

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

Miami Division

Howard Adelman and Judith Sclawy,
as Co-Personal Representatives of
The Estate of Michael Sclawy-Adelman,

CASE NO. 1:10-cv-22236-ASG

Plaintiffs,

District Ct. Judge: Alan S. Gold

vs.

Boy Scouts of America, et al.

Magistrate Judge: Jonathan Goodman

Defendants.

DEFENDANT, SOUTH FLORIDA COUNCIL'S MOTION FOR PROTECTIVE ORDER

COMES NOW, Defendant, South Florida Council, ("SFC") by and through its undersigned counsel, and pursuant Federal Rules of Civil Procedure 26 and 30, hereby moves for a Protective Order concerning the Re-Notice of Taking Digital Deposition Duces Tecum of SFC's Corporate Representative.

1. Plaintiffs unilaterally noticed a Deposition Duces Tecum for SFC's Corporate Representative. *See Re-Notice* attached as **Exhibit "A."**
2. The area of inquiry concerns whether Howard Crompton was qualified to wear a "trained" patch (an optional cloth patch some adult scouting leaders choose to wear after completing certain courses).
3. SFC has already produced **three** corporate representatives for deposition in this case. All three representatives testified concerning training of adult leaders. One representative specifically testified concerning Howard Crompton's training and whether he was qualified to wear the "trained" patch.
4. Moreover, SFC has already answered interrogatories concerning this very subject matter.
5. SFC has already produced documents showing the courses completed by Howard Crompton prior to the day of the incident and produced online materials indicating what is needed to wear the "trained" patch. Howard Crompton himself testified about his training.¹
6. Plaintiffs' request for a **4th deposition from SFC's highest ranking representatives** is the definition of harassing and SFC is entitled to a protective order.

¹ Q. Did you do the training that was sufficient to obtain the patch for your uniform that says "trained"?

A. I never put the training patch on my uniform.

Q. Did you complete the training necessary to receive the patch?

A. I believe I did.

See Deposition of Howard Crompton at p. 8, ll. 9-16 attached as **Exhibit "B."**

SFC's Corporate Representatives²

7. SFC produced Joshua Christ, the Director of Field Service at SFC, who sat for a nearly 4 hour deposition on March 30, 2011. Plaintiffs' counsel freely asked Mr. Christ about "trained" leaders. Importantly, Mr. Christ was questioned specifically regarding the training Howard Crompton had and whether he was qualified to wear the "trained" patch. *See* Deposition of Joshua Christ at pp. 46-53, ll. 12-9 attached as **Exhibit "C."**

Q. Okay. Is there a designation for Scout leaders who have completed a certain amount of training?

A. There's a training record for each volunteer, yes.

Q. Right. But if a Scouting leader meets certain requirements, are they considered to be the word "trained," and they get a little patch on their uniform that says "trained"?

A. Yes.

* * *

Q. Do you know whether Mr. Crompton was trained in that context?

A. I believe he was.

* * *

Q. But what document would contain that information?

A. His training records from our Scout net system.

Id. at pp. 46-47, ll. 20-4; p. 48, ll. 1-11.

8. SFC produced Jeff Hunt, the former Scout Executive for SFC, who sat for a 7 hour deposition on February 18, 2011. He also testified about training qualifications for adult leaders. *See* Deposition of Jeff Hunt at pp. 56-58, ll. 2-25; pp. 147-148, ll. 12-17 attached as **Exhibit "D."**
9. SFC produced John Anthony, the current Scout Executive for SFC, who sat for a 4 ½ hour deposition on February 14, 2011. He also testified about training qualifications for adult leaders. *See* Deposition of John Anthony at pp. 45-48, ll. 6-12; pp. 49-50, ll. 20-9; pp. 88-91, ll. 1-15 attached as **Exhibit "E."**
10. Now Plaintiffs' want a **4th bite at the apple**. Plaintiffs' counsel wants to ask the same questions to SFC's corporate representative that he already asked of Joshua Christ. There is no justification for counsel to re-ask these questions when Mr. Christ already testified on this subject matter.

² Plaintiffs' counsel sought corporate representative depositions of those with the most knowledge of every procedure related to outdoor scouting activities, in particular, hiking, trekking, any other physical scouting activities, first aid, medical assistance, emergency preparedness, and communication procedures in case of emergency. Plaintiffs also sought those responsible for guidelines and policies on selection of scout masters and who are responsible for policies and guidelines for scoutmaster training. Ultimately, between SFC corporate representatives and witnesses specifically selected by Plaintiffs, Plaintiffs took the depositions of SFC's highest ranking professional staff: Jeff Hunt, Joshua Christ and John Anthony.

SFC's Answers to Interrogatories

11. In addition to deposing SFC's corporate representatives for a total of 15 ½ hours, Plaintiffs already propounded written discovery on the precise issue of "trained" leaders (the nearly identical "areas of inquiry" in the Re-Notice of Deposition). See SFC's Amended Answers to Third Set of Interrogatories attached as **Exhibit "F."** and *compare with Exhibit "A."*
12. SFC answered that the following courses were required in 2009 prior to qualifying for a trained patch: Fast Start Training, New Leader Essentials (now called This is Scouting) and Position Specific Training.
13. The individual leader turns in paperwork showing their completed courses. The individual adult in Scouting is the best source of the information sought by the Plaintiffs because, for example, Howard Crompton's attendance at training was voluntary and submitting training documentation to South Florida Council was voluntary as well.
14. SFC cannot know with certainty what voluntary training Mr. Crompton completed other than the courses for which he turned in paperwork or by asking Mr. Crompton himself.
15. The paperwork provided to SFC shows that Howard Crompton completed Youth Protection Training, Fast Start Training, New Leader Essentials and Introduction to Outdoor Leader Skills. Introduction to Outdoor Leader Skills is a course that follows Position Specific Training. Therefore, SFC representatives have testified that Mr. Crompton appears qualified to where the "trained" patch, if he chose to do so.

"What Makes a Trained Leader" and Howard Crompton's Courses

16. In an effort to satisfy Plaintiffs' counsel's apparent need for additional information on this subject – and prior to filing this Motion – undersigned provided two additional documents that may help explain SFC's answers to those interrogatories. SFC produced a document called "What Makes a Trained Leader," which was available to the public on the internet. That document describes what is currently needed to qualify to wear the trained patch. See "What Makes a Trained Leader" attached as **Exhibit "G."** SFC then produced a document that lists the training courses completed by Howard Crompton. See Howard Crompton training document attached as **Exhibit "H."**³

³ This document was created by BSA upon specific request from counsel. While undersigned believes that this document may be privileged under either the attorney/client privilege or the work product doctrine, undersigned produced the same to Plaintiffs in a

17. Despite taking 3 depositions of SFC's highest professional employees, despite being provided with written answers to interrogatories on the "trained" issue, and despite being provided with the documentation listed in the prior paragraph, Plaintiffs' counsel is still unsatisfied. Regardless, the recent Notice for Deposition is cumulative, duplicative, burdensome and seeks information already repeatedly provided through written and oral discovery to the Plaintiffs.

MEMORANDUM OF LAW

Under Federal Rule of Civil Procedure 26(b)(2)(C), the Court may limit discovery if it finds that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

"The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. . ." Id. at 26(c). Courts have broad discretion in this regard and in deciding the degree of protection necessary. Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36; 104 S.Ct. 2199, 2209 (1984).

First and foremost, SFC's Corporate Representative with the most knowledge as to the areas of inquiry listed in the Re-Notice is Joshua Christ. He has already been deposed. Plaintiffs' counsel failed to move for leave under Rule 30(a)(2)(A)(ii) to take his deposition. As such, the notice of deposition is improper, and SFC is under no obligation to produce him. *See* Fed.R.Civ.P. 30(a)(2)(A)(ii); *see also* State Farm Mut. Auto. Ins. Co. v. New HorizonT, Inc., 254 F.R.D. 227, 235 (E.D.Pa 2008), which stated:

The policy against permitting a second deposition of an already-deposed deponent is equally applicable to depositions of individuals and organizations. Taking serial depositions of a single corporation may be as costly and burdensome, if not more so, as serial depositions of an individual. In both cases, each new deposition requires the deponent to spend time preparing for the deposition, traveling to the deposition, and providing testimony. In addition, allowing for serial depositions, whether of an individual or organization, provides the deposing party with an unfair strategic advantage, offering it multiple bites at the apple, each time with better information than the last. . . Here, Defendants have not sought leave of court to conduct an additional deposition of State Farm; thus the May 20, 2008 notice of deposition was improper.

good faith effort to provide as much information as possible on the "trained" patch issue so as to dispense with the need for another SFC deposition and the need for this Motion.

Second, even if Plaintiffs did move for leave, the deposition should be prohibited under 26(b)(2)(C)(i),(ii) and (iii). The requested deposition is cumulative and duplicative of the prior three SFC corporate representative depositions. It is also needlessly cumulative and duplicative of the information provided by SFC through written discovery. Moreover, the sought-after deposition is unduly burdensome.

Courts have found Rule 30(b)(6) notices to be unduly burdensome which merely request the duplication of other information already obtained through other discovery methods. The court in *Tri-State* also suggested that since depositions are inherently “time-consuming and inefficient,” they ought to “be productive and not simply an excuse to seek information that is already known.” *Tri-State Hosp. Supply Corp.*, 226 F.R.D. 118, 126 (D.D.C.2005). Where the notice seeks information which could more easily be obtained from another source, the court may refuse to allow that topic to be the subject of a 30(b)(6) deposition.

Dongguk Univ. v. Yale Univ., 270 F.R.D. 70, 74 (D.Conn. 2010).

In Dongguk, the Court held that sought-after deposition testimony of Yale corporate representatives was unreasonably cumulative and duplicative of written discovery already obtained. For example, Dongguk, through written discovery already produced documents and information describing its hiring policies, practices and procedures. Id. at 77. Yale obtained sufficient evidence as to those procedures; deposing corporate representatives on those issues would be unreasonably cumulative and burdensome. Id. The cumulative and burdensome nature of the discovery requests in the case *sub judice* is even more palpable than in Dongguk. Here, not only has SFC produced written discovery responses and documents related to the “trained” issue, it has already produced three corporate representatives to testify as to training. Joshua Christ already testified as to the areas of inquiry in the most recent Notice of Deposition.

The Dongguk Court’s conclusion equally applies to the present situation: “The Court cautions the parties that 30(b)(6) depositions can be used to test theories, challenge facts and fill in information gaps, but they cannot be used to reinvent the wheel by asking questions that have already been completely answered.” Counsel wishes to ask the same questions he asked Joshua Christ during his initial deposition and the same questions he asked SFC through the Third Set of Interrogatories. They have already been answered. Requesting a 4th bite at the apple at this time is simply harassing.

WHEREFORE, SOUTH FLORIDA COUNCIL, respectfully requests that this Honorable Court enter a Protective Order as to the *Re-Notice of Taking Digital Video Deposition Duces of Defendant South Florida Council, Inc. Boy Scouts of America Upon Oral Examination of Corporation, Partnership, Association or Government Agency*, and enter such other relief as this Court deems necessary and just.

CERTIFICATION OF GOOD FAITH

Pursuant to Local Rule 7.1(a)(3) and Judge Goodman's internal procedures, counsel for the movant has conferred with counsel for the Plaintiffs telephonically and via-email in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

By: _____s/Kevin D. Franz_____
William. L. Summers Esq.
Florida Bar No. 470521
wsummers@lane.reese.com
Kevin D. Franz, Esq.
Florida Bar No. 015243
kfranz@lanereese.com
LANE, REESE, SUMMERS, ENNIS &
PERDOMO, P.A.
2600 Douglas Road
Douglas Centre, Suite 304
Coral Gables, FL 33134
Phone: (305) 444-4418;
Fax: (305) 444-5504
Attorneys for Defendants, Boy Scouts of
America and The South Florida Council, Inc.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent August 12, 2011 to: Robert D. Peltz, Esq, Ira H. Leesfield, Esq., LEESFIELD & PARTNERS, P.A., 2350 South Dixie Highway, Miami, FL, 33133; Frederick E. Hasty, Esquire, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., 2800 Ponce de Leon Boulevard, Suite 800, Coral Gables, FL 33134; Greg Gaebe, Esq., Gaebe, Mullen Antonelli, Esco & DiMatteo, 420 S. Dixie Highway, Third Floor, Coral Gables, FL, 33146; Ubaldo J. Perez, Jr., Esq., LAW OFFICES OF UBALDO J. PEREZ, JR., P.A., 8181 NW 154th Street, Suite 210, Miami Lakes, FL 33016.

By: _____s/Kevin D. Franz_____

William. L. Summers Esq.

Florida Bar No. 470521

wsummers@lane.reese.com

Kevin D. Franz, Esq.

Florida Bar No. 015243

kfranz@lanereese.com

LANE, REESE, SUMMERS, ENNIS &
PERDOMO, P.A.

2600 Douglas Road

Douglas Centre, Suite 304

Coral Gables, FL 33134

Phone: (305) 444-4418

Fax: (305) 444-5504

Attorneys for Defendants, Boy Scouts of
America and The South Florida Council, Inc.