

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,

v.

BOY SCOUTS OF AMERICA;  
THE SOUTH FLORIDA COUNCIL INC.,  
BOY SCOUTS OF AMERICA; PLANTATION  
UNITED METHODIST CHURCH; HOWARD  
K. CROMPTON, Individually, and  
ANDREW L. SCHMIDT, Individually,

Defendants.

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**PLAINTIFFS' MOTION TO COMPEL AND/OR FOR SANCTIONS**

**COME NOW** the Plaintiffs, HOWARD ADELMAN AND JUDITH SCLAWY, as Co-Representative of the Estate of Michael Sclawy-Adelman, and move this Honorable Court for the entry of an order compelling discovery and/or awarding sanctions and would respectfully show the Court as follows:

1. On January 28, 2011, Magistrate Judge McAliley entered an order [D.E. 118] granting the Defendant's Motion to Preserve Evidence and further directed the parties as follows:
  - a. The Plaintiffs were directed to turn over the cell phone of Michael Sclawy-Adelman to an expert on or before February 22, 2011 for the purposes of inspection and the downloading of all data from May 8 and 9, 2009.
  - b. The Defendants Crompton and Schmidt were instructed to likewise transmit their cell phones which they had on May 8 and 9, 2009 to "be inspected by

the same expert by the same deadline, who will issue a similar report using the protocol set forth above.

- c. The Magistrate Judge's order further set forth a protocol for the selection of the expert to perform the inspection, pursuant to which the Plaintiff nominated three potential experts from which the Defendant Crompton and Schmidt selected the one to perform the inspection. The Court further directed both the Plaintiffs and the Defendants to each pay for 50% of the inspection costs.

See Exhibit "1" hereto.

2. Pursuant to the above-described order, the Plaintiffs' delivered Michael Sclawy-Adelman's cell phone to Carter Conrad of DeliveredData LLC for inspection on February 16, 2011.

3. Subsequently, on March 3, 2011 Mr. Conrad rendered his report concerning his inspection of Michael's cell phone to the parties by email. See transmittal letter attached as Exhibit "2" hereto.

4. Subsequently, after not receiving a copy of the report of Mr. Conrad's inspection of either of the Defendants cell phones, counsel for the Plaintiff sent the email attached to Mr. Conrad dated March 15, 2011 stating "I never received any reports regarding the other phones. Did you complete your work on them?" See email attached as Exhibit "3" hereto.

5. On the following day, March 16, 2011, Mr. Conrad responded to the email by advising Plaintiff's counsel that:

"[I] have not received the Blackberry password information [for Crompton's phone], although Mr. Hasty is aware of my requirement for the same. I am not able to process the phone without the password as the Blackberry may wipe all data without it."

See email attached as Exhibit "4" hereto.

6. Subsequently, Plaintiff's counsel spoke to Mr. Conrad, who confirmed that he had previously requested the password for the Defendant Crompton's Blackberry from his counsel and further advised him that he could not access the data in it without the password because of the risk that the Blackberry could otherwise wipe all of the data out. He further indicated that there had been a number of requests to the office of Mr. Crompton's counsel requesting this information to no avail.

7. Subsequently, Plaintiffs' counsel contacted Defendants counsel both verbally and by email requesting an explanation for their failure to provide the password, which was necessary for Mr. Conrad to complete the court ordered inspection. See correspondence attached as Exhibit "5" hereto. Thereafter, undersigned counsel personally spoke to Frederick Hasty, counsel for Mr. Crompton and requested an explanation, further indicating that if a satisfactory one was not promptly forthcoming, undersigned counsel would have no alternative but to file a motion with the Court seeking this relief. Although it was indicated that an explanation would be provided, none has been forthcoming.

8. Prior to the filing of this motion, undersigned counsel double checked once again with Mr. Conrad, who confirmed that he had requested the password for Mr. Crompton's Blackberry on a number of occasions, beginning three weeks earlier. He further indicated that although Mr. Crompton participated in one of the phone conferences with his counsel, that the password was not provided. Finally, he again reiterated that he could not perform the court ordered inspection without the password out of fear of losing the data in the Blackberry. He also confirmed that this information had been provided to Mr. Crompton's counsel.

9. The Plaintiffs have not only complied with the court's order, but have been greatly prejudiced by the Defendants' failure to do the same. Although the Defendants have been in receipt for some time of the information and data gleaned from the cell phone of the decedent, the Plaintiff has been deprived of the corresponding information ordered by the Court from the Defendant's Crompton's phone.

10. The Plaintiff has been further prejudiced by the deliberate delay in providing the information necessary to complete the court ordered inspection in that Mr. Crompton was deposed on March 8, 2011. If the Defendant had properly complied with this Court's order and provided the Blackberry and password information necessary to complete the Court ordered inspection, the Plaintiff would have had the data from the phone prior to the time of Mr. Crompton's deposition. Since there are serious issues in this case concerning when and how often Mr. Crompton called for assistance during the course of this hike, the Plaintiffs are concerned that this deliberate withholding of information necessary to complete the court ordered inspection was done to prevent their counsel from having this information available at the time of the Defendant Crompton's deposition.

WHEREFORE, the Plaintiffs move this Honorable Court for the entry of an order: (1) compelling counsel for the Defendant Crompton to immediately provide the necessary password to Mr. Conrad in order to complete the Court ordered inspection set forth by this Court's order of January 28, 2011 [D.E. 118], (2) awarding those sanctions deemed appropriate by the Court for the apparent deliberate disregard of its order by refusing to provide the information necessary to allow

the Court ordered inspection of Mr. Crompton's phone to occur and (3) allowing the Plaintiff the opportunity to depose Mr. Crompton regarding the matters revealed by the inspection ordered by the Court.

Respectfully submitted,

/s/ Robert D. Peltz  
ROBERT D. PELTZ

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **March 21, 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 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.

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**SERVICE LIST**

**HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN**  
**VS.**  
**BOY SCOUTS OF AMERICA, et al**  
**CASE NO.: 10-CV-22236-ASG**

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

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