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18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA  
 20 SAN JOSE DIVISION

21 **BE IN, INC., a New York corporation,**

22 Plaintiff,

23 v.

24 **GOOGLE, INC., a California corporation;  
 25 RICHARD ROBINSON, an individual; and  
 26 DOES 1 through 3, inclusive,**

27 Defendants.

CASE NO. 5:12-CV-03373-LHK

**PLAINTIFF BE IN, INC.'S UNOPPOSED  
 ADMINISTRATIVE MOTION TO  
 CONTINUE HEARING ON  
 DEFENDANT'S MOTION TO DISMISS  
 PLAINTIFF'S THIRD AND FOURTH  
 CAUSES OF ACTION AND INITIAL  
 CASE MANAGEMENT CONFERENCE**

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PLAINTIFF BE IN, INC.'S UNOPPOSED ADMINISTRATIVE MOTION TO CONTINUE HEARING ON DEFENDANT'S  
 MOTION TO DISMISS PLAINTIFF'S THIRD AND FOURTH CAUSES OF ACTION AND INITIAL CASE MANAGEMENT  
 CONFERENCE

Case No. 5:12-CV-03373-LHK

1           **I. Unopposed Request to Continue Hearing on Defendant's Motion to Dismiss Plaintiff's**  
2           **Third and Fourth Causes of Action and Initial Case Management Conference**

3           On September 4, 2012, Defendant Google, Inc. ("Google" ") filed a Motion to Dismiss the  
4           third and fourth causes of action of Plaintiff Be In, Inc. ("Be In") pursuant to Rule 12(b)(6) of the  
5           Federal Rules of Civil Procedure. On December 13, 2012, the parties filed a joint stipulation  
6           requesting that the hearing on Google's Motion to Dismiss and the initial Case Management  
7           Conference ("Initial CMC") be continued from January 3, 2013 to February 28, 2013. By order dated  
8           December 17, 2012, this Court granted, in part, that request, continuing the Initial CMC and hearing  
9           on Google's Motion to Dismiss to April 18, 2013. On February 19, 2013, Clifford Chance US LLP  
10          and Davis Wright Tremaine LLP sought to withdraw as counsel of record for Plaintiff in the above-  
11          captioned action and, by order of this Court dated March 7, 2013, Gibson Dunn and Crutcher LLP  
12          ("Gibson Dunn") was substituted for withdrawing counsel.

13          Since being retained as counsel for Be In, Gibson Dunn has worked diligently to review the  
14          pleadings and other relevant documents in this matter, and to evaluate the underlying legal and  
15          factual issues relating to this dispute. Based on this preliminary evaluation, Be In anticipates that it  
16          will be seeking to amend its complaint, either by stipulation or, if necessary, by seeking leave from  
17          this Court pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. Be In further anticipates  
18          that its proposed amended complaint will remove one or more causes of action in the Amended  
19          Complaint and will assert new causes of action. Be In also contemplates that it may withdraw claims  
20          against certain current defendants and/or name additional entities as defendants. Counsel for Be In  
21          has advised Google's counsel that they (i) will provide Defendants with a draft of the proposed  
22          Second Amended Complaint on or before April 22, 2013, and (ii) intend to file a stipulation or  
23          noticed motion for leave to file a Second Amended Complaint with this Court by no later than April  
24          30, 2013. Google's counsel has advised Be In's counsel that Defendants are amenable to that  
25          schedule. Google, however, reserves all rights with respect to the as yet unidentified proposed  
26          amendments, including its right to refile its Motion to Dismiss or a revised motion to dismiss.

27          Given these circumstances, Be In respectfully requests that the hearing on Google's Motion to  
28          Dismiss that is currently scheduled for April 18, 2013 be adjourned. In addition, Be In respectfully

1 requests that the initial Case Management Conference be continued to a date after June 6, 2013, to  
2 permit the parties an opportunity to review and evaluate the claims and allegations contained in Be  
3 In's proposed amended pleading before completing their obligations under Rule 26 of the Federal  
4 Rules of Civil Procedure and the Northern District of California Civil Local Rules. Be In believes  
5 that the parties will be able to meet and confer, provide initial disclosures, and prepare a Case  
6 Management Statement under Rule 26 of the Federal Rules of Civil Procedure and the Northern  
7 District of California Civil Local Rules by no later than May 30, 2013.

8 Be In is not seeking to delay this matter; on the contrary, Be In is eager to obtain a  
9 determination of the merits of its claims. However, Be In respectfully submits that it furthers the goal  
10 of Rule 1 of the Federal Rules of Civil Procedure—to secure the just, speedy, and inexpensive  
11 determination of all civil actions—to allow Be In an opportunity to reform its pleading at an early  
12 stage, prior to any hearing on Google's Motion to Dismiss—which may, potentially, be rendered  
13 moot in whole or in part by Be In's proposed Second Amended Complaint—and prior to initial  
14 disclosures and the commencement of discovery.

15 As is set forth in the accompanying Stipulation, counsel for Defendants do not oppose the  
16 continuation of case deadlines sought in this motion.

17 In light of the foregoing, Be In respectfully seeks an order adjourning the hearing on Google's  
18 Motion to Dismiss and continuing the Initial CMC to a date convenient for the Court that is no earlier  
19 than June 6, 2013.

20  
21 Dated: March 22, 2013

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/

KatieLynn Townsend

Attorney for Plaintiff  
BE IN, INC.