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11	UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
12	SAN JOSE DIVISION
13	ROCKY MOUNTAIN BANK, ) Case No. 5:09-CV-04385 JW a Wyoming Corporation, )
14	Plaintiff, ) NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE A MOTION
15	v. ) FOR RECONSIDERATION V. ) Local Rule 7-9
16	GOOGLE INC., a Delaware corporation,
17	Defendant.
18	MediaPost Communications moves the Court to grant it leave to file the attached motion for
19	reconsideration of the Court's December 4, 2009 order denying its motion to intervene. The Court
20	based its denial on a ground that had not been argued in opposition to the motion, and that movant
21	could not have anticipated. Indeed, as shown in the attached motion, the Court's ruling is squarely
22	contrary to controlling authority from the Ninth Circuit. Moreover, the decision from the District of
23	Massachusetts on which the Court relied is not on point, and a later decision of the United States
24	Court of Appeals for the First Circuit holds that intervention may be sought for the purpose of
25	unsealing even after the underlying case has been dismissed.
26	Under Ninth Circuit law, the right to intervene for the purpose of unsealing is so clear that a
27	denial may be corrected by mandamus. San Jose Mercury News v. United States District Court, 187
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F.3d 1096 (9th Cir. 1999). However, movant asks the Court to grant it leave to file the attached
motion for reconsideration.

3 Regardless of how this Court rules on the motion for reconsideration, the Court is requested 4 to file the Report that Google submitted to this Court demonstrating its compliance with this Court's 5 Temporary Restraining Order — which both sides agree is a judicial record even if they disagree about whether it should be unsealed — on the docket, under seal, so that during an appeal or 6 7 mandamus proceeding the Court of Appeals will be able to conduct an *in camera* examination of the 8 document if it chooses to do so. 9 **CONCLUSION** MediaPost should be granted leave to file the attached motion to reconsider. 10 11 /s/ Erica L. Craven-Green 12 Erica L. Craven-Green (Bar No. 199918) 13 Email: ecravengreen@gmail.com Law Offices of Erica L. Craven-Green 14 P.O. Box 460367 San Francisco, California 94146-0367 15 Telephone: (415) 572-9028 16 /s/ Paul Alan Levy 17 Paul Alan Levy (DC Bar No. 946400) Deepak Gupta (DC Bar No. 495451) 18 Public Citizen Litigation Group Email: plevy@citizen.org 19  $1600 - 20^{\text{th}}$  Street, N.W. 20 Washington, D.C. 20009 Telephone: (202) 588-1000 21 Facsimile: (202) 588-7795 Attorneys for MediaPost Communications 22 December 9, 2009 23 24 25 26 27 28 -2-

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