

EXHIBIT C

May 21, 2008

BY E-MAIL kleinr@stephenslynn.com
CONFIRMATION BY U.S. MAIL

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Re: *Howard K. Stern v. John O'Quinn*, Case No. 07-60534-CIV-DIMITROULEAS

Dear Rob:

Thank you for your letter yesterday concerning various discovery issues. Regarding the production, can we expect the documents to be mailed by Federal Express?

As to the privilege log issue, Federal Rule of Civil Procedure 26(b)(5), S.D. Local Rule 26.1 G 3(b) and recent decisions make it clear that Defendants must produce a Privilege Log or other paper which describes each document or communication withheld on the assertion of privilege with such sufficient detail that the Court can assess whether the asserted privilege applies. e.g., Williams v. Cannon, Inc., 2008 WL 2053492 (S.D. Fla. May 13, 2008) (“the Federal rules clearly prohibit a party from withholding privileged materials ... without producing a privilege log that “describe[s] the nature of the documents .. not produced or disclosed .. in a manner that ... will enable other parties to assess the claim” citing Fed. R. Civ. P. 26(b)(5)); Developers Surety and Indemnity Company v. Harding Village, Ltd., 2007 WL 2021939 (S.D. Fla. 2007) (ordering that privilege log be re-filed with Court with sufficient description to assess the validity of the asserted privilege). In fact, the Magistrate Judge assigned to this case, Judge Rosenbaum, recently ruled that all documents responsive to a request for production must be either produced or identified in a privilege log. Suncast Technologies, LLC v. Patrician Products, Inc., 2008 WL 179648 (S.D. Fla. Jan. 17, 2008) (Rosenbaum, Magistrate Judge) (requiring Defendant to file affidavit attesting that all responsive documents were produced or included in a privilege log). See also S.D. Fla. L.R. 26.1 G 3(b) (any withheld document or communication must be identified in the objection to the interrogatory or document request itself) and L.R. 26.1 G 3(c) (requiring “preparation of a privilege log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a

claim of privilege or work product protection" for any document created before the lawsuit was filed.) While the Rules do not require Defendant to divulge information which would disclose the allegedly privileged information, at a minimum we believe Defendants are required to identify any withheld documents by date, type and subject matter. Further, the privilege log is "generally due at the time of the written discovery response." FTC v. Nationwide Connections, Inc., 2007 WL 2462015 (S.D. Fla. 2007).

As to "registering general objections", or a blanket objection that a "category" of documents are off-limits because they are work-product, such objections violate the Local Rules:

IV. Objections Based upon Privilege:

Generalized objections asserting "confidentiality," attorney-client privilege or work product doctrine also do not comply with local rules. Local Rule 26.1 G 3(b) requires that objections based upon privilege identify the specific nature of the privilege being asserted, as well as identifying such things as the nature and subject matter of the communication at issue, the sender and receiver of the communication and their relationship to each other, among others. Parties are instructed to review Local Rule 26.1 G 3(b) carefully, and refrain from objections in the form of: "Objection. This information is protected by attorney/client and/or work product privilege." If such an objection is made without a *proper* privilege log attached, it shall be deemed a nullity.

Guzman v. Irmadan, Inc., ___ F.R.D. ___, 2008 WL 1733613 (S.D. Fla. April 10, 2008); See also ABM Financial Services, Inc. v. Express Consolidation, Inc., 2007 WL 2572322 (S.D. Fla. 2007) (same).

In short, we believe Defendants have an obligation to list every document created by Ms. Vicedomine and other investigators acting on behalf of the Defendants so that we and, if necessary, the Court, can assess whether the privilege is properly asserted. For Ms. Vicedomine in particular, it is entirely unclear when and in what capacity Ms. Vicedomine was working for or on behalf of Defendants, and when she was on her own, so the date of any document created by or sent to her will be important.

As to your concerns about timing, I do not know which rule you are referring to which allows third-parties 30 days in which to object to a third-party subpoena. Fed. R. Civ. P. 45 allows a subpoenaed party 14 days in which to object, and Ms. Vicedomine made timely objections. I note that we requested all documents generated by investigators employed by or working on behalf of Defendants in our requests for production dated April 4, and we granted a two-week extension for Defendants to respond, so more than 30 days has been afforded Defendants in which to make objections to the documents sought. Further, as Ms. Vicedomine's deposition was set by subpoena in late April and the Notice of Deposition was served May 19 for the same date, we believe we have given the 10 days notice for a Notice of Deposition required by Local Rule 26.1 J.

Finally, we are amenable to a confidentiality / non-distribution order concerning the pending depositions in concept, but would like to review what exactly you propose before agreeing to such an proposed order. If you'd like to see the confidentiality order entered in the Cosby matter, I can send you a copy.

Please let Lin or I know me know if you have any questions regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric P. Schroeder". The signature is fluid and cursive, with a large initial "E" and "S".

Eric P. Schroeder

cc: L. Win Wood, Esq.
Neil McCabe, Esq.
Houston S. Park, Esq.
M. Krista Barth, Esq.
John C. Patton, Esq.
Reagan D. Pratt. Esq.