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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-60534-CIV-DIMITROULEAS
MAGISTRATE JUDGE: ROBIN ROSENBAUM

HOWARD K. STERN,

Plaintiff,

vs.

JOHN O'QUINN, and JOHN
M. O'QUINN & ASSOCIATES,
PLLC d/b/a The O'Quinn Law
Firm,

Defendants.

_____ /

**DEFENDANT JOHN O'QUINN & ASSOCIATES, PLLC'S RESPONSE AND
OBJECTIONS TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

The Defendant, JOHN M. O'QUINN & ASSOCIATES, PLLC., d/b/a The O'Quinn Law Firm ("The Firm"), by and through undersigned counsel, hereby files this Response and Objections to Plaintiff's First Request for Production of Documents, dated April 4, 2008, and Memorandum of Law In Support Thereof, and states as follows:

- 1. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 93 of the First Amended Complaint.**

The Firm objects to this Request on the grounds that it is harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and is not limited in

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scope. Further, the Firm objects to this Request on the ground that the Request is overly broad because it is not limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Moreover, the Firm objects to this Request as it is unduly burdensome inasmuch as it purports to ask for "all documents" supporting, contradicting or otherwise" concerning certain statements attributed to O'Quinn, without any limitation. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request serves to harass as it seeks information which is not reasonably calculated to lead to discovery of admissible evidence. As such, the requested discovery does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

2. All documents supporting or contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 110 of the First Amended Complaint.

The Firm objects to this Request on the ground that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as written, is overly broad because it is not limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. The Request, as framed,

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is, in fact, not limited to any particular time frame or scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and his client, Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. Clearly, such a Request is overly broad and unduly burdensome. Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

The Firm additionally objects because the Request most definitely seeks documentation that contains the Firm's strategy, analysis and/or evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

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3. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 129 of the First Amended Complaint.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. *See, Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and his client, Virgie Arthur and just about anyone and everyone else. The Request as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit. In this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

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Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

4. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 145 of the First Amended Complaint.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and his client, Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written,

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isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

5. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 168 of the First Amended Complaint.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame

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and scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and his client, Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849

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(M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*,
26 F.R.D. 572, 579 (S.D. N.Y. 1960).

6. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 181 of the First Amended Complaint.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. *See, Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and/or The Firm, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as

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written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

7. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 195 of the First Amended Complaint.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Minazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and or The Firm, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail

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communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 573 (S.D. N.Y. 1960).

8. All documents supporting, contradicting or otherwise concerning the statements attributed to O'Quinn in paragraph 208 of the First Amended Complaint.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not

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reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and/or The Firm, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238

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F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

9. All documents concerning communications made by O'Quinn or The O'Quinn Law Firm to any member of the media which are not specifically referenced in the First Amended Complaint and whose subject, in whole or in part, is:

- (a) the death of Anna Nicole Smith;
- (b) the death of Daniel Smith; or
- (c) Howard K. Stern.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between O'Quinn and/or The Firm, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above

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captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents are protected as work-product. See, Fed. R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

- 10. All documents concerning Defendants' investigation, research, commentary, analysis and efforts to verify the truthfulness or accuracy of the statements attributed to O'Quinn which are set forth or referred to in Request Nos. 1 through 9, above.**

The Firm objects to this Request because the requested documents were generated by The Firm and its attorneys in response to and in anticipation of this lawsuit and/or were confidential communications between The Firm and its attorneys regarding this case. Such

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documents, to the extent they exist, necessarily reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this Request on grounds that the documents sought are protected by Work-Product and Attorney-Client privileges. See, Fed R. Civ. P. 26(b)(3); §90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 696-97 (S.D. Fla. 2007); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

Additionally, The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between The Firm and/or O'Quinn, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject

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matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

- 11. All documents concerning interviews of Defendants by any member of the media concerning plaintiff, Anna Nicole Smith or Daniel Smith, including but not limited to transcripts, summaries, videotapes, and/or audio recordings of such interviews.**

There are no such documents in The Firm's possession. Additionally, The Firm objects to this Request as it is well-established that discovery need not be required of documents of public records which are equally accessible to all parties. Fed. R. Civ. P. 26(b)(2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . ." Case law in this regard is well-established. See *Komow v. Simplex Cloth Cutting Machine Co.*, 109 Misc. 358, 179 N.Y.S. 682 (1919), *aff'd*, 191 App. Div. 884, 180 N.Y.S. 942 (1920). It is well-established that discovery need not be required of documents of public record which are equally accessible to all parties. This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

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Additionally, The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzco v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request of "all documents" runs the gamut from all communications between The Firm and/or O'Quinn, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Furthermore, O'Quinn objects to this Request as the requested discovery is most definitely privileged. The requested documentation contains information regarding The Firm's strategy, analysis and evaluation of this claim. As such, these communications and documents

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are protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

12. All documents concerning actual or alleged life insurance policies for Anna Nicole Smith.

The Firm has no documents in their possession concerning the actual or alleged life insurance policies. This Request evinces an impermissible purpose to harass and vex The Firm without just cause. No attorney from The Firm, including O'Quinn, ever claimed to have the insurance policies in possession or direct knowledge of their existence. In fact, in the referenced excerpt from O'Quinn's March 1, 2007 appearance on *Nancy Grace*, O'Quinn merely stated that he was "told by sources who should know the truth," about the existence of the policies. Keeping with the overall purpose of discovery, The Firm has no duty to produce documents that it doesn't have in its possession. See, Fed. R. Civ. P. 26(b)(2).

13. All documents received in response to subpoenas issued to third-parties in this case.

The Firm will produce all such documents in its possession.

14. All documents provided to or received from members of the media concerning:

(a) the death of Anna Nicole Smith;

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(b) the death of Daniel Smith; or

(c) Howard K. Stern.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Additionally, Under Fed. R. Civ. P. 34, any party may serve on any other party a request to produce documents which "are in the possession, custody or control of the party upon whom the request is served." O'Quinn isn't in possession of the above requested documents. Additionally, he doesn't have the right, authority, or ability to

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obtain the requested documentation. The Firm objects to this Request as it is well-established that discovery need not be required of documents of public records which are equally accessible to all parties. Fed. R. Civ. P. 26(b)(2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

15. All documents concerning communications with Rita Cosby, her attorneys or her representatives.

Any such documents were generated by The Firm and its attorneys in response to and in anticipation of this lawsuit. Such documents, to the extent they exist, necessarily reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this Request on grounds that the documents sought are protected as work product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

The Firm additionally objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247

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F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

16. All documents concerning *Blonde Ambition*.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. *See, Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

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17. All documents received from or provided to Hachette Book Group USA, Inc. concerning plaintiff, Anna Nicole Smith, Daniel Smith, Rita Cosby or Blonde Ambition.

The Firm does not have possession of any such documents.

18. All documents concerning the law enforcement investigation of the death of Anna Nicole Smith.

The Firm will produce any source documentation that it possesses in this regard. Any investigation, however, performed by The Firm or O'Quinn, in this regard, in anticipation and or during this lawsuit is protected by work-product and attorney client privileges. See, Fed. R. Civ. P. 26(b)(3); Section 90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947).

With regard to any investigation performed by The Firm or O'Quinn in anticipation of and/or during this lawsuit, the Firm additionally objects to this Request as it is well-established that discovery need not be required of documents of public records which are equally accessible to all parties. Fed. R. Civ. P. 26(b)(2) specifically instructs that courts may limit discovery where it is "obtainable from

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some other source. . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

The Firm also objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. *See, Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents" runs the gamut from all communications between The Firm and/or O'Quinn, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

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written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

19. All documents concerning the medical investigation conducted by the Broward County Medical Examiner Office into the death of Anna Nicole Smith.

The Firm will produce any source documentation that it possesses in this regard. Any investigation, however, performed by The Firm or O'Quinn in anticipation and or during this lawsuit, in this regard, is protected by work-product and attorney client privileges. See, Fed. R. Civ. P. 26(b)(3); Section 90.502, Fla. Stat., *Hickman v. Taylor*, 329 U.S. 495, 516 (1947).

With regard to any investigation performed by The Firm or O'Quinn in anticipation of and/or during this lawsuit, the Firm objects to this Request as it is well-established that discovery need not be required of documents of public records which are equally accessible to all parties. Fed. R. Civ. P. 26(b)(2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

The Firm additionally objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame

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and scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

20. All documents concerning the law enforcement investigation of the death of Daniel Smith.

The Firm will produce any source documentation in this regard. Any investigation, however, performed by The Firm or O'Quinn, in this regard, in anticipation and or during this lawsuit, is protected by work-product and attorney client privileges. See, Fed. R. Civ. P. 26(b) (3); Section 90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947).

With regard to any investigation performed by The Firm and/or O'Quinn in anticipation of and/or during this lawsuit, the Firm

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objects to this Request as it is well-established that discovery need not be required of documents of public records with are equally accessible to all parties. Fed. R. Civ. P. 26(b)(2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

The Firm additionally objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. *See, Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents" runs the gambut from all communications between The Firm and/or O'Quinn, client Virgie Arthur and just about anyone and everyone else. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

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written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

21. All documents concerning any medical investigation into the death of Daniel Smith.

The Firm will produce any source documentation in this regard. Any investigation, however, performed by The Firm or O'Quinn, in this regard, in anticipation of and/or during this lawsuit, is protected by work-product and attorney client privileges. See, Fed. R. Civ. P. 26(b)(3); Section 90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947).

With regard to any investigation performed by The Firm or O'Quinn, in anticipation of and/or during this lawsuit, the Firm objects to this Request as it is well-established that discovery need not be required of documents of public records with are equally accessible to all parties. Fed. R. Civ. P. 26(b)(2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

The Firm additionally objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695

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(S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents" runs the gamut from all communications between The Firm and/or O'Quinn, client Virgie Arthur and just about anyone and everyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a Request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

22. All documents concerning the inquest held in the Bahamas concerning the death of Daniel Smith.

The Firm will produce any source documentation in this regard. Any investigation, however, performed by The Firm or O'Quinn, in this regard, in anticipation of and/or during this lawsuit, is protected by work-product and attorney client privileges. See, Fed. R. Civ. P. 26(b) (3); Section 90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947). With regard to any documents obtained during The Firm's own investigation in this regard, The Firm objects to this Request on

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the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents" runs the gamut from all communications between The Firm and/or O'Quinn and client Virgie Arthur and just about anyone else. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

Additionally, the Firm objects to this Request as it is well-established that discovery need not be required of documents of public records with are equally accessible to all parties. Fed. R. Civ. P.

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26(b) (2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

23. All documents concerning any law enforcement investigation of Howard K. Stern.

The Firm will produce any source documentation in this regard. Any investigation, however, performed by The Firm or O'Quinn, in this regard, in anticipation of and/or during this lawsuit, is protected by work-product and attorney client privileges. See, Fed. R. Civ. P. 26(b) (3); Section 90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947).

With regard to any investigation performed by The Firm or O'Quinn, in anticipation of and/or during this lawsuit, the Firm objects to this Request as it is well-established that discovery need not be required of documents of public records which are equally accessible to all parties. Fed. R. Civ. P. 26(b) (2) specifically instructs that courts may limit discovery where it is "obtainable from some other source. . ." This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

The Firm additionally objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to discovery of admissible evidence.

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The Request, as framed, is not limited to any particular time frame and scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents" runs the gamut from all communications between The Firm and/or O'Quinn and client Virgie Arthur and just about anyone else in this regard. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

24. All investigative notes, memoranda and/or emails of Don Clark and Wilma Vicedomine concerning Anna Nicole Smith, Daniel Smith and/or Howard K. Stern.

Any such documents were generated in response to and in anticipation of this lawsuit. Such documents, to the extent they exist, necessarily reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this

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request on grounds that the documents sought are protected as work product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

The work-product doctrine, as this Court is aware, is not limited to information or documents gathered or prepared by attorneys. Rule 26(b)(3) of the Federal Rules of Civil Procedure clearly states that the work product doctrine also applies to work prepared for or by a party's representative. Thus, any investigative notes and/or reports prepared by any of The Firm's representatives, for the purpose of this litigation are protected work product. See, *Lake Shore Radiator, Inc., v. Radiator Express Warehouse*, 2007 WL 842989 (M.D. Fla. March 19, 2007). This Request, therefore, evinces an impermissible purpose to harass and vex The Firm without just cause.

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome). The Request, as drafted, includes "all

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investigative notes, memoranda and/or e-mails. . .," that occurred before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

25. All documents concerning affidavits or other statements (written or oral) that Defendants requested or otherwise sought from any person concerning Howard K. Stern, Anna Nicole Smith or Daniel Smith.

Any such documents were generated in response to and in anticipation of this lawsuit, to the extent they exist, necessarily reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this request as it relates to these documents on grounds that the documents sought are protected as work product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

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In addition, The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents concerning affidavits other statements (written or oral) . . .," as drafted includes statements and other documentation that were made and/or took place before, during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

26. All documents concerning any public relations plan or strategy concerning Howard K. Stern, Anna Nicole Smith, Daniel Smith, or Dannielynn Birkhead.

There was no public relations plan.

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The Firm additionally objects to the Request for "all documents concerning. . .strategy. ." Clearly such documents were generated in response to and in anticipation of this lawsuit. Such documents, by definition, to the extent they exist, reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this Request as it relates to these documents on grounds that the documents sought are protected as work product. See, Fed R. Civ. P. 26(b) (3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 573 (S.D. N.Y. 1960).

In addition, The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame and scope. See, *Milinzazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all documents" concerning strategy runs the gambit from all documents prepared or received by The Firm. These could be documents prepared by The Firm's client, Virgie Arthur, or just about anyone else with an interest in the case. The Request, as written, includes documentation prepared and/or received before,

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during and after the lawsuit, in this regard. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome.

Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

27. A carbon image of those portions of the hard drives on Don Clark's personal and work computer(s) containing documents or any type of information concerning:

- (a) the death of Anna Nicole Smith;**
- (b) the death of Daniel Smith; or**
- (c) Howard K. Stern.**

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame. The Request is also not limited in scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007). The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome. Under the

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Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

In addition, a portion of the information sought in this Request that may be stored on Don Clark's personal and work computer(s) was generated in response to and in anticipation of this lawsuit. Such information, to the extent it exists, necessarily reflects The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm also objects to this Request on grounds that the information sought is protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

The work-product doctrine, as this Court is aware, is not limited to information or documents gathered or prepared by attorneys. Rule 26(b)(3) of the Federal Rules of Civil Procedure clearly states that the work product doctrine also applies to work prepared for or by a party's representative. Thus, any investigative notes and/or reports prepared by any of the Defendants' representatives, for the purpose of this litigation are protected work product. See, *Lake Shore*

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Radiator, Inc., v. Radiator Express Warehouse, 2007 WL 842989 (M.D. Fla. March 19, 2007).

Furthermore, in light of the extremely intrusive nature of access to an adverse party's hard drive, a request for a "carbon image" will be denied absent strong grounds. Courts require production of a "carbon image" only in certain well-defined circumstances. These cases generally involve evidence that computer files were improperly deleted or destroyed. See, Arthur S. Linker, "In The Mirror Image? Courts Have Allowed Access To Opponent's Hard Drive Only In Specific Situations." 237 N.Y. L. J. 4 (October, 10, 2006). No such circumstances are present here to merit the production of the hard drives.

28. A carbon image of those portions of the hard drives on Wilma Vicedomine's personal and work computer(s) containing documents or any type of information concerning:

- (a) the death of Anna Nicole Smith;**
- (b) the death of Daniel Smith; or**
- (c) Howard Stern.**

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame. The Request is also not limited in scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007). The Request, as

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written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome. Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

In addition, a portion of the information sought in this Request that may be stored on Wilma Vicedomine's personal and work computer(s) was generated in response to and in anticipation of this lawsuit. Such information, to the extent it exists, necessarily reflects The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm also objects to this Request on grounds that the information sought is protected as work-product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

The work-product doctrine, as this Court is aware, is not limited to information or documents gathered or prepared by attorneys. Rule 26(b)(3) of the Federal Rules of Civil Procedure clearly states that the work product doctrine also applies to work prepared for or by a party's representative. Thus, any investigative notes and/or reports

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prepared by any of the Defendants' representatives, for the purpose of this litigation are protected work product. See, *Lake Shore Radiator, Inc., v. Radiator Express Warehouse*, 2007 WL 842989 (M.D. Fla. March 19, 2007).

Furthermore, in light of the extremely intrusive nature of access to an adverse party's hard drive, a request for a "carbon image" will be denied absent strong grounds. Courts require production of a "carbon image" only in certain well-defined circumstances. These cases generally involve evidence that computer files were improperly deleted or destroyed. See, Arthur S. Linker, "In The Mirror Image? Courts Have Allowed Access To Opponent's Hard Drive Only In Specific Situations." 237 N.Y. L. J. 4 (October, 10, 2006). No such circumstances are present here to merit the production of the hard drives.

- 29. All documents concerning communications with persons who investigated, opined on or provided information to the O'Quinn Law Firm concerning Anna Nicole Smith, Daniel Smith and/or Howard K. Stern.**

The Firm objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery of admissible evidence. The Request, as framed, is not limited to any particular time frame. The Request is also not limited in scope. See, *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for

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"all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request, as drafted, of "all documents concerning communications with persons who investigated, opined or provided information to the O'Quinn Firm concerning Anna Nicole Smith, Daniel Smith and/or Howard K. Stern," runs the gamut from all communications between O'Quinn and his client, Virgie Arthur and just about anyone else in this regard. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. It, in fact, includes the anyone and everyone's opinion without any limitation, whatsoever. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome. Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, as written, therefore, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

The Firm additionally objects because the work-product doctrine is not limited to information or documents gathered or prepared by attorneys. Rule 26(b)(3) of the Federal Rules of Civil Procedure clearly states that the work product doctrine also applies to work prepared for or by a party's representative. Thus, any investigative

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notes and/or reports prepared by any of The Firm's representatives, for the purpose of this litigation are protected work product. See, *Lake Shore Radiator, Inc., v. Radiator Express Warehouse*, 2007 WL 842989 (M.D. Fla. March 19, 2007). As such, The Firm additionally objects to this Request since any investigatory notes and/or reports prepared by any of The Firm's representatives, for the purpose of this litigation are protected work product. Any such documents were generated in response to and in anticipation of this lawsuit. These documents contain confidential communications between The Firm and its attorneys regarding this case.

Investigatory notes and/or reports, by definition, concern privileged materials compiled during The Firm's investigation. Such documents, to the extent they exist, necessarily reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this Request on grounds that the documents sought are protected as work product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

- 30. All investigative notes, memoranda and/or emails of Don Clark and Wilma Vicedomine concerning Anna Nicole Smith, Daniel Smith and/or Howard K. Stern.**

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The Firm objects to this Request because any such documents were generated in response to and in anticipation of this lawsuit. "Investigative notes," by definition, concern privileged materials compiled during The Firm's investigation. Such documents, to the extent they exist, necessarily reflect The Firm's strategy, analysis and evaluation of this claim. Consequently, The Firm objects to this Request on grounds that the documents sought are protected as work product. See, Fed R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

The work-product doctrine, as this Court is aware, is not limited to information or documents gathered or prepared by attorneys. Rule 26(b)(3) of the Federal Rules of Civil Procedure clearly states that the work product doctrine also applies to work prepared for or by a party's representative. Thus, any investigative notes, memoranda and/or e-mails prepared by any of The Firm's representatives, for the purpose of this litigation are protected work product. See, *Lake Shore Radiator, Inc., v. Radiator Express Warehouse*, 2007 WL 842989 (M.D. Fla. March 19, 2007).

The Firm, additionally, objects to this Request on the grounds that it is overly broad, unduly burdensome, harassing and seeks information which is not reasonably calculated to lead to discovery

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of admissible evidence. The Request, as framed, is not limited to any particular time frame. The Request is also not limited in scope. See, *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007) (finding request for "all communications" regarding subject of claim to be overly broad and unduly burdensome).

The Request of "all investigative notes, memoranda and/or e-mails" runs the gamut from all communications between O'Quinn and his client, Virgie Arthur and just about anyone else in this regard. The Request, as drafted, includes e-mail communications; written communications, etc., that occurred before, during and after the lawsuit, in this regard. It, in fact, includes the anyone and everyone's opinion without any limitation. The Request, as written, isn't even limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. Clearly, such a request is overly broad and unduly burdensome. Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. The Request, therefore, does not come within the scope of relevance as defined under Rule 26 of the Federal Rules of Civil Procedure.

- 31. All records of payments or other compensation (such as travel expenses) provided to Don Clark, Wilma Vicedomine and any other person who provided information to, or collected information for, The O'Quinn Law Firm concerning Anna Nicole Smith, Daniel Smith or Howard K. Stern.**

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There are no such records.

32. All records of payment or other compensation (such as travel expenses) provided to any person to whom the O'Quinn Law Firm provided information concerning Anna Nicole Smith, Daniel Smith and/or Howard K. Stern.

There are no such records.

33. All insurance agreements under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

The Firm will produce the pertinent Malpractice Insurance Policy.

MEMORANDUM OF LAW

As this Court is aware, the overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result. See *United States v. Proctor Gamble Co.* 356 U.S. 677, 682, 78 S. Ct. 983, 2 L. Ed. 2d 1077 (1958). Rule 26(b) of the Federal Rules of Civil Procedure sets forth the permissible parameters of discovery. Rule 26(b) defines the scope of discovery as including "any matter, not privileged, that is relevant to the claim of any party" or, upon a showing of good cause, "any matter relevant to the subject matter involved. . ." The burden is on a requesting party to demonstrate the relevance of its discovery requests.

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The limits of discovery were narrowed by the 2000 amendments to the Federal Rules of Civil Procedure. Instead of casting the boundaries of relevance at "any matter relevant to the subject matter involved in the action," as did the former provision, the rule now limits discovery to "any matter, not privileged that is relevant to the claim or defense of any party." See, F.R.C.P. 26(b)(1); Advisory Committee Comments to 2000 Amendments.

Discovery is ordinarily allowed under the concept of relevancy unless it is clear that the information sought has no possible bearing on the claims and defenses of the parties or otherwise on the subject matter of the action. See, *Dunkin Donuts, Inc. v. Mary's Donuts, Inc.*, 2001 WL 3407319*2 (S.D. Fla. Nov. 1, 2001). Given the low threshold of relevance, discovery must have limiting principles. As this Honorable Court recently held: "the scope of permissible discovery is not unbounded. Requested discovery must be relevant, and it must not impose undue burden, under the tests described in Rule 26(b)(2)(c)." See, *Jeld-Wen, Inc. v. Nebula Glasslam International, Inc.*, 2008 WL 756455*8 (S.D. Fla. March 11, 2008) (Robin S. Rosenbaum, United States Magistrate Judge).

One of these principles is that matters are not discoverable, under certain circumstances, if they are privileged. See, Fed. R. Civ. P. 26(b)(1). Here, there are numerous Requests for Production that are inappropriate because they ask for information protected by either the attorney-client privilege or work-product doctrine.

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Florida law governs application of the attorney-client privilege in a federal diversity action. See, *Milinzazo v. State Far, Insurance Company*, 247 F.R.D. 691 (S.D. Fla. Dec. 11, 2007). In Florida, communications between a lawyer and a client are "confidential" and, barring exception, not subject to disclosure. See, Section 90.502, Fla. Stat. Florida courts have consistently noted that the attorney-client privilege is the oldest confidential communication at common law and have recognized that it is "traditionally deemed worthy of maximum legal protection." See, *Am. Tobacco Co. v. State*, 697 So.2d 1249, 1252 (Fla. 4th DCA 1997), and cases cited therein.

Completely distinct from the attorney-client privilege is the work-product doctrine. In a federal diversity suit, federal law controls work-product issues in discovery matters. See, *Milanazzo*, 247 F.R.D. at 698-699. The work-product doctrine is a common law privilege described in detail in *Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1974) and codified in Fed. R. Civ. P. 26(b)(3). The Supreme Court in *Hickman v. Taylor*, explained the importance of the work product doctrine as follows:

Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the

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relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless and other tangible and intangible ways—aptly through roughly termed . . . 'the work product of the lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, theretofore, violate, would need to be his own. Inefficiency, unfairness, and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.

Hickman, 329 U.S. at 510-511.

The policy behind the privilege is to afford privacy to materials prepared in anticipation of litigation. As noted throughout this Response, many of Stern's Requests were to produce materials that were prepared in anticipation of this litigation. Discovery of these documents would cause the disclosure of mental impressions, conclusions, opinions and/or legal theories concerning the litigation. As such, the material is privileged and not subject to disclosure.

The work product doctrine is not limited to information or documents gathered or prepared by attorneys. Rule 26(b)(3) of the Federal Rules of Civil Procedure clearly states that the work product doctrine also applies to work prepared for or by a party's

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representative. Thus, all investigative notes and/or reports prepared by The Firm's representatives, for the purpose of this litigation are protected work product. See, *Lake Shore Radiator, Inc., v. Radiator Express Warehouse*, 2007 WL 842989 (M.D. Fla. March 19, 2007).

Furthermore, it is indisputable that the overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result. See, *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 682, 78 S. Ct. 983 (1958). Many of the documents requested aren't in O'Quinn's possession. Numerous documents are equally available to Stern. In fact, many of the documents requested are a matter of public record. As such, keeping with the overall purpose of discovery, The Firm has no duty to produce documents 1) that the Firm doesn't have in its' possession; 2) that are equally available to Stern and/or 3) that are a matter of public record. See, Fed. R. Civ. P. 26(b)(2), instructing that courts may limit discovery where the documents are obtainable from some other source. . . ."

_____ Case law in this regard is well-established. See, *Komow v. Simplex Cloth Cutting Machine Co.*, 109 Misc. 358, 179 N.Y.S. 682 (1919), *aff'd*, 191 App. Div. 884, 180 N.Y.S. 942 (1920) (It is well-established that discovery need not be required of documents of public record which are equally accessible to all parties). The Court in

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Komow held that a party is not entitled to discovery and inspection of matters of public record or are equally available to both parties and denied the plaintiff's motion for discovery and inspection of records.

Additionally, Stern has requested information that may be stored on personal and work computer(s) which was generated in response to and in anticipation of this lawsuit and/or contains confidential communications between The Firm and his attorneys regarding this case. Such information, to the extent it exists, necessarily reflects The Firm's strategy, analysis and evaluation of this claim. Consequently, such information sought is protected by work product and attorney client privileges. See, Fed R. Civ. P. 26(b)(3); §90.502, Fla. Stat.; *Hickman v. Taylor*, 329 U.S. 495, 516 (1947); *Milinzazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 696-97 (S.D. Fla. 2007); *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 319 (S.D. Fla. 2006); *In re Bilzerian*, 258 F.R.D. 846, 849 (M.D. Fla. 2001); *Transmirra Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572, 579 (S.D. N.Y. 1960).

Furthermore, in light of the extremely intrusive nature of access to an adverse party's hard drive, a request for a "carbon image" will be denied absent strong grounds. Courts require production of a "carbon image" only in certain well-defined circumstances. Courts that have permitted such production, have only done so when presented with ample evidence that computer files were improperly deleted or destroyed. See, Arthur S. Linker, "In The Mirror Image? Courts Have

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Allowed Access To Opponent's Hard Drive Only In Specific Situations." 237 N.Y. L. J. 4 (October, 10, 2006). There are no such circumstances in the case at hand to justify such an intrusive Request.

Respectfully Submitted,

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WE HEREBY CERTIFY that on May 30, 2008, this document was e-filed using the CM/EOE system and that **L. LIN WOOD, ESQ.**, (llwood@pogolaw.com) Powell Goldstein LLP, *Co-counsel for Plaintiff*, One Atlantic Center, 14th Floor, 1201 W. Peachtree Street, N.W., Atlanta, GA 30309; **M. KRISTA BARTH, ESQ.** (krista@emsattorneys.com), Eric M. Sauerberg, P.A., *Co-counsel for Plaintiff*, Suite 102, 200

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WE HEREBY CERTIFY that on May ___, 2008, this document was e-filed using the CMECF system and that **L. LIN WOOD, ESQ.**, (llwood@pogolaw.com) Powell Goldstein LLP, *Co-counsel for Plaintiff*, One Atlantic Center, 14th Floor, 1201 W. Peachtree Street, N.W., Atlanta, GA 30309; **M. KRISTA BARTH, ESQ.** (krista@emsattorneys.com), Eric M. Sauerberg, P.A., *Co-counsel for Plaintiff*, Suite 102, 200

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