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 BE IN, INC., a New York corporation

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 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 **BE IN, INC., a New York corporation,**
 16 **Plaintiff,**

17 **v.**

18 **GOOGLE, INC., a California corporation,**
 19 **RICHARD ROBINSON, and DOES 1-3,**
 20 **inclusive.**
 21 **Defendants.**

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

**DECLARATION OF KATIE TOWNSEND
 IN SUPPORT OF PLAINTIFF'S MOTION
 FOR LEAVE TO FILE SECOND
 AMENDED COMPLAINT**

Date: September 26, 2013
 Time: 1:30 p.m.
 Dept: Courtroom 8, Fourth Floor
 Judge: Hon. Lucy H. Koh

Date Comp. Filed: June 28, 2012

Trial Date: None set.

DECLARATION OF KATIE TOWNSEND

I, Katie Townsend, declare:

1. I am an attorney licensed to practice law in the State of California and before the United States District Court for the Northern District of California, and am an associate in the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for plaintiff Be In, Inc. (“Be In”) in the above-captioned action. I make this declaration in support of Be In’s Motion for Leave to Amend Complaint. I have personal knowledge of the facts set forth in this declaration and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of Be In’s proposed Second Amended Complaint.

3. On Monday, April 22, 2013, Ashlie Beringer, Jeana Bisnar Maute and I met and conferred with Colleen Bal, counsel for defendants in the above-captioned action, by telephone. During that call, we conveyed to defendants’ counsel plaintiff’s willingness not to name Richard Robinson or the entity that we understand to be his direct employer, Google UK Ltd., as defendants in plaintiff’s proposed Second Amended Complaint, provided defendants agreed to provide access to discovery from Mr. Robinson and Google UK as though they were named parties located within the United States. During our discussion, we explained to defendants’ counsel that the purpose of this proposal was to facilitate discovery in this matter and ensure that Be In would not be procedurally disadvantaged were it to agree not to name Mr. Robinson or Google UK as defendants.

4. Later that same day, I e-mailed counsel for defendants a copy of Be In’s Proposed Second Amended Complaint. In that same e-mail, I reiterated the proposal that we had conveyed to defendants’ counsel earlier that day concerning Mr. Robinson and Google UK. Attached hereto as **Exhibit B** is a true and correct copy of an e-mail chain containing that e-mail to defendants’ counsel.

5. On Friday, April 26, 2013, I received an e-mail response from defendants’ counsel to plaintiff’s “proposed second amended complaint and [its] related discovery proposal.” In that response, among other things, defendants’ counsel stated that it would agree to stipulate to the filing of the proposed Second Amended Complaint if, *inter alia*, plaintiff agreed “to extend Defendants’ deadline to move, answer or otherwise respond to the complaint by 21 days after the deadline

1 calculated under applicable rules.” Defendant’s counsel also stated that, in order for defendants to
2 agree to Plaintiff’s proposal concerning Mr. Robinson, that “Be In (and any related parties) must
3 agree that it will not now nor at any time in the future name him as a defendant in this or any related
4 action. The agreement by Be In (and related parties) must be enforceable by injunction, and with the
5 prevailing party to recover its attorney’s fees.” Finally, defendants were unwilling to agree to
6 produce relevant discovery maintained by Google UK, asserting that “Google UK will not enter any
7 agreement with respect to the proposed second amended complaint or discovery in this action.” A
8 true and correct copy of defendants’ counsel’s April 26, 2013 response e-mail is included in the e-
9 mail chain attached hereto as Exhibit B.

10 6. On April 29, 2013, I responded to defendants’ counsel via e-mail. Among other
11 things, I informed defense counsel that plaintiff was willing to agree to an extension of time, as set
12 forth in defendants’ counsel’s prior e-mail. I also informed defendants’ counsel that “it is our
13 understanding that Google UK is currently, and has been at all relevant times, Mr. Robinson’s direct
14 employer,” and confirmed that plaintiff “remains willing to agree that it will not separately name
15 Google UK in its proposed second amended complaint if Google Inc. agrees that it will treat Google
16 UK as within the scope of its discovery obligations in connection with this matter (for example, that
17 it will respond to any requests for production of documents directed to Google, Inc. by providing
18 responsive material and information from Google UK).” A true and correct copy of my April 29,
19 2013 e-mail to defendants’ counsel is included in the e-mail chain attached hereto as Exhibit B.

20 7. On April 30, 2013, defendants’ counsel responded to my e-mail. Among other things,
21 defendants’ counsel’s stated that they would stipulate to the filing of the Proposed Second Amended
22 Complaint, but only if defendants would agree that “Defendants shall have 21 extra days to respond
23 to the complaint, from the deadline calculated under the applicable rules (counting from the date
24 when service is effectuated upon all Defendants).” A true and correct copy of defendants’ counsel’s
25 April 30, 2013 e-mail to me is included in the e-mail chain attached hereto as Exhibit B.

26 8. Shortly thereafter, my colleague Jeana Maute, sent, via e-mail, a draft proposed
27 stipulation for the filing of the proposed Second Amended Complaint to defendants’ counsel. I was
28

1 copied on that e-mail. Thereafter, defendants' counsel sent back a redlined version of that draft
2 stipulation with proposed changes. I was also copied on that e-mail.

3 9. Later that day, after reviewing the redlined version of the draft stipulation with
4 defendants' counsel's comments, I sent an e-mail to defendant's counsel stating that plaintiff did not
5 oppose defendants' "proposed changes to the draft stipulation. . . , with one exception: that each
6 Defendant's deadline to 'answer, move, or otherwise respond to the Second Amended Complaint'"
7 will be "calculated as of the date when service is effectuated upon all defendants named in the
8 Second Amended Complaint." I explained in my e-mail to defendants' counsel that we had
9 "assumed that you would be accepting service on behalf of all defendants named in the [Second
10 Amended Complaint]" and "still assume, at a minimum, that you will be accepting service for
11 Google, Inc., who we do not think should get the benefit of any delay that would result if Plaintiff is
12 required to effect personal service on YouTube, LLC or Google UK." Accordingly, I requested that
13 defendants' counsel "let us know which parties you will accept service for," so that we could address
14 that issue in the draft stipulation. I also offered, in the alternative, to "take the agreement with respect
15 to timing out of the stipulation and address it separately after the parties have had an opportunity to
16 work through that issue." A true and correct copy of my April 30, 2013 e-mail to defendants'
17 counsel is included in the e-mail chain attached hereto as Exhibit B.

18 10. In response to that e-mail, defendants' counsel did not inform us which defendants
19 named in the proposed Second Amended Complaint it was willing to accept service on behalf of, and
20 instead stated that "[a]t this point, it is obviously too late to try to reach any agreement regarding
21 service on Google UK." A true and correct copy of that April 30, 2013 e-mail to me from
22 defendants' counsel is included in the e-mail chain attached hereto as Exhibit B.

23 11. In response, I again proposed that the parties file a stipulation "that does not address
24 extensions of time for any party, and [that the parties] address the service/briefing schedule issue
25 separately." I explained that "Plaintiff is not opposed to giving defendants an extension of time to
26 respond to the Second Amended Complaint. However, it appears that there are issues that the parties
27 need to discuss further with respect to that point." I attached to that e-mail a draft stipulation that
28 made no reference to any extensions of time, but included the other revisions defendants' counsel had

1 proposed. A true and correct copy of that April 30, 2013 e-mail is included in the e-mail chain
2 attached hereto as Exhibit B.

3 12. Defendants' counsel would not agree to such a stipulation. Accordingly, I informed
4 defendants' counsel that plaintiff would be proceeding by way of a motion for leave to file an
5 amended complaint. A true and correct copy of those April 30, 2013 e-mails exchanged between
6 myself and defendants' counsel are included in the e-mail chain attached hereto as Exhibit B.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is true
8 and correct and that this declaration was executed on April 30, 2013, in Los Angeles, California.

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10 By: /s/ _____
11 Katie Townsend