

1 Plaintiff Christine Thomas (“Plaintiff”) and defendant Chase Bank USA, N.A.
2 (“Defendant”) (together, the “Parties”) hereby agree to the following Stipulated
3 Protective Order Governing the Designation and Handling of Confidential
4 Documents and Information and request that the Court enter this Stipulation as an
5 Order of the Court (“Stipulated Protective Order” or “Order”):

6 **1. PURPOSES AND LIMITATIONS**

7 The Parties acknowledge that this Stipulated Protective Order does not confer
8 blanket protections on all disclosures or responses to discovery and that the
9 protection it affords extends only to the information or items that are entitled under
10 applicable legal principles to treatment as confidential. The Parties further
11 acknowledge, as set forth in Section 9 below, that this Stipulated Protective Order
12 creates no entitlement to file Confidential Material, as defined below, under seal.

13 **2. DEFINITIONS**

14 2.1 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts and outside counsel (and their support staff).

16 2.2 Material: all items or information, regardless of the medium or manner
17 generated, stored or maintained (including, among other things, testimony,
18 transcripts, videos or tangible things) that are produced or generated in connection
19 with this case.

20 2.3 “Confidential Material”: means Material that is designated as
21 “Confidential – Subject to Protective Order” in accordance with this Order and
22 protected from disclosure under the terms of this Order. Confidential Material is
23 material that a party reasonably and in good faith believes contains or discloses
24 confidential, non-public, proprietary and/or sensitive information such as financial
25 data, proprietary information, competitively sensitive nonpublic commercial
26 information, information involving a legitimate privacy interest and other
27 competitively sensitive information that is of a nonpublic nature that was created,
28 received and/or maintained on a confidential basis, including but not limited to: (a)

1 personal and financial information of Plaintiff or any other individual; (b) sensitive
2 customer information such as mailing address, account number and account
3 information; and (c) any other information the Producing Party believes is
4 sufficiently sensitive that disclosure would reveal business, competitive, proprietary
5 or financial information of the Producing Party.

6 2.4 Receiving Party: a Party that receives Material in connection with this
7 case.

8 2.5 Producing Party: a Party or non-party that produces Material in
9 connection with this case.

10 2.6 Designating Party: a Party or non-party that designates Material as
11 “Confidential – Subject to Protective Order” in connection with this case.

12 2.7 Privileged Material: Material protected by any privilege, including but
13 not limited to the attorney-client privilege, the attorney work product doctrine or any
14 other applicable privilege.

15 2.8 Counsel: outside counsel and in-house counsel (as well as their support
16 staffs).

17 2.9 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to this case who has been retained by a Party or its Counsel to serve as an
19 expert witness or as a consultant in this case. This definition includes a professional
20 jury or trial consultant retained in connection with this litigation.

21 2.10 Professional Vendors: persons or entities that provide litigation support
22 services to the Parties (e.g., photocopy; videotaping; translating; preparing exhibits
23 or demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
24 and their employees and subcontractors.

25 **3. SCOPE AND DURATION**

26 3.1 Scope. The protections conferred by this Order cover not only
27 Confidential Material, but also any information copied or extracted therefrom, as
28 well as all copies, excerpts or compilations thereof, plus testimony, conversations or

1 presentations by parties or counsel to or in court or in other settings that might reveal
2 Confidential Material.

3 3.2 Duration. The confidentiality obligations imposed by this Order shall
4 remain in effect until a Designating Party agrees otherwise in writing or a court
5 orders otherwise.

6 **4. DESIGNATING CONFIDENTIAL MATERIAL**

7 4.1 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of Section 4.1(a), Section 4(b) below), or as
9 otherwise stipulated or ordered, material that qualifies for protection under this Order
10 shall be so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) For information in documentary form (apart from transcripts of
13 depositions or other proceedings before the Magistrate Judge), that the Producing
14 Party affix the legend “Confidential – Subject to Protective Order” on each page of
15 Material that the Producing Party wants to subject to the protections of this Order.

16 A Receiving Party may designate Material produced by a non-party Producing
17 Party as Confidential if the Material contains information the Receiving Party in
18 good faith believes to be Confidential Material of the Receiving Party by producing a
19 properly designated copy of the Material to all Parties within 21 days after the
20 Material is initially produced by the non-party Producing Party. All Material
21 produced by non-parties in response to subpoenas in this case shall be treated as
22 Confidential Material during that 21-day period.

23 (b) For information produced prior to the entry of this Order, that the
24 Producing Party provide a properly designated copy of the Material to all Parties
25 within 21 days after the Order is entered. All Material produced prior to the entry of
26 this Order in this case shall be treated as Confidential Material during that 21-day
27 period.

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1 (c) For deposition testimony, a Party may request at the time a
2 question is asked, or at the end of the deposition, that any portion of the deposition
3 transcript be designated Confidential. A Party may designate any portion of a
4 deposition as “Confidential – Subject to Protective Order” after transcription of the
5 deposition by giving written notice of the designation by page and line number to all
6 counsel of record within thirty (30) days after receipt of the transcript from the court
7 reporter.

8 (d) For Material produced in some form other than documentary, and
9 for any other tangible items, that the Producing Party affix in a prominent place on
10 the exterior of the container or containers in which the Material is stored the legend
11 “Confidential – Subject to Protective Order.”

12 4.2 Discovery to Non-parties. The Parties shall serve a copy of this Order
13 simultaneously with any discovery request made to a non-party in this action. A
14 non-party who produces Material in this case may designate the Material as
15 “Confidential – Subject to Protective Order” in accordance with this Order, and such
16 Material will be protected from disclosure to the same extent as other Confidential
17 Material.

18 4.3 Failures to Designate. Failure to designate any Material as Confidential
19 Material shall not be deemed a waiver of the Producing Party’s claim of
20 confidentiality as to such Material, and the Producing Party may thereafter designate
21 such information as Confidential Material. A Designating Party’s failure to
22 designate information as “Confidential – Subject to Protective Order” also does not
23 waive a claim of attorney-client privilege or work-product protection, as provided in
24 Federal Rule of Evidence 502(b).

25 4.4 Inadvertent Production of Privileged Material. In the event that the
26 Producing Party discovers it has inadvertently produced Privileged Material, the
27 Producing Party may demand return or destruction of all copies of the Privileged
28 Material by providing written notice of the demand to the Party(-ies) to which the

1 Privileged Material was produced. A Party receiving the notice shall have 14
2 calendar days to respond to the demand. If the Party receiving notice does not agree
3 to the demand within that time, that Party shall provide a written response and
4 available dates to hold a meet and confer session to attempt to resolve the parties'
5 dispute. If, following the meet and confer session, the Party(-ies) receiving the
6 Privileged Material agrees to destroy or return it to the Producing Party, it shall do so
7 no later than 7 days thereafter. Any Party receiving a demand to return Privileged
8 Material shall segregate the Privileged Material and any materials derived from the
9 Privileged Material, and shall not use or disclose them unless and until the Producing
10 Party either agrees to withdraw its demand for the return or destruction of the
11 Material after the meet and confer session or fails to ensure that the procedures set
12 forth in Magistrate Judge Adler's Chambers Rules regarding discovery disputes are
13 followed in a timely manner or the Court issues a ruling against the Producing Party.¹
14 This section is not intended to and does not supersede applicable law concerning
15 issues relating to privilege and/or waiver of privilege.

16 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 5.1 Objection to Designation. A Party may object to the designation of
18 particular Confidential Material by giving written notice to the Designating Party.
19 The written notice shall identify the information to which the objection is made, and
20 explain the basis for the belief that the confidentiality designation was not proper
21 The Party objecting to designation agrees to meet and confer by telephone within 14
22 calendar days after notice is received and to give the Designating Party an
23 opportunity to review the designated material, to reconsider the circumstances and, if
24 no change in designation is offered, to explain the basis for the chosen designation.

25 5.2 Failure to Resolve Objection Through Meet and Confer. If the Parties
26 cannot resolve the objection through the meet and confer process, the parties shall

27 _____
28 ¹ All discovery motions shall be filed in accordance with the procedures set forth in
Magistrate Judge Adler's Chambers Rules.

1 follow the procedures set forth in Magistrate Judge Adler’s Chambers Rules
2 regarding discovery disputes. The disputed information shall be treated as
3 Confidential under the terms of this Stipulated Protective Order until there is a final
4 determination of any motion. In connection with any motion filed under this section,
5 the Designating Party shall bear the burden of establishing that good cause exists for
6 the disputed information to be treated as Confidential.

7 **6. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

8 6.1 Basic Principles. A Receiving Party may use Confidential Material that
9 is disclosed or produced by another Party or by a non-party in connection with this
10 case only for prosecuting, defending or attempting to settle this action. Such
11 Confidential Material may be disclosed only to the categories of persons and under
12 the conditions described in this Stipulated Protective Order.

13 6.2 Disclosure of Confidential Material. Unless otherwise ordered by the
14 Court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose Confidential Material to:

16 (a) Counsel for any Party, as well as employees of said Counsel to
17 whom it is reasonably necessary to disclose the information in connection with this
18 action and Professional Vendors who are reasonably necessary for the processing of
19 the Confidential Material, so long as they do not maintain their own copies of the
20 Confidential Material.

21 (b) the officers, directors and employees of any Party to whom
22 disclosure is reasonably necessary in connection with this action;

23 (c) Experts to whom disclosure is reasonably necessary in connection
24 with this action and who have signed the “Agreement to Be Bound by Stipulated
25 Protective Order” (Exhibit A);

26 (d) the Court and its personnel;

27 (e) court reporters, their staffs and Professional Vendors of such
28 reporters to whom disclosure is reasonably necessary in connection with this action;

1 (f) during their deposition, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Agreement to Be
3 Bound by Stipulated Protective Order” (Exhibit A).

4 6.3 Filing of Confidential Material. In the event that any Party wishes to
5 use Confidential Material in any affidavits, briefs, memoranda of law, or other papers
6 to be filed in Court in this action, such paper containing Confidential Material shall
7 be enclosed and filed in a sealed envelope or container identifying the enclosed
8 document and bearing the caption of this case and a notice substantially as follows:

9 CONFIDENTIAL – SUBJECT TO PROTECTIVE
10 ORDER

11 Subject to public policy, and further court order, nothing shall be filed under seal,
12 and the Court shall not be required to take any action, without separate prior order by
13 the Judge before whom the hearing or proceeding will take place, after application by
14 the affected party with appropriate notice to opposing counsel.

15 Notwithstanding the Parties’ designation of Confidential Material, any court
16 hearing that refers to or describes Confidential Material may be held in open court
17 with records unsealed unless the Court orders, upon its own motion or upon a Party’s
18 request, that the proceedings be conducted in camera, and any transcript relating
19 thereto be designated as Confidential Material.

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21 **7. CONFIDENTIAL MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

23 If a Receiving Party is served with a subpoena or an order issued in other
24 litigation that would compel disclosure of Confidential Material, the Receiving Party
25 must so notify the Designating Party, in writing (by fax and/or email) immediately
26 and in no event more than five court days after receiving the subpoena or order.
27 Such notification must include a copy of the subpoena or court order. Nothing in this
28

1 Order shall be construed as authorizing a party to disobey a lawful subpoena issued
2 in another action.

3 The Receiving Party also must immediately inform in writing the party who
4 caused the subpoena or order to issue in the other litigation that some or all the
5 material covered by the subpoena or order is the subject of this Order. In addition,
6 the Receiving Party must deliver a copy of this Order promptly to the party in the
7 other action that caused the subpoena or order to issue.

8 The purpose of imposing these duties is to alert the interested parties to the
9 existence of this Order and to afford the Designating Party in this action an
10 opportunity to try to protect its confidentiality interests in the court from which the
11 subpoena or order issued. The Designating Party shall bear the burden and expense
12 of seeking protection of its Confidential Material in that court, and nothing in these
13 provisions should be construed as authorizing or encouraging a Receiving Party in
14 this action to disobey a lawful subpoena or directive from another court.

15 **8. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Confidential Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all copies of the Confidential Material, (c) inform the person or person to
21 whom unauthorized disclosures were made of all the terms of this Order and (d)
22 request such person or persons to execute the “Acknowledgment and Agreement to
23 Be Bound by Stipulated Protective Order” that is attached hereto as Exhibit A.

24 **9. FINAL DISPOSITION**

25 The termination of proceedings in this action shall not relieve any person to
26 whom Confidential Material was disclosed from the obligation of maintaining the
27 confidentiality of such Material in accordance with the provisions of this Order.
28 Within sixty days of final termination of this action, including any appeal, each Party

1 shall return or destroy all items (including copies and summaries of such items)
2 designated as Confidential Material by other Parties. Written verification of
3 destruction shall be given immediately after such destruction. Notwithstanding this
4 provision, Counsel are entitled to retain a single archival copy of all filed pleadings,
5 even if such material contains Confidential Material, until the statute of limitations
6 runs on any potential claims for professional negligence or malpractice. Any such
7 archival copies that contain or constitute Confidential Material remain subject to this
8 Order.

9 **10. RESERVATION OF RIGHTS**

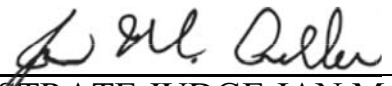
10 10.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 10.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Order, no Party waives any right it otherwise would have to object to disclosing or
14 producing any information or item on any ground not addressed in this Order.
15 Similarly, no Party waives any right to object on any ground to use in evidence of
16 any of the material covered by this Protective Order.

17 10.3 No Waiver. By agreeing to the limited disclosure permitted under this
18 Protective Order, no party waives its claim that Confidential Material is confidential.
19 All parties agree that a disclosure in accordance with this Protective Order does not
20 constitute a waiver of a party's claim or position that the information so disclosed is
21 confidential.

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23 **IT IS SO ORDERED.**

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25 Dated: February 18, 2011


MAGISTRATE JUDGE JAN M. ADLER,
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE ORDER**

I, _____, [type full name] of
_____ [type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Southern District of California on
[date] in the case of Christine Thomas v. Chase Bank USA, N.A., Case No. 10-cv-
415 MMA (JMA). I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
agree that I will not disclose in any manner any Confidential Material that is subject
to this Stipulated Protective 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 Southern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. Unless otherwise noted immediately below, I, as a party,
employee of a party, expert, or a person employed by Counsel agree that I shall be
deemed to have designated the Counsel who hired or retained me with offices in
California, as my California agent for service.

I hereby appoint _____ [type name] of
_____ [type address and telephone number] as my
California agent for service of process in connection with this action or any
proceedings related to enforcement of this Protective Order.

Date: _____
City and State where sworn and signed: _____
Print Name: _____
Signature: _____