

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-22236-CIV-GOLD/MCALILEY

HOWARD ADELMAN and JUDITH
SCLAWY, as co-personal representatives
of the ESTATE OF MICHAEL
SCLAWY-ADELMAN,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA, et al.,

Defendants.

ORDER FOLLOWING DISCOVERY CONFERENCE

On January 24, 2011, the Court held a discovery conference on: (1) Plaintiff's Motion for Preservation of Evidence (GPS) [DE 55], (2) Defendants' Motion to Preserve Evidence (cell phones) [DE 85], (3) Defendants' Motion to Preserve Evidence (computers) [DE 86], and (4) Defendants' Appeal of Magistrate Judge's Order Following Discovery Conference in Part [DE 97], which the Honorable Alan S. Gold remanded to me. [DE 111, p. 3]. These matters have been extensively briefed by the parties. [See, e.g., DE 58, 65, 70, 73, 74, 98, 103, 105, 104, 107, 108, 113, 116]. The Court has considered the record, as well as the argument of counsel during the discovery conference. For the reasons stated at the conference, which are incorporated in this Order, the Court ORDERS as follows:

(1) **Cellular telephones.** Defendants' Motion to Preserve Evidence [DE 85] is **GRANTED IN PART.** Plaintiffs have agreed to preserve Michael Sclawy-Adelman's



cellular telephone. This telephone will be inspected by a neutral expert. **No later than February 2, 2011**, Plaintiffs shall provide to Defendants the names and contact information for three experts in South Florida who Plaintiffs believe are qualified to perform the inspection of the cellular telephone. **No later than February 7, 2011**, Defendants shall select one of the three experts to perform the inspection. The inspection shall take place **no later than February 22, 2011**. The parties shall share the cost of the inspection: Plaintiffs shall pay half the cost and Defendants, collectively, shall pay half.

The expert shall turn on the cellular telephone, retrieve any data from May 8, 2009 and May 9, 2009 and produce a report that identifies all data for those two days found on the telephone, and shall distribute his report to counsel for each party. After the expert completes his inspection, he shall return the telephone to Plaintiffs' counsel, who will preserve it, untouched, until further order of this Court, or written agreement of all parties. If Defendants Howard Crompton and Andrew Schmidt have in their possession, custody or control, the cellular telephones they used on May 8 and 9, 2009, those cellular telephones shall be inspected by the same expert by the same deadline, who will issue a similar report using the protocol set forth above. If the Defendants' cellular telephones are the telephones that they currently use, they are ordered to simply retain those telephones following the inspection. If the Defendants' cellular telephones are not in current use, then the telephones shall be returned to Defendants' counsel, who shall preserve them, untouched, until further order of this Court, or written agreement of all parties.

To the extent the parties seek the preservation or inspection of other telephones, this request is denied at this time. The parties may subpoena telephone records from third-parties as provided in the Federal Rules of Civil Procedure.

(2) Computers. Defendants' Motion to Preserve Evidence [DE 86] is **GRANTED IN PART**. As Plaintiffs have already agreed, they shall preserve Michael Sclawy-Adelman's computer. To the extent Plaintiffs and Michael Sclawy-Adelman's sister still have in their possession, custody or control, the computers that they were using on May 8 and 9, 2009, they shall preserve those computers. Likewise, to the extent Defendants Howard Crompton and Andrew Schmidt have in their possession, custody or control, the computers they used on May 8 and 9, 2009, they shall preserve those computers, and shall inform Plaintiff, **no later than February 2, 2011**, whether they do have these computers.

The Court will not order that any party's computers be subject to inspections at this time. Information stored on those computers may be discovered pursuant to discovery requests, as forth in Federal Rules of Civil Procedure 30, 34 and 45.

(3) GPS. Plaintiff's Motion for Preservation of Evidence [DE 55] is **GRANTED**. The forensic inspection of the GPS will take place in North Carolina by the expert identified by Defendants Crompton and Schmidt. Defendants shall reimburse Plaintiffs for the cost of their expert to attend the inspection.

No later than February 2, 2011, Plaintiffs shall inform Defendants, by letter, of the actual out-of-pocket costs Plaintiffs will incur for their expert to attend the inspection, (minus the two hours of time that expert would devote to the inspection, if it were held in the Miami

area). In calculating this cost, Plaintiffs shall include the cost of coach airfare, a competitively priced rental car and a \$50 meal allowance. If at all possible, the inspection shall be scheduled so that Plaintiffs' expert can travel to North Carolina and return in one day.

(4) Defendants' Appeal of Magistrate Judge's Order Following Discovery Conference in Part [DE 97], is **DENIED AS MOOT**. The parties have identified sixteen third-party witnesses that they wish to depose, but have not set dates for these depositions. [DE 113-1, pp. 3-4]. **No later than February 11, 2011**, for each of these witnesses, the party wishing to depose the witness shall notice the deposition at a time agreeable to the witness and all counsel. All reasonable efforts must be made to schedule these depositions with the discovery deadline. However, if necessary, the parties may agree to take deposition(s) beyond the discovery deadline with the understanding that these late depositions shall not be used as a basis to seek an extension of any pretrial deadline.

DONE and ORDERED in chambers in Miami, Florida this 28th day of January, 2011.


CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

cc:
The Honorable Alan S. Gold
Counsel of record