

**IN THE COURT OF APPEALS
FOR THE STATE OF TEXAS
NINTH DISTRICT**

**SAM THE EAGLE WEBBLOG AND
OPERATION KLEINWATCH WEBBLOG**

VS.

PRK ENTERPRISES, ET AL

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No. 09-01-00051-CV

No. 09-10-00188-CV

IN RE JOHN DOES 1 AND 2

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IN THE NINTH

COURT OF APPEALS

SITTING AT BEAUMONT

**REAL PARTIES IN INTEREST’S 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

This mandamus petition does not merit this Court granting temporary relief under TEX. R. APP. P. 52.10(b). First, the bloggers’ comments are not constitutionally protected speech in any way. Instead, the website and commentary are pure defamation. See attached

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

hereto 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. (Exhibit "1"). Since this speech is not constitutionally protected, Relators' arguments that their constitutionally protected rights might be violated, fails of ab initio.

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. 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 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 ____ day of April, 2010:

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