items designated in  
16 this action as “CONFIDENTIAL,” the Receiving Party must so notify the  
17 Designating Party, in writing (by fax, if possible) immediately and in no event more  
18 than three court days after receiving the subpoena or order. Such notification must  
19 include a copy of the subpoena or court order.

20 The Receiving Party also must immediately inform in writing the Party who  
21 caused the subpoena or order to issue in the other litigation that some or all the  
22 material covered by the subpoena or order is the subject of this Protective Order. In  
23 addition, the Receiving Party must deliver a copy of the Protective Order promptly  
24 to the Party in the other action that caused the subpoena or order to issue.

25 The purpose of imposing these duties is to alert the interested parties to the  
26 existence of this Protective Order and to afford the Designating Party in this case an  
27 opportunity to try to protect its confidentiality interests in the court from which the  
28

1 subpoena or order issued. The Designating Party shall bear the burdens and the  
2 expenses of seeking protection in that court of its confidential material – and  
3 nothing in these provisions should be construed as authorizing or encouraging a  
4 Receiving Party in this action to disobey a lawful directive from another court.

5 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED**  
6 **MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
8 Protected Material to any person or in any circumstance not authorized under this  
9 Protective Order, the Receiving Party must immediately (a) notify in writing the  
10 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
11 all copies of the Protected Material, (c) inform the person or persons to whom  
12 unauthorized disclosures were made of all the terms of this Protective Order, and (d)  
13 request such person or persons to execute the “Agreement to Be Bound By  
14 Protective Order” that is attached hereto as Exhibit A.

15 **10. FILING PROTECTED MATERIAL.**

16 Without written permission from the Designating Party or a court order  
17 secured after appropriate notice to all interested persons, a Party may not file in the  
18 public record in this action any Protected Material. A Party that seeks to file  
19 ~~Protected Material must do so based upon an application that they be filed under~~  
20 ~~seal. Such application must comply with the requirements of Civil Rule 5(g) should~~  
21 ~~seek to file only the confidential portions of such documents under seal and based~~  
22 ~~upon the appropriate showing. Any application to file documents under seal in~~  
23 ~~proceedings before the district judge should be made to the district judge.~~

24 **11. FINAL DISPOSITION.**

25 Unless otherwise ordered or agreed in writing by the Producing Party, within  
26 sixty days after the final termination of this action, including any appeals, each  
27 Receiving Party must return all Protected Material to the Producing Party. As used  
28

1 in this subdivision, “all Protected Material” includes all copies, abstracts,  
2 compilations, summaries, attorney and consultant work product, or any other form  
3 of reproducing or capturing any of the Protected Material. With permission in  
4 writing from the Designating Party, the Receiving Party may destroy some or all of  
5 the Protected Material instead of returning it. Whether the Protected Material is  
6 returned or destroyed, the Receiving Party must submit a written certification to the  
7 Producing Party (and, if not the same person or entity, to the Designating Party) by  
8 the sixty day deadline that identifies (by category, where appropriate) all the  
9 Protected Material that was returned or destroyed and that affirms that the Receiving  
10 Party has not retained any copies, abstracts, compilations, summaries or other forms  
11 of reproducing or capturing any of the Protected Material. Notwithstanding this  
12 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
13 papers, transcripts, legal memoranda, correspondence, and attorney and consultant  
14 work product, even if such materials contain Protected Material. Any such archival  
15 copies that contain or constitute Protected Material remain subject to this Protective  
16 Order and shall be maintained in a safe and secure manner.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Protective Order  
19 abridges the right of any person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of  
21 this Protective Order, no Party waives any right it otherwise would have to object to  
22 disclosing or producing any information or item on any ground not addressed in this  
23 Protective Order. Similarly, no Party waives any right to object on any ground to  
24 use in evidence any of the material covered by this Protective Order.

25  
26 APPROVALS ON NEXT PAGE:  
27  
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD FOR ING AND  
2 CHASE, AND BY JOHN ACTING PRO SE.

3 Dated: January 21, 2010

/s/ Matthew D. Moran

4 Jim Hicks  
5 Gary W. Park  
6 Matthew D. Moran  
7 HICKS | PARK LLP  
8 824 Wilshire Boulevard, Suite 300  
9 Los Angeles, CA 90017

10 Lawrence A. Callaghan  
11 TUCKER, ELLIS & WEST LLP  
12 135 Main Street, Suite 700  
13 San Francisco, CA 94105

14 Attorneys for Plaintiff  
15 ING Bank, fsb

16 Dated: January 21, 2010

/s/ Baimba John

17 3354 Casalegno Court  
18 San Jose, CA 95148

19 *Pro se*

20 Dated: January 21, 2010

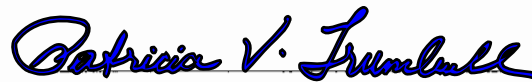
/s/ Harvey Sohnen

21 Harvey Sohnen  
22 LAW OFFICES OF SOHNEN & KELLY  
23 2 Theatre Square, Suite 230  
24 Orinda, California 94563-3346

25 Attorney for Third Party Defendant  
26 J.P. Morgan Chase

27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 Dated: Jan. 22, 2010



Patricia V. Trumbull  
United States Magistrate Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address],  
declare under penalty of perjury that I have read in its entirety and understand the  
Stipulated Protective Order Regarding Confidential Material (“Order”) entered by  
the United States District Court for the Northern District of California on  
\_\_\_\_\_ in the case of ING Bank, fsb, v. Baimba John, Case  
No. C 09-1467 (PVT). I agree to comply with and to be bound by all the terms of  
this Order and I understand and acknowledge that failure to so comply could expose  
me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this Order  
to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Northern District of California for the purpose of enforcing the terms of this  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
[printed name]  
Signature: \_\_\_\_\_  
[signature]