

1 GRACE Y. HOROUPIAN (SBN 180337)  
**KUTAK ROCK LLP**  
 2 Suite 1100  
 18201 Von Karman Avenue  
 3 Irvine, CA 92612-1077  
 Telephone: (949) 417-0999  
 4 Facsimile: (949) 417-5394  
 Email: grace.horoupian@kutakrock.com

5  
 6 NEIL L. ARNEY (SBN 125682)  
**KUTAK ROCK LLP**  
 Suite 3100  
 7 1801 California Avenue  
 Denver, CO 80202  
 8 Telephone: (303) 297-2400  
 Facsimile: (303) 292-7799  
 9 Email: neil.arney@kutakrock.com

10 Attorneys for Plaintiff  
 ROCKY MOUNTAIN BANK, a  
 11 Wyoming corporation

12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**

15 ROCKY MOUNTAIN BANK, a  
 Wyoming corporation,

16 Plaintiff,

17 v.

18 GOOGLE INC., a Delaware  
 19 corporation,

20 Defendant.

Case No. 5:09-CV-04385 PVT

**MOTION TO FILE PLEADINGS  
 UNDER SEAL**  
 (~~FILED UNDER SEAL~~)

Hearing Date: \_\_\_\_\_  
 Time: a.m.  
 Room: \_\_\_\_\_

Trial Date: Not Scheduled  
 Date Action Filed: \_\_\_\_\_  
 Judge: Hon. \_\_\_\_\_

**MOTION TO FILE UNDER SEAL**  
**CASE NO. \_\_\_\_\_**

1 Plaintiff Rocky Mountain Bank, by and through its attorneys Kutak Rock  
2 LLP, hereby submits the following Motion to File Pleadings Under Seal and in  
3 support thereof, states and alleges as follows:

#### 4 INTRODUCTION

5 The Bank is a full service banking institution which, among other things,  
6 offers various loans to individual consumers and corporate entities. (See Mark  
7 Hendrickson's Declaration filed herewith (the "Declaration"), ¶ 4) In connection  
8 with a request for information from one of the Bank's customers, the Bank  
9 inadvertently sent the information to the wrong "gmail" account, which is an email  
10 account established through www.google.com. (Declaration, ¶¶ 5 and 6) In  
11 sending the email, the Bank also inadvertently attached confidential account  
12 information of 1,324 other accounts, including names, addresses, tax identification  
13 numbers, and account numbers of customers. (Declaration, ¶ 8) The Bank is  
14 taking all appropriate steps to protect the confidential customer information and to  
15 prevent the misuse of such information.

16 In connection with the Bank's internal investigation and evaluation of the  
17 likelihood that the confidential customer information has been or will be misused  
18 and to adequately protect the confidential customer information, the Bank has  
19 determined that it is necessary to: (a) prevent Google Inc. ("Google") and the  
20 Google account holder from using the Confidential Customer Information; (b) have  
21 the Gmail Account immediately frozen or deactivated to prevent any access to the  
22 confidential customer information; (c) permanently delete the inadvertent email  
23 from Google's system; (d) determine the status of the "gmail" account, specifically,  
24 whether the "gmail" account is active or dormant and whether the inadvertent email  
25 was opened or otherwise manipulated by the account holder; and (e) in the event  
26 that the "gmail" account is not dormant, ascertain the identity of the "gmail"  
27 account holder, so that the Bank can take appropriate steps with the account holder  
28 to ensure that the confidential customer information is not distributed or otherwise

1 misused. (Declaration, ¶15) The Bank has requested information from Google  
2 regarding the “gmail” account and has requested Google’s assistance in preventing  
3 further disclosure of the confidential customer information. Google, however, has  
4 refused to disclose any information to the Bank or to assist the Bank in its efforts to  
5 prevent disclosure of the confidential customer information, unless and until it is  
6 subject to legal process. (Declaration, ¶14)

7 Accordingly, the Bank has filed a Verified Complaint for Declaratory and  
8 Injunctive Relief against Defendant Google Inc. (the “Verified Complaint”). In  
9 connection therewith, the Bank has filed its Memorandum of Points and Authorities  
10 in Support of Motion for Temporary Restraining Order and Preliminary Injunction  
11 (the “Motion for Injunctive Relief”). (Declaration, ¶17) However, until the Bank is  
12 able to determine the status of the “gmail” account there is no need for the Bank to  
13 contact its account holders or needlessly panic its customers. Therefore, it is  
14 imperative that the pleadings and filings in this action are filed under seal.

### 15 ARGUMENT

16 Although there is a presumption in favor of access to court records, it “is not  
17 absolute and can be overridden given sufficiently compelling reasons for doing so.”  
18 *Foltz v. State Farm Mutual Automobile Insurance Co.*, 331 F.3d 1122, 1135 (9th  
19 Cir. 2003); *see also Kamakana v. City and County of Honolulu*, 447 F.3d 1172,  
20 1178-9 (9th Cir. 2003). As the Verified Complaint and the Motion for Injunctive  
21 Relief contain information that could potentially alarm the Bank’s customers and  
22 create needless panic, compelling reasons exist to grant the Bank’s Motion to File  
23 Under Seal.

24 The Bank is taking all appropriate steps to ensure that the confidential  
25 customer information is not misused. However, until the Bank is able to determine  
26 the status of the “gmail” account there is no need for the Bank to contact its account  
27 holders. If the Motion and the Verified Complaint are not permitted to be filed  
28 under seal, all of the Bank’s customers may learn of the inadvertent disclosure and

1 assume that it was in fact their confidential information that was disclosed.  
2 Publication of the inadvertent disclosure of confidential information prior to  
3 making a determination as to whether the “gmail” account is active or dormant will  
4 unnecessarily create panic among all of the Bank’s customers and result in a surge  
5 of inquiry from the Bank’s customers.

6 WHEREFORE, Plaintiff Rocky Mountain Bank respectfully requests that its  
7 Verified Complaint, Motion for Injunctive Relief and all other pleadings and filings  
8 in this matter be filed under seal and for such other relief as the Court deems  
9 appropriate.

10 Respectfully submitted this 18<sup>th</sup> day of September, 2009.

11 **KUTAK ROCK LLP**

12  
13 By: /s/ Grace Y. Horoupian

14 Grace Y. Horoupian  
15 ATTORNEYS FOR PLAINTIFF  
16 ROCKY MOUNTAIN BANK  
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