EXHIBIT A

NO. E184-784

PRK ENTERPRISES, INC. AND KLEIN INVESTMENTS, INC.	§	IN THE DISTRICT COURT OF
VS.	§	JEFFERSON COUNTY, TEXAS
GOOGLE, INC., BLOGGER.COM, WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM AND WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM	§	172nd JUDICIAL DISTRICT

PETITIONER'S ORIGINAL PETITION UNDER RULE 202

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PRK ENTERPRISES, INC. AND KLEIN INVESTMENTS, INC., Plaintiffs in the above-entitled and numbered cause and files Petitioners' Original Petition, complaining of GOOGLE, INC., BLOGGER.COM, WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM, AND WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM, Defendants, and for a cause of action would show the following:

PARTIES

1. Plaintiffs, PRK Enterprises, Inc. and Klein Investments, Inc., are corporations doing business in Jefferson County, Texas and are appearing in court through their attorney of record.

2. Defendant, Google, Inc., is a website and can be served through Google Legal Support, located at 1600 Ampa Theater Parkway, Mountain View, California 94843.

3. Defendant, Blogger.com, is a website. No service is requested at this time.

4. Defendant, www.operationkleinwatch.blogspot.com, is a website. No service is requested at this time.

5. Defendant, www.samtheeagleusa.blogspot.com is a website. No service is requested at this time.

JURISDICTION AND VENUE

6. The issues in controversy are within the jurisdictional purview of this Court. Venue is proper in this Court, because any potential suit will be filed in this venue.

FACTS AND CAUSES OF ACTION

7. Pursuant to Rule 202.2, the Petitioners anticipate the institution of the suit in which the Petitioners may be parties against Respondents identified above, and/or potentially other Respondents. The Petitioners seek to investigate potential claims against the Respondents identified above. The subject matter of the anticipated lawsuit are claims for breach of copyright law, defamation per se, libel per se, and invasion of privacy. Petitioners may be making a claim under the Digital Millennium Copyright Act of 1998, 17 U.S.C. Section 512, because the Respondents identified below are currently using, without permission, copyrighted material and copyrighted intellectual property, for the purposes of accomplishing the state law torts identified above.

8. Specifically, the websites being hosted by the Defendant Google, Inc., and/or Blogger.com, identified above, have been engaged in a pattern of libel and defamation per se, invasion of privacy, and use of copyrighted images (both facial and voice image), without

permission. The purpose of these websites are to disparage, harass and cause injury to these Petitioners, as well as to Mr. Philip Klein personally. These websites host significant, false information, and invade the privacy of Petitioners throughout the website. For example, without limitation, the website Operation Klein Watch, contains false information on legal proceedings that do not involve either Mr. Klein individually or the Petitioners, falsely represent that judgments have been taken against the Petitioners and/or Mr. Klein individually, falsely identify a bankruptcy proceeding, also identify lawsuits that do not involve Petitioners and/or Mr. Klein individually. Additionally, this website identifies all members of Mr. Klein's family, for no apparent purpose other than to invade their privacy. A review of the websites make it clear that they are not expressing any "opinions" protected by the First Amendment but instead are solely vehicles for defamation.

9. Petitioners have sent correspondence to Google, Inc. to determine the identity of who owns or hosts these websites, to no avail. Accordingly, Petitioners seek under Rule 202 petition to take the deposition of the designated corporate representatives of Google, Inc., and/or its subsidiary Blogger.com, for the following purposes:

1. To identify all parties, persons, or entities responsible for the website www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com.
2. Identify all persons, parties or entities who provide contributions of money or literary substance to these websites.

3. Identify all persons, parties or entities who posted comments on these websites and/or have provided financial support to these websites.

4. Identify all persons, parties or entities who are in anyway affiliated with, or connected with in any capacity, these websites.

10. As part of this petition, Petitioners attach a copy of the opinion of the Supreme Court of the State of New York, *Liskulula:, Petitioner, v. Google, Inc. and/or its subsidiary Blogger.com,* in which the Supreme Court of the State of New York ruled that the respondents must divulge the same type of information that Petitioners are seeking in this Rule 202 petition.

11. At this time, Petitioners cannot identify the name of the person(s) who would be Google, Inc., to provide the information requested therein. Petitioners believe that an appropriate corporate representative(s) would provide testimony identifying the parties, persons or entities enquired about in the area of sought after testimony.

12. Petitioners request that this Court enter an order authorizing Petitioners to take these depositions of the corporate representatives identified herein.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, PRK Enterprises, Inc. and Klein Investments, Inc., pray that Defendants, GOOGLE, INC., BLOGGER.COM, WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM, AND WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM be cited to appear and answer herein as the law directs, and that upon hearing, Petitioners

obtain the relief sought herein through the depositions sought herein, and for such other and further relief, both general and special, statutory or common law, at law and in equity, to which Petitioners may be justly entitled.

Respectfully submitted,

JOHN S. MORGAN
Texas Bar No. 14447475
HARRIS, DUESLER & HATFIELD
550 Fannin, Suite 650
Beaumont, Texas 77701
Telephone: (409) 832-8382
Facsimile: (409) 833-4240
ATTORNEY FOR PLAINTIFFS

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, on this day personally appeared PHILIP R. KLEIN who being by me duly sworn, upon oath states that all statements of fact contained herein are true and correct to the best of his knowledge.

PHILIP KLEIN

SUBSCRIBED AND SWORN TO BEFORE ME on this 25th day of August, 2009 certify which witness my hand and seal of office.

STEPHEN LOUIS HARTMAN
Notary Public,
State of Texas
Comm. Exp. 10-27-12

NOTARY PUBLIC, THE STATE OF TEXAS
Expires 10-27-12

EXHIBIT B

CAUSE NO. E-0184784

PRK ENTERPRISES INC. and KLEIN INVESTMENTS, INC.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	JEFFERSON COUNTY
GOOGLE, INC., et. al,	§	
Defendants.	§	172nd JUDICIAL DISTRICT

NOTICE OF RULE 11 AGREEMENT

Defendant Google, Inc. hereby files the attached agreement pursuant to Tex. R. Civ. P. 11.

Respectfully Submitted,

/s/ Dennis M. Lynch
Dennis M. Lynch
State Bar No. 90001506

FIGARI & DAVENPORT, LLP
3400 Bank of America Plaza
901 Main Street, LB 125
Dallas, TX 75202-3796
Phone (214) 939-2000
Facsimile (214) 939-2090

Attorneys for Defendant Google, Inc.

CERTIFICATE OF SERVICE

I hereby certify on the 2nd day of October, 2009, a true and correct copy of the foregoing document has been sent via facsimile to the following counsel of record:

Mr. John S. Morgan
Harris, Duesler & Hatfield
550 Fannin,, Suite 650
Beaumont, Texas 77701

/s/ Dennis M. Lynch
Dennis M. Lynch

FIGARI & DAVENPORT

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING LIMITED LIABILITY PARTNERSHIPS

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October 1, 2009

via E-MAIL (jsmorgan@udhlawyers.com)
Mr. John S. Morgan
Harris, Duesler & Hatfield
550 Fannin, Suite 650
Beaumont, Texas 77701

Re: *PRK Enterprises Inc. and Klein Investments, Inc. ("Plaintiffs") v. Google Inc., et al.*; No. E-0184784; In the 172nd Judicial District Court of Jefferson County, Texas

Dear John:

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, this letter will memorialize our agreement with respect to your request for information from Google, Inc. ("Google").

In lieu of a hearing on the Petition (as defined below), you, on behalf of Plaintiffs, will serve Google (through me as its attorney via certified mail) with a subpoena duces tecum (the "Subpoena") identifying the specific production requests outlined in Petitioner's Original Petition Under Rule 202 (the "Petition"). I will accept service of the Subpoena on behalf of Google. We agree that the deadline for the production of any documents requested by the Subpoena and any objections to the requests in the Subpoena will be twenty (20) days from the date I receive the Subpoena. Notwithstanding the language in the Petition, Plaintiffs will not take a deposition at this time and, instead, Google will respond to the Subpoena with any objections and produce documents in its possession, custody, or control, with identifying information, if any, related to the websites at issue. Nothing herein should be construed as a waiver of Google's right to object to the documents requested in the Subpoena.

In the event that Google and/or any person(s) or entity(ies) who post information on the websites at issue file any objection to the Subpoena, and in the event that Plaintiffs seek to obtain a court ruling on the validity of those objections, then it is agreed that any such motion regarding objections shall be heard in this Court and Google will appear in

this Court to respond to any such motion on the validity of any objections asserted by Google to the Subpoena. Likewise, if any court ruling regarding the Subpoena is appealed, then it is agreed that Google's appearance for any hearing on the validity of any objections to the Subpoena shall constitute an appearance for purpose of any appeal.

Although the Texas Rules of Civil Procedure anticipate a hearing on any request under Rule 202, Plaintiffs will not set a hearing under Rule 202. Plaintiffs further agree that any "answer" of Google to the Petition is hereby suspended indefinitely and that this Rule 11 agreement will suffice as Google's "answer" to the Petition. Once Google responds to the Subpoena with any objections and provides its documents, if any, you agree to (1) contact me to discuss what additional documents, possible deposition of Google, and/or court rulings are necessary from Plaintiffs' point of view or (2) file a non-suit of the Petition.

If I have accurately stated our agreement, please indicate so by signing your name in the space provided and returning your signature to me as soon as possible. If you have any questions, or if we need to discuss anything further at this time, please do not hesitate to contact me.

Sincerely yours,

Dennis M. Lynch

DML/rll

AGREED:

By: _____
John S. Morgan, Esq.
Attorney for PRK Enterprises, Inc. and
Klein Investments, Inc.

EXHIBIT C

CAUSE NO. E-184784

PRK ENTERPRISES, ET AL.	**IN THE DISTRICT COURT**
	OF
VS.	**JEFFERSON COUNTY, TEXAS**
GOOGLE.COM, ET AL.	**172ND JUDICIAL DISTRICT**

MOTION TO QUASH SUBPOENA AND MOTION TO DENY PETITIONER'S RELIEF UNDER RULE 202

COMES NOW, the blog Operation Kleinwatch, who hereby moves to quash any and all subpoenas for records related to this Petition. The respondent files this motion *pro se* and is excluded from filing this motion as an e-file document, pursuant to the Court's Order dated August 15, 2008, whereby *pro se* parties are excluded from e-file requirements.

On Sept. 29, 2009, the petitioner issued a subpoena to Google.com seeking the identity of the anonymous person behind Operation Kleinwatch. Google.com notified the movant, who now asks the Court to quash this subpoena and any others on the grounds that the discovery sought would violate his right under the First Amendment to the United States Constitution and Article I, Section 8, of the Texas Constitution to offer critical and anonymous commentary.

In support of this motion, the respondent states as follows for cause:

I.

STATEMENT OF THE CASE

In *Reno v. American Civil Liberties Union* (521 U.S. 844, 853, 870 [1997], the Supreme Court determined that First Amendment rights of free speech apply to the Internet. "From the publisher's point of view, [the Internet] constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers . . . . Through the use of chat rooms, any person with a phone line can become a town crier with a

voice that resonates farther than it could from any soapbox. Through the use of Web pages, . . . the same individual can become a pamphleteer."

The U.S. Court of Appeals for the Sixth Circuit in *Taubman v. WebFeats* (319 F.3d 770, 778 [6th Cir. 2003]) further determined that the critical speech on the Internet is protected. "...[defendant] is free to shout 'Taubman Sucks!' from the rooftops . . . The rooftops of our past have evolved into the internet domain names of our present. We find that the domain name is a type of public expression, no different in scope than a billboard or a pulpit, and Mishkoff has a First Amendment right to express his opinion about Taubman."

Philip R. Klein is a public personality and principal officer in two corporations, PRK Enterprises, Inc., and Klein Investments, Inc. Under these two corporations, the petitioner currently operates a number of ventures, including an Internet blog, The Southeast Texas Political Review (http://setpoliticalreview.com/), and a private investigation firm, Klein Investigations and Consulting.

As publisher of the Southeast Texas Political Review, Mr. Klein allegedly reports on the "story behind the story in Southeast Texas Politics." The petitioner has been sued for defamatory statements based on dubious sources and unsubstantiated rumors in at least two instances.

As a private investigator, Mr. Klein has appeared in numerous interviews in the national, international, and tabloid press regarding missing persons. The petitioner also occasionally provides commentary of a political nature for the local media.

The petitioner's opinions are often discussed critically on local blogs ("*True Lies: Why you shouldn't practice journalism at home*;" June 10, 2008, http://setxbayou.blogspot.com/2008/06/true-lies-why-you-shouldnt-practice.html, The Bayou; "*Just the fax; Nederland sleuth gossips to gossip site*;"

http://setxbayou.blogspot.com/2009/08/just-fax-nederland-sleuth-gossips-to.html, August 11, 2009, The Bayou; "*PG is impersonated*;" http://www.blogdenovo.org/archives/001699.html#more, de Novo, May 7, 2007).

Since April 15, 2007, the Operation Kleinwatch blog (http://operationkleinwatch.blogspot.com) has operated anonymously under a pseudonym and pen name, Gus Pillsbury, through Blogger.com. This blogging service is a subsidiary of Google.com.

The blog, Operation Kleinwatch, clearly offers critical and reasoned analysis of Philip R. Klein's expressed opinions and statements. Whether these expressions are made through his daily blog, media appearances, newspaper and magazine interviews, radio shows, or TV commentary, this criticism is protected under the First Amendment.

Philip R. Klein, Klein Investments, Inc., and PRK Enterprises, Inc., have collectively petitioned this Court for pre-litigation discovery under Rule 202.2. The purpose of this petition is to investigate whether evidence exists to support his claim that the purpose of Operation Kleinwatch is to disparage, harass, and cause injury, and that the anonymous blog engages in copyright infringement, defamation, libel, and an invasion of Mr. Klein's privacy.

However, the petitioner does not contain allegations that would be necessary for a public personality to state a claim for defamation. Most notably, the petition does not allege that statements made on the blog Operation Kleinwatch were made with actual malice.

Furthermore, the petitioner alleges that statements made on Operation Kleinwatch are not factual; as the only example, the petitioner cites a list of legal actions to which Mr. Klein or his corporate entitites have been a party, intended to document the petitioner's litigious nature.

On Sept. 29, 2009, the petitioner issued a subpoena to Google.com seeking the identity of the anonymous person behind Operation Kleinwatch. Google.com notified the movant, who now asks the Court to quash this subpoena and any others on the grounds that the discovery sought would violate his right under the First Amendment to the United States Constitution and Article I, Section 8, of the Texas Constitution to offer critical and anonymous commentary.

II.

ARGUMENT

Under Rule 202 of the Rules of Civil Procedure, a determination of whether to allow pre-suit discovery depends on balancing the burden or prejudice to the target of the discovery against the benefit to the prospective petitioner in being able to take discovery immediately without first filing suit (*In re Hochheim Prairie Farm Mut. Ins. Ass'n,* 115 S.W.3d 793, 795-796 (Tex. App.-Beaumont 2003).

Specific to this case before the court, there is insufficient benefit to Mr. Klein because the verified petition affords no basis for concluding that he has valid claims against movant, and there is serious potential prejudice to movant because his identification would permanently deprive him of his First Amendment right to offer anonymous criticism of the petitioner's statements.

I. The First Amendment Protects against the compelled identification of anonymous Internet speakers. This is established case law (*Watchtower Bible and Tract Soc. of New York v. Village of Stratton*, 536 U.S. 150, 166-167 [2002]; *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 199-200 [1999]; *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 [1995]; *Talley v. California*, 362 U.S. 60 [1960]; *Doe v. State,* 112 S.W.3d 532 [Tex. Crim. App. 2003]; *aff'g State v. Doe*, 61 S.W.3d 99, 103 [Tex. App. – Dallas 2001]).

In *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995), the Supreme Court of the United States found that:

> [A]n author is generally free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, . . . the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.
>
> * * *
>
> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent.
>
> *McIntyre v. Ohio Elections Comm.,* 514 U.S. at 341-342, 356.

These rights extend to anonymous speech on the Internet (*Reno v. ACLU*, 521 U.S. 844, 853, 870 [1997]; *Johnson*, 4 F. Supp. 2d 1029, 1033 (D.N.M. 1998); *ACLU v. Miller,* 977 F. Supp. 1228, 1230 [N.D. Ga. 1997]; *see also ApolloMEDIA Corp. v. Reno*, 526 U.S. 1061 1450 (1999), *aff'g* 19 F. Supp.2d 1081 [C.D. Cal. 1998] [protecting anonymous denizens of a web site at www.annoy.com, a site "created and designed to annoy" legislators through anonymous communications]; *Global Telemedia v. Does*, 132 F. Supp.2d 1261 [C.D. Cal 2001] [striking complaint based on anonymous postings on Yahoo! Message board based on California's anti-SLAPP statute]; *Doe v. 2TheMart.com*, 140 F.Supp.2d 1088, 1092-1093 [W.D. Wash. 2001]).

Internet speakers may speak anonymously for many reasons. They may seek to avoid having their opinion stereotyped according to racial, class, or ethnic characteristics; they may want to publish things about themselves that they are unwilling to disclose otherwise; or they may want to express opinions that may make other people angry and spark retaliation.

No matter what reason exists for this anonymity, a rule that makes it easy to remove this cloak of anonymity deprives the marketplace of valuable contributions, and potentially brings unnecessary harm to the speakers themselves.

Specific to the petitioner's petition, Mr. Klein has already publicly stated a goal of retaliation for these critical opinions in a posting from The Southeast Texas Political Review on November 9, 2008:

> "I will assign one person from my office for an entire month to look into every aspect of their lives. And I will post it."

While the Internet provides individuals the opportunity to speak anonymously, this platform also creates an unparalleled capacity to monitor every speaker and discover his or her identity. Any speaker who sends an e-mail or visits a website leaves an electronic footprint that, if saved by the recipient, provides the beginning of a path that can be followed back to the original party. See Lessig, *The Law of the Horse*, 113 Harv. L. Rev. 501, 504-505 (1999).

Since a court order, even when issued at the behest of a private party, constitutes state action, the order is subject to constitutional limitations (New York Times Co. v. Sullivan, 364 U.S. 254, 265 [1964]; Shelley v. Kraemer, 334 U.S. 1 [1948]). The Supreme Court held that a court order to compel production of individuals' identities in a situation that would threaten the exercise of fundamental rights "is subject to the closest scrutiny" (*NAACP v. Alabama*, 357 U.S. 449, 461 [1958]; *Bates v. City of Little Rock*, 361 U.S. 516, 524 [1960]).

The abridgement of rights to speech and press, "even though unintended, may inevitably follow from varied forms of governmental action," such as compelling the production of names (*NAACP v. Alabama*, 357 U.S. at 461). These First Amendment rights may also be abridged by means of private retribution following such court-ordered disclosures (*Id.* at 462-463; *Bates*, 361 U.S. at 524). As the Supreme Court has held, due process requires the showing of a

"subordinating interest which is compelling" where, as here, compelled disclosure threatens a significant impairment of fundamental rights (*Bates*, 361 U.S. at 524; *NAACP v. Alabama*, 357 U.S. at 463).

Because compelled identification affects the First Amendment right of anonymous speakers to remain anonymous, justification for an incursion on that right requires proof of a compelling interest; beyond that, the restriction must also be narrowly tailored to serve that interest (*McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 347 [1995]. The courts have recognized the chilling effect that subpoenas to reveal the names of anonymous speakers can have on dissenting opinions, and the First Amendment interests that are implicated by such subpoenas (*E.g.*, *FEC v. Florida for Kennedy Committee*, 681 F.2d 1281, 1284-1285 [11th Cir. 1982]; *Ealy v. Littlejohn*, 560 F.2d 219, 226-230 [5th Cir. 1978].

The courts have evolved a standard for the compelled disclosure of the sources of libelous speech, recognizing a qualified privilege against disclosure of such otherwise anonymous sources. In those cases, the courts apply a three-part test, under which the person seeking to identify the anonymous speaker has the burden of showing that:

1) The issue on which the material is sought is not just relevant to the action, but goes to the heart of its case;
2) Disclosure of the source to prove the issue is "necessary" because the party seeking disclosure is likely to prevail on all the other issues in the case, and that
3) The discovering party has exhausted all other means of proving this part of its case.

United States v. Caporale, 806 F.2d 1487, -9-1504 (11th Cir. 1986); *Miller v. Transamerican Press*, 621 F.2d 721, 726 (5th Cir. 1980); *Carey v.Hume,* 492 F.2d 631 (D.C. Cir. 1974); *Cervantes v. Time,* 464 F.2d 986 (8th Cir. 1972); *Campbell v. Klevenhagen*, 760 F. Supp. 1206,

1210, 1215 (S.D. Tex. 1991); *Channel Two Television Co. v. Dickerson*, 725 S.W.2d 470, 472 (Tex.App.-- Houston [1st Dist.] 1987).

One court succinctly captured the issue in refusing to enforce a subpoena to identify anonymous Internet speakers whose identity was allegedly relevant to the defense against a shareholder derivative suit, "If Internet users could be stripped of that anonymity by a civil subpoena enforced under the liberal rules of civil discovery, this would have a significant chilling effect on Internet communications and thus on basic First Amendment rights" (*Doe v. 2theMart.com*, 140 F. Supp.2d 1088, 1093 [W.D. Wash. 2001].

II. The Qualified Privilege for Anonymous Speech Supports a Five-Part Standard for the Identification of John Doe Defendants.

In recent cases, courts have drawn on the privilege against revealing sources to enunciate a similar standard for protecting against the identification of anonymous Internet speakers. In *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (App. Div. 2001), a corporation sued four individuals who had made a variety of remarks about it on a bulletin board maintained by Yahoo! That court enunciated a five-part standard for cases involving subpoenas to identify anonymous Internet speakers, which movant urges the Court to apply in this case:

> We offer the following guidelines to trial courts when faced with an application by a plaintiff for expedited discovery seeking an order compelling an ISP to honor a subpoena and disclose the identity of anonymous Internet posters who are sued for allegedly violating the rights of individuals, corporations or businesses. The trial court must consider and decide those applications by striking a balance between the well-established First Amendment right to speak anonymously, and the right of the plaintiff to protect its proprietary interests and reputation through the assertion of recognizable claims based on the actionable conduct of the anonymous, fictitiously-named defendants.
>
> We hold that when such an application is made, the trial court should first require the plaintiff to undertake efforts to notify the anonymous posters that they are the subject of a subpoena or application for an order of disclosure, and withhold action to afford the fictitiously-named defendants a reasonable opportunity to file and serve opposition to the application. These notification efforts should include posting a message of notification of

> the identity discovery request to the anonymous user on the ISP's pertinent message board.
>
> The court shall also require the plaintiff to identify and set forth the exact statements purportedly made by each anonymous poster that plaintiff alleges constitutes actionable speech.
>
> The complaint and all information provided to the court should be carefully reviewed to determine whether plaintiff has set forth a prima facie cause of action against the fictitiously-named anonymous defendants. In addition to establishing that its action can withstand a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to [New Jersey's rules], the plaintiff must produce sufficient evidence supporting each element of its cause of action, on a prima facie basis, prior to a court ordering the disclosure of the identity of the unnamed defendant.
>
> Finally, assuming the court concludes that the plaintiff has presented a prima facie cause of action, the court must balance the defendant's First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant's identity to allow the plaintiff to properly proceed.
>
> The application of these procedures and standards must be undertaken and analyzed on a case-by-case basis. The guiding principle is a result based on a meaningful analysis and a proper balancing of the equities and rights at issue.
>
> 342 N.J. Super. at 141-142, 775 A.2d at 760-761.1

This standard extends to the Petitioner's claim of trademark infringement. In *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999), the petitioner sued several anonymous defendants who had registered Internet domain names that used the petitioner's trademark. The court expressed concern about the possible chilling effect that such discovery could have:

> People are permitted to interact pseudonymously and anonymously with each other so long as those acts are not in violation of the law. This ability to speak one's mind without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate . . . . People who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identities.
>
> *Id.* at 578.

Accordingly, the Seescandy court required the plaintiff to make a good faith effort to communicate with the anonymous defendants and to provide them with notice that the suit had been filed against them, thus assuring them an opportunity to defend their anonymity. The court also compelled the plaintiff to demonstrate that it had viable claims against such defendants (*Id.* at 579). This demonstration included a review of the evidence in support of the trademark claims that the plaintiff was bringing against the anonymous defendants (*Id.* at 580).

In *Melvin v. Doe*, 49 Pa. D.&C.4th 449 (2000), *rev'd on other grounds*, 575 Pa. 264, 836 A.2d 42 (2003), the court ordered disclosure only after finding genuine issues of material fact requiring trial. In reversing the order of disclosure, the Pennsylvania Supreme Court expressly recognized the right to speak anonymously and sent the case back for a determination of whether, under Pennsylvania libel law, actual economic harm must be proved as an element of the cause of action (836 A.2d at 50).

In another case, the Virginia Circuit Court for Fairfax County considered a subpoena for identifying information of an AOL subscriber. The subscriber did not enter an appearance, but AOL argued for a standard that would protect its subscribers against needless piercing of their protected anonymity. The court required the plaintiff to submit the actual Internet postings on which the defamation claim was based, and then articulated the following standard for disclosure:

> "The court must be satisfied by the pleadings or evidence supplied to that court . . . that the party requesting the subpoena has a legitimate, good faith basis to contend that it may be the victim of conduct actionable in the jurisdiction where suit was filed, and . . . the subpoenaed identity information [must be] centrally needed to advance that claim."
>
> *In re Subpoena Duces Tecum to America Online,* 52 Va.Cir. 26, 34, 2000 WL 1210372 (Va.Cir. Fairfax Cy. 2000), *rev'd on other grounds*, 261 Va. 350, 542 S.E.2d 377 (2001)

Although each of these cases sets out a slightly different standard, each requires the courts to weigh the petitioner's interest in obtaining the name of the person that has allegedly violated its rights against the interests implicated by the potential violation of the First Amendment right to anonymity, thus ensuring that First Amendment rights are not trammeled unnecessarily. In other words, the qualified privilege to speak anonymously requires courts to review a would-be petitioner's claims and the evidence supporting them to ensure that the petitioner has a valid reason for piercing the speaker's anonymity.

III. Philip R. Klein cannot meet the standard for identification of an anonymous speaker.

The courts have established standards in deciding whether to allow petitioners to compel the identification of anonymous Internet speakers. Because Mr. Klein cannot meet these standards, he is not entitled to have his subpoena enforced.

Mr. Klein's complaints lack specificity concerning purported libelous statements. The qualified privilege to speak anonymously requires the court to review the petitioner's claims to ensure that petitioner does, in fact, have a valid reason for piercing each speaker's anonymity. Thus, the court should require the petitioner to set forth the exact statements by each anonymous speaker that is alleged to have violated his rights.

Texas requires that defamatory words be set forth verbatim in a complaint for defamation (*Perkins v Welch*, 57 S.W.2d 914, 915 [Tex. Civ. App. – San Antonio 1933]; *see also Granada Biosciences v. Barrett*, 958 S.W.2d 215, 222 [Tex.App.– Amarillo 1997]; *Asay v. Hallmark Cards*, 594 F.2d 692, 699 [8th Cir. 1979]).

Likewise, Mr. Klein is seeking the identities of "all persons, parties or entities who posted comments on these web sites and/or have provided financial support to these websites." Mr. Klein does not identify, which comments, if any, are libleous in nature. Those readers who leave

anonymous comments are entitled to the same protection under the First Amendment as the anonymous author of Operation Kleinwatch.

The court should review the facial validity of the claims after the statements are specified to determine whether it is facially actionable. In a defamation case, some statements may be too vague or insufficiently factual to be defamatory. Still other statements may be non-actionable because they are merely statements of opinion, which are expressly excluded from the cause of action for defamation (*Carr v. Brasher*, 776 SW2d 567, 570 [Tex. 1989]; *Brewer v. Capital Cities/ABC*, 986 SW2d 636, 643 [Tex. App. – Ft. Worth 1998]).

Mr. Klein has provided two vague and spurious examples. As noted above, his original petition specifically claimed that a list of litigation "falsely represents that judgements have been taken against Mr. Klein, falsely represents a bankruptcy proceeding, and identifies lawsuits that do not involve the petitioners and/or Mr. Klein."

In his other example, Mr. Klein erroneously claims that the anonymous blogger "identifies all members of Mr. Klein's family, for no apparent purpose other than to invade their privacy." These two instances are not actionable. The list of lawsuits are public record and properly cited. They can be verified by cause or case number through The Jefferson County District Court Clerk, the Jefferson County Clerk, or in the case of bankruptcies, through the index for the U.S. Bankruptcy Court in the Eastern District of Texas found on PACER (http://pacer.psc.uscourts.gov/), the federal website that provides Public Access to Court Electronic Records. Nor does the purported list of Mr. Klein's family exist on Operation Kleinwatch.

The Court should require an evidentiary basis for the petitioner's claims. No person should be subjected to compulsory identification through a court's subpoena power unless the petitioner

produces sufficient evidence supporting each element of his cause of action to show that he has a realistic chance of winning a lawsuit against that defendant.

The requirement of presenting evidence prevents a petitioner from being able to identify critics simply by filing a facially adequate complaint. In this regard, petitioners often claim that they need identification of the defendants simply to proceed with their case. However, relief is generally not awarded to a petitioner unless he comes forward with evidence in support of his claims, and the Court should recognize that identification of an otherwise anonymous speaker is a major form of relief in cases like this. Requiring actual evidence to enforce a subpoena is particularly appropriate where the relief itself may undermine, and thus violate, the defendant's First Amendment right to speak anonymously.

Indeed, in a number of cases, petitioners have succeeded in identifying their critics and then sought no further relief from the court (Thompson, *On the Net*, in the Dark, California Law Week, Volume 1, No. 9, at 16, 18, [1999]).

One of the leading advocates of using discovery procedures to identify anonymous critics has urged corporate executives to use discovery first, and to decide whether to sue for libel only after the critics have been identified and contacted privately (Fischman, *Your Corporate Reputation Online*, http://www.fhdlaw.com/html/corporate_reputation.htm; Fischman, *Protecting the Value of Your Goodwill from Online Assault*, http://www.fhdlaw.com/html/bruce_article.htm).

Lawyers who represent petitioners in these cases have also urged companies to bring suit, even if they do not intend to pursue the action to a conclusion, because "[t]he mere filing of the John Doe action will probably slow the postings" (Eisenhofer and Liebesman, *Caught by the Net*, 10 Business Law Today No. 1, Sept./Oct. 2000, at 46).

These lawyers have similarly suggested that clients decide whether it is worth pursuing a

lawsuit only after finding out who the defendant is (*Id.*). Even the pendency of a subpoena may have the effect of deterring other members of the public from discussing the public personality who has filed the action (*Id.*). However, imposition of a requirement that proof of wrongdoing be presented to obtain the names of the anonymous critics, and not just to secure an award of damages or other relief, may well persuade petitioners that such subpoenas are not worth pursuing unless they are prepared to litigate.

To address this potential abuse, this Court should borrow by analogy the holdings of cases involving the disclosure of anonymous sources. Those cases require a party seeking discovery of information protected by the First Amendment to show that there is reason to believe that the information sought will, in fact, help its case (*In re Petroleum Prod. Antitrust Litig.*, 680 F.2d 5, 6-9 [2d Cir. 1982]; *Richards of Rockford v. PGE*, 71 F.R.D. 388, 390-391 [N.D.Cal. 1976]. *See also Schultz v. Reader's Digest*, 468 F.Supp. 551, 566-567 [E.D.Mich. 1979]).

The petitioner should be required to show genuine issues of material fact on all issues in the case, including issues with respect to which it needs to identify the anonymous speakers, before it is given the opportunity to obtain their identities. In *Cervantes v. Time* (464 F.2d 986, 993-994 [8th Cir. 1972]), the Court found that "Mere speculation and conjecture about the fruits of such examination will not suffice."

The extent to which a proponent of compelled disclosure of the identity of an anonymous critic should be required to offer proof to support each of the elements of its claims at the outset of its case, to obtain an injunction compelling the identification of the defendant, varies with the nature of the element. On many issues in suits for defamation or disclosure of inside information, several elements of the petitioner's claim will ordinarily be based on evidence to which the petitioner, and often not the defendant, is likely to have easy access. For example, the petitioner

is likely to have ample means of proving that a statement is false. Thus, it is ordinarily proper to require a petitioner to present proof of this element of its claims as a condition of enforcing a subpoena for the identification of a Doe defendant. The same is true with respect to the proof of damages. Even if discovery is needed to develop the full measure of damages, a petitioner surely should have some information at the outset supporting claims that he suffered actual damages.

Beyond two claims that are demonstrably wrong, the petitioner has not introduced any evidence that anything Operation Kleinwatch published is false.

The Court should balance the equities in this claim. After the Court has satisfied itself that Operation Kleinwatch has made at least one statement that is actionable:

> [T]he final factor to consider in balancing the need for confidentiality versus discovery is the strength of the movant's case . . .. If the case is weak, then little purpose will be served by allowing such discovery, yet great harm will be done by revelation of privileged information. In fact, there is a danger in such a case that it was brought just to obtain the names . . .. On the other hand, if a case is strong and the information sought goes to the heart of it and is not available from other sources, then the balance may swing in favor of discovery if the harm from such discovery is not too severe.
>
> *Missouri ex rel. Classic III v. Ely*, 954 SW.2d 650, 659 (Mo. App. 1997).

Just as the Missouri Court of Appeals approved such balancing in a reporter's source disclosure case, *Dendrite* called for such individualized balancing when the petitioner seeks to compel identification of an anonymous Internet speaker:

> [A]ssuming the court concludes that the plaintiff has presented a prima facie cause of action, the court must balance the defendant's First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant's identity to allow the plaintiff to properly proceed.
>
> The application of these procedures and standards must be undertaken and analyzed on a case-by-case basis. The guiding principle is a result based on a meaningful analysis and a proper balancing of the equities and rights at issue.
>
> *Dendrite v. Doe*, 342 N.J. Super. 134, 141-142, 775 A.2d 756, 760-761 (App. Div. 2001). See also *In re Hochheim Prairie Farm Mut. Ins. Ass'n*, 115 S.W.3d 793, 795-796 (Tex.

App.-Beaumont 2003) (Rule 202 requires balancing of interests).

If the petitioner cannot come forward with concrete evidence sufficient to prevail on all elements of its case on subjects that are based on information within its own control, there is no basis to breach the anonymity of the defendants [*Bruno v. Stillman*, 633 F.2d 583, 597 (1st Cir. 1980)]; *Southwell v. Southern Poverty Law Center*, 949 F.Supp. 1303, 1311 [W.D.Mich. 1996]). The Court should consider the strength of the petitioner's case, and its interest in redressing the alleged violations. In this regard, the Court can consider not only the strength of the petitioner's evidence but also the nature of the allegations, the likelihood of cause significant damage to the petitioner, and the extent to which the petitioner's own fault is responsible for the problems of which he complains.

Here, consideration weighs heavily against Mr. Klein at this balancing stage of the case. Klein is a public personality trying to identify a private individual who has criticized his opinions. By publishing these opinions in a public forum, Mr. Klein voluntarily made his opinions a fair subject for comment, even robust and very unkind comment; and the comments on Operation Kleinwatch are expressly protected by the First Amendment.

The principal advantage of the Dendrite test is its flexibility. It balances the interests of the petitioner who claims to have been wronged against the interest in anonymity of the Internet speaker who claims to have done no wrong. In that way, it provides for a preliminary determination based on a case-by-case, individualized assessment of the equities.

It avoids creating a false dichotomy between protection for anonymity and the right of victims to be compensated for their losses. It ensures that online speakers who make wild and outrageous statements about public figures or private individuals or companies will not be immune from identification and from being brought to justice, while at the same time ensuring that persons

with legitimate reasons for speaking and criticizing anonymously will be allowed to maintain the secrecy of their identity as the First Amendment allows.

The *Dendrite* test also has the advantage of discouraging the filing of unnecessary lawsuits. In the first few years of the Internet, hundreds or even thousands of lawsuits were filed seeking to identify online speakers, and the enforcement of subpoenas in those cases was almost automatic.

Consequently, many lawyers advised their clients to bring such cases without being serious about pursuing a claim to judgment, on the assumption that a petitioner could compel the disclosure of its critics simply for the price of filing a complaint. ISP's have reported some staggering statistics about the number of subpoenas they received – AOL's amicus brief in the Melvin case reported the receipt of 475 subpoenas in a single fiscal year, and Yahoo! stated at a hearing in California Superior Court that it receives "thousands" of such subpoenas (*Universal Foods Corp. v. John Doe*, Case No. CV786442 [Cal. Super. Santa Clara Cy.] , Transcript of Proceedings July 6, 2001, at page 3).

I urge the Court to quash this subpoena by adopting the *Dendrite* test that weighs the interests of defamation petitioners to vindicate their reputations in meritorious cases against the right of Internet speakers to maintain their anonymity when their speech is not actionable.

IV. The petitioner's claims of copyright infringement are not valid.

Philip Klein is asking for an unprecedented waiver of the Fair Use doctrine, as codified in the Copyright Act of 1976, 17 U.S.C. § 107. Specifically,

> Notwithstanding the provisions of sections 17 U.S.C. § 106 and 17 U.S.C. § 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

Furthermore, the use of Mr. Klein's statements are absolutely crucial to the context of the commentary and analysis found on Operation Kleinwatch, since Philip Klein does not maintain a public archive of his past articles. Critical readers cannot document his previous statements.

Even though this fair use extends to the recordings and images found on Operation Kleinwatch, Philip R. Klein lacks standing since he does not hold the copyright to these items. One can't call a press conference and later claim a copyright on the pictures; the copyright belongs to the person who took the picture.

These images are in parodies of Mr. Klein. The Supreme Court determined that parody, even commercial, is a transformative work, not derivative. As such, the work is protected against copyright claims under the Fair Use doctrine (*Campbell v. Acuff-Rose Music*, 510 U.S. 569 [1994]).

Conclusion:

This subpoena to Google should be quashed.

/S/
Authorized Representative *Pro Se*
Operation Kleinwatch Blog
Google, Inc.
1600 Amphitheatre Parkway
Mountain View CA 94043

CC: Dennis Lynch
901 Main
Dallas, Texas 75202

EXHIBIT D

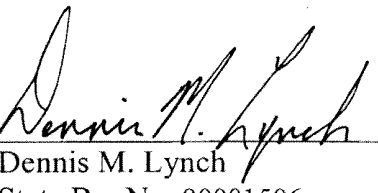
CAUSE NO. E-0184784

PRK ENTERPRISES INC. and KLEIN INVESTMENTS, INC.,	§	IN THE DISTRICT COURT OF
Petitioners,	§	
v.	§	JEFFERSON COUNTY
GOOGLE INC., et. al,	§	
Respondents.	§	172nd JUDICIAL DISTRICT

GOOGLE INC.'S OBJECTIONS AND RESPONSES TO SUBPOENA DUCES TECUM

Pursuant to the Texas Rules of Civil Procedure and the Rule 11 agreement between Google Inc. ("Google") and Petitioners PRK Enterprises, Inc. and Klein Investments, Inc. (together, the "Petitioners"), Google hereby serves it objections and responses to the subpoena duces tecum (the "Subpoena") served by Petitioners.

Respectfully submitted,

By: 
Dennis M. Lynch
State Bar No. 90001506

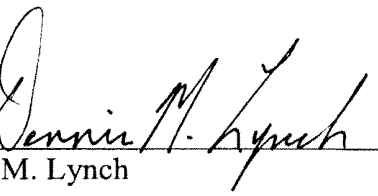
FIGARI & DAVENPORT, LLP
3400 Bank of America Plaza
901 Main Street, LB 125
Dallas, TX 75202-3796
Phone (214) 939-2000
Facsimile (214) 939-2090

ATTORNEYS FOR GOOGLE INC.

CERTIFICATE OF SERVICE

I hereby certify on the 22nd day of October, 2009, a true and correct copy of the foregoing document has been sent via certified mail, return receipt requested, to the following counsel of record:

Mr. John S. Morgan
Harris, Duesler & Hatfield
550 Fannin,, Suite 650
Beaumont, Texas 77701


Dennis M. Lynch

I. GENERAL OBJECTIONS AND STATEMENTS REGARDING THE SUBPOENA

The following general objections and statements are incorporated into the specific objections and responses of Google:

1. Google objects to the Subpoena to the extent it exceeds the scope of discoverable information provided under the Texas Rules of Civil Procedure, particularly Rule 202 for a pre-lawsuit action such as this matter.

2. Google objects to the Subpoena as overbroad, irrelevant, and harassing. Specifically, the Subpoena includes a third web site that is not included in the Petitioners' Rule 202 Petition and is beyond the scope of the parties' Rule 11 agreement.

3. Google has recently received notice that the blog Operation Kleinwatch has filed a motion to quash the Subpoena (the "Motion to Quash"). Until the Court resolves the Motion to Quash, Google objects to the production of any documents. If the Court resolves the Motion to Quash in favor of the Petitioners, and there is no appeal of that ruling, Google will produce documents responsive to the Subpoena subject to Google's objections herein and at a mutually convenient date and time.

4. Google's response to the Subpoena and the production of any documents is made in accordance with state and federal law, including the Electronic Communications Privacy Act, 18 U.S.C. § 2701 *et seq.* (the "ECPA").

5. By its response to the Subpoena and the production of documents does not waive any objection to further proceedings in this matter, and Google expressly reserves any such objections.

II. SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

Any and all identifiers, user account IP addresses, user access Email Addresses, user entry logs, user posting logs, register user information, account access IP addresses and/or any identifying descriptors for the following blogspots for the previous year:

a. http://samtheeagleusa.blogspot.com/
b. http://operationkleinwatch.blogspot.com/
c. http://www.notthisonetoojacques.blogspot.com/

RESPONSE:

Google objects to this request as vague and ambiguous with respect to the terms "identifiers" and "identifying descriptors." Google further objects to this request as overbroad and irrelevant for, among other things, the reasons identified in General Objection No. 2 above. Google further objects to this request as unduly burdensome. Subject to and without waiving the foregoing objections, and in the event the Motion to Quash is denied and not appealed, Google will produce documents responsive to this request at a mutually convenient date and time.

REQUEST NO. 2:

To identify all parties, persons, or entities responsible for the website www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com.

RESPONSE:

Google objects to this request as vague, ambiguous and indefinite with respect to the phrases "To identify" and "responsible for." Google further objects to this request as unduly burdensome. Subject to and without waiving the foregoing objections, and in the

event the Motion to Quash is denied and not appealed, Google will produce documents responsive to this request at a mutually convenient date and time.

REQUEST NO. 3:

Identify all persons, parties or entities who provide contributions of money or literary substance to these websites.

RESPONSE:

Google objects to this request as overbroad and irrelevant. Google further objects to this request as unduly burdensome. Google further objects to this request as vague and ambiguous with respect to the phrase "these websites" because it is not clear if Petitioners are referring to the websites identified in Request No. 1 (which includes a third web site that is beyond the scope of Petitioners' Rule 202 Petition and the parties' Rule 11 agreement) or the websites identified in Request No. 2 (which does not include the third website). Google further objects to this request to the extent it is construed to request the actual e-mail content or literary substance because the production of such information is prohibited by the ECPA except in limited circumstances not present here. Subject to and without waiving the foregoing objections, Google states that it will meet and confer with Petitioners to determine whether there are any documents responsive to this request in the event the Motion to Quash is denied and not appealed.

REQUEST NO. 4:

Identify all persons, parties or entities who posted comments on these websites and/or have provided financial support to these websites.

RESPONSE:

Google objects to this request as vague, ambiguous, and indefinite with respect to the term "financial support." Google further objects to this request as vague and ambiguous with respect to the phrase "these websites" because it is not clear if Petitioners are referring to the websites identified in Request No. 1 (which includes a third web site that is beyond the scope of Petitioners' Rule 202 Petition and the parties' Rule 11 agreement) or the websites identified in Request No. 2 (which does not include the third website). Google further objects to this request as overbroad and irrelevant. Google further objects to this request as unduly burdensome. Google further objects to this request to the extent it is construed to request actual e-mail content, literary substance, or comments because the production of such information is prohibited by the EPCA except in limited circumstances not present here. Subject to and without waiving the foregoing objections, Google states that it will meet and confer with Petitioners to determine whether there are any documents responsive to this request in the event the Motion to Quash is denied and not appealed.

REQUEST NO. 5:

Identify all persons, parties or entities who are in anyway affiliated with, or connected with in any capacity, these websites.

RESPONSE:

Google objects to this request as vague, ambiguous, indefinite, and overbroad, particularly with respect to the phrase "in anyway [sic] affiliated with, or connected with in any capacity." Google further objects to this request as vague and ambiguous with

respect to the phrase "these websites" because it is not clear if Petitioners are referring to the websites identified in Request No. 1 (which includes a third web site that is beyond the scope of Petitioners' Rule 202 Petition and the parties' Rule 11 agreement) or the websites identified in Request No. 2 (which does not include the third website). Google further objects to this request as irrelevant. Google further objects to this request as unduly burdensome. Subject to and without waiving the foregoing objections, Google states that it will meet and confer with Petitioners to determine whether there are any documents responsive to this request in the event the Motion to Quash is denied and not appealed.

EXHIBIT E

CAUSE NO. E-0184784

PRK ENTERPRISES INC. and KLEIN INVESTMENTS, INC.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	JEFFERSON COUNTY
GOOGLE, INC., et. al,	§	
Defendants.	§	172nd JUDICIAL DISTRICT

NOTICE OF RULE 11 AGREEMENT

Defendant Google Inc. hereby files the attached agreement pursuant to Tex. R. Civ. P. 11.

Respectfully Submitted,

/s/ Dennis M. Lynch
Dennis M. Lynch
State Bar No. 90001506

FIGARI & DAVENPORT, LLP
3400 Bank of America Plaza
901 Main Street, LB 125
Dallas, TX 75202-3796
Phone (214) 939-2000
Facsimile (214) 939-2090

ATTORNEYS FOR DEFENDANT
GOOGLE INC.

CERTIFICATE OF SERVICE

I hereby certify on the 7th day of January, 2010, a true and correct copy of the foregoing document has been sent via facsimile to the following counsel of record:

Mr. John S. Morgan
Harris, Duesler & Hatfield
550 Fannin,, Suite 650
Beaumont, Texas 77701

/s/ Dennis M. Lynch
Dennis M. Lynch

FIGARI & DAVENPORT

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING LIMITED LIABILITY PARTNERSHIPS

3400 Bank of America Plaza
901 Main Street
Dallas, Texas 75202-3796
214-939-2000
Fax 214-939-2090

Writer's Direct Dial Number
214-939-2008

Writer's E-Mail Address
dennis.lynch@figdav.com

January 6, 2010

via E-MAIL (jsmorgan@ndhlawyers.com)
Mr. John S. Morgan
Harris, Duesler & Hatfield
550 Fannin, Suite 650
Beaumont, Texas 77701

Re: *PRK Enterprises Inc. and Klein Investments, Inc. ("Plaintiffs") v. Google Inc., et al.*; No. E-0184784; In the 172nd Judicial District Court of Jefferson County, Texas

Dear John:

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, this letter will memorialize our agreement regarding the scope of the hearing currently scheduled by Plaintiffs for January 15, 2010 in the above-referenced matter (the "Hearing").

The Hearing will address the issues raised in the bloggers' motion to quash Plaintiffs' subpoena (the "Subpoena") issued to Google Inc. ("Google"). It is my understanding and our agreement that the Hearing will only address the issues raised in the motion to quash. More specifically, the Hearing is not intended to, and you will not address either at the Hearing or in the subsequent Order evidencing the ruling(s) at the Hearing, any of Google's underlying objections to the Subpoena.

As we discussed, if Plaintiffs are successful in defeating the motion to quash and there is no successful appeal of that ruling, Google will provide Plaintiffs with documents responsive to the Subpoena, subject to its objections. After Google provides its documents, you will contact me to discuss any additional information required by the Subpoena and the propriety of Google's objections to the Subpoena. If the need arises, a hearing at a later date will be scheduled to address any additional information requested by the Subpoena and Google's objections to the Subpoena.

If I have accurately stated our agreement, please indicate so by signing your name in the space provided and returning your signature to me as soon as possible. If you have

any questions, or if we need to discuss anything further at this time, please do not hesitate to contact me.

Sincerely yours,

Dennis M. Lynch

DML/rll

AGREED:

By: _____
John S. Morgan, Esq.
Attorney for PRK Enterprises, Inc. and
Klein Investments, Inc.

Dennis M. Lynch

From: LexisNexis File & Serve [TransactionReceipt@fileandserve.lexisnexis.com]
Sent: Thursday, January 07, 2010 12:12 PM
To: Dennis M. Lynch
Subject: Case: 184784; Transaction: 28857122 Transaction Receipt

To: Dennis M Lynch
Subject: Transaction Receipt

This email is to confirm receipt of your documents. The transaction option you selected was "File And Serve". The details for this transaction are listed below.

Court:	TX Jefferson 172nd District Court
Case Name:	P R K Enterprises Inc et al vs Google Inc et al
Case Number:	184784
Transaction ID:	28857122
Document Title(s):	
Notice of Rule 11 Agreement (4 pages)	
Authorized Date/Time:	Jan 7 2010 12:06PM CST
Authorizer:	Dennis M Lynch
Authorizer's Organization:	Figari & Davenport LLP
Sending Parties:	
Google Inc	
Served Parties:	
Klein Investments Inc	
P R K Enterprises Inc	

Thank you for using LexisNexis File & Serve.

Questions? For prompt, courteous assistance please contact LexisNexis Customer Service by phone at 1-888-529-7587 (24/7).

EXHIBIT F

NO. 184,784

PRK ENTERPRISES, INC. AND KLEIN INVESTMENTS, INC.	§	IN THE DISTRICT COURT OF
VS.	§	JEFFERSON COUNTY, TEXAS
GOOGLE, INC., BLOGGER.COM, WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM AND WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM	§	172ND JUDICIAL DISTRICT

AMENDED ORDER DENYING RESPONDENTS' MOTION TO QUASH SUBPOENA

CAME ON TO BE CONSIDERED Respondent's Motion to Quash Subpoena, and Petitioner's response thereto, as well as the arguments of counsel, and the Court finds that said motions are unmeritorious; therefore

IT IS ORDERED that Respondent, Sam the Eagle Webblog's Motion to Quash Subpoena is hereby DENIED. It is further,

ORDERED that Respondents, Operation Kleinwatch, http://samtheeagleusa.blogspot.com/, http://operationkleinwatch.blogspot.com/, and http://notthisonetoojacques.blogspot.com/s' Motion to Quash Subpoena is hereby DENIED. It is further,

ORDERED that Petitioner's Motion to Compel is GRANTED. It is further,

ORDERED that the objections to the subpoena of Sam the Eagle Webblog, Operation Kleinwatch, http://samtheeagleusa.blogspot.com/, http://operationkleinwatch.blogspot.com/, and http://notthisonetoojacques.blogspot.com/ are hereby stricken.

SIGNED this 29th day of January, 2010.

Donald J. Floyd

JUDGE PRESIDING

APPROVED AS TO FORM & SUBSTANCE:

/S/ JOHN S. MORGAN
JOHN S. MORGAN, ATTORNEY FOR PETITIONER,
PRK ENTERPRISES, INC. AND KLEIN INVESTMENTS, INC.

EXHIBIT G

Cause No. E-184784

PRK ENTERPRISES et al.	*	IN THE DISTRICT COURT
	*	
VS.	*	
	*	
	*	OF JEFFERSON
	*	COUNTY,TEXAS
	*	
GOOGLE et al.	*	
	*	172nd JUDICIAL DISTRICT

Notice of Appeal

COMES NOW, the Sam the Eagle Webblog, and Operation Kleinwatch Webblog interested parties, desire to appeal the following to the Ninth District Court of Appeals:

Order denying Respondents Motion to Quash Subpoenas dated January 29, 2010

Appellants maintain that these orders constitute actions which result in final disposition of the case. Furthermore, Appellants have requested the trial court to issue Findings of Fact and Conclusions of Law pursuant to Texas Rule of Civil Procedure 297. Appellants assert that said Findings of Fact and Conclusions of Law are necessary to prosecute their appeal.

Appellants further acknowledge responsibility for costs related to the filing of the record by the County Clerk

Appellants are appearing pro se and as such are not required to file this Motion by E-FILE pursuant to the Courts order dated August 15, 2008.

Respectfully Submitted,

/S/
Authorized Representative
Pro Se
Sam the Eagle Webblog
Google Blogspot
1600 Amphitheatre Parkway
Mountain View CA 94043

/S/
Authorized Representative
Pro Se
Operation Kleinwatch Webblog
Google Blogspot
1600 Amphitheatre Parkway
Mountain View CA 94043

cc: Dennis Lynch
901 Main
Dallas, Texas 75202

cc: John Morgan
550 Fannin, Suite 650
Beaumont, Texas 77701

cc: Clerk, Ninth Court of Appeals
1001 Pearl
Beaumont, Texas 77701

EXHIBIT H

Court of Appeals
State of Texas
Ninth District

February 16, 2010

Operation Kleinwatch Webblog
Google Blogspot
1600 Ampitheatre Parkway
Mountain View, CA 94043

Sam the Eagle Webblog
Google Blogspot
1600 Ampitheatre Parkway
Mountain View, CA 94043

John S. Morgan
Harris, Duesler & Hatfield
550 Fannin, Suite 650
Beaumont, TX 77701

Dennis Lynch
Figari & Davenport
901 Main Street, Suite 3400
Dallas, TX 75202

RE: Case Number: 09-10-00051-CV
Trial Court Case Number: E-184,784

Style: Sam the Eagle Webblog and Operation Kleinwatch Webblog
v.
PRK Enterprises, et al

The appellant's Notice of Appeal in the above styled and numbered cause was filed this date.

Enclosed is appellant's Certified Bill of Costs for the filing fee. Please remit immediately and make check payable to "Ninth Court of Appeals."

A Docketing Statement must be filed by appellant pursuant to TEX. R. APP. P. 32.

All communication with the appellate court about a case must be through the Clerk of the Court pursuant to TEX. R. APP P. 9.6. Any violation of this rule may be treated as an improper ex parte communication.

Sincerely,

CAROL ANNE FLORES, CLERK

EXHIBIT I

No. 184,784

PRK Enterprises, Inc. And Klein Investments, Inc.	§	**In the District Court of**
	§	
	§	
vs.	§	**Jefferson County, Texas**
	§	
Google, Inc., Blogger.com, www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com	§	
	§	
	§	**172nd Judicial District**

Petitioners' First Amended Petition

To the Honorable Judge of Said Court:

COMES NOW, PRK ENTERPRISES, INC. and KLEIN INVESTMENTS, INC., Plaintiffs in the above-entitled and numbered cause and files Petitioners' First Amended Petition, complaining of Google, Inc., Blogger.com, www.operationkleinwatch.blogspot.com and www.sametheeagleusa.blogspot.com, Defendants, and for a cause of action would who unto the Court the following:

Parties

1. Plaintiffs, PRK Enterprises, Inc. and Klein Investments, Inc., are corporations doing business in Jefferson County, Texas and are appearing in court through their attorney of record.

2. Defendant, Google, Inc., is a website and can be served through Google Legal Support, located at 1600 Ampa Theater Parkway, Mountain View, California 94843.

3. Defendant, Blogger.com, is a website. No service is requested at this time.

4. Defendant, www.operationkleinwatch.blogspot.com, is a website. No service is

requested at this time.

5. Defendant, www.samtheeagleusa.blogspot.com is a website. No service is requested at this time.

JURISDICTION AND VENUE

6. The issues in controversy are within the jurisdictional purview of this Court. Venue is proper in this Court, because any potential suit will be filed in this venue.

FACTS AND CAUSES OF ACTION

7. The Petitioners anticipate the institution of the suit in which the Petitioners may be parties against Respondents identified above, and/or potentially other Respondents. The Petitioners seek to investigate potential claims against the Respondents identified above. The subject matter of the anticipated lawsuit are claims for breach of copyright law, defamation per se, libel per se, and invasion of privacy. Petitioners may be making a claim under the Digital Millennium Copyright Act of 1998, 17 U.S.C. Section 512, because the Respondents identified below are currently using, without permission, copyrighted material and copyrighted intellectual property, for the purposes of accomplishing the state law torts identified above.

8. Specifically, the websites being hosted by the Defendant Google, Inc., and/or Blogger.com, identified above, have been engaged in a pattern of libel and defamation per se, invasion of privacy, and use of copyrighted images (both facial and voice image), without permission. The purpose of these websites are to disparage, harass and cause injury to these Petitioners, as well as to Mr. Philip Klein personally. These websites host significant, false

information, and invade the privacy of Petitioners throughout the website. For example, without limitation, the website Operation Klein Watch, contains false information on legal proceedings that do not involve either Mr. Klein individually or the Petitioners, falsely represent that judgments have been taken against the Petitioners and/or Mr. Klein individually, falsely identify a bankruptcy proceeding, also identify lawsuits that do not involve Petitioners and/or Mr. Klein individually. Additionally, this website identifies all members of Mr. Klein's family, for no apparent purpose other than to invade their privacy. A review of the websites make it clear that they are not expressing any "opinions" protected by the First Amendment but instead are solely vehicles for defamation.

9. Petitioners have sent correspondence to Google, Inc. to determine the identity of who owns or hosts these websites, to no avail. Accordingly, Petitioners seek to take the deposition of the designated corporate representatives of Google, Inc., and/or its subsidiary Blogger.com, for the following purposes:

1. To identify all parties, persons, or entities responsible for the website www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com.
2. Identify all persons, parties or entities who provide contributions of money or literary substance to these websites.
3. Identify all persons, parties or entities who posted comments on these websites and/or have provided financial support to these websites.
4. Identify all persons, parties or entities who are in anyway affiliated with, or

connected with in any capacity, these websites.

10. As part of this petition, Petitioners attach a copy of the opinion of the Supreme Court of the State of New York, *Liskulula:, Petitioner, v. Google, Inc. and/or its subsidiary Blogger.com,* in which the Supreme Court of the State of New York ruled that the respondents must divulge the same type of information that Petitioners are seeking in this Rule 202 petition.

11. At this time, Petitioners cannot identify the name of the person(s) who would be Google, Inc., to provide the information requested therein. Petitioners believe that an appropriate corporate representative(s) would provide testimony identifying the parties, persons or entities enquired about in the area of sought after testimony.

12. Petitioners request that this Court enter an order authorizing Petitioners to take these depositions of the corporate representatives identified herein.

13. Plaintiff now sues Google, Inc., on the doctrine of the civil conspiracy, slander, and libel, and Plaintiff would show that Google, Inc., is now an active co-conspirator with the websites and the bloggers at issue. In this regard, Google, Inc., has entered into a Rule 11 agreement for the production of records, but now it adamantly refuses to do so, because it is a civil conspirator with the other Defendants. Plaintiff, therefore, seeks to recover from Google, Inc., all actual damages caused by the torts perpetrated by the Defendant, Google, Inc., for which the Plaintiff now sues.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, PRK Enterprises, Inc. and Klein

Investments, Inc., pray that Defendants, GOOGLE, INC., BLOGGER.COM, WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM, AND WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM be cited to appear and answer herein as the law directs, and that upon hearing, Petitioners obtain the relief sought herein through the depositions sought herein, and for such other and further relief, both general and special, statutory or common law, at law and in equity, to which Petitioners may be justly entitled.

Respectfully submitted,

/s/ John S. Morgan

JOHN S. MORGAN
Texas Bar No. 14447475
HARRIS, DUESLER & HATFIELD
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 document was served on the following counsel of record via facsimile, on this 26th day of February, 2010.

Dennis Lynch
Figari & Davenport
901 Main Street, Suite 3400
Dallas, Texas 75202

Via facsimile (214) 939-2090

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

Via CM/RRR

/s/ John S. Morgan
JOHN S. MORGAN

EXHIBIT J

No. 184,784

PRK ENTERPRISES, INC. AND KLEIN INVESTMENTS, INC.	§	IN THE DISTRICT COURT OF
VS.	§	JEFFERSON COUNTY, TEXAS
GOOGLE, INC., BLOGGER.COM, WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM AND WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM	§	172ND JUDICIAL DISTRICT

NOTICE OF INTENTION TO TAKE THE DEPOSITION OF A CORPORATE REPRESENTATIVE OF DEFENDANT, GOOGLE, INC. WITH SUBPOENA DUCES TECUM

TO: Defendant, Google, Inc., by and through its attorney of record, Dennis R. Lynch, Attorney at Law, 2390 Eastex Freeway, Suite 200, Beaumont, Texas 77703.

PLEASE TAKE NOTICE THAT Plaintiff will take the deposition of the CORPORATE REPRESENTATIVE of Defendant, on March 11, 2010 beginning at 9:30 a.m. Said deposition will be conducted at the law firm of Harris, Duesler & Hatfield, 550 Fannin, Suite 650, Beaumont, Texas 77701. The reporting firm of JAN GIROUARD & ASSOCIATES is scheduled to report this deposition. The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

The corporate representative of Defendant to be deposed shall be the individual most knowledgeable with the following information requested in the attached Exhibit "A.".

PLEASE TAKE FURTHER NOTICE that you are required, at the time of the deposition, to produce those documents and/or tangible items within your care, custody, possession, or control referring to, relating to, or in any way dealing with all categories set

forth below. Take notice that "documents" include all categories of items and materials set forth on Exhibit "A" appended hereto and incorporated herein for all purposes.

Respectfully submitted,

/s/ John S. Morgan
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
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This hereby certify that a true and correct copy of the foregoing document has been provided to counsel of records, via e-file and facsimile, on the 26th day of February, 2010.

Dennis Lynch
Figari & Davenport
901 Main Street, Suite 3400
Dallas, Texas 75202

Via facsimile (214) 939-2090

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

Via CM/RRR

/s/ John S. Morgan
JOHN S. MORGAN

No. 184,784

PRK Enterprises, Inc. And Klein Investments, Inc.	§	In the District Court of
	§	
vs.	§	Jefferson County, Texas
	§	
Google, Inc., Blogger.com, www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com	§	172nd Judicial District

EXHIBIT "A"

1. Any and all identifiers, user account IP addresses, user access Email Addresses, user entry logs, user posting logs, registered user information, account access IP addresses and/or any identifying descriptors for the following blogspots for the previous year:

   a) http://samtheeagleusa.blogspot.com/
   b) http://operationkleinwatch.blogspot.com/
   c) http://www.notthisonetoojacques.blogspot.com/

2. To identify all parties, persons, or entities responsible for the website www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com.

3. Identify all persons, parties or entities who provide contributions of money or literary substance to these websites.

4. Identify all persons, parties or entities who posted comments on these websites and/or have provided financial support to these websites.

5. Identify all persons, parties or entities who are in anyway affiliated with, or connected with in any capacity, these websites.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a true and correct copy of the foregoing document has been provided to all counsel of record, via facsimile on this _____ day of _____, 2009.

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

Via CM/RRR

/s/ John S. Morgan
JOHN S. MORGAN