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10 Attorneys for Plaintiff
 BE IN, INC., a New York corporation

DAVIS WRIGHT TREMAINE LLP

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 13 IN THE UNITED STATES DISTRICT COURT
 14 THE NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 BE IN, INC., 17 Plaintiff, 18 v. 19 GOOGLE, INC., a California corporation, RICHARD ROBINSON, and DOES 1 through 20 3, inclusive, 21 Defendants.) Case No. CV12-03373-LHK)))) NOTICE OF MOTION AND MOTION) TO WITHDRAW AS COUNSEL FOR) PLAINTIFF)) Judge: Hon. Lucy H. Koh) Hearing Date: April 18, 2013) Hearing Time: 1:30pm) Courtroom: 8, 4th Floor) Judge: Hon. Lucy H. Koh) Trial Date: None set)))
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 26 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

27 **PLEASE TAKE NOTICE** that, on April 18, 2013, at 1:30 p.m. or as soon thereafter as
 28 the matter may be heard in Courtroom 8, 4th Floor, United States District Courthouse, 280 South

1 First Street, San Jose, CA 95113, before the Honorable Lucy H. Koh, Davis Wright Tremaine LLP
 2 (“DWT”) and Clifford Chance US LLP¹ (“Clifford Chance”) shall and hereby do respectfully seek
 3 leave of this Court, pursuant to Civil L.R. 11-5(a) and in compliance with Cal. Rules of Prof'l
 4 Conduct R. 3-700, to withdraw and be relieved as counsel for Plaintiff Be In Inc.

5 This Motion is made by DWT and Clifford Chance (“Movants”) pursuant to Civil Local
 6 Rule 11-5 and Rule 3-700(C) of the California Rules of Professional Conduct for an order
 7 relieving them as counsel for Be In on the grounds that Be In has breached an agreement with or
 8 obligation to Movants as to expenses and fees, making it unreasonably difficult for Movants to
 9 effectively carry out their representation. This Motion is based upon this Notice of Motion,
 10 Motion, Memorandum of Points and Authorities, and the concurrently-filed Declarations of
 11 Joseph E. Addiego III and William E. Wallace III, all papers and records on file herein, and such
 12 other and further oral and documentary evidence as this Court deems necessary.

MEMORANDUM OF POINTS AND AUTHORITIES

14 In 2012, Be In retained Movants to represent Be In in connection with the above-captioned
 15 litigation. (Declaration of Joseph E. Addiego III, (“Addiego Decl.”), ¶ 2; Declaration of William
 16 E. Wallace III, (“Wallace Decl.”), ¶ 2.) In doing so, Be In expressly agreed to pay DWT and
 17 Clifford Chance for fees and expenses incurred for such representation. *Id.* Be In has breached
 18 and remains in breach of agreements with or obligation to Movants as to expenses and fees.
 19 (Addiego Decl., ¶ 4; Wallace Decl., ¶ 4.) Continued representation of Be In will present an
 20 unreasonable financial burden upon Movants, and it is and will be unreasonably difficult for them
 21 to effectively carry out their representation of Be In. (Addiego Decl., ¶ 5; Wallace Decl., ¶ 5.) In
 22 addition, Movants are informed by Be In that it has secured replacement counsel, although Be In
 23 has not executed substitution of counsel as of the filing of this Motion. (Wallace Decl., ¶ 8.)

I. ARGUMENT

A. The California Rules of Professional Conduct Permit Movants to Withdraw Under the Circumstances at Bar

27 ¹ While Clifford Chance attorneys have not yet been admitted to appear in this case *pro hac vice*,
 28 their names appear on the pleadings in this case with a notation that *pro hac vice* admission is
 pending and Clifford Chance therefore join this Motion to Withdraw. (Wallace Decl., ¶ 3.)

1 Withdrawal is governed by the California Rules of Professional Conduct. *See Nehad v.*
2 *Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to
3 attorney withdrawal); *j2 Global Commc'ns, Inc. v. Blue Jay, Inc.*, No. C 08-4254 PHJ, 2009 WL
4 464768, at *1 (N.D. Cal. Feb. 24, 2009) (citation omitted). California Rule of Professional
5 Conduct 3-700(C) sets forth several grounds under which an attorney may request permission to
6 withdraw. An attorney may withdraw if the client breaches an agreement or obligation as to
7 expenses or fees. Cal. Rules of Prof'l Conduct R. 3-700(C)(1)(f); *j2 Global Commc'ns, Inc.*, 2009
8 WL 464768 at *1 (citation omitted) (holding withdrawal is proper where client failed to pay an
9 unspecified amount of attorney's fees and client refused to communicate with its attorney). An
10 attorney also may request withdrawal on the basis of "conduct [that] renders it unreasonably
11 difficult for the member to carry out the employment effectively." Cal. Rules of Prof'l Conduct R.
12 3-700(C)(1)(d); *j2 Global Commc'ns, Inc.*, 2009 WL 464768 at *1. Be In's failure to pay fees and
13 expenses imposes an unreasonable financial burden upon Movants, making it unreasonably
14 difficult for them to effectively carry out their representation.

15 **B. Movants Have Taken Reasonable Steps To Avoid Reasonably Foreseeable**
16 **Prejudice To Be In**

17 Where, as here, the Rules allow for permissive withdrawal, leave of court is necessary.
18 Cal. Rules of Prof'l Conduct R. 3-700(A)(1) ("If permission for termination of employment is
19 required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding
20 before that tribunal without its permission."). Before counsel can withdraw, counsel also must
21 comply and take reasonable steps to avoid reasonably foreseeable prejudice to the rights of the
22 client, including giving due notice to the client, allowing time for employment of other counsel.²
23 *See id.*; *see also* N.D. Civil Local Rule 11-5(a) ("Counsel may not withdraw from an action until
24 relieved by order of Court after written notice has been given reasonably in advance to the client
25 and to all other parties who have appeared in the case.").

26 ² Civil Local Rule 11-5(b) further requires "[w]hen withdrawal by an attorney from an action is
27 not accompanied by simultaneous appearance of substitute counsel or agreement of the party to
28 appear pro se, leave to withdraw may be subject to the condition that papers may continue to be
served on counsel for forwarding purposes, unless and until the client appears by other counsel or
pro se." Movants do not object to undertaking such an obligation.

1 Movants have taken reasonable steps to avoid foreseeable prejudice to Be In. Movants
2 have given Be In due notice of Movants' intent to withdraw from representation through oral and
3 written communications dating back to November 2012. (Addiego Decl., ¶ 6; Wallace Decl., ¶ 6.)
4 On January 17, and 20, 2013, Movants provided Be In with final notice that it intended to
5 withdraw from the Litigation if Be In did not remedy its breach by January 31, 2013, and
6 suggested that Be In secure substitute counsel. (Addiego Decl., ¶ 7; Wallace Decl., ¶ 7.) Movants
7 also provided Be In with a copy of the instant motion on February 11, 2013, prior to filing.
8 (Wallace Decl., ¶ 9.) Through these steps, Movants have allowed ample time for Be In to identify
9 and employ other counsel, and given that the next deadline in this litigation is March 28, 2013
10 (last day to meet and confer pursuant to FRCP 26(f)), Be In still has ample time to secure
11 substitute counsel.³ Indeed, Be In has informed Movants that it has located replacement counsel,
12 although the substitution has not yet been executed. (Wallace Decl., ¶ 8.)

13 C. Service of Motion

14 Concurrently with the filing of this Motion, Movants will serve this Motion and its
15 supporting papers on all parties not registered with the Court's e-filing system. (Addiego Decl., ¶
16 8.) Movants have served these papers via overnight mail on Be In. (Addiego Decl., ¶ 9.)

17 II. CONCLUSION

18 Given the circumstances outlined above, sufficient good cause exists to permit Movants'
19 withdrawal as counsel of record for Be In and Movants respectfully request that the Court enter an
20 order:

- 21 a) Granting this Motion;
- 22 b) Withdrawing DWT and Clifford Chance as counsel of record for Be In;
- 23 c) Relieving DWT and Clifford Chance of any and all further obligations on behalf of
24 Be In in this action;

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26 ³ On December 17, 2012, the Court signed an Order continuing the hearing on Defendants'
27 pending motion to dismiss and the initial case management conference to April 18, 2013, and all
28 dates relating to the parties' obligations to engage in a Meet and Confer, provide Initial
Disclosures, and to prepare a Case Management Statement under Federal Rules of Civil Procedure
Rule 26 and the Northern District of California Local Rules flow from the April 18, 2013 hearing
date.

