

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 10-CV-22236-ASG

HOWARD ADELMAN AND JUDITH SCLAWY
as Co-Personal Representatives of the
ESTATE OF MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

vs.

BOY SCOUTS OF AMERICA; et al

Defendants.

**PLAINTIFFS' SUPPLEMENT TO THEIR OMNIBUS RESPONSE TO THE COURT'S
ORDERS (DE # 80, 91 and 100) REGARDING VARIOUS DISCOVERY MATTERS**

COME NOW the Plaintiffs, by and through their undersigned attorneys, and file this Supplement to the Plaintiffs' Omnibus Response to the Court's Orders (DE# 80, 91 and 100) regarding various discovery matters originally filed on January 14, 2001. Plaintiffs supplement its initial Response (DE 103) with the following additional information, which was inadvertently not included:

I. THE GPS ISSUE

In further response to the issues raised by the Defendants regarding the so-called "GPS issue," the Plaintiff point out the following:

During the hearing held on December 29, 2010 before Magistrate Judge McAlliley, Defendants' counsel Frederick Hasty responded to the Court's inquiry that the basis for his request that the GPS be examined at a forensic laboratory was:

Mr. Hasty: “In part, and the other reason is because the accusation was made in the Plaintiffs’ motion that simply turning the device on would destroy data.”

Transcript of Hearing, Document 93-2, page 10.

Mr. Hasty went on to further respond to the Court’s inquiry asking whether “you share that concern . . .” by stating:

Mr. Hasty: My expert doesn’t think that should be the case, but if there is any question about it, and because of what has happened with the Park Service, he recommended the independent forensic lab, and they can tell us whether or not about the data, they will turn it on and they will be able to determine right away whether or not there has been data lost, destroyed, altered or somehow mangled in the process of what happened.

Transcript of Hearing, Document 93-2, page 11. Therefore, according to the statements of defense counsel, the Defendants’ own expert does not believe that merely turning on the GPS would alter or destroy data.

It is also significant that defense counsel’s description of the contents of Plaintiffs’ earlier Motion for Preservation of Evidence (DE 55) is not accurate. The Motion, which was directed toward preventing Defendant Crompton from modifying, altering or damaging the contents of the GPS, specifically stated:

13. The subject GPS device would automatically track up to 10 tracks within its internal memory. However, once that track limit is reached, the GPS device will begin overriding older information. The number of “tracks” currently on the GPS device is unknown. With the automatic override function in place, it is highly probable that any use of the GPS device will result in the destruction of material evidence.

(DE 55, page 4.)

Accordingly, the Plaintiff’s earlier motion indicated that the subsequent “use” of the GPS could result in overriding earlier stored data. This is a much different proposition than represented

by Defendants' counsel, who has stated that the Plaintiffs contended that "simply turning the device on would destroy data," which is not in fact the case.

The motion filed by the Plaintiffs further went on to state that in response to the Plaintiffs' request that the GPS be entrusted to a mutually agreeable third party, that:

Counsel for Defendant Howard Crompton has responded and indicated that the Defendant does not agree to turn the GPS device over to a mutually agreeable third party, nor does counsel for the Defendant agree not to conduct unilateral testing of the subject GPS device.

Document 55, page 7.

Therefore, the Motion to Preserve Evidence previously filed by the Plaintiffs as well as the statements of Defendants' own counsel during the hearing on December 29, 2010, clearly support the Plaintiffs' position that there is no justification for requiring a trip to North Carolina to download the GPS by a forensic laboratory and that the parties can accomplish the same locally.

Respectfully submitted,

/s/ Robert D. Peltz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 18, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Robert D. Peltz
ROBERT D. PELTZ

SERVICE LIST

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