

**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.

**PLAINTIFF HOWARD K. STERN'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS RESPONSIVE TO PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS FROM DEFENDANT JOHN M. O'QUINN**

Plaintiff Howard K. Stern ("Stern") respectfully moves this Court for an order pursuant to Federal Rule of Civil Procedure 37 compelling Defendant John M. O'Quinn to produce documents responsive to Howard K. Stern's First Request for Production of Documents to Defendant John M. O'Quinn, dated April 4, 2008.

Pursuant to S.D. Fla. Local Rule 26.1(H)(2), the grounds for this Motion are set forth below for each Request. Plaintiff Howard K. Stern's Memorandum of Law in Support of His Motions to Compel Discovery has been filed in support.

STATEMENT OF MEETING AND CONFERRING

Counsel for Plaintiff certifies that prior to filing this motion, pursuant to S.D. Fla. Local Rule 7.1.A.3 and Appendix A, § VI to the Local Rules, counsel for Plaintiff and Defendants conferred in a good faith effort to resolve the matters raised in this motion but

were unable to reach an agreement at this time. (A true and correct copy of correspondence between Eric P. Schroeder and Robert M. Klein dated June 19, 2008, is attached hereto as Tab A.)

THE REQUESTS AT ISSUE

WHEREFORE, Plaintiff respectfully requests that this Court compel further or sufficient responses to the following Requests to Produce:

A. Documents Supporting Or Contradicting Statements Attributed to O'Quinn In The First Amended Complaint

Plaintiff's Request No. 2: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 93 of the First Amended Complaint.

Defendant's Objection: O'Quinn 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 is vague, ambiguous, overly broad and unduly burdensome as it isn't limited to any particular time frame, subject or scope. Further, the Request is overly broad as it isn't limited in scope to the subject matter of the above captioned litigation or the time frame involved herein. 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. Moreover, this Request 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, 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 to 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. 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. 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. O'Quinn additionally objects because such documents were generated in response to and in anticipation of this lawsuit, to the extent they exist, necessarily reflect O'Quinn's strategy, analysis and evaluation of this claim. Consequently, O'Quinn 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).

See Defendant's Response and Objections to Plaintiff's First Request for Production of Documents, attached as Tab B.

Plaintiff's Request No. 3: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 110 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 4: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 129 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 5: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 145 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 6: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 168 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 7: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 181 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 8: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 195 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 9: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 208 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Reasons supporting Motion as related to Request Nos. 2 through 9: As set forth in Stern's Memorandum of Law, Defendant's generalized objections that the above requests are overbroad and do not seek relevant evidence are baseless. The Requests seek documents at the heart of the dispute: documents which support or contradict the veracity of statements made by O'Quinn which Stern contends are false and that defame him.

Further, the documents are not subject to the work-product doctrine because O'Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Finally, the Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should

affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

B. Documents Concerning O'Quinn's Communications With The Media Concerning Stern Or the Deaths Of Anna Nicole Smith And Daniel Smith

Plaintiff's Request No. 10: All documents concerning communications made by O'Quinn or the O'Quinn law firm to members 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.

Defendant's Objection:

[Defendant's objections are substantially the same as his objections to Request No. 2. In the interests of efficiency they are not repeated verbatim here. See Tab B for the full objection.]

Reasons supporting Motion as related to Request No. 10: This request seeks any other comments Defendant O'Quinn made to the media concerning Mr. Stern and/or the deaths of Anna Nicole Smith and Daniel Smith. Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

Defendants' assertion of the work product doctrine is baseless as the Request seeks communications with third parties. Further, documents created by the Firm's or O'Quinn's investigators are not subject to the work-product doctrine because O'Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to

support his assertion that Stern is criminally responsible for the deaths of Anna Nicole and Daniel Smith; and the facts contained in the documents are not privileged.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

C. Documents Concerning O'Quinn's Efforts To Investigate Whether His Statements About Stern Were True Or False

Plaintiff's Request No. 11: 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. 2 through 10, above.

Defendant's Objection: Any documents requested were generated by O'Quinn and his attorneys in response to and in anticipation of this lawsuit and/or were confidential communications between O'Quinn and his attorneys regarding this case. Such documents, to the extent they exist, necessarily reflect O'Quinn's strategy, analysis and evaluation of this claim. Consequently, O'Quinn 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); *Milinzio 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). O'Quinn 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, scope or subject. *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. Clearly, such a request is 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. 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. O’Quinn additionally objects because such documents were generated in response to and in anticipation of this lawsuit, to the extent they exist, necessarily reflect O’Quinn’s strategy, analysis and evaluation of this claim. Consequently, O’Quinn 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).

Reasons supporting Motion as related to Request No. 11: As set forth in Stern’s Memorandum of Law, this court should compel Defendant to produce all documents responsive to the Request because the documents sought are directly relevant to Mr. Stern’s claim that O’Quinn defamed him by accusing Stern of murdering Anna Nicole Smith and Mr. O’Quinn’s defenses of truth and lack of actual malice. *See* Initial Disclosures attached as Tab C. Further, the documents are not subject to the work-product doctrine because O’Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for

the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

D. Documents Indicating The Identity of Sources For O'Quinn's Defamatory Accusations As Described In Paragraphs 168 and 208 Of The First Amended Complaint

Plaintiff's Request No. 16: All documents provided to or received from the "investigator", "others" and "people [you] talk[ed] to on the inside" whom you mentioned in your March 20, 2007 appearance on CNN Headline News' Nancy Grace Show. This comment is set forth in paragraph 168 of the First Amended Complaint.

Defendant's Objection: O'Quinn 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,

scope or subject. *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). This Request, therefore, evinces an impermissible purpose to harass and vex O’Quinn without just cause. Furthermore, 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 notes and/or reports prepared by any of O’Quinn’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). *See also*, 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).

Plaintiff’s Request No. 17: All documents provided to or received from the “investigator” mentioned in your March 27, 2007 appearance on Fox News’ On the Record with Greta Van Susteren and any documents which support your statement in that appearance that “Stern ... decided he needed to rid of Daniel.” These comments are set forth in paragraph 208 of the First Amended Complaint.

Defendant’s Objection: Defendant’s objections are substantially the same as his objections to Request No.16. *See* Tab B for the full objection.

Reasons supporting Motion as related to Requests Nos. 16 and 17: As set forth in Stern’s Memorandum of Law, this court should compel Defendant to produce all documents responsive to the Request because the documents sought are directly relevant to Mr. Stern’s claim that O’Quinn defamed him by accusing Stern of murdering Anna Nicole Smith and Mr. O’Quinn’s defenses of truth and lack of actual malice. *See* Initial Disclosures attached as Tab C. Further, the documents are not subject to the work-product doctrine because O’Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for

the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

E. Documents Concerning O'Quinn's Communications With Rita Cosby And Her Book "Blonde Ambition; the Untold Story Behind Anna Nicole Smith's Death"

Plaintiff's Request No. 20: All documents concerning communications with Rita Cosby, her attorneys or her representatives.

Defendant's Objection: O'Quinn objects to this Request because any such documents were generated by O'Quinn and his attorneys in response to and in anticipation of this lawsuit. Such documents, to the extent they exist, necessarily reflect O'Quinn's strategy, analysis and evaluation of this claim. Consequently, O'Quinn 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). O'Quinn

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, scope or subject. *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. Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any mater, 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.

Plaintiff’s Request No. 21: All documents concerning *Blonde Ambition*.

Defendant’s Objection: O’Quinn 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, scope or subject. *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. Under the Federal Rules of Civil Procedure, parties may only obtain discovery regarding any mater, 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.

Reasons supporting Motion as related to Requests Nos. 20 and 21: As set forth in Stern’s Memorandum of Law, this court should compel Defendant to produce all documents responsive to the Request because the documents sought are directly relevant to Mr. Stern’s claim that O’Quinn defamed him by accusing Stern of murdering Anna Nicole Smith and Mr. O’Quinn’s defenses of truth and lack of actual malice. *See* Initial Disclosures attached as Tab C. Further, the documents are not subject to the work-

product doctrine because O'Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

F. Documents Concerning O'Quinn's Knowledge Of And Attempts To Substantiate The Cause Of Anna Nicole And Daniel Smith's Deaths

Plaintiff's Request No. 23: All documents concerning the law enforcement investigation of the death of Anna Nicole Smith.

Defendant's Objection: The Firm will produce any source documentation that it possesses in this regard. Any investigation, however, performed by O'Quinn or The Firm, 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 O'Quinn or The Firm in anticipation of and/or during this lawsuit, O'Quinn additionally 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, indeed, concerns a matter of public record. This Request, therefore, evinces an impermissible purpose to harass and vex O'Quinn without just cause. O'Quinn 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 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 framed, 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.

Plaintiff's Request No. 24: All documents concerning the medical investigation conducted by the Broward County Medical Examiner Office into the death of Anna Nicole Smith.

Defendant's Objection: Defendant's objections are substantially the same as his objections to Request No. 23. *See* Tab B for the full objection.

Plaintiff's Request No. 25: All documents concerning the law enforcement investigation of the death of Daniel Smith.

Defendant's Objection: Defendant's objections are substantially the same as his objections to Request No. 23. *See* Tab B for the full objection.

Plaintiff's Request No. 26: All documents concerning any medical investigation into the death of Daniel Smith.

Defendant's Objection: Defendant's objections are substantially the same as his objections to Request No. 23. *See* Tab B for the full objection.

Plaintiff's Request No. 27: All documents concerning the inquest held in the Bahamas concerning the death of Daniel Smith.

Defendant's Objection: Defendant's objections are substantially the same as his objections to Request No. 23. *See* Tab B for the full objection.

Plaintiff's Request No. 28: All documents provided to, received from or containing analysis of the actions and/or conclusions of law enforcement or medical examiners concerning any investigation of Howard K. Stern, Anna Nicole Smith or Daniel Smith.

Defendant's Objection: Defendant's objections are substantially the same as his objections to Request No. 23. *See* Tab B for the full objection.

Reasons supporting Motion as related to Requests Nos. 23 through 28: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce all documents responsive to the Request because the documents sought are directly relevant to Mr. Stern's claim that O'Quinn defamed him by accusing Stern of murdering Anna Nicole Smith and Mr. O'Quinn's defenses of truth and lack of actual malice. *See* Initial Disclosures attached as Tab C. Further, the documents are not subject to the work-product doctrine because O'Quinn explicitly relies on the investigation performed by Mr.

Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

G. Documents Received By Investigators Don Clark And Wilma Vicedomine Concerning Anna Nicole Smith, Daniel Smith, And Howard K. Stern

Plaintiff's Request No. 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.

Defendant's Objection: Any such documents were generated in response to and in anticipation of this lawsuit. "Investigative notes," by definition, concern privileged materials compiled during O'Quinn's investigation. Such documents, to the extent they exist, necessarily reflect O'Quinn's strategy, analysis and

evaluation of this claim. Consequently, O'Quinn 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 O'Quinn'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). O'Quinn 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, scope or subject. *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/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. 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, doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Reasons supporting Motion as related to Request No. 30: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce all documents responsive to the Request because the documents sought are directly relevant to Mr. Stern's claim that O'Quinn defamed him by accusing Stern of murdering Anna Nicole Smith and Mr. O'Quinn's defenses of truth and lack of actual malice. *See* Initial Disclosures attached as Tab C. Further, the documents are not subject to the work-

product doctrine because O'Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

H. Documents Concerning Witness Statements

Plaintiff's Request No. 32: 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.

Defendant's Objection: Any such documents were generated in response to and in anticipation of this lawsuit, to the extent they exist, necessarily reflect O'Quinn's strategy, analysis and evaluation of this claim.

Consequently, O'Quinn 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). In addition, O'Quinn 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*, *Milinzio 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, therefore, doesn't come within the scope of "relevance" as defined under Rule 26 of the Federal Rules of Civil Procedure.

Reasons supporting Motion as related to Request No. 32: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce all documents responsive to the Request because the documents sought are directly relevant to Mr. Stern's claim that O'Quinn defamed him by accusing Stern of murdering Anna Nicole Smith and Mr. O'Quinn's defenses of truth and lack of actual malice. *See* Initial Disclosures attached as Tab C. Further, the documents are not subject to the work-product doctrine because O'Quinn explicitly relies on the investigation performed by Mr. Clark and Ms. Vicedomine to support his assertion that Stern is criminally responsible for the deaths of Anna Nicole and Daniel Smith; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties are privileged and Stern has a substantial need for the requested documents which he cannot obtain elsewhere because the alleged factual

sources for O'Quinn's statements about Plaintiff are known only to O'Quinn and his investigators.

Defendant has not complied with Local Rule 26.1(G)(3)(b) by listing and describing the documents withheld under assertion of the privilege. Accordingly, Defendant's failure to comply with the Local Rules with the requisite particularity waives any purported privilege or protection. At the very least, if Defendant has no further responsive documents that have not been produced or listed in a privilege log, it should affirmatively state that fact, or it should identify any documents that have not been produced or identified on a privilege log.

Defendant's standard objection of "overbroad" and "unduly burdensome" is meritless as the request is limited by its subject matter to only documents relevant to this action.

Respectfully submitted this 30th day of June, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 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 30th day of June, 2008.

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