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17 GOOGLE INC. AND RICHARD ROBINSON

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION
21

22 BE IN, INC., a New York Corporation,
23 Plaintiff,

24 v.

25 GOOGLE INC., a California Corporation,
26 RICHARD ROBINSON, and DOES 1 through 3,
inclusive,

27 Defendants.
28

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

INITIAL JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT & [PROPOSED]
ORDER

Judge: Hon. Lucy H. Koh

1 The parties to the above-entitled action jointly submit this Initial JOINT CASE
2 MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All
3 Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.
4 Counsel for Be In, Inc. and counsel for Defendants met and conferred on May 15, 2013.

5 **1. JURISDICTION & SERVICE**

6 Plaintiff's Statement:

7 The Court has subject matter jurisdiction over Be In's claims under the Copyright Act of
8 1976, 17 U.S.C. § 101 et seq., pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) and (b), and
9 supplemental jurisdiction over Be In's state law claims under 28 U.S.C. § 1367. This Court also
10 has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332 based on the diversity of the
11 parties, and because the amount in controversy exceeds \$75,000.00. Venue is proper in this Court
12 pursuant to 28 U.S.C. § 1391(b), because Google Inc.'s principal place of business is Mountain
13 View, California, in this judicial district, and Google transacts business in this district.

14 No issues exist as to personal jurisdiction over current defendants Google Inc. and
15 Richard Robinson. Be In has served both current defendants.

16 Be In moved for leave to file a second amended complaint on April 30, 2013, which adds
17 defendants YouTube, LLC, and Google UK Ltd., and drops defendants Richard Robinson, and
18 Does 1-3. (D.I. 37.) Defendants do not contest jurisdiction as to proposed defendant YouTube
19 LLC.

20 Personal jurisdiction over proposed defendant Google UK may be disputed. Be In
21 contends the Court has personal jurisdiction over Google UK because, upon information and
22 belief, Google UK transacts, operates, and solicits business in this District (including without
23 limitation business activities conducted with and on behalf of its parent company Google Inc.),
24 and it purposefully directed its activities at the forum, thereby invoking the benefits and
25 protections of its laws; the claims arise out of or relate its forum-related activities; and the
26 exercise of jurisdiction is reasonable. Defendants may contest jurisdiction over Google UK based
27 on a forum selection clause contained in a non-disclosure agreement ("NDA") executed between
28 Be In and Google Ireland, Ltd. That forum selection clause does not apply to the claims alleged

1 against Google UK. First, although the NDA requires that affiliates to whom Google Ireland
2 discloses confidential information also maintain that information in confidence, Google UK is not
3 a party to the NDA and cannot invoke the forum selection clause. Second, the forum selection
4 clause is narrow and would not extend to the claims alleged against Google UK in any event.

5 As to service, Be In has served current defendants Richard Robinson and Google Inc. If
6 the Court grants Be In's motion for leave to file its Second Amended Complaint, Be In will serve
7 new defendants YouTube LLC and Google UK promptly on receipt of the Court's order. The
8 parties have discussed the possibility of Defendants accepting service on behalf of Google UK in
9 exchange for an extension of time to respond to the second amended complaint.

10 Defendants' Statement:

11 Defendants do not contest jurisdiction with respect to Google Inc. and proposed
12 Defendant YouTube, LLC. With respect to proposed Defendant Google UK, however, a forum
13 selection clause in the non-disclosure agreement ("NDA") pleaded in both Plaintiff's First and
14 Proposed Second Amended Complaints requires that Plaintiff's claims against Google UK be
15 brought exclusively in the courts of England. As Be In acknowledges, the NDA was executed in
16 anticipation of the May 12, 2011 meeting in London, to cover the potential disclosure of
17 confidential information between Google UK and Be In. *See, e.g.*, Proposed Second Amended
18 Complaint, ¶¶ 44-47, 55. Google UK is a "group company" under the NDA and is entitled to the
19 benefits of the provisions of the NDA, including the forum selection clause. Although Be In
20 apparently disputes the straight-forward application of the forum selection clause to the claims Be
21 In proposes to assert against Google UK, the clause applies to those claims under both English
22 law (which expressly governs the NDA and all related claims) and California Law. Thus, if
23 Google UK is ultimately named as a party in the case, Google UK may contest jurisdiction.

24 **2. FACTS**

25 Plaintiff's Statement:

26 Starting in 2007, Be In created and developed CamUp, an award-winning social
27 entertainment consumption platform. The platform allows up to eight users, such as groups of
28 friends to simultaneously watch, listen, chat and collaborate around shared videos, music, and

1 other media in a real-time, personal environment online as they see live streaming video of each
2 other—something no other platform provided. By March 2011, Be In had developed the unique
3 technology, appearance and infrastructure for this social video sharing platform, CamUp, and had
4 developed proprietary strategies for integrating that platform into established content, social and
5 media platforms.

6 Be In publicly unveiled CamUp for the first time at SXSW Interactive, the industry-
7 leading technology conference, in Austin, Texas in March 2011. CamUp's demonstration booth
8 was located steps away from Google's booth, and Google personnel visited the booth and viewed
9 the demonstration. Be In publicly launched the Cam Up website shortly thereafter. In April
10 2011, Be In won the "Early Stage" award from MIPTV Connected Creativity Ventures for the
11 most innovative start-up of the year.

12 On May 12, 2011, Be In representatives met with Richard Robinson, a Google U.K.
13 executive, to discuss Be In's vision and strategy for the CamUp platform and a proposed business
14 partnership. At the meeting, Be In disclosed proprietary and confidential business strategies in
15 confidence, pursuant to a non-disclosure agreement. Among the information Be In disclosed was
16 using the platform Be In had devised to transform Google's (and YouTube's) massive—but
17 unstructured, and largely anonymous—user base into an organized social community that would
18 foster shared social experiences around Google's content products, including most immediately,
19 YouTube. Part of this integration strategy was a button that could be used to invite YouTube
20 users to "Watch With Your Friends," allowing YouTube users to share content in a novel
21 dynamic environment using CamUp. Mr. Robinson was enthusiastic about CamUp and asked Be
22 In to send additional written information. Be In followed up the meeting by sending
23 Mr. Robinson an eight-page memo the next day, marked "Confidential," which described some
24 key aspects of Be In's confidential strategic plan.

25 On or about June 28, 2011, Google launched an invitation-only field test of Google+, its
26 most recent, and ambitious, attempt to create a social network to rival Facebook and other
27 competitors. Included as part of Google+ is Google Hangouts, a social video platform that bears
28 striking similarity to CamUp, and infringes Be In's copyrights. It immediately was hailed by the

1 media as the new social network's "killer" feature. CNN called Hangouts "a key component of
2 Google+" and "Google's sharpest edge over Facebook's current product." TechCrunch gushed
3 that "nailing an intimate experience that supports two or more people in a video conference is no
4 small feat, but Google knocked it out of the park with Hangouts It's more than just one-on-
5 one chat though, which is why Hangouts are so magical."

6 Google claims that the development of Hangouts began "long before" the events giving
7 rise to this lawsuit. But Google has acknowledged publicly that Hangouts was developed late in
8 the process of Google+, and that the Hangouts group was the last group to join the development
9 team for Google+. At least one news article based on an interview with the lead developer for
10 Hangouts, Chee Chew, places the start of the development for Hangouts at only "several months"
11 before July 28, 2011.

12 In addition, Mr. Chew has claimed in a video that the prototype for Google Hangouts
13 purportedly only took "about an hour" to develop. The video, which pre-dates the filing of this
14 lawsuit, can be found at [http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-
15 video-link-between-seattle-and-stockholm-became-an-awesome-google-feature/](http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-video-link-between-seattle-and-stockholm-became-an-awesome-google-feature/). Google's claim
16 that Hangouts' development started earlier is apparently based on the fact that what Mr. Chew
17 describes in the video as a "permanent video link" between two Google engineering offices had
18 previously existed. The video makes clear that this permanent link was simply a means of
19 enabling Google developers in Seattle and Stockholm to collaborate. This is very different from
20 the consumer-facing Google Hangouts, whose conception Mr. Chew places at a much later point
21 in time. Moreover, the issue for trial will not be when Google first began development of some
22 of the base elements it later incorporated into Hangouts, but whether it copied from Be In during
23 the development process.

24 Google points to the declaration of Mr. Robinson as proof of Google's lack of liability of
25 Be In's trade secret claim. Notably, however, since prior to the filing of this lawsuit Be In has
26 been requesting documents evidencing Google's purported independent development, but Google
27 thus far has refused to provide them. Mr. Robinson's recollection of the May 2011 meeting
28

1 described in his declaration will be contradicted by the Be In representatives who attended the
2 meeting.

3 Google used and continues to use proprietary integration and business strategies disclosed
4 by Be In at the May meeting in marketing and implementing Google Hangouts, including
5 placement of a button underneath YouTube videos in August 2011 encouraging viewers to share
6 the viewing experience with others. The button was labeled “Watch With Your Friends”—the
7 language that was proposed by Be In—and was placed in the same position on the screen that Be
8 In had described at the meeting. Google has acknowledged that the development of this button
9 did not begin until July 2011, two months after Mr. Robinson’s meeting with Be In. Google
10 subsequently modified the language of the button, but when a user placed the mouse over the
11 button, the “Watch With Your Friends” language still appeared. It appears that Google has now
12 removed the “Watch With Your Friends” language from YouTube entirely.

13 With this action, Be In seeks to stop defendants from their continued copying, use, and
14 misappropriation of Be In’s valuable trade secrets and intellectual property.

15 Be In anticipates the following factual issues will need to be resolved:

- 16 • Did Google copy elements of the CamUp website that it first viewed at a
17 demonstration in March 2011 at the SXSW Interactive conference?
 - 18 • Did Google misappropriate the trade secrets that Be In disclosed at the May 2011
19 meeting and in the written documentation Be In provided after the meeting at
20 Mr. Robinson’s request?
 - 21 • Can Google establish independent development of Hangouts given the apparent
22 timing of the relevant development, the striking similarities of Hangouts to the
23 CamUp website unveiled in March 2011, and Google’s apparent use of the same
24 proprietary strategies that Be In disclosed in May 2011?
 - 25 • Did Google violate the contractual Terms of Service of the CamUp website?
 - 26 • What amount can Google prove should be deducted from the profits it derived
27 from infringing the copyrights of the CamUp website?
- 28

- What harm did Be In suffer after potential investors pulled back and its momentum stalled after Google launched Hangouts?
- To what extent has Google been unjustly enriched by its misappropriation of Be In's trade secrets?

Defendants' Statement:

In June 2011, Google launched a video chat product called Hangouts as part of its larger rollout of its Google+ offerings. Hangouts was the result of internal development, ideas and planning at Google that date back long before the time period at issue in this lawsuit. Separately, in July and August 2011, California employees of Google and its subsidiary YouTube, LLC who were responsible for the YouTube user interface came up with the idea of linking the new Hangouts product to YouTube through a button on the YouTube user interface. After considering different wording possibilities to express the idea that friends could use the button to watch YouTube videos together via Hangouts, these employees decided to add the phrase "Watch With Your Friends" to the button. One Google product (YouTube) thereby promoted another Google product (Hangouts).

Meanwhile, in March 2011, Plaintiff launched an unsuccessful video chat website called CamUp. Plaintiff hoped to interest Google and/or YouTube in the CamUp website. Through a mutual acquaintance in London, Plaintiff arranged a meeting in London with a Google UK employee named Richard Robinson. Mr. Robinson is a sales employee, not a product developer; his job responsibilities did not encompass or relate to evaluating business proposals from third parties. However, he agreed to the meeting as a favor to the mutual acquaintance. Plaintiff met with Mr. Robinson in May 2011 in London to promote CamUp, and sent him a document describing the CamUp website. Shortly afterwards, Mr. Robinson emailed two London colleagues to see if they were interested in learning more about Plaintiff. Neither colleague responded. Mr. Robinson let the matter drop, and did not tell anyone else about the meeting or transmit anything from the meeting to others. Mr. Robinson was unaware that Google was working on Hangouts, and does not know who developed Hangouts or who placed the button to Hangouts on the YouTube user interface. The two colleagues to whom Mr. Robinson sent an

1 email about the meeting never received any other information about the meeting, and in any
2 event did not transmit anything about Plaintiff to anyone else. Neither of these recipients, Bruce
3 Daisley and Benjamin Faes, were involved in Google's development of Hangouts or YouTube's
4 integration with Hangouts.

5 In this lawsuit, Plaintiff makes two false accusations. The first is that Richard Robinson
6 covertly passed alleged "trade secrets" from the May 2011 meeting with Plaintiff in London
7 (1) to the developers elsewhere working on Google's Hangouts product; and (2) to the
8 employees elsewhere who added the button to Hangouts on the YouTube user interface. Plaintiff
9 apparently alleges, for example, that the idea of one Google product (YouTube) interoperating
10 with another Google product (Hangouts) through a button is Plaintiff's unique intellectual
11 property that nobody could have created but Plaintiff. It also apparently alleges that use of the
12 phrase "watch with your friends" to encourage users to watch videos with their friends is a
13 valuable trade secret and/or that YouTube could not have independently arrived at use of the
14 same common phrase. These accusations are baseless. Google has informed Plaintiff since
15 September 2011 that the allegations are false, and in August 2012, Google provided Plaintiff a
16 detailed, sworn declaration of Richard Robinson which attached Mr. Robinson's emails to his
17 colleagues and made clear that (1) he transmitted nothing from the May 2011 meeting apart from
18 the two emails attached to the declaration; and (2) he does not know who was involved in
19 developing Hangouts or the YouTube "Watch With Your Friends" button.

20 Plaintiff's trade secret claim also appears to encompass the allegation that Mr. Robinson
21 covertly told others at Google to develop Hangouts, based on secret information from the May
22 2011 meeting in London, and that Google's Hangouts product therefore embodies a stolen "trade
23 secret." The accusation is false for all of the reasons described above. To support this
24 allegation, Plaintiff selectively quotes an interview with a Hangouts developer, who states that a
25 Hangouts prototype was generated after review by Google executives in "about an hour."
26 Plaintiff insinuates that Google created Hangouts for the first time after Mr. Robinson's May
27 2011 meeting, and that it was able to create it so quickly only because the idea was stolen from
28 Plaintiff. *See Proposed Second Amended Complaint* ¶ 67. But that suggestion misrepresents the

1 very Google interview Plaintiff cites. The parts of the interview omitted by Plaintiff explain that
2 (1) Hangouts had long existed as an internal project to link Google employees in Seattle
3 collaborating with other employees in Stockholm; (2) Google executives joined a “Hangout” to
4 see the project; (3) Google was able to create a prototype of Hangouts in Google+ in “about an
5 hour” because it already had pre-existing work, and (4) the project was “at the core the same” as
6 the released version, including “a bunch of thumbnails” and a “main screen.” The YouTube
7 video of the Google interview – which predates the filing of this lawsuit – can be found at:
8 [http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-video-link-between-seattle-](http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-video-link-between-seattle-and-stockholm-became-an-awesome-google-feature/)
9 [and-stockholm-became-an-awesome-google-feature/](http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-video-link-between-seattle-and-stockholm-became-an-awesome-google-feature/).

10 Because Plaintiff persists in pursuing a baseless trade secret claim in bad faith,
11 Defendants will seek an award of attorneys’ fees and costs under the California Uniform Trade
12 Secrets Act.

13 Plaintiff’s second accusation is that Google’s Hangouts developers repeatedly visited the
14 Plaintiff’s CamUp website in 2011 and then “slavishly copied” the appearance of the website,
15 thereby infringing Plaintiff’s copyright in the website and breaching the website Terms of
16 Service. Among other things, Plaintiff claims that Google copied the placement of a rectangular
17 viewing screen above a horizontal row of small thumbnails of participant viewers, use of a
18 grayed-out silhouette in the thumbnails to signify a seat open for an additional viewer, placement
19 of chat or playlist logs to the side of the main screen, and a grey and white color palate. Plaintiff
20 does not explain why Google would want to copy the user interface of Plaintiff’s failed product.
21 Nor does Plaintiff allege any credible factual support for its claim that anyone from Google
22 involved in the development of the Hangouts user interface ever even saw its website, much less
23 copied it. Instead, Plaintiff asserts that traffic to its website from locations where Google has
24 offices increased prior to Google’s release of Hangouts. Notably, the locations of the claimed
25 increased traffic vary with each version of Plaintiff’s complaint, depending on the particular
26 Google-related entities that it names as defendants. *Compare* First Amended Complaint § 32
27 (alleging a “dramatic spike in user traffic . . . in particular from individuals located in Mountain
28 View, California) *with* Proposed Second Amended Complaint § 58 (alleging “unusual, new

1 traffic . . . from within the United Kingdom, the areas of Palo Alto and Mountain View . . . and
2 Seattle, Washington[.]”).

3 Like the trade secret claim, the copyright infringement claim and related breach of Terms
4 of Service claim are meritless. As noted above, Google has been working on what became
5 Hangouts for years – it did not suddenly rush to “copy” Plaintiff’s website in March 2011.
6 Moreover, basic website design elements about which Plaintiff complains are commonplace and
7 driven by functional considerations. Plaintiff’s copyright claim and related breach of contract
8 claim are baseless.

9 Defendants anticipate the following factual issues will need to be resolved:

- 10 1. Did Google independently develop its Hangouts product, including its user
11 interface?
- 12 2. Did Google’s development of Hangouts predate Plaintiff’s London meeting with
13 Google UK’s Richard Robinson and Plaintiff’s release of its Cam Up website?
- 14 3. Did Google employees independently decide to link YouTube to Hangouts with a
15 button after considering different wording possibilities for that button?
- 16 4. Did Richard Robinson of Google UK transmit information about his May 2011
17 meeting with Plaintiff in London to others, apart from the emails attached to his
18 August 2012 declaration?
- 19 5. Did Mr. Robinson know who at Google or YouTube was developing Hangouts, or
20 was in charge of the YouTube user interface?
- 21 6. Was anyone involved in Google’s Hangouts product aware of Plaintiff or
22 Plaintiff’s CamUp website?
- 23 7. Did any involved in Google’s Hangouts product ever copy any elements of
24 Plaintiff’s Cam Up website?

25 **3. LEGAL ISSUES**

26 Plaintiff’s Statement:

27 The legal issues in dispute are those raised in Be In’s proposed Second Amended
28 Complaint, including the following:

- Defendants' misappropriation of Be In's trade secrets in violation of California Civil Code § 3426, *et seq.*;
- Defendants' infringement of Be In's copyright in violation of the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;
- Defendants' breach of an implied in fact contract to compensate Be In for use of Be In's proprietary business and integration strategies;
- Defendants' breach of contract in violation of Be In's terms of service prohibiting them from making unauthorized use of Be In's intellectual property rights;
- Be In's entitlement to injunctive relief and monetary damages.

Be In reserves the right to add claims if discovery reveals additional wrongdoing by defendants, and to expand the legal issues in dispute accordingly.

Defendants' Statement:

Defendants anticipate the following legal issues will need to be resolved:

1. What law applies to Defendant Google UK;
2. Whether Plaintiff can articulate valid "trade secrets," or whether all such information is non-secret;
3. Whether Plaintiff can or cannot meet its burden to prove that Defendants did not independently develop the Hangouts product and the button linking the Hangouts product to the YouTube user interface;
4. Whether Plaintiff has any protectable copyright rights in the alleged similarities between Plaintiff's Cam Up website and Google's Hangouts product;
5. Whether there is a binding contract, whether express or implied, between Plaintiff and any Defendant and, if so, the terms of that contract(s);
6. The enforceability and terms of Plaintiff's Terms of Service, in general and with respect to any Defendant;
7. Whether Plaintiff acted in bad faith, within the meaning of California Civil Code section 3426.4 with respect to its trade secret accusations; and
8. Whether Defendants are entitled to their costs and attorneys' fees from Plaintiff

for defending against Plaintiff's copyright allegations.

4. MOTIONS

Be In has filed the following motions:

- (PENDING) Motion for Leave to File Second Amended Complaint on April 30, 2013 (D.I. 37). Google filed a conditional opposition to the motion on May 14, 2013 (D.I. 33). The Court is currently set to hear the motion on September 26, 2013 at 1:30 p.m.
- (PENDING) Notice of Substitution of Counsel on May 14, 2013 (D.I. 42).
- Motion to continue hearing on Defendant's Motion to Dismiss on March 25, 2013 (D.I. 34), which the Court granted on March 26, 2013 (D.I. 35)
- Motion to withdraw counsel on February 19, 2013 (D.I. 28) and to substitute counsel on March 6, 2013 (D.I. 30), which the Court granted together March 7, 2013 (D.I. 33)
- Administrative Motion to file under seal Opposition to Motion to Dismiss on September 25, 2012 (D.I. 22), which the Court found moot on March 26, 2013 (D.I. 35)

Additionally, Be In anticipates that it may need to move to compel discovery from Google UK Ltd., because Google has taken the position during meet and confer that documents and information of Google UK are "not necessarily" in Google Inc.'s custody or control. Be In also anticipates that it may file a motion for partial summary judgment, depending on the facts revealed during discovery.

Defendants have filed the following motions:

- Motion to Dismiss Plaintiff's Third and Fourth Causes of Action on September 4, 2012 (D.I. 15), which the Court found moot on March 26, 2013 in light of Be In's amended complaint (D.I. 35)
- Administrative Motion to file under seal on September 4, 2012 (D.I. 16), which the Court granted on September 12, 2012 (D.I. 20)

- 1 • Motion to remove incorrectly filed document on September 4, 2012 (D.I. 17),
2 which the Court granted on September 12, 2012 (D.I. 21)

3 In addition to a motion to dismiss Plaintiff's Second Amended Complaint (and any further
4 amended complaints), Google Inc. and proposed Defendants YouTube and Google UK anticipate
5 that they may file dispositive motions, including motions for summary judgment, and that there is
6 the potential for discovery issues moving forward which may require motion practice to resolve.
7 Defendants also contemplate filing motions for attorneys' fees and costs and sanctions.

8 **5. AMENDMENT OF PLEADINGS**

9 Be In has a pending motion for leave to file its Second Amended Complaint. Defendants
10 have stated that they "do not in principle oppose Plaintiff's filing of an amended complaint," but
11 object only to having the amended complaint signed by Gibson Dunn, when Morrison & Foerster
12 has now substituted in as counsel in the case. (D.I. 43 at 5.) The parties have stipulated that Be
13 In has until May 30 to file a revised proposed second amended complaint to be signed by
14 Morrison & Foerster or a reply brief. (D.I. 46.) If Be In seeks to file a revised proposed second
15 amended complaint, Defendants will use their best efforts to confirm whether they stipulate to
16 the revised second amended complaint prior to the June 5 Case Management Conference. (*Id.*)

17 Be In does not presently anticipate seeking further leave to amend, but discovery has not
18 yet commenced, and Be In reserves the right to so amend its pleading if necessary. Be In
19 proposes that the deadline for such an amendment be set for one month before the close of fact
20 discovery.

21 **6. EVIDENCE PRESERVATION**

22 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
23 Stored Information, and met and conferred on May 15, 2013 pursuant to Fed. R. Civ. P. 26(f).

24 Be In confirms that it has taken reasonable and proportionate steps taken to preserve
25 evidence relevant to the issues reasonably evident in this action. Pursuant to the instructions of
26 prior counsel, Be In notified relevant employees and contractors of Be In of their obligation to
27 preserve evidence.
28

1 Defendants confirm that they have taken reasonable and proportionate steps to preserve
2 evidence relevant to the issues reasonably evident in this action.

3 **7. DISCLOSURES**

4 At their meet-and-confer on May 15, 2013 pursuant to Fed. R. Civ. P. 26(f), the parties
5 agreed to exchange initial disclosures under Fed. R. Civ. P. 26 on May 29, 2013 (14 days after
6 their conference, as provided in Fed. R. Civ. P. 26(a)(1)(C)).

7 **8. DISCOVERY**

8 Neither party has taken any discovery to date. As noted immediately above, the parties
9 agreed to exchange initial disclosures on May 29, 2013.

10 The parties have met and conferred with respect to e-discovery. The parties have also met
11 and conferred on a proposed stipulated protective order. The parties hope to have agreed on the
12 form of order before the June 5 Case Management Conference. If the parties are unable to reach
13 agreement, they will have narrowed their disputes to a discrete issue or set of issues that can be
14 presented to the Court.

15 The parties anticipate that the scope of discovery will encompass the factual and legal
16 issues identified in Sections 2 and 3 above, and the requested relief discussed in Section 11
17 below, including all related, ancillary, and subsidiary factual and legal issues and matters.

18 The parties propose the following modifications to the rules governing discovery:

19 Plaintiff's Position:

- 20 • **Interrogatories:** Each side may propound a maximum of 50 interrogatories.
21 • **Depositions:** Each party may take up to 20 witness depositions (excluding expert
22 witness depositions).

23 Plaintiff Be In is a much smaller company than Google, and intends to make every effort
24 to handle discovery efficiently and to minimize discovery expense. However, Be In does not
25 believe that ten depositions will be sufficient in this case. Although the parties have not yet
26 exchanged initial disclosures, Be In understands that Google will be disclosing four to five
27 developers of Hangouts whom Google may rely upon at trial and that the development team was
28 much larger than that. In addition, Be In understands that Google will be disclosing individuals

1 from a separate development team at YouTube who were responsible for the development of the
2 “Watch With Your Friends” button whom Google may also rely upon at trial. Be In also needs to
3 depose what is sure to be an entirely separate group of individuals regarding Google’s business
4 strategy for Hangouts and the monetary and strategic significance of Hangouts and the integration
5 strategy Google adopted to both YouTube and to Google. Google’s indirect revenue model
6 makes this discovery particularly challenging.

7 In addition, Be In needs to depose Mr. Robinson and the individuals with whom he
8 communicated regarding the May 2011 meeting—which even Google admits is at least two
9 additional people. And Be In needs to depose third party investors whose actions were impacted
10 by the launch of Google Hangouts and is entitled to depose a corporate representative of Google
11 Inc., YouTube and Google U.K. Some of the witnesses reside outside of the United States and
12 they cannot be compelled to testify at trial, making depositions even more critical here than in the
13 typical case.

14 Given the combined size of Google Inc., YouTube and Google UK, Be In seeks to
15 increase the number of interrogatories to 50 to allow it to focus its other discovery efforts more
16 effectively on the individuals who have relevant information and to tailor its discovery to the key
17 issues of the case.

18 Defendants’ Position:

19 Defendants do not believe that discovery should exceed the limits set forth in the Federal
20 Rules. This is a simple case where minimal discovery will quickly show that Plaintiff’s
21 accusations are not true. There is no good cause for increased depositions or interrogatories
22 based on Plaintiff’s speculation about the content of discovery not yet taken. Defendants believe
23 that Plaintiffs have nothing to support their central accusations -- that Mr. Robinson transmitted
24 anything from his May 2011 meeting with Plaintiff in London to developers elsewhere or that
25 Google copied any aspects of Plaintiff’s website -- and thus hope to conduct a broad fishing
26 expedition in what will be a failed effort to support those accusations. Plaintiff can always come
27 back with a request for increased depositions or interrogatories if, after Plaintiff has exhausted the
28 default discovery limits, it can show a legitimate need to increase the burden and expense of this

meritless lawsuit on Defendants. There is no need to double the number of depositions and interrogatories at this point.

9. CLASS ACTION

This case is not a class action.

10. RELATED CASES

There are no related cases pending at this time.

11. RELIEF

Plaintiff's Statement:

Be In seeks the following relief in its case against Google, Google UK, and YouTube:

- An order preliminarily and permanently enjoining defendants and any other persons or entities acting in concert with defendants from further misappropriation of Be In's trade secrets including its confidential business and marketing plans and strategies;
- An order preliminarily and permanently enjoining defendants and any other persons or entities acting in concert with defendants from engaging in future acts of infringement, contributory infringement and/or induced infringement of Be In's copyrights in its CamUp platform, including by prohibiting Google from offering or utilizing its Hangouts platform;
- Damages:
 - adequate to compensate Be In for defendants' acts of trade secret misappropriation, copyright infringement, breach of implied contract and breach of contract, including actual and exemplary damages, lost profits, infringer's profits and/or, at a minimum, damages based on reasonable royalty rates for Be In's technology, in amounts to be proven at trial;
 - for unjust enrichment based on profits of defendants attributable to their wrongful acts;
 - based on the copyright statute;

- An award of Be In's attorneys' fees, costs of suit herein incurred, and pre-judgment and post-judgment interest.

Defendants' Statement:

Defendants seek denial of Plaintiff's requested relief, an award of attorneys' fees and costs under the Uniform Trade Secrets Act, and costs and -- if they are the prevailing party-- attorneys' fees under the Copyright Act. Defendants are considering other requests for relief/sanctions, and reserve the right to supplement this response.

12. SETTLEMENT AND ADR

The parties have agreed to submit to private mediation before a neutral at a time and date that is mutually acceptable to both parties.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

Be In is willing consent to having a magistrate judge conduct all further proceedings including trial and entry of judgment if that will enable the case to be set for trial more quickly.

Defendants do not consent to a magistrate judge.

14. OTHER REFERENCES

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES

Neither party at this time requests bifurcation of any issue, claim or defense. The parties will work to narrow issues for trial once discovery commences, the case progresses further, and the parties' positions are more developed.

16. EXPEDITED TRIAL PROCEDURE

This case should not be handled under the Expedited Trial Procedure of General Order No. 64.

17. SCHEDULING

The parties' proposed case schedule is set forth below:

Event	Proposed Date
Last day to make original Initial Disclosures (14 days after Rule 26 conference)	05/29/2013
Last day to file and serve amendments to the pleadings	01/24/2014
Designate experts	02/11/2014
Complete fact discovery	02/21/2014
Exchange opening expert reports (on issues on which the producing party would bear the burden of proof at trial)	03/14/2014
Exchange rebuttal expert reports (on issues on which the rebutting party would not bear the burden of proof at trial)	04/15/2014
Complete expert discovery	05/5/2014
Last date to file dispositive motions	06/02/2014
Motions in Limine (filing)	21 days before trial
Opposition to Motions in Limine (filing)	14 days before trial
Pretrial Statement	07/14/2014
Pretrial Conference	07/21/2014
Trial	07/28/2014 (or Court's earliest convenience)

18. TRIAL

Be In, Inc. has requested a jury trial. The parties expect trial will last seven to ten court days.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Be In filed its "Certificate of Interested Entities or Persons" under Civil Local Rule 3-16 on April 30, 2013 (D.I. 36) identifying the following entities known by Plaintiff to have either:

- (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or
- (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding:

- a) Dreamore, Inc. (63% shareholder)
- b) Zeus Corporation (15% shareholder)
- c) Joseph Jordan D'Anna (11% shareholder)
- d) Elia D'Anna (11% shareholder).

With respect to Defendant Google Inc., and pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel certifies that as of this date, Defendant Google Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

20. OTHER

PDF Email Service: The parties agree that they may serve discovery and objections and/or responses to discovery by electronic mail and that, if sent by 5:30 p.m. Pacific time on a business day, they shall be deemed served as of that business day as though they had been personally served. The parties further agree that electronic mail shall be the sole required method for such service. Additional service by hard copy is optional, and does not affect calculation of due dates. Separately, and for purposes of production of documents and things, the parties further agree that production through secure file transfer or FTP via electronic mail shall be the preferred method for such production, except in instances of voluminous productions that cannot practically be sent in this manner. Each Party may specify to opposing counsel a list of attorneys, assistants, and paralegals to be included on an electronic mail service list for purposes of this paragraph.

In addition, the parties agree that they may serve documents filed with the Court under seal by electronic mail and that the documents shall be deemed served as of the time and date of the accompanying ECF documents filed with the Court provided that they are sent promptly after the filing.

The parties do not anticipate raising any other issues at the Case Management Conference.

1 Dated: May 29, 2013

MORRISON & FOERSTER LLP

2 By: /s/ Kenneth A. Kuwayti
3 KENNETH A. KUWAYTI

4 Attorneys for Plaintiff
5 BE IN, INC.

6
7 Dated: May 29, 2013

WILSON SONSINI GOODRICH ROSATI

8 By: /s/ Colleen Bal
9 COLLEEN BAL

10 Attorneys for Defendants
11 GOOGLE INC. and RICHARD
12 ROBINSON
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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____ By: _____
Honorable LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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GENERAL ORDER 45 ATTESTATION

I, Kenneth A. Kuwayti, am the ECF User whose ID and password are being used to file the Joint Proposed Case Management Schedule. In compliance with General Order 45, X.B., I hereby attest that Colleen Bal has concurred in this filing.

/s/ Kenneth A. Kuwayti
Kenneth A. Kuwayti