

**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
& ASSOCIATES PLLC d/b/a THE O'QUINN LAW FIRM**

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 & Associates PLLC d/b/a The O'Quinn Law Firm (the "O'Quinn Law Firm") to produce documents responsive to Howard K. Stern's First Request for Production of Documents to Defendant John M. O'Quinn & Associates PLLC, 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. 1: All documents supporting or contradicting the statements attributed to O'Quinn in paragraph 93 of the First Amended Complaint.

Defendant's Objection: 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 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, 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 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.

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

Plaintiff's Request No. 2: 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 its objections to Request No. 1. In the interests of efficiency they are not repeated verbatim here. *See* Tab B for the full objection.]

Plaintiff's Request No. 3: 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 its objections to Request No. 1. 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 145 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as its objections to Request No. 1. 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 168 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as its objections to Request No. 1. 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 181 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as its objections to Request No. 1. 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 195 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as its objections to Request No. 1. 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 208 of the First Amended Complaint.

Defendant's Objection:

[Defendant's objections are substantially the same as its objections to Request No. 1. 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. 1 through 8: 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 generalized assertion of the work-product doctrine is meritless 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.

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. 9: 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: 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, 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. 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).]

Reasons supporting Motion as related to Request No. 9: This requests 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. Any such documents are relevant in that they may tend to support or disprove O’Quinn’s assertion that Mr. Stern murdered Anna Nicole and Daniel Smith by providing further facts or accusations, by demonstrating that O’Quinn contradicted himself, to demonstrate O’Quinn’s motive or intent in going on national television to air his accusations, to further evidence the public relations campaign Stern alleges that O’Quinn engaged in an effort to mitigate his damages for having falsely accused Stern of murder, and may show further instances in which O’Quinn slandered Stern.

Defendant's assertion of the work-product doctrine is meritless as the Request seeks communications with third parties and thus any work product privilege was waived when the document was shared with a third party. 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 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 The O'Quinn Law Firm's Efforts To Investigate Whether O'Quinn's Statements About Stern Were True Or False

Plaintiff's Request No. 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.

Defendant's Objection: 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 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); *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). 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, 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 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.

Reasons supporting Motion as related to Request No. 10: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce documents responsive to Request No. 11 because the Firm's investigation, research, commentary, analysis and efforts to verify the truthfulness or accuracy of the statements attributed to O'Quinn in the Amended Complaint go to the central issues of 1) falsity and 2) whether O'Quinn knew the statements were false or acted with reckless disregard as to their falsity.

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; the facts contained in the documents are not privileged; documents received from third parties are not privileged, documents and information shared with third parties is not 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 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. 15: All documents concerning communications with Rita Cosby, her attorneys or her representatives.

Defendant's Objection: 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, 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 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. 16: All documents concerning *Blonde Ambition*.

Defendant's Objection: 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. 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.

Reasons supporting Motion as related to Requests Nos. 15 and 16: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce documents responsive to the Requests because any information exchanged between Ms. Cosby and the Firm and any information regarding Blonde Ambition, is relevant to Stern's allegation in the Complaint that Defendants have engaged in a public relations campaign to injure Stern's reputation, including feeding false information "developed" in Mr. Clark's and Ms. Vicedomine's investigation to Ms. Cosby. If true, the communications are relevant to Mr. O'Quinn's defenses of truth and lack of actual malice and Plaintiff's damages in this matter.

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; 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 not 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.

E. 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. 18: 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 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 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 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. 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. 19: 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 objection is substantially the same as its objections to Request No. 18. *See* Tab B for the full objection.

Plaintiff's Request No. 20: All documents concerning the law enforcement investigation of the death of Daniel Smith.

Defendant's Objection: Defendant's objection is substantially the same as its objections to Request No. 18. *See* Tab B for the full objection.

Plaintiff's Request No. 21: All documents concerning any medical investigation into the death of Daniel Smith.

Defendant's Objection: Defendant's objection is substantially the same as its objections to Request No. 18. *See* Tab B for the full objection.

Plaintiff's Request No. 22: All documents concerning the inquest held in the Bahamas concerning the death of Daniel Smith.

Defendant's Objection: Defendant's objection is substantially the same as its objections to Request No. 18. *See* Tab B for the full objection.

Plaintiff's Request No. 23: All documents concerning any Law Enforcement investigation of Howard K. Stern.

Defendant's Objection: Defendant's objection is substantially the same as its objections to Request No. 18. *See* Tab B for the full objection.

Reasons supporting Motion as related to Requests Nos. 18 through 23: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce documents responsive to the Requests because any information developed in any investigation into the deaths of Anna Nicole or Daniel Smith which proves or disproves O'Quinn's accusation that Stern murdered the two persons is directly relevant to Mr. Stern's claim that O'Quinn defamed him by accusing Stern of murdering Anna Nicole and Daniel Smith and to Mr. O'Quinn's defenses of truth and lack of actual malice.

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; 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 not 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 Received By Investigators Don Clark And Wilma Vicedomine Concerning Anna Nicole Smith, Daniel Smith, And Howard K. Stern

Plaintiff's Request No. 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.

Defendant's Objection: 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 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, 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 “all 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.

Reasons supporting Motion as related to Request No. 24: As set forth in Stern’s Memorandum of Law, this court should compel Defendant to produce documents responsive to the Requests because documents created or received by Mr. Clark and Ms. Vicedomine are directly relevant to Mr. Stern’s claim that O’Quinn defamed him by accusing Stern of murdering Anna Nicole and Daniel Smith and to Mr. O’Quinn’s defenses of truth and lack of actual malice. 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 not 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 Concerning Witness Statements

Plaintiff's Request No. 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.

Defendant's Objection: 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). 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, 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 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.

Reasons supporting Motion as related to Request No. 25: As set forth in Stern's Memorandum of Law, this court should compel Defendant to produce documents responsive to the Requests because witness statements are directly relevant to Mr. Stern's claim that O'Quinn defamed him by accusing Stern of murdering Anna Nicole and Daniel Smith and to Mr. O'Quinn's defenses of truth and lack of actual malice. 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.

/s/ L. Lin Wood

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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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