

No. 10-0366

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IN THE SUPREME COURT OF TEXAS

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IN RE

JOHN DOES 1 AND 2,

RELATORS

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

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

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JOHN S. MORGAN  
Texas Bar No. 14447475  
HARRIS, DUESLER & HATFIELD, LLP  
550 Fannin, Suite 650  
Beaumont, Texas 77701  
Telephone: (409) 832-8382  
Facsimile: (409) 833-4240  
ATTORNEYS FOR RESPONDENTS,  
PRK ENTERPRISES, INC. AND KLEIN  
INVESTMENTS, INC.

## Identify of Parties and Counsel

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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*

[www.operationkleinwatch.blogspot.com](http://www.operationkleinwatch.blogspot.com)  
and [www.samtheeagleusa.blogspot.com](http://www.samtheeagleusa.blogspot.com),  
*Real Parties-In-Interest*

Blogger.com  
*Real Party-In-Interest*

### COUNSEL

Jeffrey L. Dorrell  
Escamilla, Poneck & Cruz, LLP  
201 Stratford  
Houston, Texas 77006  
(713) 807-1188  
(713) 864-0048 facsimile  
Attorney for Relators

John S. Morgan  
Harris, Duesler & Hatfield, LLP  
550 Fannin, Suite 650  
Beaumont, Texas 77701  
(409) 832-8382  
(409) 833-4240 facsimile  
Attorney for PRK Enterprises, Inc.  
and Klein Investments, Inc.

Dennis M. Lynch  
Figari & Davenport, LLP  
3400 Bank fo America Plaza  
Dallas, Texas 75202-3796  
(214) 939-2000  
(214) 939-2090 facsimile  
Attorney for Google, Inc.

Unrepresented Real Parties-In-Interest  
c/o Google Blogspot  
1600 Amphitheatre Parkway  
Mountain View, California 94043  
Defendants, Pro Se

Unrepresented Real Party-In-Interest

**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: <sup>1</sup>

**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

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<sup>1</sup>The 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,

/s/ John S. Morgan  
JOHN S. MORGAN  
TBA#14449495  
Harris, Duesler & Hatfield, LLP  
550 Fannin, Suite 650  
Beaumont, Texas 77701  
Telephone: (409) 832-8382  
Facsimile: (409) 833-4240

**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 26<sup>th</sup> day of May, 2010:

Dennis M. Lynch  
Figari & Davenport  
901 Main Street  
Dallas, Texas 75202-3796

**Via facsimile (214) 939-2090**

Sam the Eagle Webblog  
Google Blogspot  
Operation Kleinwatch Blog  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

**Via CM/RRR-#7007 2680 0001 3354 0196**

Jeffrey L. Dorrell  
201 Stratford  
Houston, Texas 77006

**Via facsimile (713) 807-1110**

/s/ John S. Morgan  
JOHN S. MORGAN