

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

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

HOWARD K. STERN,

Plaintiff,

vs.

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

Defendants.

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**PLAINTIFF HOWARD K. STERN'S REPLY IN SUPPORT OF HIS MOTION TO  
DETERMINE THE SUFFICIENCY OF DEFENDANT JOHN M. O'QUINN'S  
RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

**INTRODUCTION**

Plaintiff asked Defendant John M. O'Quinn ("O'Quinn") to answer two sets of Requests for Admissions:

(1) Did Defendant O'Quinn speak the words attributed to him in Plaintiff Howard K. Stern's Complaint; and

(2) Does O'Quinn know of any life insurance policies for Anna Nicole Smith.

O'Quinn's initial response was to avoid answering the first question, and offering a nonsensical response to the second. Defendants' response to the Motion to Determine the Sufficiency of O'Quinn's responses to the requests for admissions is further gamesmanship.

As to whether O'Quinn is quoted accurately in the Complaint, O'Quinn concedes that "the actual words being quoted and attributed to O'Quinn in the Amended Complaint may well be correct."<sup>1</sup> (Def.RFA.Br. at 2.) Whether the quotes "may well be correct" however, is precisely what O'Quinn is asked to admit or deny. He should be ordered to answer this question. O'Quinn's claim that the quotation is taken out of context because it is not accompanied by video, comments by other speakers, etc. is irrelevant as O'Quinn is disputing the *meaning* of the words, not whether they are *accurately set forth* in the Complaint

With respect to the request for admission regarding O'Quinn's knowledge of life insurance policies, Stern awaits O'Quinn's amended response.<sup>2</sup> If O'Quinn has amended his response and admits to no knowledge of any life insurance policies that were taken out for Anna Nicole Smith, it should not have taken a motion to compel to force O'Quinn to comply with the Federal Rules of Civil Procedure. Stern should therefore be awarded the expenses he was forced to incur in filing this Motion. See Fed R. Civ. P. 36(a), 37(a)(4).

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<sup>1</sup> Defendant's Response in Opposition to Plaintiff Howard K. Stern's Motion to Determine the Sufficiency of Defendant John M. O'Quinn's Responses to Plaintiff's First Request for Admissions will be cited as "Def.RFA.Br." herein.

<sup>2</sup> O'Quinn claims to have amended his responses to Requests 9 through 16 and stated that he would provide those amendments to Stern's counsel under separate cover. (Def.RFA.Br., at 2.) As of this filing, Stern has yet to receive those amended responses. (Affidavit of Matthew J. Watson, attached as Exhibit A to Stern's Reply Brief supporting his Motion to Compel Compliance with Local Rule 26.1.)

**ARGUMENT AND CITATION OF AUTHORITY**

**I. O'QUINN HAS STILL FAILED TO PROPERLY ADMIT OR DENY THAT HE WAS ACCURATELY QUOTED IN THE AMENDED COMPLAINT.**

Requests for Admission 9 through 16 ask whether O'Quinn was accurately quoted in the Amended Complaint. The Request is designed to eliminate the need for the parties to litigate at trial whether O'Quinn is accurately quoted in the Amended Complaint.

In response, O'Quinn concedes "the actual words being quoted and attributed to O'Quinn in the Amended Complaint may well be correct . . . .", but he still refuses to answer the Requests with an "Admitted" or "Denied". (Def.RFA.Br. at 2.) This is improper, as the Requests ask O'Quinn to answer whether the "actual words being quoted and attributed to O'Quinn" are in fact "correct."

O'Quinn's qualified denial, which claims that video and other commentators' quotations are needed to place O'Quinn's statements in context, is beside the point. Whether the statements in the Amended Complaint were taken out of context, whether the trier of fact needs to view the visual components of the interviews, and whether the statements were highly edited are all unrelated to whether what O'Quinn stated is accurately set forth in the Complaint. (See id. at 2-3.) Stern is not seeking admissions from O'Quinn concerning the meaning of the words; rather Stern simply seeks confirmation of whether O'Quinn, in fact, spoke the words quoted in the Amended Complaint. In this respect, Stern's requests for admissions are similar to those in which a party asks another to admit that a document is accurately quoted. See, e.g., Lewis v. Michael Stores, Inc., 2007 WL 2021833, at \*3 (M.D. Fla. July 12, 2007) (requiring party to admit or deny whether a document contains certain quoted material); see also Miller v.

Holzmann, 240 F.R.D. 1, 4 (D.D.C. 2006) (“if the request for admission quotes a documents [sic] and asks the other party to admit that the document contains the material quoted, it should be admitted if the quotation is accurate and denied if it is not”).

O’Quinn cites no error in the quotes at issue, and provides no reason why he cannot inform Stern and the Court whether he was accurately quoted. Either he said the words attributed to him, or he did not. Plaintiff therefore respectfully submits that O’Quinn should be ordered to provide an answer of “Admitted” or “Denied” to Requests 9 through 16, and Plaintiff should be granted his expenses for having to file this Motion regardless of the answer. See Fed R. Civ. P. 36(a), 37(a)(4).

**II. STERN IS ENTITLED TO HIS EXPENSES AS TO REQUEST NO. 18 BECAUSE O’QUINN ONLY FULLY RESPONDED AFTER STERN BROUGHT THIS MOTION.**

A party who brings a motion to determine the sufficiency of responses to requests for admission may be entitled to an award of expenses under Rule 37(a)(4). Fed. R. Civ. P. 36(a). Rule 37(a)(4), in turn, provides that the party whose conduct necessitated a motion to determine the sufficiency of a request for admission shall pay the moving party’s reasonable expenses incurred in bringing the motion unless the opposing party’s response was substantially justified or other circumstances make an award unjust. Fed. R. Civ. P. 37(a)(4). Stern respectfully submits that O’Quinn’s conduct with respect to Request No. 18 was unjustified and Stern should therefore be awarded the expenses he incurred in bringing this motion.

In Request No. 18, Stern asked O’Quinn to “[a]dmit that [O’Quinn] has no knowledge of any life insurance policies in which a third-party would benefit upon the death of Anna Nicole Smith.” O’Quinn responded that “[a]fter a reasonable inquiry, the

information known or readily available to O'Quinn is insufficient to enable him to admit or deny." In Stern's motion to determine the sufficiency of O'Quinn's responses to the requests for admission, Stern explained why O'Quinn's "response" was nonsensical, i.e., O'Quinn allegedly did not have enough information to determine whether he knew whether he could admit or deny there were any life insurance policies.

In his response to the Plaintiff's motion to compel, however, O'Quinn now reveals that "O'Quinn now admits that he has no present knowledge of the existence of any life insurance policies." (Def.RFA.Br. at 3.) It should not have taken a motion to compel to determine whether O'Quinn knows of any life insurance policies. It is a question of present knowledge that should have been answered months ago. Stern therefore respectfully submits that he should be awarded his reasonable expenses in bringing this motion. See Fed R. Civ. P. 36(a) & 37(a)(4).

#### **CONCLUSION**

Stern respectfully submits that the answers provided by O'Quinn in response to Stern's Requests for Admission regarding whether he is quoted accurately in the Complaint are insufficient. O'Quinn should be ordered to specify grounds upon which he denies Stern's Requests, or, in the alternative, O'Quinn's responses should be treated as admissions. The motion to determine sufficiency should therefore be GRANTED.

Furthermore, Stern respectfully submits that this Court should award Stern his reasonable and necessary attorneys' fees and expenses incurred in bringing this motion, pursuant to Fed. R. Civ. P. 36(a) and 37(a)(4), because this motion for O'Quinn to answer rudimentary Requests for Admission should never have been necessary..

Respectfully submitted this 31st day of July, 2008.

/s/ L. Lin Wood

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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This 31st day of July, 2008.

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