

No. 10-0366

IN THE SUPREME COURT OF TEXAS

IN RE

JOHN DOES 1 AND 2,

RELATORS

Appealed from the Ninth Court of Appeals,
Beaumont, Texas No. 09-10-00051-CV

REAL PARTY IN INTERESTS' RESPONSE TO RELATORS' MOTION FOR
EMERGENCY STAY

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INVESTMENTS, INC.

Identify of Parties and Counsel

In accordance with Tex.R.App.P.53.2(a), Respondents certify that the following is a complete list of the parties and trial and appellate counsel:

PARTIES

_____ John Does 1 and 2
Relators

PRK Enterprises, Inc.
Klein Investments, Inc.
Real Parties-In-Interest

Google, Inc.
Real Party-In-Interest

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Real Parties-In-Interest

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**REAL PARTY IN INTERESTS' RESPONSE TO RELATORS' MOTION FOR
EMERGENCY STAY**

COMES NOW, Real Parties in Interest, PRK Enterprises and Klein Investments, Inc., and files this Response to Relators' Motion for Emergency Stay, and would show the Court as follows: ¹

I.

Argument & Authorities

Relators mandamus petition does not merit this Court granting temporary relief under TEX. R. APP. P. 52.10(b). The Honorable Ninth Circuit Court of Appeals has already denied temporary relief and mandamus relief to Relators. Further, Relators have also dismissed their appeal. See Ninth Court of Appeals Order dismissing Relators' Appeal. (Exhibit "A"). The Relators' blog comments are not constitutionally protected speech in any way. Instead, the websites and commentary are pure defamation. Notably, Relators did not argue either before the Honorable Ninth Circuit Court of Appeals or this Honorable Court that the trial court, Honorable Judge Floyd presiding, made any error of law in his ruling overruling Relators' objections to the Real Parties In Interest's discovery requests. As such, any such argument is waived. See PRK Enterprises, Inc. and Klein Investments, Inc.'s Response to Respondent's Motion to Quash Subpoena, and Motion to Compel, which is incorporated as set forth herein. (Relators' Attachment "I"). Since Relators' speech is not

¹The Relators style this matter - In Re: John Does 1 and 2

constitutionally protected, there is no possibility that Relators' constitutional rights might be violated.

Further, the Relators complain that the discovery of their identities is based upon an alleged improper Rule 11 agreement entered into between the Real Parties in Interest and Google, Inc. (which is now a Defendant in this case). Such an argument is specious. Further, even if such argument were meritorious, Relators would not be entitled to either relief from stay or mandamus relief, because the Trial Court did not make any error of law; and Relators do not assert that the Trial Court made an error of law. *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (mandamus is only available if there is "a clear and prejudicial error of law" by the trial court). The Real Parties in Interest originally filed this matter pursuant to Rule 202, which does not authorize any form of court-ordered discovery except depositions. *In Re: Akzo Mobil Chemical Co.*, 24 S.W.3d 919, 920 (Tex. App. - - Beaumont, 2000, org. proceeding). The Real Parties in Interest and Google, however, entered into a voluntary Rule 11 agreement, whereby Google voluntarily agreed to produce documentation prior to any necessary deposition. There is nothing in Rule 202 that prohibits parties from voluntarily entering into informal discovery. As such, there is nothing unlawful about the subpoena and it does not violate either Relators' alleged First Amendment Rights to Anonymous Speech, or any of the Texas Rules of Civil Procedure.

From the very beginning, the bloggers (now the Relators) have been doing nothing but trying to delay this matter. As a result of the Real Parties in Interest filing its 202 Petition, the bloggers have sought delay at every turn. At all times, the information posted

by these Relators has been nothing but defamation, and Relators have not engaged in constitutionally protected speech. If this Court grants emergency relief to Relators, this Court will be permitting continued anonymous defamation of the Real Parties in Interest, and will be sanctioning continued efforts by the Relators to spoliage evidence by making it difficult to track down their identities. Accordingly, the Real Parties in Interest request that this Court deny this motion for emergency stay.

WHEREFORE, PREMISES CONSIDERED, the Real Parties in Interest request that this Court deny Relators' motion for emergency stay and petition for writ of mandamus, and that Real Parties in Interest be granted such other and further relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to the following counsel of record, via facsimile and/or certified mail, return receipt requested, on this 26th day of May, 2010:

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