

1 Thomas R. Burke (CA State Bar No. 141930)
 Jonathan L. Segal (CA State Bar No. 264238)
 2 DAVIS WRIGHT TREMAINE LLP
 505 Montgomery Street, Suite 800
 3 San Francisco, California 94111
 Telephone: (415) 276-6500
 4 Facsimile: (415) 276-6599
 Email: thomasburke@dwt.com
 jonathansegal@dwt.com

6 Attorneys for Media Intervenors

7
 8 IN THE UNITED STATES DISTRICT COURT
 9 THE NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 IN RE GOOGLE GMAIL LITIGATION) Case No. 5:13-md-02430-LHK
 12)
 13) **NOTICE OF PENDING MOTION**
 14)
 15)
 16)

17 The plaintiffs and defendant in this case have made numerous motions to seal portions of
 18 this record (Docket Nos. 87, 88, 101, 106, 112, and 123). On February 19, 2014, Media
 19 Intervenors¹ opposed these sealing requests, arguing that the parties have not satisfied the legal
 20 standards required for sealing, and that the requests ignore the Ninth Circuit's strong presumption
 21 in favor of access. (Docket No. 136). Although all of the underlying civil actions in this
 22 multidistrict litigation have settled, the Court has not yet ruled on plaintiffs' and defendant's
 23

24 ¹ Allbritton Communications Company; Atlantic Media, Inc.; California Newspaper Publishers
 25 Association; Courthouse News Service; Forbes LLC; Gannett Co., Inc.; Investigative Reporting
 26 Workshop at American University; The McClatchy Company; MediaNews Group, Inc., d/b/a
 27 Digital First Media; National Press Photographers Association; National Public Radio, Inc.; The
 28 New York Times Company; The New Yorker; The Newspaper Guild - CWA; North Jersey Media
 Group Inc.; POLITICO LLC; Reporters Committee for Freedom of the Press; Reuters America
 LLC; The Seattle Times Company, the American Society of Newspaper Editors; Association of
 Alternative Newsmedia; Digital Media Law Project; First Amendment Coalition; Online News
 Association; the Society for Professional Journalists, and The Washington Post.

DAVIS WRIGHT TREMAINE LLP

1 motions to seal or the Media Interveners' objections. Nor does it appear that the Court has issued
 2 an order addressing the redaction of a portion of the transcript of the hearing on the class-
 3 certification motion.

4 Because the Court has not yet ruled on the sealing motions, thousands of pages of
 5 attachments remain either heavily redacted or entirely sealed. The public continues to have a
 6 strong interest in seeing the entire factual basis for the Court's class certification ruling in a case
 7 that affects the privacy of millions of Americans. Indeed, the fact that a settlement has been
 8 reached should not be an obstacle to ruling on the motion or allowing access to documents. *See*
 9 *Phillips v. General Motors Corporation*, 307 F.3d 1206, 1209 (9th Cir. 2002); *See also Ford v.*
 10 *City of Huntsville*, 242 F.3d 235, 239-242 (5th Cir. 2001) (recognizing media organization's
 11 standing to challenge a post-settlement confidentiality order); *Rosado v. Bridgeport Roman*
 12 *Catholic Church*, 276 Conn. 168 (2005) (allowing a media outlet to intervene in clergy child abuse
 13 cases that had been withdrawn, pursuant to settlement, to make modifications to a protective order
 14 and remanding the case to the trial court to decide whether unsealing is appropriate). Accordingly,
 15 the Media Interveners respectfully request that the Court to rule on the motions to seal.

16
 17 DATED this 18th day of July 2014.

Respectfully submitted,

18 DAVIS WRIGHT TREMAINE LLP

19
 20 By: /s/ Thomas R. Burke
 Thomas R. Burke

21 Attorneys for Third-Party Intervenor