

NO. \_\_\_\_\_

IN RE JOHN DOES 1 AND 2

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IN THE

SUPREME COURT

**RELATORS' MOTION FOR EMERGENCY STAY**

Relators ask the Court for an emergency stay.

**A. INTRODUCTION**

1. Relators are John Does 1 and 2; Real Parties-In-Interest are: PRK Enterprises, Inc.; Klein Investments, Inc.; Google, Inc.; [www.blogger.com](http://www.blogger.com); [www.operationkleinwatch.blogspot.com](http://www.operationkleinwatch.blogspot.com); and [www.samtheeagleusa.blogspot.com](http://www.samtheeagleusa.blogspot.com); Respondent is the Honorable Donald J. Floyd, presiding judge of the 172<sup>nd</sup> District Court of Jefferson County, Texas.

2. Relators file their petition for writ of mandamus concurrently with this motion for emergency relief.

3. Relators attach a certificate of compliance certifying that on **May 17, 2010**, they notified all Real Parties-in-Interest by facsimile or hand delivery that a motion for temporary relief would be filed. TEX. R. APP. P. 52.10(a).

## B. ARGUMENT & AUTHORITIES

4. The Court may grant temporary relief pending its determination of an original proceeding. TEX. R. APP. P. 52.10(b).

5. This emergency stay is necessary to maintain the status quo of the parties and preserve the Court's jurisdiction to consider the merits of the original proceeding. *In re Reed*, 901 S.W.2d 604, 609 (Tex. App.—San Antonio 1995, orig. proceeding).

6. Relators' original proceeding for writ of mandamus filed concurrently with this motion arises from PRK Enterprises, Inc.'s and Klein Investments, Inc.'s petition seeking an order allowing them to take a pre-suit deposition of Google, Inc., pursuant to TEX. R. CIV. P. 202.2(1), allegedly to investigate potential claims for defamation and conspiracy.

7. As more fully detailed in Relators' petition, Respondent's **January 29, 2010**, order compelling Google to comply with petitioners' subpoena to produce documents revealing Relators' identities is unlawful because Rule 202 does not permit any form of pre-suit discovery except depositions. TEX. R. CIV. P. 202.1; *In re Akzo Nobel Chemical Co.*, 24 S.W.3d 919, 920 (Tex. App.—Beaumont 2000, orig. proceeding). Petitioners' subpoena is also unenforceable because it was not served in accordance with TEX. R. CIV. P. 176.3(a) and because the subpoena was not accompanied by proof under oath that all fees due the witness by law were paid—at least as of the date that Respondent compelled Google to respond. TEX. R. CIV. P. 176.8(b). In addition, petitioners' subpoena

tramples Relators' constitutionally protected First Amendment right to anonymous speech. Respondent's failure to comply with the cited rules and law was a clear abuse of discretion that leaves Relators with no adequate remedy at law.

8. Respondent's order renders Relators unable to preserve their right to anonymous speech pending this Court's review.<sup>1</sup> Therefore, Relators ask the Court to stay Respondent's **January 29, 2010**, order compelling Google to produce documents until the Court has ruled on Relators' petition for writ of mandamus.

### **C. CONCLUSION & PRAYER**

9. For the reasons stated in this motion, Relators ask the Court for an emergency stay of Respondent's **January 29, 2010**, order denying the motions to quash the subpoena duces tecum and compelling Google to comply in order to maintain the status quo of the parties and preserve the Court's jurisdiction to consider the merits of Relators' original proceeding. Relators pray for such other and further relief, at law or in equity, as to which they shall show themselves to be lawfully entitled.

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<sup>1</sup> It should be noted that it was almost certainly the intent of petitioners and Google, Inc., to preserve Relators' right to challenge petitioners' subpoena in an appellate court when they agreed that Google would not produce documents sought unless "there was no successful appeal" of any order enforcing petitioners' subpoena. (**Tab F** of Relators' Petition for Mandamus). However, the original proceeding filed contemporaneously with this motion is, strictly speaking, not an "appeal." Therefore, in the absence of the stay requested here, it would be possible for Klein to argue that Relators' prosecution of a petition for a writ of mandamus was not a "successful appeal."

Respectfully submitted,

**ESCAMILLA, PONECK & CRUZ, LLP**

By:  /s/ Jeffrey L. Dorrell

Jeffrey L. Dorrell

State Bar No. 00787386

201 Stratford

Houston, Texas 77006

Telephone: 713-807-1188 (Direct)

FAX: 713-807-1110

**ATTORNEYS FOR RELATORS JOHN DOES 1 AND 2**

# CERTIFICATE OF CONFERENCE

I hereby certify that on **May 17, 2010**, my office transmitted a letter by telephonic document transfer to the below counsel for real parties-in-interest to inquire if they were opposed to Relators' Motion for Emergency Stay of the trial court's January 29, 2010, order denying movants' motions to quash the Klein parties' subpoena duces tecum and compelling Google, Inc., to respond. The parties responded as indicated.

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

<u>          </u>	Advised that He was OPPOSED
<u>          </u>	Advised that He was NOT Opposed
<u>  X  </u>	Did Not Respond

Dennis M. Lynch  
Figari & Davenport, LLP  
3400 Bank of America Plaza  
901 Main Street, LB 125  
Dallas, TX 75202-3796  
Facsimile (214) 939-2090  
**Counsel for Google, Inc.**

<u>          </u>	Advised that He was OPPOSED
<u>          </u>	Advised that He was NOT Opposed
<u>  X  </u>	Did Not Respond

/s/ Jeffrey L. Dorrell  
**JEFFREY L. DORRELL**

**CERTIFICATE OF COMPLIANCE**

Under TEX. R. APP. P. 52.10(a), I certify that on **May 17, 2010**, I notified the following real parties-in-interest to the original proceeding as shown below by facsimile or hand delivery that a motion for temporary relief would be filed.

**PARTIES**

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*

**COUNSEL**

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

Dennis M. Lynch  
Figari & Davenport, LLP  
3400 Bank of America Plaza  
Dallas, Texas 75202-3796  
Telephone: 214-939-2000  
FAX: 214-939-2090  
Attorney for Google, Inc.

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

/s/ Jeffrey L. Dorrell

**JEFFREY L. DORRELL**

## CERTIFICATE OF SERVICE

I hereby certify that on 05-17, 2010, a true and correct copy of the foregoing was sent by certified mail, return receipt requested, in accordance with TEX. R. APP. P. 9.5 to the following:

Dennis M. Lynch  
Figari & Davenport, LLP  
3400 Bank of America Plaza  
901 Main Street, LB 125  
Dallas, TX 75202-3796  
Telephone: 214-939-2000  
**Facsimile 214-939-2090**

John S. Morgan  
Harris, Duesler & Hatfield, LLP  
550 Fannin, Suite 650  
Beaumont, Texas 77701  
Telephone: 409-832-8382  
**Facsimile: 409-833-4240**

/s/ Jeffrey L. Dorrell

**JEFFREY L. DORRELL**

