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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,
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 v.
 18
 GOOGLE INC., a Delaware
 19 corporation,
 20
 Defendant.

Case No.

**VERIFIED COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**
 (~~FILED UNDER SEAL~~) [REDACTED]

1 Plaintiff Rocky Mountain Bank, by and through its attorneys Kutak Rock
2 LLP, hereby submits the following Verified Complaint for Declaratory and
3 Injunctive Relief against Defendant Google Inc., in support thereof, states and
4 alleges as follows:

5 **PARTIES**

6 1. Plaintiff Rocky Mountain Bank (the “Bank”) is a Wyoming
7 corporation with its principal place of business in Wilson, Wyoming.

8 2. Defendant Google Inc. (“Google”) is a Delaware corporation with its
9 principal place of business in Mountain View, California. Plaintiff and Defendant
10 are collectively referred to as the “Parties.”

11 **JURISDICTION AND VENUE**

12 3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 on the
13 grounds that the amount in controversy exceeds \$75,000, exclusive of interest and
14 costs, and the controversy is between citizens of different states. For purposes of
15 diversity, the Bank is a citizen of Wyoming, since it is incorporated in Wyoming
16 and has its principal place of business in Wyoming. Upon information and belief,
17 Defendant Google is a citizen of the States of California and Delaware because its
18 principal place of business is in California and it is incorporated in Delaware.

19 4. This Court may exercise personal jurisdiction over Google because,
20 among other things, Google’s principal place of business is in California and in this
21 District.

22 5. Venue is proper in this District under 28 U.S.C. § 1391(a)(1) and (3).

23 **GENERAL ALLEGATIONS**

24 6. The Bank is a full service banking institution which, among other
25 things, offers various loans to individual consumers and corporate entities.

26 7. On August 12, 2009, the Bank received a telephone call from a
27 customer (the “Customer”), wherein the Customer requested that the Bank send
28 certain annual loan statements via e-mail (the “Requested Information”) to a third-

1 party representative of the Customer (the "Request").

2 8. In connection with the Request, on August 12, 2009, at approximately
3 4:13 p.m., an employee of the Bank attempted to send the Customer's
4 representative the Requested Information via e-mail.

5 9. At approximately 7:22 p.m., the Customer's representative informed
6 the Customer, via email, that he had not received the Requested Information. The
7 Customer forwarded the email to an employee of the Bank at approximately 7:50
8 p.m.

9 10. On August 13, 2009, an employee of the Bank discovered that the
10 Requested Information was inadvertently sent to the wrong email address (the
11 "Inadvertent Email"). The e-mail was sent to the following address:
12 "[Redacted]@gmail.com" (the "Gmail Account"), which is an account that was set
13 up and maintained through www.google.com. Additionally, the Bank discovered
14 that the information that was attached to the Inadvertent Email contained
15 Confidential Customer Information relating to 1,325 individual and business
16 customer accounts (the "Customer Accounts"), *i.e.*, for customers other than just
17 the Customer who requested information.

18 11. The customer information that was attached to the Inadvertent E-Mail
19 included names, addresses, tax identification numbers and loan information for
20 each of the 1,325 customer accounts. The attached information is confidential
21 information of the Bank's customers and to which the Bank's customers have a
22 right to privacy (hereinafter the "Confidential Customer Information").

23 12. Because of the inadvertent disclosure of the Confidential Customer
24 Information, state and federal regulations require the Bank to make a prompt and
25 good faith investigation to determine the likelihood that the Confidential Customer
26 Information has been or will be misused. The reason for this investigation is to
27 ascertain if the privacy rights of the Customers are protected.

28 13. After learning of the inadvertent disclosure of Confidential Customer

1 Information, the Bank immediately attempted to recall the Inadvertent Email, which
2 was sent using Microsoft Outlook. However, the Bank's efforts to recall the
3 Inadvertent Email were not successful. The Bank is advised that the recipient of the
4 email must also be using Microsoft Outlook to recall an email. Further, the Bank is
5 advised that, if the Inadvertent Email had already been opened, a recall attempt
6 would be futile.

7 14. On August 13, 2009, at approximately 1:57 p.m., Mark Hendrickson,
8 the President of the Bank, sent an email to the Gmail Account, whereby Mr.
9 Hendrickson instructed the recipient to immediately delete the Inadvertent Email
10 and the file attached thereto in its entirety without opening or reviewing it. Mr.
11 Hendrickson also requested that the recipient immediately contact the Bank to
12 discuss his/her actions. As of the date of this Complaint, the Bank has not received
13 a response from the Gmail Account holder.

14 15. In an effort to determine whether the Gmail Account is a valid, active
15 email address, on or about August 13, 2009, an employee of the Bank attempted to
16 register the email address through Google.com. The Bank employee was unable to
17 register the address. Therefore, the Bank concluded that Gmail Account was a
18 valid Google email address.

19 16. The Bank believes and understands that Google has information
20 regarding the Gmail Account holder, and regarding the status and activity level of
21 the Gmail Account. The Bank also believes that Google has the ability to freeze the
22 Gmail Account and to take other steps to prevent access to and dissemination of the
23 inadvertently disclosed Confidential Customer Information. Accordingly, in further
24 efforts to protect the Confidential Customer Information, both the Bank and the
25 Bank's undersigned counsel contacted Google's legal support via email and
26 informed Google that Confidential Customer Information was sent to one of its
27 "gmail" accounts and inquired as to whether the account was active or dormant and
28 what steps could be taken to ensure that the Confidential Customer Information was

1 not used or disclosed. However, Google advised the Bank and undersigned counsel
2 that it would not provide any information regarding the Gmail Account and would
3 not otherwise assist in preventing disclosure of the Confidential Customer
4 Information except and unless it was requested through “a valid third-party
5 subpoena or other appropriate legal process.”

6 17. In connection with the Bank’s internal investigation and evaluation of
7 the likelihood that the Confidential Customer Information has been or will be
8 misused, the Bank has determined that it is necessary to: (a) prevent Google or the
9 Google account holder from using the Confidential Customer Information; (b) have
10 the Gmail Account immediately frozen or deactivated to prevent any access to the
11 Confidential Customer Information; (c) delete the Inadvertent Email from Google’s
12 system; (d) determine the status of the Gmail Account, specifically, whether the
13 Gmail Account is active or dormant and whether the Inadvertent Email was opened
14 or otherwise manipulated by the account holder; and (e) in the event that the Gmail
15 Account is not dormant, ascertain the identity of the Gmail Account holder, so that
16 the Bank can take appropriate steps with the account holder to ensure that the
17 Confidential Customer Information is not distributed or otherwise misused.

18 18. In connection with the Bank’s internal investigation, on September 1,
19 2009 the Bank notified the Wyoming Division of Banking and the Tenth Federal
20 Reserve District (collectively, the “Regulators”) of the Inadvertent Email and the
21 steps the Bank had taken and planned to take to protect its customer information.
22 The Regulators confirmed that the Bank was taking proper steps in connection with
23 the Inadvertent Email and agreed that the Bank must take action to have the Gmail
24 Account frozen and/or determine the status of the Gmail Account.

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**FIRST CAUSE OF ACTION
(Declaratory Relief)**

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3 19. The Bank incorporates the allegations of paragraphs 1 through 18
4 inclusive, as if fully set forth herein.

5 20. The Bank and its Regulators believe it is imperative for the Bank to
6 obtain information regarding the Gmail Account and stop access to the Confidential
7 Customer Information in order to protect the privacy rights of the Bank's
8 Customers whose information was inadvertently disclosed.

9 21. The Bank has requested information from Google regarding the Gmail
10 Account and has requested Google's assistance in preventing further disclosure of
11 the Confidential Customer Information. Google, however, has refused to disclose
12 any information to the Bank or to assist the Bank in its efforts to prevent disclosure
13 of the Confidential Customer Information, unless and until it is subject to legal
14 process.

15 22. Because of Google's refusal to provide information or other assistance
16 to the Bank that is necessary to protect confidential information of the Bank's
17 customers, there is a dispute between the parties.

18 23. The Bank, therefore, requests a declaration that, in connection with its
19 efforts to protect the Confidential Customer Information, it is entitled to the
20 information requested concerning the Gmail Account, specifically, whether the
21 Gmail Account is active or dormant, whether the Inadvertent Email was opened or
22 otherwise manipulated; and in the event that the Gmail Account is not dormant, the
23 identity of the Gmail Account holder. In addition, the Bank requests a declaration
24 that Google is required to take all reasonable steps to ensure that the Confidential
25 Customer Information is not accessed, used or distributed, including, but not
26 limited to, deactivating the Gmail Account and deleting the Inadvertent Email from
27 its system.
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**SECOND CAUSE OF ACTION
(Injunctive Relief)**

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3 24. The Bank incorporates the allegations of paragraphs 1 through 23
4 inclusive, as if fully set forth herein.

5 25. Injunctive relief is warranted because the Bank has no plain, speedy
6 and adequate remedy at law to prevent disclosure or misuse of the Confidential
7 Customer Information.

8 26. The Bank is likely to prevail on the merits of its claims, or at a
9 minimum, there is a serious question going to the merits of the Bank's claim, and
10 the balance of the equities tip decidedly in favor of issuing injunctive relief in favor
11 of the Bank.

12 27. The granting of injunctive relief preventing the unlawful use of
13 Confidential Customer Information will serve the public interest.

14 28. Based on the foregoing, the Bank is entitled to a temporary restraining
15 order, a preliminary injunction, and a permanent injunction: (a) restraining and
16 permanently enjoining Google and its account holder from accessing, distributing,
17 or using the Confidential Customer Information; (b) requiring Google to
18 immediately deactivate the Gmail Account or any other steps within its power to
19 prevent access to the Gmail Account; (c) requiring Google to delete the Inadvertent
20 Email and the Confidential Customer Information from its system; (d) requiring
21 Google to immediately disclose the status of the Gmail Account; specifically,
22 whether the Gmail Account is active or dormant and whether the Inadvertent Email
23 was opened or otherwise manipulated by the account holder; and (e) in the event
24 that the Gmail Account is not dormant, requiring Google to disclose all information
25 that it has regarding the Gmail Account holder to allow the Bank to prevent the
26 account holder from using or distributing the Confidential Customer Information
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PRAYER FOR RELIEF

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2 WHEREFORE, Plaintiff Rocky Mountain Bank prays that judgment be
3 entered in its favor and against Defendant Google Inc. on the claims asserted herein
4 and that it be awarded the following relief:

5 1. A declaration that it is entitled to the information concerning the Gmail
6 Account; specifically, whether the Gmail Account is active or dormant, whether the
7 Inadvertent Email was opened or otherwise manipulated; and in the event that the
8 Gmail Account is not dormant, the identity of the Gmail Account holder.

9 2. A declaration that Google is required to take all reasonable steps to
10 ensure that the Confidential Customer Information is not accessed, used or
11 distributed, including, but not limited to, deactivating the Gmail Account and
12 deleting the Inadvertent Email and the Confidential Customer Information from its
13 system.

14 3. A temporary restraining order, preliminary injunction, and permanent
15 injunction, ordering that:

16 a. Google and the Gmail Account holder are enjoined from
17 accessing, using, or distributing the Confidential Customer Information;

18 b. Google immediately deactivate the Gmail Account and delete
19 the Inadvertent Email and attachment from its system;

20 c. Google immediately disclose the status of the Gmail Account,
21 specifically, whether the Gmail Account is dormant or active, whether the
22 Inadvertent Email was opened or otherwise manipulated, and in the event
23 that the Gmail Account is not dormant, the identity and contact information
24 for the Gmail Account holder.

25 4. Any other and further relief the Court deems just and proper under the
26 circumstances.

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Respectfully submitted this 17th day of September, 2009.

KUTAK ROCK LLP

By: /s/ Grace Y. Horoupian

Grace Y. Horoupian
ATTORNEYS FOR PLAINTIFF
ROCKY MOUNTAIN BANK

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