

1 JOHNSON & PHAM, LLP
 Christopher D. Johnson, SBN: 222698
 2 E-mail: cjohnson@johnsonpham.com
 Christopher Q. Pham, SBN: 206697
 3 E-mail: cpham@johnsonpham.com
 Nicole L. Drey, SBN: 250235
 4 E-mail: ndrey@johnsonpham.com
 Hung Q. Pham, SBN: 276613
 5 E-mail: ppham@johnsonpham.com
 6355 Topanga Canyon Boulevard, Suite 326
 6 Woodland Hills, California 91367
 Telephone: (818) 888-7540
 7 Facsimile: (818) 888-7544

8 Attorneys for Plaintiffs
 BMW OF NORTH AMERICA, LLC, and
 9 BAYERISCHE MOTOREN WERKE AG

10 Michael D. Eisenberg, Esq. (235252)
 Law Offic of Michael D. Eisenberg
 11 1991 Village Park Way, Suite 100
 Encinitas, California 92023
 12 Phone: (858) 812-0820
 Fax: (858) 761-0240
 13 Email: meisenberg@mdetrademarks.com

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**
 16

17 BMW OF NORTH AMERICA, LLC, a
 18 Delaware Limited Liability Company,
 19 and BAYERISCHE MOTOREN
 20 WERKE AG, a German Corporation,

21 Plaintiffs,

22 v.

23 IDS ONLINE CORPORATION, a New
 24 Jersey Corporation; BENSON KIM HO,
 25 an Individual; and DOES 1-10,
 26 Inclusive,

27 Defendants.
 28

Case No.: 2:16-cv-02331-SVW-AS

**AMENDED STIPULATED
 PROTECTIVE ORDER FOR
 LITIGATION INVOLVING
 HIGHLY SENSITIVE
 CONFIDENTIAL
 INFORMATION AND/OR
 TRADE SECRETS**

1 1. A. PURPOSES AND LIMITATIONS

2 Disclosure in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 14.4, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information of which special protection from public disclosure and
19 from use fro any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may
25 be privileged or otherwise protected from disclosure under state or federal
26 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
27 flow of information, to facilitate the prompt resolution of disputes over
28 confidentiality of discovery materials, to adequately protect information the

1 parties are entitled to keep confidential, to ensure the parties are permitted
2 reasonably necessary uses of such material in preparation for and in the conduct of
3 trial, to address their handling at the end of the litigation, and serve the ends of
4 justice, a protective order for such information is justified in this matter. It is the
5 intent of the parties that information will not be designated as confidential for
6 tactical reasons and that nothing be so designated without good faith belief that it
7 has been maintained in a confidential, non-public manner, and there is good cause
8 why it should not be part of the public record of this case.

9 **2. DEFINITIONS**

10 2.1 Challenging Party: a Party or Non-Party that challenges the
11 designation of information or items under this Order.

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for
14 protection under Federal Rule of Civil Procedure 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House
16 Counsel (as well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information
18 or items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY.”

21 2.5 Disclosure or Discovery Material: all items or information, regardless
22 of the medium or manner in which it is generated, stored, or maintained
23 (including, among other things, testimony, transcripts, and tangible things), that
24 are produced or generated in disclosures or responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a
26 matter pertinent to the litigation who (1) has been retained by a Party or its
27 counsel to serve as an expert witness or as a consultant in this action, (2) is not a
28 past or current employee of a Party or of a Party’s competitor, and (3) at the time

1 of retention, is not anticipated to become an employee of a Party or of a Party's
2 competitor.

3 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
4 Information or Items: extremely sensitive “Confidential Information or Items,”
5 disclosure of which to another Party or Non-Party would create a substantial risk
6 of serious harm that could not be avoided by less restrictive means.

7 2.8 House Counsel: attorneys who are employees of a party to this
8 action. House Counsel does not include Outside Counsel of Record or any other
9 outside counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association,
11 or other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a
13 party to this action but are retained to represent or advise a party to this action and
14 have appeared in this action on behalf of that party or are affiliated with a law firm
15 which has appeared on behalf of that party.

16 2.11 Party: any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and Outside Counsel of Record (and
18 their support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this action.

21 2.13 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits
23 or demonstrations, and organizing, storing, or retrieving data in any form or
24 medium) and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.”

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1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the
10 following information: (a) any information that is in the public domain at the time
11 of disclosure to a Receiving Party or becomes part of the public domain after its
12 disclosure to a Receiving Party as a result of publication not involving a violation
13 of this Order, including becoming part of the public record through trial or
14 otherwise; and (b) any information known to the Receiving Party prior to the
15 disclosure or obtained by the Receiving Party after the disclosure from a source
16 who obtained the information lawfully and under no obligation of confidentiality
17 to the Designating Party.

18 Any use of Protected Material at trial shall be governed by a separate
19 agreement or order of the trial judge. This Order does not govern the use of
20 Protected Material at trial.

21 4. DURATION

22 Even after final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs. Final disposition shall be
25 deemed to be the later of (1) dismissal of all claims and defenses in this action,
26 with or without prejudice; and (2) final judgment herein after the completion and
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
28 including the time limits for filing any motions or applications for extension of

1 time pursuant to applicable law.

2 5. DESIGNATING PROTECTED MATERIAL

3 5.1 Exercise of Restraint and Care in Designating Material for
4 Protection. Each Party or Non-Party that designates information or items for
5 protection under this Order must take care to limit any such designation to specific
6 material that qualifies under the appropriate standards. To the extent it is practical
7 to do so, the Designating Party must designate for protection only those parts of
8 material, documents, items, or oral or written communications that qualify – so
9 that other portions of the material, documents, items, or communications for
10 which protection is not warranted are not swept unjustifiably within the ambit of
11 this Order.

12 Mass, indiscriminate, or routinized designations are prohibited.
13 Designations that are shown to be clearly unjustified or that have been made for
14 an improper purpose (e.g., to unnecessarily encumber or retard the case
15 development process or to impose unnecessary expenses and burdens on other
16 parties) expose the Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that
18 it designated for protection do not qualify for protection at all or do not qualify for
19 the level of protection initially asserted, that Designating Party must promptly
20 notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for
24 protection under this Order must be clearly so designated before the material is
25 disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
3 contains protected material. If only a portion or portions of the material on a page
4 qualifies for protection, the Producing Party also must clearly identify the
5 protected portion(s) (e.g., by making appropriate markings in the margins) and
6 must specify, for each portion, the level of protection being asserted.

7 A Party or Non-Party that makes original documents or materials available
8 for inspection need not designate them for protection until after the inspecting
9 Party has indicated which material it would like copied and produced. During the
10 inspection and before the designation, all of the material made available for
11 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY.” After the inspecting Party has identified the documents it wants copied
13 and produced, the Producing Party must determine which documents, or portions
14 thereof, qualify for protection under this Order. Then, before producing the
15 specified documents, the Producing Party must affix the appropriate legend
16 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY”) to each page that contains Protected Material. If only a portion or
18 portions of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins) and must specify, for each portion, the level of
21 protection being asserted.

22 (b) for testimony given in deposition or in other pretrial or trial
23 proceedings, that the Designating Party identify on the record, before the close of
24 the deposition, hearing, or other proceeding, all protected testimony and specify
25 the level of protection being asserted. When it is impractical to identify separately
26 each portion of testimony that is entitled to protection and it appears that
27 substantial portions of the testimony may qualify for protection, the Designating
28 Party may invoke on the record (before the deposition, hearing, or other

1 proceeding is concluded) a right to have up to 21 days to identify the specific
2 portions of the testimony as to which protection is sought and to specify the level
3 of protection being asserted. Only those portions of the testimony that are
4 appropriately designated for protection within the 21 days shall be covered by the
5 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
6 may specify, at the deposition or up to 21 days afterwards if that period is properly
7 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a
10 deposition, hearing or other proceeding to include Protected Material so that the
11 other parties can ensure that only authorized individuals who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
13 proceedings. The use of a document as an exhibit at a deposition shall not in any
14 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
15 – ATTORNEYS’ EYES ONLY.”

16 Transcripts containing Protected Material shall have an obvious legend on
17 the title page that the transcript contains Protected Material, and the title page
18 shall be followed by a list of all pages (including line numbers as appropriate) that
19 have been designated as Protected Material and the level of protection being
20 asserted by the Designating Party. The Designating Party shall inform the court
21 reporter of these requirements. Any transcript that is prepared before the
22 expiration of a 21-day period for designation shall be treated during that period as
23 if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” in its entirety unless otherwise agreed. After the expiration of that period,
25 the transcript shall be treated only as actually designated.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent
28 place on the exterior of the container or containers in which the information or

1 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
3 item warrant protection, the Producing Party, to the extent practicable, shall
4 identify the protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the Designating Party’s right to secure protection under this Order for such
8 material. Upon timely correction of a designation, the Receiving Party must make
9 reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time. Unless a prompt challenge to a
14 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
15 substantial unfairness, unnecessary economic burdens, or a significant disruption
16 or delay of the litigation, a Party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process by providing written notice of each designation it is challenging
21 and describing the basis for each challenge. To avoid ambiguity as to whether a
22 challenge has been made, the written notice must recite that the challenge to
23 confidentiality is being made in accordance with this specific paragraph of the
24 Protective Order. The parties shall attempt to resolve each challenge in good faith
25 and must begin the process by conferring directly (in voice to voice dialogue;
26 other forms of communication are not sufficient) within 14 days of the date of
27 service of notice. In conferring, the Challenging Party must explain the basis for
28 its belief that the confidentiality designation was not proper and must give the

1 Designating Party an opportunity to review the designated material, to reconsider
2 the circumstances, and, if no change in designation is offered, to explain the basis
3 for the chosen designation. A Challenging Party may proceed to the next stage of
4 the challenge process only if it has engaged in this meet and confer process first or
5 establishes that the Designating Party is unwilling to participate in the meet and
6 confer process in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
8 without court intervention, the Designating Party shall file and serve a motion to
9 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil
10 Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
11 within 14 days of the parties agreeing that the meet and confer process will not
12 resolve their dispute, whichever is earlier. Each such motion must be accompanied
13 by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed in the preceding paragraph. Failure by the
15 Designating Party to make such a motion including the required declaration within
16 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
17 designation for each challenged designation. In addition, the Challenging Party
18 may file a motion challenging a confidentiality designation at any time if there is
19 good cause for doing so, including a challenge to the designation of a deposition
20 transcript or any portions thereof. Any motion brought pursuant to this provision
21 must be accompanied by a competent declaration affirming that the movant has
22 complied with the meet and confer requirements imposed by the preceding
23 paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges and those made for an improper purpose
26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
27 expose the Challenging Party to sanctions. Unless the Designating Party has
28 waived the confidentiality designation by failing to file a motion to retain

1 confidentiality as described above, all parties shall continue to afford the material
2 in question the level of protection to which it is entitled under the Producing
3 Party's designation until the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that
6 is disclosed or produced by another Party or by a Non-Party in connection with
7 this case only for prosecuting, defending, or attempting to settle this litigation.
8 Such Protected Material may be disclosed only to the categories of persons and
9 under the conditions described in this Order. When the litigation has been
10 terminated, a Receiving Party must comply with the provisions of Section 13
11 below (FINAL DISPOSITION).

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

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
23 A;

24 (b) the officers, directors, and employees (including House Counsel)
25 of the Receiving Party to whom disclosure is reasonably necessary for this
26 litigation and who have signed the "Acknowledgment and Agreement to Be
27 Bound" (Exhibit A);

28 ///

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial
6 consultants, and Professional Vendors to whom disclosure is reasonably necessary
7 for this litigation and who have signed the “Acknowledgment and Agreement to
8 Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom
10 disclosure is reasonably necessary and who have signed the “Acknowledgment
11 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
12 Designating Party or ordered by the court. Pages of transcribed deposition
13 testimony or exhibits to depositions that reveal Protected Material must be
14 separately bound by the court reporter and may not be disclosed to anyone except
15 as permitted under this Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information
17 or a custodian or other person who otherwise possessed or knew the information.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
20 in writing by the Designating Party, a Receiving Party may disclose any
21 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as
24 well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this litigation and who have signed the
26 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
27 A;

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1 (b) Experts of the Receiving Party (1) to whom disclosure is
2 reasonably necessary for this litigation, (2) who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom
4 the procedures set forth in paragraph 7.4, below, have been followed;

5 (c) the court and its personnel;

6 (d) court reporters and their staff, professional jury or trial
7 consultants, and Professional Vendors to whom disclosure is reasonably necessary
8 for this litigation and who have signed the “Acknowledgment and Agreement to
9 Be Bound” (Exhibit A); and

10 (e) the author or recipient of a document containing the information
11 or a custodian or other person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
14 Experts.

15 (a) Unless otherwise ordered by the court or agreed to in writing by
16 the Designating Party, a Party that seeks to disclose to an Expert (as defined in
17 this Order) any information or item that has been designated “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
19 first must make a written request to the Designating Party that (1) identifies the
20 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” information that the Receiving Party seeks permission to disclose to the
22 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
23 primary residence, (3) attaches a copy of the Expert’s current resume, (4)
24 identifies the Expert’s current employer(s),¹ (5) identifies each person or entity
25 from whom the Expert has received compensation or funding for work in his or
26

27 ¹ The Expert shall be restricted from undertaking work prior to the termination of the litigation
28 that could foreseeably result in an improper use of the Designating Party’s “HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 her areas of expertise or to whom the expert has provided professional services,
2 including in connection with a litigation, at any time during the preceding five
3 years,² and (6) identifies (by name and number of the case, filing date, and
4 location of court) any litigation in connection with which the Expert has offered
5 expert testimony, including through a declaration, report, or testimony at a
6 deposition or trial, during the preceding five years.

7 (b) A Party that makes a request and provides the information
8 specified in the preceding respective paragraphs may disclose the subject
9 Protected Material to the identified Expert unless, within 14 days of delivering the
10 request, the Party receives a written objection from the Designating Party. Any
11 such objection must set forth in detail the grounds on which it is based.

12 (c) A Party that receives a timely written objection must meet and
13 confer with the Designating Party (through direct voice to voice dialogue) to try to
14 resolve the matter by agreement within seven days of the written objection. If no
15 agreement is reached, the Party seeking to make the disclosure to the Expert may
16 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil
17 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
18 such motion must describe the circumstances with specificity, set forth in detail
19 the reasons why the disclosure to the Expert is reasonably necessary, assess the
20 risk of harm that the disclosure would entail, and suggest any additional means
21 that could be used to reduce that risk. In addition, any such motion must be
22 accompanied by a competent declaration describing the parties' efforts to resolve
23 the matter by agreement (i.e., the extent and the content of the meet and confer
24

25
26 _____
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a
28 third-party, then the Expert should provide whatever information the Expert believes can be
disclosed without violating any confidentiality agreements, and the Party seeking to disclose to
the Expert shall be available to meet and confer with the Designating Party regarding any such
engagement.

1 discussions) and setting forth the reasons advanced by the Designating Party for
2 its refusal to approve the disclosure.

3 In any such proceeding, the Party opposing disclosure to the Expert
4 shall bear the burden of proving that the risk of harm that the disclosure would
5 entail (under the safeguards proposed) outweighs the Receiving Party's need to
6 disclose the Protected Material to its Expert.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 IN OTHER LITIGATION

9 8.1 Notice of Civil Subpoena or Court Order. If a Party is served with a
10 civil subpoena or a court order issued in other litigation that compels disclosure of
11 any information or items designated in this action as "CONFIDENTIAL" or
12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

13 (a) promptly notify in writing the Designating Party. Such
14 notification shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall
18 include a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected.³

21 8.2 Compliance with Civil Subpoena or Court Order. If the Designating
22 Party timely seeks a protective order, the Party served with the civil subpoena or
23 court order shall not produce any information designated in this action as
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
25 ONLY" before a determination by the court from which the subpoena or order
26

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court from which the subpoena or order issued.

1 issued, unless the Party has obtained the Designating Party's permission. The
2 Designating Party shall bear the burden and expense of seeking protection in that
3 court of its confidential material – and nothing in these provisions should be
4 construed as authorizing or encouraging a Receiving Party in this action to
5 disobey a lawful directive from another court.

6 8.3 Compliance with Law Enforcement or Grand Jury Subpoena. The
7 Parties acknowledge that, as a matter of law or as a function of any criminal or
8 law enforcement investigations, they may be prevented from giving any notice
9 whatsoever relating to the disclosure of information marked as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.” Nothing herein shall require a Party to give notice where otherwise
12 prohibited by law or criminal enforcement. In these circumstances, the Party may
13 produce information marked as “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” without violating the terms of
15 this Stipulated Protective Order.

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 9.1 Application. The terms of this Order are applicable to information
19 produced by a Non-Party in this action and designated as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be
23 construed as prohibiting a Non-Party from seeking additional protections.

24 9.2 Production of Non-Party Confidential Information. In the event that a
25 Party is required, by a valid discovery request, to produce a Non-Party’s
26 confidential information in its possession, and the Party is subject to an agreement
27 with the Non-Party not to produce the Non-Party’s confidential information, then
28 the Party shall:

1 (a) promptly notify in writing the Requesting Party and the Non-
2 Party that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (b) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 (c) make the information requested available for inspection by the
8 Non-Party.

9 9.3 Failure to Object. If the Non-Party fails to object or seek a protective
10 order from this court within 14 days of receiving the notice and accompanying
11 information, the Receiving Party may produce the Non-Party's confidential
12 information responsive to the discovery request. If the Non-Party timely seeks a
13 protective order, the Receiving Party shall not produce any information in its
14 possession or control that is subject to the confidentiality agreement with the Non-
15 Party before a determination by the court.⁴ Absent a court order to the contrary,
16 the Non-Party shall bear the burden and expense of seeking protection in this
17 court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has
20 disclosed Protected Material to any person or in any circumstance not authorized
21 under this Stipulated Protective Order, the Receiving Party must immediately (a)
22 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
23 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
24 inform the person or persons to whom unauthorized disclosures were made of all
25 the terms of this Order, and (d) request such person or persons to execute the
26

27 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the Receiving Parties are those set forth in Federal
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order that provides for
10 production without prior privilege review. Pursuant to Federal Rule of Evidence
11 502(d) and (e), insofar as the parties reach an agreement on the effect of
12 disclosure of a communication or information covered by the attorney-client
13 privilege or work product protection, the parties may incorporate their agreement
14 in the stipulated protective order submitted to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of
17 any person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in
21 this Stipulated Protective Order. Similarly, no Party waives any right to object on
22 any ground to use in evidence of any of the material covered by this Protective
23 Order.

24 12.3 Filing Protected Material. Without written permission from the
25 Designating Party or a court order secured after appropriate notice to all interested
26 persons, a Party may not file in the public record in this action any Protected
27 Material. A Party that seeks to file under seal any Protected Material must comply
28 with Civil Local Rule 79-5. Protected Material may only be filed under seal

1 pursuant to a court order authorizing the sealing of the specific Protected Material
2 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
3 request establishing that the Protected Material at issue is privileged, protectable
4 as a trade secret, or otherwise entitled to protection under the law. If a Receiving
5 Party's request to file Protected Material under seal pursuant to Civil Local Rule
6 79-5(e) is denied by the court, then the Receiving Party may file the Protected
7 Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless
8 otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 13.1 Return or Destruction of Protected Material. Within 60 days after the
11 final disposition of this action, as defined in Section 4, each Receiving Party must
12 return all Protected Material to the Producing Party or destroy such material. As
13 used in this subdivision, “all Protected Material” includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of
15 the Protected Material. Whether the Protected Material is returned or destroyed,
16 the Receiving Party must submit a written certification to the Producing Party
17 (and, if not the same person or entity, to the Designating Party) by the 60-day
18 deadline that (1) identifies (by category, where appropriate) all the Protected
19 Material that was returned or destroyed and (2) affirms that the Receiving Party
20 has not retained any copies, abstracts, compilations, summaries or any other
21 format reproducing or capturing any of the Protected Material.

22 13.2 Exception for Archival Copies. Notwithstanding Section 13.1,
23 Counsel are entitled to retain an archival copy of all pleadings, motion papers,
24 trial, deposition, and hearing transcripts, legal memoranda, correspondence,
25 deposition and trial exhibits, expert reports, attorney work product, and consultant
26 and expert work product, even if such materials contain Protected Material. Any
27 such archival copies that contain or constitute Protected Material remain subject to
28 this Protective Order as set forth in Section 4 (DURATION).

1 13.3 Exception for Pending Matters. Notwithstanding Section 13.1,
2 Counsel may retain copies of any and all documents, specifically including but not
3 limited to purchase orders, invoices or other documents that may implicate any
4 individual(s) or entity(ies) that are the subject of or involved in any way with any
5 pending litigation or investigation that could potentially result in litigation,
6 regardless of whether these documents contain Protected Material. Any
7 documents subject to this provision shall remain subject to this Protective Order as
8 set forth in Section 4 (DURATION).

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: August 16, 2016 JOHNSON & PHAM, LLP

11
12 By: /s/ Christopher Q. Pham _____
13 Christopher Q. Pham, Esq.
14 Nicole L. Drey, Esq.
15 Attorneys for Plaintiffs
16 BMW OF NORTH AMERICA, LLC, and
BAYERISCHE MOTOREN WERKE AG

17 DATED: August 16, 2016 LAW OFFICE OF MICHAEL D. EISENBERG

18
19 By: /s/ Michael D. Eisenberg _____
20 Michael D. Eisenberg, Esq.
21 Attorneys for Defendants
22 IDS ONLINE CORPORATION and
BENSON KIM HO

23
24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: August 18, 2016

26
27 / s / _____
28 Honorable Alka Sagar
United States Magistrate Judge

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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 that was issued by the United States District Court for the Central District of California on _____ [date] in the case of ***BMW of North America, LLC, et al. v.***

IDS Online Corporation, et al., CACD Case No. 2:16-cv-02331-SVW-AS. 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 solemnly promise that I will not disclose in any manner any information or item 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 Central 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.

[CONTINUED ON NEXT PAGE]

Initials: _____

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1 I hereby appoint _____ [print or type full
2 name] _____ of

3 _____
4 _____

5 [print or type full address and telephone number] as my California agent for
6 service of process in connection with this action or any proceedings related to
7 enforcement of this Stipulated Protective Order.

8
9 Date: _____

10 City and State where sworn and signed: _____

11
12 Printed name: _____

13 Signature: _____

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