

**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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**MOTION TO COMPEL RESPONSES TO INTERROGATORIES FROM  
DEFENDANT JOHN M. O'QUINN**

Plaintiff Howard K. Stern ("Stern") respectfully moves this Court for an order pursuant to Federal Rules of Civil Procedure 37(a)(3)(b)(iii) and 37(a)(4), compelling Defendant John M. O'Quinn to provide full and complete responses to the below listed interrogatories of Plaintiff's First Set of Continuing Interrogatories 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 Interrogatory. A memorandum of law has simultaneously been filed in support. (Plaintiff Howard K. Stern's Memorandum of Law in Support of His Motions to Compel Discovery from Defendants John M. O'Quinn and John M. O'Quinn & Associates PLLC d/b/a The O'Quinn Law Firm).

**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, counsel for Plaintiff and counsel for Defendants conferred in a good faith effort to resolve the matters raised in this motion. (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.) This motion has become necessary, as it is apparent that the issues raised in this motion cannot be resolved by agreement.

**THE INTERROGATORIES AT ISSUE**

WHEREFORE, Plaintiff respectfully requests that this Court compel further or sufficient responses to the following Interrogatories (a true and correct copy of Def. John O'Quinn's Resp. & Objections to Pl.'s First Set of Continuing Interogs. is attached hereto as Tab B):

**A. Whether John O'Quinn Is Accurately Quoted In The First Amended Complaint**

**Plaintiff's Interrogatory No.1:** Identify any statement attributed to you in paragraphs 93, 110, 129, 145, 168, 181, 195 and 208 of the First Amended Complaint in which you contend you were: 1) misquoted in the First Amended Complaint; or 2) misquoted by the media entity on whose program or in whose publication the identified comment(s) appeared. If you contend you were misquoted, provide a true and correct quotation of the statement.

**Defendant's Objection:** As to every statement attributed to me in the above-referenced paragraphs, the quotes are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts. Therefore, without referring to a complete video of the actual interviews, I am unable to address any particular misquotation because he lacks the necessary information to truthfully provide a complete answer.

**Reasons supporting Motion as related to Interrogatory No. 1:** Defendant's response is non-responsive, insufficient and evasive. The Interrogatory asks for O'Quinn to identify any statement in which he was misquoted. O'Quinn does not identify: 1) how the statements are "taken completely out of context"; 2) the "certain portions omitted"; and 3) how the "medium in which those words are uttered" causes any portion of the quoted material to be in error. As a result, Plaintiff cannot determine, despite the denial, whether Defendant O'Quinn contends the statements in the Complaint are accurate or inaccurate.

**B. Identity Of The Source or Sources For O'Quinn's Claim That Anna Nicole Smith Had Several Life Insurance Policies On Her Life And Stern Requested A Copy Of Ms. Smith's Will Days Before She Died**

**Plaintiff's Interrogatory No. 2:** Identify the person(s) who gave you information, or from whom you obtained information, concerning whether or not there was or is a life insurance policy or policies on the life on [sic] Anna Nicole Smith, including but not limited to: 1) the person you identified as residing in New York City on page 190 of your Jurisdictional Deposition; and 2) the "sources that should know the truth" and who told you "that there were seven life insurance policies on Anna Nicole's life" and the beneficiary of the insurance policies on Anna Nicole's life "was her son, . . . and the alternative beneficiary is Stern" as stated by you on CNN Headline News' *Nancy Grace* show and set forth in Paragraph 129 of the First Amended Complaint. (*Emphasis added*).

**Defendant's Objection:** I believe that I got that information from a gentleman whom I believe was a producer with Greta Van Susteren's show. I cannot identify the man by name. I believe that I received that information at some point during the hearings concerning custody of Anna Nicole's body. **Beyond that, Defendant objects to Interrogatory Number 2, to the extent that it is beyond the scope of discovery as defined by Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. O'Quinn has filed a Motion For Protective Order with regard to this same privileged material. Courts have routinely distinguished between interrogatories seeking discoverable facts and those seeking attorney work product, finding a "distinction between asking the identity of person with knowledge, which is clearly permissible, and asking the identity of persons**

contacted and/or interviewed during an investigation, which is not.” See, *Commonwealth of Massachusetts v. First National Supermarkets, Inc.*, 112 F.R.D. 149, 152 (D. Mass. 1986). See also, *Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199 (E.D. N.Y. May 25, 2007)(*same*). Similarly, in *Morgan v. City of New York*, No. 00 Civ. 9172, 2002 WL 1808233, at \*3 (S.D. N.Y. Aug. 6, 2002), the court directed plaintiff to answer an interrogatory requesting the identity of “every person whom Plaintiff believes has knowledge of any facts concerning Plaintiff’s claims in this litigation,” but not an interrogatory requiring plaintiff to “[i]dentify every person whom Plaintiff or her agents have contacted, interviewed or communicated with concerning Plaintiff’s allegations in this case.” See also, *Seven Hanover Assocs., LLC. v. Jones Lang LaSalle Americas, Inc., No. 04 Civ. 4143*, 2005 WL 3358597, at 1\* (S.D. N.Y. Dec. 7, 2005)(“Defendant is free to ask for the names of persons with knowledge of the facts, but is not entitled, through plaintiffs, to the identifications of who among such knowledgeable individuals may have been interviewed by the Plaintiff’s attorney.”) In the case of *St. Paul Fire & Marine Ins. Co. v. King*, 45 F.R.D. 521, 522-523 (W.D. Okla., 1968), the Court sustained an objection to an interrogatory seeking the names and addresses of persons contacted and/or interviewed by the plaintiff and held that the interrogatory called for more than “the identity and location of persons having knowledge of relevant facts,” which is what is allowed by the rule. As in the above cited cases, Stern does not simply seek the identity of person(s) with knowledge of the facts. Rather, Stern seeks the identities of those who actually participated in O’Quinn’s case preparation. Requiring O’Quinn to reveal the identities of individuals and or representatives who assisted him in his case preparation could easily reveal every person whom O’Quinn or his agents contacted, interviewed or communicated with in preparation of his legal representation. Accordingly, Interrogatory No. 2 improperly intrudes upon the attorney work product doctrine. As stated in Professor Moore’s learned treatise, when the terms of the interrogatory are cast in terms of the identification of persons interviewed or contacted by counsel, the work product doctrine may be applicable: In cases where the names sought go beyond those known to the interrogated party to have knowledge and beyond categories likely to have knowledge, and extend to those contacted and interviewed, the work-product doctrine may be applicable. 4 Moore’s *Federal Practice*, §26.67[2], pp. 25-166-7 (1984 ed.). Additionally, it should be noted that the scope of permissible discovery relates to the identity and location of persons having knowledge of any discoverable matter. See, 8A Fed. Prac & Prac. Civ. 2d §2165 (2008 Update), “Scope of Interrogatories.” (*Emphasis added*). Interrogatory No. 2 seeks the identity of person(s) who have no knowledge of discoverable matters. The law is clear in this regard; no party may be compelled to do interrogating party’s

**investigation for him, nor will he be required to answer questions concerning privileged matter or questions that are unduly burdensome. See, Fed. R. Civ. P. 26(b). Alternatively, O'Quinn would ask this Court to stay and/or postpone further discovery until this Court has had the opportunity to consider and rule on O'Quinn's Motion For Protective Order with regard to this same privileged material. Pursuant to Fed. R. Civ. P. 33, a court may postpone a response until a later time.**

(The **BOLD** portion highlighted above is not emphasized in O'Quinn's Interrogatory Response, but it is a stock objection that is repeated in many of the Interrogatory Responses. In the interest of time, this objection is identified below as the "**Objection To Identifying Sources or Investigators On Work Product Grounds.**")

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**Plaintiff's Interrogatory No. 3:** Do you contend that Howard K. Stern requested that a facsimile or copy of Anna Nicole Smith's Will be faxed to him four days before her death? If so, state the specific facts supporting your contention and identify each person who provided you information, or from whom you otherwise obtained information, concerning Howard K. Stern requesting a copy of Anna Nicole Smith's will several days before her death, including the person mentioned by you on pages 190 and 191 of your Jurisdictional Deposition.

**Defendant's Objection:** Yes. My recollection is that a fax cover sheet was produced during the trial on the custody issue. The fax cover sheet clearly indicated that the will had been faxed four days prior to Anna's death. I don't specifically recall who originally introduced that exhibit as evidence during the hearings. Any other information that has been developed is subject to the objections set forth above in response to Interrogatory No. 2.

**Reasons supporting Motion as related to Interrogatory Nos. 2 and 3:** As set forth in Stern's Memorandum of Law, further response should be compelled because the identity of the source(s) and facts supporting O'Quinn's claims that Howard K. Stern was the beneficiary of "seven life insurance policies" for Ms. Smith and that Stern requested a copy of Ms. Smith's will several days before she died 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 negligence and actual malice. (*See* Defendant John O'Quinn's Rule 26 Initial Disclosures attached as Tab C.)

Further, because Defendants rely on their investigation into the death of Anna Nicole Smith for their defense to the Complaint, the Interrogatory seeks only facts, and Plaintiff has a substantial need for the sources, the requested information is not subject to the work product doctrine. Moreover, the facts supporting the life insurance and "faxed will" claims and the source(s) and facts supporting the claims are known only to O'Quinn and his investigators. Finally, the Defendant has not complied with Local Rule 26.1(G) by listing and describing the communications withheld under assertion of the privilege and the response does not indicate whether any information is being withheld on the basis of privilege. If O'Quinn has no other sources other than those identified in his answer to the Interrogatory, he should affirmatively state that as his response.

**C. Facts Supporting Defendants' Contention That Stern Is Criminally Responsible For The Deaths Of Anna Nicole Smith And Daniel Smith**

**Plaintiff's Interrogatory No. 4:** Do you contend that Howard K. Stern murdered, killed or is otherwise criminally responsible for the death of Anna Nicole Smith? If so, state the specific facts supporting your contention and identify each person who provided you information, or from whom you otherwise obtained information, that supports this contention.

**Defendant's Objection:** I do believe that Mr. Stern is criminally responsible for the death of Ms. Smith. However, to the extent that this Interrogatory seeks the identity of specific individuals who provided information, or from whom we obtained information that would support this contention, Defendant adopts and incorporates by reference herein the objections set forth in response to Interrogatory No. 2. Without waiving that objection, and to the extent that much of my opinion is based upon facts that have been reported by various media outlets or admitted by Mr. Stern himself, either at court hearings or in interviews, I believe that Mr. Stern was principally responsible for providing Ms. Smith with numerous prescription medications which she was taking at the time that she passed away, that he facilitated her use of those drugs, and was often responsible

for administering the medication. It is also clear that she was gravely ill during the several day period immediately preceding her death, yet Stern sought no medical help, allegedly because Ms. Smith did not want him to secure medical assistance for her. I personally find it difficult to believe that Mr. Stern would refuse to seek medical treatment for someone who was gravely ill, merely because he was allegedly asked not to seek medical assistance, particularly in light of his professed love and devotion to Ms. Smith. Having observed Mr. Stern's testimony during the hearings in Florida, I simply do not believe that his contentions to that effect are credible. It also appeared clear to me at the time of Ms. Smith's death that Mr. Stern had a personal financial motive for virtually all of his actions. This belief was based in part upon his determination to move Ms. Smith to the Bahamas prior to the birth of her child, so that he could establish paternity, an issue which was regularly being discussed in the media, at that time, and had been for many, many months. I also do not believe that Mr. Stern could have been the father of the child, and was suspicious of the claims that he made concerning paternity, given his absolute refusal to submit to any kind of a blood test. While I am not at liberty to disclose the balance of any information that I have learned which currently forms a part of my opinion, since that would violate my own work product privilege with regard to my continuing representation of Virgie Arthur, and would also violate the attorney/client privilege with my own counsel in this matter, we have had investigators working on this case since March of 2007. One of those investigators is Don Clark, whom I believe to be an extraordinary and talented investigator. I have known Mr. Clark for many years, dating back to his tenure with the Federal Bureau of Investigation, and believe that his integrity is impeccable. Thus, while I must necessarily assert a work product objection to any request that I relate "specific facts" supporting my beliefs, some of the information that I have relayed in response to this Interrogatory was observed during the courtroom proceedings in Florida during February of 2007, in multiple interviews that Mr. Stern has given, the contents of which have been relayed to me at one point or another, or summarized for me internally, my own observations concerning Mr. Stern's credibility and media source information that has been summarized for me within the firm at various times. To the extent that Stern seeks the identity of person(s) whom I contacted, interviewed and/or consulted with during our investigation and/or work-up of the case, that information is privileged. In addition, however, O'Quinn objects to this interrogatory 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 above Interrogatory doesn't merely request the identity of every person whom

O'Quinn believes has knowledge of any facts concerning Stern's claims in this litigation. O'Quinn, therefore, objects to answering Interrogatory No. 4 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (The **Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

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**Plaintiff's Interrogatory No. 5:** Do you contend that the conclusion of the Broward County Medical Examiner that Anna Nicole Smith's death was an "accident" is in error? If so, state the specific facts supporting your contention and identify each person who provided you with information, or from whom you otherwise obtained information, that supports your contention.

**Defendant's Objection:** Yes, to the extent that the medical examiner's report is necessarily based in part upon interviews that were conducted of various witnesses, including Mr. Stern himself, the report is certainly subject to challenge. Since I have grave doubts concerning Mr. Stern's credibility, I cannot accept the conclusions in the medical examiner's report, which are necessarily dependent upon statements or information that was provided by Mr. Stern. Beyond that, and to the extent that this Interrogatory seeks the identify of person(s) from whom I secured information which supports my belief, or the sources of other information supporting that belief. I object to answering Interrogatory No. 5 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work- product rule and for which the requisite showing has not been made. (The **Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

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**Plaintiff's Interrogatory No. 6:** Do you contend that Howard K. Stern murdered, killed or is otherwise criminally responsible for the death of Daniel Smith, the son of Anna Nicole Smith? If so, state the specific facts supporting your contention and identify each person who provided you with information, or from whom you otherwise obtained information, that supports this contention.

**Defendant's Objection:** Yes, it is my belief that Mr. Stern must bear some criminal culpability for the death of Daniel Smith. That belief is based in part upon media accounts of the evening and early morning hours when Daniel Smith died and media interviews provided by Mr. Stern and

others. Defendant specifically objects to having to identify “specific facts” supporting his beliefs, or the identity of specific persons who provided other information with regard to Daniel’s death, which may otherwise “support[s] this contention.” This Interrogatory seeks the identity of person(s) who O’Quinn contacted, interviewed and/or consulted with during O’Quinn’s investigation and/or work-up of the case. The above Interrogatory doesn’t merely request the identity of every person whom O’Quinn believes has knowledge of any facts concerning Stern’s claims in this litigation. O’Quinn, therefore, objects to answering Interrogatory No. 6 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (**The Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

**Reasons supporting Motion as related to Interrogatory Nos. 4, 5 and 6:** As set forth in Stern’s Memorandum of Law, further response should be compelled because the identity of the source and facts supporting O’Quinn’s claims that Anna Nicole Smith’s death was not “ACCIDENTAL,” and that Stern is “criminally responsible” for the death of Anna Nicole and Daniel Smith 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 negligence and actual malice. (*See* Initial Disclosures attached as Tab B.)

O’Quinn’s claim that he “is not at liberty” to disclose the facts supporting his accusations of homicide or criminal responsibility and refusal to answer with “specific facts” are improper, as Defendants rely on their investigation into the death of Anna Nicole Smith for their defense to the Complaint. The Interrogatories seek only facts, and Plaintiff has a substantial need for the sources and facts supporting the homicide claims; the facts and their source are known only to O’Quinn and his investigators. As a result, the requested information is not subject to the work product doctrine. Finally, the Defendant has not complied with Local Rule 26.1(G) by listing and describing the

communications withheld under assertion of the privilege and the response does not indicate whether any information is being withheld on the basis of privilege. If O'Quinn has no further information he should affirmatively state that as his response.

**D. Identity Of Sources Who Allegedly Provided O'Quinn With Information Related To Specific Statements Attributed To O'Quinn In The First Amended Complaint**

**Plaintiff's Interrogatory No. 7:** Identify the "investigators" and "people on the inside" identified in your March 20, 2007 statement on CNN Headline News' *Nancy Grace* show and set forth in paragraph 168 of the First Amended Complaint.

**Defendant's Objection:** I'm not sure I knew the identity of the investigator at that time. I believe I was commenting on media reports concerning the claims that had been made by Anna Nicole's biological father. By "people on the inside," I was referring to people who had attended the court proceedings, lawyers involved in the case and media persons who were conducting their own investigations. To the extent that this Interrogatory seeks the identification of individuals with specific information that we had discovered throughout the course of the investigation, or whom we had interviewed the course of our investigation, Defendant objects to providing any further response to Interrogatory No. 7, as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (**Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

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**Plaintiff's Interrogatory No. 8:** Identify each person who provided you with information, or from whom you otherwise obtained information, that supports your March 26, 2007 statement on CNN Headline News' *Nancy Grace* show that Stern "let somebody lay blue in a bed and [did] not try to get any medical attention" and the death was "not [an] accident." This comment is set forth in paragraph 181 of the First Amended Complaint.

**Defendant's Objection:** Other than media interviews, any information that I had received would have come directly from our own in-house investigator, Don Clark. In that regard, and to the extent that this Interrogatory seeks the identity of person(s) who provided O'Quinn with information during O'Quinn's preparation and/or work-up of the case, Defendant objects to having to provide this information. The above

Interrogatory doesn't merely request the identity of every person whom O'Quinn believes has knowledge of any facts concerning Stern's claims in this litigation. O'Quinn, therefore, objects to answering Interrogatory No. 8 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (The **Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

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**Plaintiff's Interrogatory No. 9:** Identify each person who provided you with information, or from whom you otherwise obtained information, supporting your March 27, 2007 statement on Fox News's *On The Record With Greta Van Susteren* show that "Stern learned of that and he decided he need rid of Daniel." This comment is set forth in paragraph 208 of the First Amended Complaint.

**Defendant's Objection:** I believe that I received that information from the media. At that point in time the media had already reported that Daniel had hired a private investigator to investigate his mother's death. Additionally, Stern seeks the identify of person(s) who provided O'Quinn with information during O'Quinn's preparation and/or work-up of the case. The above Interrogatory doesn't merely request the identity of every person whom O'Quinn believes has knowledge of any facts concerning Stern's claims in this litigation. O'Quinn, therefore, objects to answering Interrogatory No. 9 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (The **Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

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**Plaintiff's Interrogatory No. 10:** Identify each person who provided you with information, or from whom you otherwise obtained information, that support the statements attributed to you in paragraphs 93, 110, 129, 145, 195 and 208 of the First Amended Complaint.

**Defendant's Objection:** Again, my only communications concerning the facts that were being developed in this case came from attorneys within our firm or our own in-house investigator, in addition to the testimony that I observed in the courtroom and various media interviews and news shows. In addition, however, O'Quinn objects to this interrogatory 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. Alternatively, as reflected by the above Interrogatory, Stern seeks the identify of person(s) who O’Quinn contacted, interviewed and/or consulted with during O’Quinn’s investigation and/or work-up of the case. The above Interrogatory doesn’t merely request the identity of every person whom O’Quinn believes has knowledge of any facts concerning Stern’s claims in this litigation. O’Quinn, therefore, objects to answering Interrogatory No. 9 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (The **Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

**Reasons supporting Motion as related to Interrogatory Nos. 7, 8, 9 and 10:** In each of the above Interrogatories, O’Quinn is asked to name the sources for the statements set forth in paragraphs 93, 110, 129, 145, 168, 181, 195 and 208 of the First Amended Complaint which form the basis for Stern’s claims. As set forth in Stern’s Memorandum of Law, further response should be compelled because the identity of the source or sources supporting O’Quinn’s statements is 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 negligence and actual malice because it will allow Stern to test O’Quinn’s claim that he: 1) had a source for the information; and 2) investigated the veracity of what the source told him. (*See* Initial Disclosures attached as Tab C.)

O’Quinn’s claim that he cannot reveal the identity of his factual sources – particularly when he claims he “is not at liberty” to disclose the facts supporting his accusations of homicide or criminal responsibility – and his refusal to identify the “specific facts” which support his claims of murder, are improper, as Defendants rely on

their investigation into the death of Anna Nicole Smith for their defense to the Complaint. The Interrogatories seek only facts, and Plaintiff has a substantial need for the sources allegedly supporting the statements made by O'Quinn; the source for O'Quinn's statements are known only to O'Quinn and his investigators. As a result, the requested information is not subject to the work product doctrine. Finally, the Defendant has not complied with Local Rule 26.1(G) by listing and describing the communications withheld under assertion of the privilege and the response does not indicate whether the identity of any source is being withheld on the basis of privilege. If O'Quinn has no source for the statements other than as described he should affirmatively state that as his response.

**E. Whether O'Quinn Hired Investigators To Investigate Stern And The Deaths Of Anna Nicole And Daniel Smith And The Identity Of Any Such Investigators**

**Plaintiff's Interrogatory No. 11:** Have you hired, employed, engaged or communicated with any person or entity that has investigated, is investigating or will investigate Howard K. Stern, the death of Anna Nicole Smith and/or the death of Daniel Smith? If so, identify each person or entity hired, employed, engaged or communicated with in that regard.

**Defendant's Objection:** As reflected by the above Interrogatory, Stern seeks the identity of person(s) with whom O'Quinn hired, employed, engaged or communicated with regard to O'Quinn's legal representation. The above Interrogatory doesn't merely request the identity of every person whom O'Quinn believes has knowledge of any facts concerning Stern's claims in this litigation. O'Quinn, therefore, objects to answering Interrogatory No. 11 as it is not within the scope of discovery as defined in Fed. R. Civ. P. 26(b), because it seeks information that is protected by the work-product rule and for which the requisite showing has not been made. (The **Objection To Identifying Sources or Investigators On Work Product Grounds** is then set forth.)

**Reasons supporting Motion as related to Interrogatory No. 11:** As set forth in Stern's Memorandum of Law, further response should be compelled because the identity of

O'Quinn's investigators is 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 negligence and actual malice. (*See* Initial Disclosures attached as Tab C.) The identity of the investigators is relevant because O'Quinn relies on said investigation as his support for his claim that Mr. Stern is criminally responsible for Ms. Smith's and Daniel Smith's deaths. At a minimum, Plaintiff needs the identity of the investigators so he can test whether their investigation is subject to the work product doctrine, whether these investigators provided O'Quinn with information to support the statements made in the Complaint, whether these investigators were hired "after the fact" to find information to support Mr. O'Quinn's statements after he uttered them, whether any supporting information was found, whether these investigators told O'Quinn any information that would contradict or undermine the veracity of his statements, whether these investigators shared any information they gathered with third parties, and the credibility of the investigators. O'Quinn's answer is particularly disingenuous given that O'Quinn already identified Don Clark as his main investigator and has recently moved to prohibit all discovery from Wilma Vicedomine because she acted as his investigator in tandem with Don Clark.

O'Quinn's claim that he cannot disclose the identity of the investigators he claims gave him facts to support his accusations of homicide or criminal responsibility is improper – particularly when he refuses to identify the "specific facts" supporting those accusations – as Defendants rely on their investigation into the death of Anna Nicole and Daniel Smith for their defense to the Complaint, the Interrogatory seeks only facts and Plaintiff has a substantial need for the identity of the investigators as their identities are

known only to O'Quinn and his investigators. As a result, the requested information is not subject to the work product doctrine. Finally, the Defendant has not complied with Local Rule 26.1(G) by listing and describing the communications withheld under assertion of the privilege and the response does not indicate whether any information is being withheld on the basis of privilege. If O'Quinn engaged or communicated with no other investigator other than Don Clark and Wilma Vicedomine, he should affirmatively state that as his response.

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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This 30th day of June, 2008.

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