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 8 Google Inc., YouTube, LLC, and Google UK Ltd.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

13 BE IN, INC., a New York Corporation,)
)
 14 Plaintiff,)
)
 15 v.)
)
 16 GOOGLE INC., a California corporation;)
 YOUTUBE, LLC, a Delaware limited liability)
 17 company; and GOOGLE UK LTD., a private)
 limited company registered in England and)
 18 Wales,)
)
 19 Defendants.)
)
 20 _____)

Case No.: 5:12-cv-03373-LHK-HRL
**DEFENDANT GOOGLE INC.'S
 ADMINISTRATIVE MOTION TO
 FILE DOCUMENTS UNDER SEAL
 PURSUANT TO LOCAL RULE 79-5**

Judge: Hon. Howard R. Lloyd

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants Google Inc., YouTube, LLC, and Google UK Ltd. (“Google”) hereby request
3 that the Court permit Defendants to file under seal portions of two documents: (1) the parties’
4 Discovery Dispute Joint Report #2 (“Joint Report”), attached as Exhibit A to the Declaration of
5 Riana S. Pfefferkorn filed in support of the instant Motion (“Pfefferkorn Declaration”), and (2)
6 Exhibit B to the Joint Report, which is attached as Exhibit B to the Pfefferkorn Declaration.

7 This is a trade secret case, in which Plaintiff contends that Defendant misappropriated
8 alleged trade secrets. This motion to seal concerns a document and a discovery response which
9 Plaintiff contends contain or describe its alleged trade secrets.

10 • **Joint Report:** The first document is the Joint Report, which contains or quotes from
11 discovery responses and a document which Plaintiff has designated as “Confidential” and which
12 Plaintiff contends contain alleged trade secrets. It is attached as Exhibit A to the Pfefferkorn
13 Declaration.

14 • **Exhibit B to Joint Report:** The second document is a true and correct copy of
15 excerpts from Plaintiff’s supplemental responses to Google’s first set of interrogatories to
16 Plaintiff which Plaintiff designated “Confidential.” This document is Exhibit B to the Joint
17 Report. It is attached as Exhibit B to the Pfefferkorn Declaration.

18 Google does not contend that these two documents contain protectable trade secrets.
19 However, Google believes that the two documents listed above contain information that Plaintiff
20 alleges to constitute trade secrets. Therefore, under the section of the Uniform Trade Secrets Act
21 which addresses sealing of claimed trade secrets, and as a professional courtesy to Plaintiff,
22 Google seeks to seal both documents.

23 Civil Local Rule 79-5(d) authorizes the sealing of documents that contain information the
24 opposing party has designated as confidential. Likewise, California Civil Code section 3426.5 –
25 a section of the Uniform Trade Secrets Act which applies because Plaintiff alleges a trade secret
26 misappropriation claim under California law – provides that courts “shall” take steps to treat as
27 confidential an “alleged trade secret.” Thus, under the statute’s wording, the merits question of
28 trade secrecy need not be adjudicated in order for an “alleged trade secret” to be sealed.

1 For these reasons, Google respectfully requests leave to file the following portions of the
2 two documents under seal. Pursuant to Civil Local Rule 7-11, Google sought and obtained a
3 stipulation from Plaintiff regarding the sealing of these documents.
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Document	Portion to be Sealed
Discovery Dispute Joint Report #2	Page 5, lines 17-18 (all text in point (3) after “such as”), 21 (all text after “such as” through end of sentence), 22-24 (all text after “the following:”, through end of page) Page 6, lines 1-2
Exhibit B to Joint Report	Page 3, ll. 16-27 (except numbers “1.” and “2.”) Page 4, ll. 1-7, 24-27 (except numbers “4.” and “5.”) Page 5, ll. 1-6 (except numbers “6.” and “7.”)

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17 Dated: October 11, 2013

/s/ Colleen Bal
Colleen Bal
WILSON SONSINI GOODRICH & ROSATI
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Attorneys for Defendants
Google Inc., YouTube, LLC, and Google UK Ltd.