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17 Attorneys for Plaintiff  
18 ROCKY MOUNTAIN BANK, a  
19 Wyoming corporation

20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 ROCKY MOUNTAIN BANK, a  
23 Wyoming corporation,

24 Plaintiff,

25 v.

26 GOOGLE INC., a Delaware  
27 corporation,

28 Defendant.

Case No. 5:09-CV-04385 PVT

**DECLARATION OF MARK  
HENDRICKSON IN SUPPORT OF  
MOTION TO FILE UNDER SEAL  
(~~FILED UNDER SEAL~~) [REDACTED]**

1 I, Mark Hendrickson, being over the age of 18, and having been duly sworn  
2 and under oath, state as follows:

3 1. I am the President of Rocky Mountain Bank (the "Bank"). As such, I  
4 have personal knowledge of the facts stated herein.

5 2. I submit this affidavit in support of the Bank's Motion to File Under  
6 Seal.

7 3. As Defendant Google Inc. has not yet been served with the Verified  
8 Complaint for Declaratory and Injunctive Relief (the "Verified Complaint") and the  
9 Memorandum of Point and Authorities in Support of Motion for Temporary  
10 Restraining Order and Preliminary Injunction (the "Motion for Injunctive Relief")  
11 the Bank is unable to obtain a stipulation regarding the Bank's Motion to File  
12 Under Seal (the "Motion"). Once Google's counsel has entered an appearance in  
13 this action the Bank intends to discuss the Motion with them.

14 4. The Bank is a full service banking institution which, among other  
15 things, offers various loans to individual consumers and corporate entities.

16 5. On August 12, 2009, the Bank received a telephone call from a  
17 customer (the "Customer"), wherein the Customer requested that the Bank send  
18 certain annual loan statements via e-mail (the "Requested Information") to a third-  
19 party representative of the Customer (the "Request").

20 6. In connection with the Request, on August 12, 2009, at approximately  
21 4:13 p.m., an employee of the Bank attempted to send the Customer's  
22 representative the Requested Information via e-mail.

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

27 8. On August 13, 2009, an employee of the Bank discovered that the  
28 Requested Information was inadvertently sent to the wrong email address (the

1 “Inadvertent Email”). The e-mail was sent to the following address:  
2 “[REDACTED]@gmail.com” (the “Gmail Account”), which is an account that was  
3 set up and maintained through www.google.com. Additionally, the Bank  
4 discovered that the information that was attached to the Inadvertent Email  
5 contained Confidential Customer Information relating to 1,325 individual and  
6 business customer accounts (the “Customer Accounts”), *i.e.*, for customers other  
7 than just the Customer who requested information.

8 9. The customer information that was attached to the Inadvertent E-Mail  
9 included names, addresses, tax identification numbers and loan information for  
10 each of the 1,325 customer accounts. The attached information is confidential  
11 information of the Bank’s customers and to which the Bank’s customers have a  
12 right to privacy (hereinafter the “Confidential Customer Information”).

13 10. The Bank has taken and continues to take all reasonable and  
14 appropriate steps to ensure that the Confidential Customer Information is not  
15 disclosed or used for an improper purpose. Because of the inadvertent disclosure of  
16 the Confidential Customer Information, state and federal regulations require the  
17 Bank to make a prompt and good faith investigation to determine the likelihood that  
18 the Confidential Customer Information has been or will be misused. The reason for  
19 this investigation is to ascertain if the privacy rights of the Customers are protected.

20 11. After learning of the inadvertent disclosure of Confidential Customer  
21 Information, the Bank immediately attempted to recall the Inadvertent Email, which  
22 was sent using Microsoft Outlook. However, the Bank’s efforts to recall the email  
23 were not successful. The Bank is advised that the recipient of the email must also  
24 be using Microsoft Outlook to recall an email. Further, the Bank is advised that, if  
25 the Inadvertent Email had already been opened, a recall attempt would be futile.

26 12. On August 13, 2009, at approximately 1:57 p.m., I sent an email to the  
27 Gmail Account, whereby I instructed the recipient to immediately delete the  
28 Inadvertent Email and the file attached thereto in its entirety without opening or

1 reviewing it. I also requested that the recipient immediately contact the Bank to  
2 discuss his/her actions. As of the date of this Complaint, the Bank has not received  
3 a response from the Gmail Account holder.

4 13. In an effort to determine whether the Gmail Account is a valid, active  
5 email address, on or about August 13, 2009, an employee of the Bank attempted to  
6 register the email address through Google.com. The Bank employee was unable to  
7 register the address. Therefore, the Bank concluded that Gmail Account was a  
8 valid Google email address.

9 14. The Bank believes and understands that Google has information  
10 regarding the Gmail Account Holder, and regarding the status and activity level of  
11 the Gmail Account. The Bank also believes that Google has the ability to freeze the  
12 Gmail Account and to take other steps to prevent access to and dissemination of the  
13 inadvertently disclosed Confidential Customer Information. Accordingly, in further  
14 efforts to protect the Confidential Customer Information, both the Bank and the  
15 Bank's undersigned counsel contacted Google's legal support via email and  
16 informed Google that Confidential Customer Information was sent to one of its  
17 "gmail" accounts and inquired as to whether the account was active or dormant and  
18 what steps could be taken to ensure that the Confidential Customer Information was  
19 not used or disclosed. However, Google has been unwilling to provide information  
20 to the Bank or to assist the Bank in its efforts to prevent disclosure of the  
21 Confidential Customer Information. In particular, Google advised the Bank and  
22 undersigned counsel that it would not provide any information regarding the Gmail  
23 Account and would not otherwise assist in preventing disclosure of the Confidential  
24 Customer Information except and unless it was requested through "a valid third-  
25 party subpoena or other appropriate legal process."

26 15. In connection with the Bank's internal investigation and evaluation of  
27 the likelihood that the Confidential Customer Information has been or will be  
28 misused, the Bank has determined that it is necessary to: (a) prevent Google or the

1 Google account holder from using the Confidential Customer Information; (b) have  
2 the Gmail Account immediately frozen or deactivated to prevent any access to the  
3 Confidential Customer Information; (c) permanently delete the Inadvertent Email  
4 from Google's system; (d) determine the status of the Gmail Account, specifically,  
5 whether the Gmail Account is active or dormant and whether the Inadvertent Email  
6 was opened or otherwise manipulated by the account holder; and (e) in the event  
7 that the Gmail Account is not dormant, ascertain the identity of the Gmail Account  
8 holder, so that the Bank can take appropriate steps with the account holder to ensure  
9 that the Confidential Customer Information is not distributed or otherwise misused.

10 16. In connection with the Bank's internal investigation, on September 1,  
11 2009 the Bank notified the Wyoming Division of Banking and the Tenth Federal  
12 Reserve District (collectively, the "Regulators") of the Inadvertent Email and the  
13 steps the Bank had taken and planned to take to protect its customer information.  
14 The Regulators confirmed that the Bank was taking proper steps in connection with  
15 the Inadvertent Email and agreed that the Bank must take action to have the Gmail  
16 Account frozen and/or determine the status of the Gmail Account.

17 17. In an effort to compel Google to provide information regarding the  
18 Gmail Account and to prevent disclosure, distribution, or use of the Confidential  
19 Customer Information, the Bank has instituted an action against Google and has  
20 filed a Motion for TRO and preliminary injunction.

21 18. As stated above, the Bank is taking all appropriate and reasonable  
22 steps to determine whether there was an improper disclosure and misuse of  
23 Confidential Customer Information. The Bank's Regulators have determined that  
24 the Bank is taking appropriate steps. However, until there is a determination that  
25 the Confidential Customer Information was in fact disclosed and/or misused, the  
26 Bank cannot advise its customers on whether there was an improper disclosure.

27 19. Publication of a possible inadvertent disclosure of Confidential  
28 Customer Information prior to making a determination whether there was in fact a

1 disclosure of such information will unnecessarily create panic among all of the  
2 Bank's customers and result in a surge of inquiry and concern from the Bank's  
3 customers.

4 I declare under penalty of perjury under the laws of the United States that the  
5 foregoing statements are true and accurate to the best of my knowledge.

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7 [SIGNATURE PAGE TO FOLLOW]  
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DATED this \_\_\_\_ day of September, 2009.


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Mark Hendrickson, President  
Rocky Mountain Bank

**[SIGNATURE PAGE TO DECLARATION OF MARK HENDRICKSON  
IN SUPPORT OF MOTION TO FILE PLEADINGS UNDER SEAL]**

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DATED this 16 day of September, 2009.



Mark Hendrickson, President  
Rocky Mountain Bank

**[SIGNATURE PAGE TO DECLARATION OF MARK HENDRICKSON IN  
SUPPORT OF MOTION TO FILE PLEADINGS UNDER SEAL]**