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10 UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

13	ROCKY MOUNTAIN BANK,	)	Case No. 5:09-CV-04385 JW
	a Wyoming Corporation,	)	
14		)	MOTION FOR LEAVE TO INTERVENE
	Plaintiff,	)	AND MEMORANDUM SUPPORTING
15	v.	)	<u>MOTION FOR LEAVE TO INTERVENE</u>
		)	Fed. R. Civ. P. 24(b)
16	GOOGLE INC., a Delaware corporation,	)	Date: December 7, 2009
		)	Time: 9 AM
17	Defendant.	)	Courtroom: Courtroom 8, 4th floor
		)	Judge Ware

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 19 **NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE**

20 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

21 Please take notice that, on Monday, December 7, at 9 AM, or as soon thereafter as the matter  
 22 may be heard by this Court, located at 280 South 1st Street, San Jose, California, MediaPost  
 23 Communications will move and hereby does move the Court, pursuant to Rule 24 of the Federal Rules  
 24 of Civil Procedure, for leave to intervene for the limited purpose of seeking public disclosure of the  
 25 report lodged by Google with the Court in chambers explaining its compliance with the Temporary  
 26 Restraining Order entered by this Court on September 23, 2009. The report is a judicial record and  
 27 thus subject to the strong presumption of public access, and movant wants to see the document for the  
 28

1 purpose of continuing to report on this case.

2 This motion seeks the following relief — an order granting movant leave to intervene for the  
3 limited purpose of filing the motion to unseal that is being filed simultaneously with this motion.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Pursuant to Rule 24 of the Federal Rules of Civil Procedure, MediaPost Communications has  
6 moved the Court for leave to intervene for the limited purpose of seeking public disclosure of the  
7 report lodged by defendant Google with the Court in chambers explaining Google’s compliance with  
8 the Temporary Restraining Order, for the following reasons:

9 1. MediaPost Communications, the business name of Fadner Media Enterprises, LLC, is an  
10 integrated publishing and content company whose mission is to provide a complete array of resources  
11 for media, marketing and advertising professionals. MediaPost is the holding company for the  
12 following entities: MediaPost.com, the OMMA conferences (holding more than twenty-five events  
13 per year), Publications.MediaPost.com, OMMA & MEDIA Magazines, and a suite of more than forty  
14 industry-focused eNewsletters & blogs. One of its publications, Online Media Daily, carried the first  
15 report about the Court’s order granting plaintiff’s request for a TRO and ordering the Gmail user’s  
16 account deactivated, and published several stories about this case.

17 2. MediaPost Communications seeks to assert its right under Rules 5(d) and (e) of the Federal  
18 Rules of Civil Procedure, under the First Amendment, and under the common law presumption that  
19 judicial records will be available for public scrutiny to review the report that Google lodged with the  
20 Court in chambers explaining its compliance with the Temporary Restraining Order.

21 3. “Nonparties seeking access to a judicial record in a civil case may do so by seeking  
22 permissive intervention under Rule 24(b)(2).” *San Jose Mercury News v. United States District*  
23 *Court*, 187 F. 3d 1096, 1102 (9th Cir. 1999) (granting mandamus and reversing denial of motion for  
24 leave to intervene). *Accord Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1120-1130 (9th  
25 Cir. 2003) (court of appeals had jurisdiction to consider appeal of parties who intervened to seek  
26 unsealing of judicial records); *In re Associated Press*, 162 F.3d 503, 506-509 (7th Cir. 1998) (“the  
27 most appropriate procedural mechanism [for third parties to obtain access to court proceedings and

1 documents] is by permitting those who oppose the suppression of the material to intervene for that  
2 limited purpose.”).

3 **CONCLUSION**

4 The motion for leave to intervene should be granted.

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6 Respectfully submitted,

7 /s/ Erica L. Craven-Green  
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October 20, 2009

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