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April 7, 2009

BY FACSIMILE – 212.805.7906

The Honorable Denny Chin
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

**USDC SDNY
DOCUMENT
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DATE FILED: 4-10-09**

Re: *Howard K. Stern v. Rita Cosby, et al.*,
Civil Action File No. 1:07-civ-08536-DC

Dear Judge Chin:

This Court's Order of March 26, 2009 noted that "[Mr.] Stern was recently criminally charged in California in connection with the allegedly illegal prescribing of medications for Anna Nicole Smith" and granted permission to the parties to submit supplemental papers discussing any bearing these criminal charges may have on Cosby's pending motion for summary judgment. Cosby submitted papers on April 6, 2009, arguing that the criminal charges are relevant to this libel action and that the criminal charges against Stern render him libel proof in this action.

I am co-counsel of record for Mr. Stern in connection with the California criminal charges. This afternoon, counsel for Mr. Stern obtained discovery from the State in the California criminal matter. This discovery was produced subject to a broad protective order requiring confidentiality of the materials. While I am not at liberty to discuss the details of the discovery obtained, I can state in my place that from an initial review of the materials, this new information has a significant bearing, not only on Mr. Stern's reputation, the application of the libel proof doctrine, and the summary judgment issues, but on the entire matter pending before this Court. Counsel for Mr. Stern is in the process of seeking permission from the District Attorney in California prosecuting the criminal matter, to provide the discovery to this Court under seal for review in camera and for use under seal in Mr. Stern's response to the latest Cosby brief.

Due to the critical importance of these documents to the pending summary judgment motions, if the District Attorney does not agree to the use under seal of the materials, Mr. Stern will file a formal motion for modification of the California protective order seeking the permission of the California Court to allow this Court to review the materials under seal.

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Once permission is obtained for the discovery materials to be utilized in this action under seal, Mr. Stern will be incorporating a great deal of the information in his brief in response to Cosby's brief submitted pursuant to the March 26, 2009 Order.

Cosby seeks to have Mr. Stern's case dismissed as a matter of law based in part on the recent California criminal charges. Therefore, it is absolutely essential that Mr. Stern have the opportunity to develop a full record concerning those charges to present to this Court for its consideration before ruling on the pending motion.

At this time, Mr. Stern is requesting a fourteen (14) day extension of time to respond to the supplemental briefing, making Mr. Stern's response due April 27, 2009. Hopefully this extension will allow enough time for Mr. Stern to obtain permission to provide this Court with the California discovery for use in this proceeding. If the California District Attorney denies Mr. Stern's request, and requires Mr. Stern to file a formal motion for modification of the California protective order, Mr. Stern may have to request an additional extension of time from this Court to obtain a ruling on any such motion.

Given the importance placed by Cosby on the California criminal charges to this case, Mr. Stern respectfully seeks an order from this Court granting him this extension of time to file his brief and present the full and accurate picture of the California criminal proceedings to this Court, including the discovery obtained in the California matter today.

After consultation, Elizabeth McNamara informed me this afternoon that her client objects to Mr. Stern's request for this extension of time.

Thank you for your consideration.

Respectfully yours,

L. Lin Wood

AMS/b

cc: Douglass B. Maynard, Esq. (By Email)
Elizabeth A. McNamara, Esq. (By Email)

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The request for a 14-day extension is granted. I will not consider any materials in opposition to defendants' summary judgment motion ex parte. The parties may request that I consider confidential materials in camera, i.e., without the materials being made public, but both sides must have access - so ordered.

ESD
4/10/09