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 17 BE IN, INC., a New York corporation

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

**STIPULATION AND [PROPOSED]
 ORDER GRANTING 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**

STIPULATION AND [PROPOSED] ORDER GRANTING 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 WHEREAS, on September 4, 2012, Defendant Google, Inc. (“Google”) filed a Motion to
2 Dismiss the third and fourth causes of action of Plaintiff Be In, Inc. (“Be In”) pursuant to Rule
3 12(b)(6) of the Federal Rules of Civil Procedure;

4 WHEREAS, on December 13, 2012, the parties filed a joint stipulation requesting that the
5 hearing on Google’s Motion to Dismiss and the initial Case Management Conference (“Initial CMC”)
6 be continued from January 3, 2013 to February 28, 2013 and, by order dated December 17, 2012, this
7 Court granted, in part, that request, continuing the Initial CMC and hearing on Google’s Motion to
8 Dismiss to April 18, 2013;

9 WHEREAS, on February 19, 2013, Clifford Chance US LLP and Davis Wright Tremaine
10 LLP sought to withdraw as counsel of record for Plaintiff in the above-captioned action and, by order
11 of this Court dated March 7, 2013, Gibson Dunn and Crutcher LLP (“Gibson Dunn”) was substituted
12 for withdrawing counsel;

13 WHEREAS, Be In and its new outside counsel are evaluating the underlying legal and
14 factual issues involved in this dispute and anticipate seeking leave, by stipulation or motion, to amend
15 the Amended Complaint;

16 WHEREAS, Be In anticipates that its proposed Second Amended Complaint will remove one
17 or more existing causes of action or parties, and may assert new causes of action and/or add new
18 parties;

19 WHEREAS, based on the foregoing, the parties agree that the hearing on Google’s Motion to
20 Dismiss should be adjourned, and that the Initial CMC should be continued until after April 30, 2013.

21 NOW, THEREFORE, IT IS HEREBY STIPULATED THAT:

- 22 1. The April 18, 2013 hearing on Google’s Motion to Dismiss is adjourned.
- 23 2. The initial Case Management Conference is continued to a date convenient to the Court
24 that is no earlier than June 6, 2013.
- 25 3. Be In will file and serve a stipulation or noticed motion for leave to file a Second
26 Amended Complaint on or before April 30, 2013.
- 27 4. Google retains all rights with respect to the proposed Second Amended Complaint,

1 including the right to oppose leave to file such complaint and the right to move to dismiss any or all
2 of such complaint.

3 5. All dates relating to the parties' obligations to engage in a meaningful meet and confer,
4 provide initial disclosures, and to prepare a case management statement under Rule 26 of the Federal
5 Rules of Civil Procedure and the Northern District of California Civil Local Rules shall be continued
6 and flow from the continued date of the Initial Case Management Conference.

7 6. This stipulation is without prejudice to the rights, claims, or defenses of any party.

8 IT IS SO STIPULATED.

9
10 Dated: March 25, 2013

Respectfully submitted,

GIBSON DUNN & CRUTCHER LLP

11
12
13 By: /s/

KatieLynn Townsend

14 Attorney for Plaintiff
15 BE IN, INC.

16
17 Dated: March 25, 2013

Respectfully submitted,

18 WILSON SONSINI GOODRICH & ROSATI

19 By: /s/

Colleen Bal

20
21 Attorney for Defendants
22 GOOGLE, INC. and RICHARD ROBINSON

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, KatieLynn Townsend, hereby attest that concurrences in the filing of this document have been obtained from each of the signatories.

By: /s/ _____
KatieLynn Townsend

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1 **[PROPOSED] ORDER**

2 Pursuant to stipulation, the foregoing is approved. The hearing on Google Inc.'s Motion to
3 Dismiss the third and fourth causes of action of plaintiff Be In, Inc. is adjourned, and the initial Case
4 Management Conference in this matter is continued to _____, 2013 at 1:30 p.m. in
5 Courtroom 8 of the above-captioned court.

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7 IT IS SO ORDERED.

8 DATED: _____, 2013
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10 _____
11 The Honorable Lucy H. Koh
12 United States District Court Judge
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