

1 Troy M. Yoshino, No. 197850  
 2 Eric J. Knapp, No. 214352  
 3 Aengus H. Carr, No. 240953  
**CARROLL, BURDICK & McDONOUGH LLP**  
 4 Attorneys at Law  
 44 Montgomery Street, Suite 400  
 5 San Francisco, CA 94104  
 Telephone: 415.989.5900  
 6 Facsimile: 415.989.0932  
 Email: tyoshino@cbmlaw.com  
 eknapp@cbmlaw.com  
 acarr@cbmlaw.com

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 8 Attorneys for Defendant  
 BMW OF NORTH AMERICA, LLC

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 (SAN FRANCISCO DIVISION)

12  
 13 TIM NGUYEN, as an individual and on  
 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 BMW OF NORTH AMERICA, LLC; and  
 17 DOES 1-100,

18 Defendants.

Case No. CV 10-2257 SI

**STIPULATION TO: (1) CONSENT TO  
 PLAINTIFFS' FILING THIRD AMENDED  
 COMPLAINT (2) SET BRIEFING SCHEDULE  
 RELATING TO BMW NA'S ANTICIPATED  
 DISPOSITIVE MOTIONS; AND (2) CONTINUE  
 INITIAL CASE MANAGEMENT CONFERENCE  
 AND RELATED DATES; DECLARATION OF ERIC  
 J. KNAPP IN SUPPORT THEREOF**

**[N.D. CAL. L.R. 6-2]**

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1 By and through their respective counsel of record, plaintiff Tim Nguyen, as an individual  
2 and on behalf of all others similarly situated, and Defendant BMW of North America (“BMW  
3 NA”) stipulate and agree as follows:

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5 **RULE 15(a)(2) STIPULATED FILING OF THIRD AMENDED COMPLAINT**

6 1. In the parties’ prior stipulated order signed by the Court on January 3, 2011 (Docket  
7 No. 30), plaintiff indicated that he was contemplating filing a Third Amended Complaint on or  
8 before January 15, 2011. On January 14, 2011, Plaintiff filed his Third Amended Complaint, and  
9 associated exhibits. (*See* Docket Nos. 31 and 32, respectively). The parties have met and  
10 conferred, and hereby stipulate and agree, that BMW NA consents to plaintiff filing his Third  
11 Amended Complaint. The Third Amended Complaint and attached exhibits are attached hereto  
12 as Exhibit A.

13 **STIPULATED REQUEST FOR ORDER CHANGING TIME PURSUANT TO L.R. 6-2**  
**(BRIEFING SCHEDULE ON BMW NA’S ANTICIPATED MOTIONS TO DISMISS AND STRIKE)**

14 2. BMW NA anticipates filing dispositive motions to the Third Amended Complaint.  
15 Plaintiff’s Third Amended Complaint, raises new issues and adds a new named plaintiff.  
16 Accordingly, the parties mutually recognize that the briefing schedule and subsequent hearing  
17 should be altered to give the parties an opportunity to properly address these issues. The parties  
18 have met and conferred and propose the following schedule:

19 March 11, 2011: BMW NA files dispositive motions;

20 April 8, 2011: Plaintiffs’ opposition briefs due;

21 April 29, 2011: BMW NA’s reply briefs due.

22 The Third Amended Complaint obviates the need for the motion hearing currently  
23 scheduled for March 4, 2011, and the parties request it be continued to May 20, 2011 at 9:00 a.m.  
24 or a later date and time convenient for the Court to address any motions filed by BMW NA in  
25 response to the Third Amended Complaint.

26 3. Procedural History: Pursuant to Civil Local Rule 6-1(a), the parties have previously  
27 stipulated to two extensions of time for BMW NA to respond to plaintiff’s Second Amended  
28 Complaint. The first extension was up to and including August 17, 2010, and the second was to

1 September 28, 2010, whereupon BMW NA filed dispositive motions. The parties have also  
2 previously stipulated to extensions of time for the briefing schedule on the dispositive motions to  
3 the Second Amended Complaint, to continue the Initial Case Management Conference, and to  
4 extend the ADR deadlines, and the Court has approved such stipulations. *See* Docket No. 14  
5 (Aug. 5, 2010 Order); Docket No. 26 (Oct. 13, 2010 Order); Docket Entry of December 3, 2010  
6 (Order); Docket No. 29 (December 22, 2010 Order); Docket No. 30 (January 3, 2011 Order).  
7 Filing of the Third Amended Complaint renders moot BMW NA’s pending dispositive motions to  
8 the Second Amended Complaint.

9 4. Pursuant to N.D. Cal. Local R. 6-1(b) and 6-2, the parties seek approval of this  
10 stipulated request for an order changing time, as the agreements set forth in paragraph 3 affect  
11 dates involving papers required to be filed with the Court and a hearing date currently set on the  
12 Court’s calendar.

13 5. Other than as discussed in paragraph 3, there have been no prior time modifications in  
14 this case. The extensions of time requested herein would require continuation of the hearing on  
15 the Motions from March 4, 2011, to May 20, 2011.

16 **STIPULATED REQUEST FOR ORDER CHANGING TIME PURSUANT TO L.R. 6-2**  
17 **(CONTINUANCE OF INITIAL CASE MANAGEMENT CONFERENCE)**

18 6. The parties hereby further agree that the initial case management conference  
19 (“CMC”) should be continued to a date and time convenient to the Court, no earlier than July 1,  
20 2011. This additional time is requested primarily because, as set forth above, the parties are  
21 requesting an extension of time on the briefing schedule and hearing related to BMW NA’s  
22 planned dispositive motions to the Third Amended Complaint.

23 7. As set forth in the parties’ prior stipulation and the Court’s order approving that  
24 stipulation (*see* Docket No. 30, January 3, 2011 Order), the parties have requested that the Court  
25 continue the CMC because the parties acknowledge that the full scope of issues presented by this  
26 lawsuit will not be known until the Court rules on BMW NA’s responsive pleadings. Given this  
27 situation, the parties agree that meet-and-confers on the subjects discussed in the Court’s  
28 Scheduling Order would be more productive if postponed until after such rulings.





1 ADR deadlines, and the Court has approved such stipulations. *See* Docket No. 14 (Aug. 5, 2010  
2 Order); Docket No. 26 (Oct. 13, 2010 Order); Docket Entry of December 3, 2010 (Order); Docket  
3 No. 29 (December 22, 2010 Order); Docket No. 30 (January 3, 2011 Order).

4 6. Pursuant to N.D. Cal. Local R. 6-1(b) and 6-2, the parties seek approval of this  
5 stipulated request for an order changing time, as the agreements set forth in paragraph 4 affect  
6 dates involving papers required to be filed with the Court and a hearing date currently set on the  
7 Court's calendar.

8 7. Other than as discussed in paragraph 5 of this Declaration, there have been no prior  
9 time modifications in this case. The extensions of time requested herein would require  
10 continuation of the hearing on the Motions from March 4, 2011, to May 20, 2011.

11 8. The parties also agree that the initial case management conference ("CMC") should  
12 be continued to a date and time convenient to the Court, no earlier than July 1, 2011. This  
13 additional time is requested primarily because, as set forth above, the parties are requesting an  
14 extension of time on the briefing schedule and hearing related to the Motions.

15 9. On January 3, 2011, this Court ordered that the CMC shall be continued to April 22,  
16 2011. (*See* Docket No. 30, January 3, 2011 Order.) As discussed in the stipulation relating to  
17 that Order, the parties have requested that the Court continue the CMC because the parties  
18 acknowledge that the full scope of issues presented by this lawsuit will not be known until the  
19 Court rules on BMW NA's responsive pleadings. Given this situation, the parties agree that  
20 meet-and-confers on the subjects discussed in the Court's Scheduling Order would be more  
21 productive if postponed until after such rulings.

22 10. Given the requested change in the Motions schedule, the parties request that the  
23 Court continue the CMC to at least July 1, 2011, to allow the timeline contemplated in the  
24 Court's Scheduling Order to progress normally, *i.e.*, to allow for: (a) a 14-day period in which to  
25 meet and confer; (b) an additional 14 days to prepare the Rule 26(f) report, initial disclosures,  
26 and the Court-mandated Joint Case Management Statement; and (c) for the Court to have 7 days  
27 to review relevant materials before the initial Case Management Conference.  
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**ORDER**

For good cause shown, the Court hereby enters the Stipulation set forth above as the Order of the Court. The schedule in this case is hereby modified as follows:

a. Plaintiff has filed a Third Amended Complaint. BMW NA shall respond to the Third Amended Complaint by March 11, 2011. Should BMW NA oppose the Third Amended Complaint by motions, plaintiff will have until April 8, 2011 to file any opposition. Any reply briefs relating to such motions shall be filed by April 29, 2011. The motion hearing set for March 4, 2011 is continued to May 20, 2011 at 9:00 a.m. to address any motions filed in response to the Third Amended Complaint.

b. The case management conference shall be continued to July 1, 2011 at ~~2:00~~<sup>2:30</sup> p.m.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_, 2011

By:   
\_\_\_\_\_  
HONORABLE SUSAN ILLSTON