UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-CV-22236-ASG

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

Plaintiffs,

vs.

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.
_____/

PLAINTIFFS' RESPONSE AND OPPOSITION TO DEFENDANT SOUTH FLORIDA COUNCIL, INC., BOY SCOUTS OF AMERICA'S MOTION TO DISMISS COUNTS VII AND VIII OF THE AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs, hereby respond to and oppose Defendant South Florida Council, Inc., Boy Scouts of America (hereinafter "South Florida Council"), Motion to Dismiss Counts VII and VIII of the Plaintiffs' Amended Complaint, and in support thereof, state as follows:

1. This case is about the wrongful death of seventeen year-old Michael Sclawy-Adelman who died of heat stroke on May 9, 2009, while on a 20-mile Boy Scout sanctioned and organized hike in the Florida Everglades.

2. The 20-mile hike was conducted by Defendant adult Scoutmasters Howard Crompton and Andrew Schmidt, on a day when temperatures in the Florida Everglades reached 100 degrees.

3. A Boy Scout permit approving the Defendant Scoutmasters to conduct the 20-mile hike was issued by Defendant South Florida Council.

4. During the hike, Michael Sclawy-Adelman began showing signs of heat illness. Rather than providing reasonable care to Michael Sclawy-Adelman, the Defendant Scoutmasters continued the hike until Michael became dizzy, disoriented, delirious, and could go no further. Even then, the Defendant Scoutmasters allowed 1 ½ hours to pass before calling for help. By that time, it was too late. Michael Sclawy-Adelman died of heat stroke at mile 15 of the 20 mile Boy Scout sanctioned hike.

5. Defendant South Florida Council's Motion to Dismiss Count VII (negligent selection and retention), and Count VIII (negligent supervision) of the Plaintiffs' Amended Complaint is without merit. By law, the Plaintiffs have properly and sufficiently plead their claims in Counts VII and VIII, and in doing so, have stated claims upon which relief may be granted. Accordingly, Plaintiffs oppose Defendant South Florida Council's Motion to Dismiss Counts VII and VIII of the Amended Complaint and respectfully request that the Motion be denied.

MEMORANDUM OF LAW

I. Defendant Has Failed To Meet Its Burden On A Motion To Dismiss

In deciding a motion to dismiss, the Court is constrained by the four corners of the complaint, must accept the plaintiffs' well-pled allegations as true, and must construe the complaint in the light most favorable to the plaintiffs. *See* St. George v. Pinellas County, 285 F.3d 1334, 1337 (1th Cir. 2002); Lobo v. Celebrity Cruises, Inc., 667 F. Supp. 2d 1324, 1327 (S.D. Fla. 2009). The well established rule is that a complaint should not be dismissed unless it appears beyond doubt that the plaintiffs will not be able to prove any facts in support of their claim that would entitle them to

relief. Kissimmee River Valley Sportsmans Ass'n v. City of Lakeland, 60 F. Supp. 2d 1289, 1291 (M.D. Fla. 1999)(*citing* Conley v. Gibson, 355 U.S. 41 (1957)).

Furthermore, a Rule 12 (b)(6) motion to dismiss must be reviewed in conjunction with Fed. R. Civ. P. 8(a), which requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." This is traditionally known as "notice pleading," the objective of which is simply to put the defendant on notice as to the claim against it and the basis for the claim. *See* Sams v. United Food & Commercial Workers Int'l Union, 866 F.2d 1380, 1384 (11th Cir. 1989)(all that is required is that the defendant be on notice as to the claim being asserted against him and the grounds on which it rests). The Eleventh Circuit Court of Appeals has repeatedly emphasized "the liberality of the principles of notice pleading that govern federal procedure." Brown v. Nichols, 8 F.3d 770, 773 (11th Cir. 1993). Only when the complaint fails to meet this liberal standard will it be dismissed.

In the instance case, in asserting that the Plaintiffs have failed "to plead facts sufficient to state a cause of action" [D.E. 29], Defendant South Florida Council would have the Plaintiffs prove their entire case in their initial pleading. This is not the law.

Moreover, motions to dismiss for failure to state a claim are generally viewed with disfavor and rarely granted. *See e.g.,* Klaskala v. U.S. Dep't of Health and Human Services, 889 F. Supp. 480, 483 (S.D. Fla. 1995). It is well settled in the United States Court of Appeals, Eleventh Circuit, that the threshold of sufficiency that a complaint must meet to survive a motion to dismiss is "exceedingly low."Ancata v. Prison Health Services, 769 F.2d 700, 703 (11th Cir. 1985)(quoting Quality Foods de Centro America, S.A. v. Latin American Agribusiness Devel., 711 F.2d 989, 995 (11th Cir. 1983)).

When the allegations of the Amended Complaint in this action are measured against these standards, it is clear that Defendant South Florida Council has failed to meet its burden, and that the Plaintiffs have properly and sufficiently stated a cause of action in Counts VII and VIII of the Amended Complaint.

II. Defendant's Motion Inappropriately Contests the Facts and Merits of the Lawsuit

In its Motion to Dismiss, Defendant South Florida Council asks the Court to rule on issues that are discoverable and not appropriately addressed at this stage of the proceedings. Defendant South Florida Council essentially wants the Plaintiffs to prove their entire case in the Complaint. This is not the law. This is why we have discovery.

A Rule 12(b)(6) motion to dismiss for failure to state a cause of action is not the appropriate mechanism for resolving a contest about the facts or the merits of a case. Rather, its purpose is solely to test the *legal sufficiency* of the statement of the claim for relief. *See e.g.* Holloway v. Bizzaro, 571 F. Supp. 2d 1270, 1272 (S. D. Fla. 2008). The Court's sole task is to assess the legal feasibility of the complaint, not assess the weight of the evidence that might be offered in support thereof.

Defendant South Florida Council asks the Court to ignore the very purpose of the Rule and delve into the facts and merits of the Plaintiffs' case. Such argument is appropriate for a summary judgement motion upon completion of discovery, not on a Rule 12(b)(6) motion to dismiss.

III. Defendant South Florida Council Owed A Duty to Use Reasonable Care in the Selection, Retention, and Supervision of the Defendant Scoutmasters

In its Motion to Dismiss, Defendant South Florida Council seems to ignore the numerous allegations in the Amended Complaint regarding its involvement with the subject hike and the Defendant Scoutmasters. Rather, Defendant South Florida Council makes the blanket statement that

it "has no responsibility for hiring, retaining, supervising or controlling troop Scoutmasters" and, thus, owed no duty or care to Michael Sclawy-Adelman. [D.E. 29 - Def. M. To Dismiss at 2].

First, pursuant to Florida law, a legal duty arises whenever an endeavor creates a generalized and foreseeable risk of harming others. "Where a defendant's conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon the defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses." McCain v. Florida Power Corp., 593 So. 2d 500, 503 (Fla. 1992)(citing Kaisner v. Kolb, 543 So. 2d 732, 735 (Fla. 1989)); Riedel v. Sheraton Bal Harbour Assoc., 806 So. 2d 530 532 (Fla. 3d DCA 2002).

The allegations of the Amended Complaint state sufficient facts to allege that Defendant South Florida Council created a zone of risk which encompassed Michael Sclawy-Adelman and, as such, undertook a duty to use reasonable care in the selection, retention, and supervision of the Defendant Scoutmasters.

The Plaintiffs' Amended Complaint alleges in part that Defendant South Florida Council:

- Has the responsibility for and approval power over all applicants for Scoutmaster positions [D.E. 20 ¶¶ 96, 117].
- Is responsible for and accepts the responsibility for the quality of the scouting program of Troop 111 [D.E. 20 ¶ 101].
- Is responsible for ensuring adequate leadership for the local troop [D.E. 20 ¶ 104].
- Approves troop level activities [D.E. 20 ¶ 97].
- Maintains leadership records [D.E. 20 ¶105].
- Has a duty to perform a proper investigation of scout leaders [D.E. 20 ¶119].

Plaintiffs further allege that Michael Sclawy-Adelman's parents entrusted their son to the Defendant Scoutmasters because Defendant South Florida Council bestowed the indicia of competence, expertise, and safety upon the Scoutmasters [D.E. 20 ¶¶114, 115].

In addition, the Amended Complaint alleges that by approving the subject hike through a Boy Scout permit issued to the Defendant Scoutmasters, Defendant South Florida Council undertook a duty to use reasonable care in the selection, retention, and supervision of the Defendant Scoutmasters [D.E. 20 ¶136].

Furthermore, by maintaining files and overseeing the provision of adult leadership to Michael Sclawy-Adelman's troop, Defendant South Florida Council undertook a duty to use reasonable care in the selection, retention, and supervision of the Defendant Scoutmasters [D.E. 20 ¶¶ 96-97, 101, 104, 113-119].

If these allegations are taken as true, which by law they must be for purposes of a Rule 12(b)(6) motion, they sufficiently and properly state a cause of action against Defendant South Florida Council for negligent selection, retention, and supervision.

In an attempt to escape its duty to Michael Sclawy-Adelman, Defendant South Florida Council directs the court to a few cases involving injuries to (or deaths of) Boy Scouts. Not one of those cases was decided at the initial pleading stage. Each of these cases was decided on motions for summary judgement based upon evidence beyond the four corners of the complaint; evidence accumulated over the course of discovery. The instant case is not those cases. Plaintiffs are entitled to conduct their discovery. Plaintiffs are entitled to prove their allegations through discovery practice.

In addition, the Court does not have benefit of the complaints in those cases to be able to compare them with the Amended Complaint in the instant case, nor does the Court have access to the particular facts of those cases. Defendant South Florida Council cannot demonstrate that the allegations of the complaints in those cases were consistent with the allegations of the Plaintiffs' Amended Complaint. There is also no basis for the Court to conclude that the facts of those cases are identical to the facts of this case. Without factual discovery, there is no way for the Court to rule, as a matter of law, that the Plaintiffs in this action cannot prove any set of facts that will entitle them to relief.

Furthermore, the cases cited by Defendant South Florida Council primarily involved claims for vicariously liability against the Boy Scouts/Councils. Thus, the issue of control was paramount to the claims. Here, the claims set forth in Counts VII and VIII are not purely vicarious liability claims.[1] The claims against this Defendant are based upon this Defendant's direct negligence, failures, acts, and omissions.

Glover v. Boy Scouts of America, 923 P.2d 1383 (Utah 1996), Wilson v. United States, 989 F.2d 953 (8th Cir. 1993)[2] and Anderson v. Boy Scouts of America, 589 N.E.2d 892 (Ct. App. Ill. 1992) cited by Defendant South Florida Council are also distinguishable from the instant case, because those cases involved injuries (or death) that did not directly arise out of a Boy Scout activity.

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[1] Unlike claims based upon vicarious liability, negligent selection or retention claims may encompass liability for negligent acts that are outside the scope of the employment or service. *See*, Anderson Trucking Serv., Inc. v. Gibson, 884 So. 2d 1046, 1052 (Fla. 5th DCA 2004).

[2] Defendant cites to three different opinions involving the *Wilson* case.

In Glover, decided fourteen (14) years ago, an injury to a Boy Scout occurred after a Scout meeting when a Scoutmaster was driving home. The injured Scout who was on rollerblades, grabbed onto the back of the car and was injured when he was run over by the car. Unlike the instant case, involving a Boy Scout sanctioned 20-mile hike, rollerblading while holding onto the back of a moving vehicle was not a Boy Scout sanctioned activity.

In Wilson, decided seventeen (17) years ago, the injuries/death occurred during a Boy Scout trip to an Army post. At 10:30 p.m., and while Scout leaders were inside the building, three teenage Boy Scouts went outside and picked up a pipe that was stacked outside the building and raised it up to a vertical position where it struck a power line. The pipe had been stacked in the same place on the Army base for six years. Unlike the instant case, involving a Boy Scout sanctioned 20-mile hike, picking up and playing with stored pipes was not a Boy Scout sanctioned activity.

Finally, in Anderson, decided eighteen (18) years ago, the Scoutmaster injured a child (who was not even a Scout), as the Scoutmaster was backing his car out of the driveway of his home. Unlike the instant case, involving a Boy Scout sanctioned 20-mile hike, backing a car out of one's driveway is not a Boy Scout activity.

Moreover, in 1999, the Oregon Supreme Court reviewed a similar Motion to Dismiss in Lourim v. Swensen, 328 Or. 380, 977 P.2d 1157 (1999). In Lourim, as in the instant case, the Boy Scouts cited several cases from other jurisdictions in support of their motion to dismiss. The Oregon Court rejected those cases and the defendant's arguments. Referring to the cases cited by the defendant, the court stated that, *"those cases are irrelevant to the present inquiry, because they all were decided after the presentation of evidence....our review of the matter is confined to the allegations in the complaint and the reasonable inferences that may be drawn from them. We do*

not speculate whether plaintiff ultimately might be able to prove the existence of a right to control on the part of the Boy Scouts." Id. at 388 n. 3, 977 P.2d at 1161.

As such, the Defendant's blanket contention that as a matter of law neither Defendant Boy Scouts of America or Defendant South Florida Council has no responsibility for hiring, retaining, supervising, or controlling Scoutmasters, is false.

In the instant case, the allegations asserted by the Plaintiffs, when taken as true as required by law on a motion to dismiss, are proper and sufficient to establish a duty on the part of Defendant South Florida Council to properly select, retain, and supervise the subject Defendant Scoutmasters.

IV. The Defendant's Motion Does Not Challenge the Claim For Negligent Selection In Count VII

Although Defendant South Florida Council states that it is moving for dismissal of Count VII, that Count includes claims for both negligent selection and negligent retention. Defendant South Florida Council does not address the negligent selection claim in its Motion to Dismiss. As such, Plaintiffs will only address Defendant South Florida Council's argument as to the negligent retention claim.

V. Plaintiffs' Claim For Negligent Retention In Count VII Properly and Sufficiently States A Claim For Relief

The Plaintiffs' claim that Defendant South Florida Council was negligent in retaining Defendant Scoutmasters Howard K. Crompton and Andrew L. Schmidt is sufficiently set forth in the Amended Complaint to state a cause of action for negligent retention.

Liability for the negligent retention of an employee, agent *or servant,* independent of the doctrine of respondeat superior, was first recognized by the Florida Supreme Court in *Mallory v. O'Neil*, 69 So. 2d 313 (Fla. 1954). It has been held that the central task of judging the principal's

responsibility to investigate an agent or servant is consideration of the type of work to be done by the agent or servant. See Tallahassee Furniture Co., Inc. v. Harrison, 583 So. 2d 744, 750 (Fla. 1st DCA 1991)(citing Williams v. Feather Sound, Inc., 386 So. 2d 1238, 1240 (Fla. 2d DCA 1980), *rev. denied*, 392 So. 2d 1374 (Fla. 1981)). The test is generally whether the principal exercised the level of care which, under the circumstances, a reasonably prudent person would exercise in selecting or retaining the agent for the particular duties to be performed. *See* Garcia v. Duffy, 492 So. 2d 435, 440 (Fla. 2d DCA 1986).

Negligent retention occurs when, during the course of employment, agency ***or service***, the employer becomes aware ***or should have become aware*** of problems with the agent that indicate his unfitness, and the employer/principal fails to take further action such as investigation, discharge or reassignment. Garcia v. Duffy, 492 So. 2d 435, 438-39 (Fla. 2d DCA 1986). This common law duty is set forth in Restatement (Second) Torts § 317 and Restatement (Second) of Agency 2d § 219(2) and 213. *See* Storm v. Town of Ponce Inlet, 866 So. 2d 713, 716 (Fla. 5th DCA 2004)(citations omitted).

In the instant case, when the allegations of the Amended Complaint are viewed in the context of these legal concepts, the Plaintiffs have clearly and sufficiently stated a cause of action for negligent retention. Defendant South Florida Council maintained files on the Defendant Scoutmasters, and ultimately approved them as leaders. In doing so, and in sanctioning activities conducted by the Defendant Scoutmasters, including the subject hike, Defendant South Florida Council negligently retained the Defendant Scoutmasters. These Scoutmasters were knowingly placed in a position to oversee, lead, and protect children. A reasonably prudent person would not

retain Scoutmasters without ensuring that they were properly trained and prepared to do the very jobs for which they were selected and approved.

Plaintiffs have made numerous allegations of fact detailing the ways in which the Defendant Scoutmasters were unfit for the job as scout leaders, and that Defendant South Florida Council either knew or should have known that they were unfit for this role, and thus, should not have retained them. Plaintiffs allege that:

- Defendant South Florida Council knew or should have known that Howard K. Crompton and Andrew L. Schmidt were not properly prepared to recognize the signs of distress which Michael Sclawy-Adelman exhibited on the day of his death [D.E. 20 - Amended Complaint ¶122.]
- Defendant South Florida Council knew or should have known that Howard K. Crompton and Andrew L. Schmidt were not properly certified in first aid through the American Red Cross or any other recognized agency or organization [D.E. 20 - Amended Complaint ¶123.]
- Defendant South Florida Council knew or should have known that Defendants Howard K. Crompton and Andrew L. Schmidt were unfit Scoutmasters to competently and safely plan and conduct a 20 mile Boy Scout hike through the Florida Everglades [D.E. 20 - Amended Complaint ¶ 124].
- Defendant South Florida Council knew or should have known that Defendants Howard K. Crompton and Andrew L. Schmidt were not properly trained in appropriate emergency planning, procedures, and medicine [D.E. 20 - Amended Complaint ¶ 125].

- Defendant South Florida Council knew or should have known that Defendants Howard K. Crompton and Andrew L. Schmidt lacked the appropriate level of experience and training to properly lead Boy Scouts [D.E. 20 - Amended Complaint ¶ 126].
- Defendant South Florida Council knew or should have known that Defendant Andrew L. Schmidt had a reputation for pushing minor Boy Scouts beyond their limits [D.E. 20 - Amended Complaint ¶ 127].

Furthermore, the Plaintiffs have alleged that the Defendant Scoutmasters were at all times material, acting as the actual and/or apparent agents or servants of Defendant South Florida Council. [D.E 20 -Amended Complaint ¶¶ 30 and 33]. Essentially, they were serving as volunteer employees while they were performing scout leader services under the auspices of Defendant South Florida Council.

In addition, the Plaintiffs have properly and sufficiently alleged that Defendant South Florida Council failed to perform a proper investigation, and/or to take corrective action, when it knew of should have known that Defendant Scoutmasters Crompton and Schmidt were unfit to be retained as Scoutmasters:

- In order to comply with their responsibility as a chartered organization of the Boy Scouts of America, Defendant South Florida Council was required to make an appropriate investigation of Defendant Scoutmasters Howard Crompton and Andrew Schmidt [D. E. 20 - Amended Complaint ¶ 119].
- Defendant South Florida Council failed to make an appropriate investigation of Defendant Scoutmasters Howard Crompton and Andrew Schmidt [D.E. 20 - Amended Complaint ¶ 120].

- An appropriate investigation would have revealed the unsuitability of both Defendant Howard Crompton and Andrew Schmidt for the Scoutmaster positions of trust which Defendant South Florida Council bestowed upon them, in particular their unsuitability for leading the subject hike [D.E. 20 - Amended Complaint].

Moreover, in Paragraph 130 of the Amended Complaint [D.E. 20], the Plaintiffs set forth additional acts and/or omissions on the part of Defendant South Florida Council which establish negligent retention of Defendant Scoutmasters Crompton and Schmidt:

- Failing to adequately, properly, and timely review the performance of Defendants Howard K. Crompton and Andrew L. Schmidt as Scoutmasters;
- Failing to ensure that Howard K. Crompton and Andrew L. Schmidt could competently and safely plan and conduct a 20 mile hike in the Florida Everglades without endangering the lives of the scouts on the hike;
- Retaining Howard K. Crompton and Andrew L. Schmidt as Scoutmasters when they were not properly and adequately trained, instructed, or versed in acting as Scoutmasters;
- Retaining Scoutmasters Howard K. Crompton and Andrew L. Schmidt as Scoutmasters when they did not display a proper degree of reasonable care in the performance of Scouting activities;

While the entirety of the facts will be fleshed out in discovery, the allegations contained in the Plaintiffs' Amended Complaint are more than sufficient for an initial pleading, and certainly state a cause of action for negligent retention. As previously stated, Fed. R. Civ. P. 8(a), requires only a "short and plain statement of the claim showing that the pleader is entitled to relief,"and all well-pled allegations must be accepted as true. As such, Defendant South Florida Council's Motion to Dismiss Count VII should be denied.

VI. Plaintiffs' Claim For Negligent Supervision Properly and Sufficiently States A Claim for Relief

Defendant South Florida Council's negligent supervision of Defendant Scoutmasters Howard K. Crompton and Andrew L. Schmidt is sufficiently pled in the Amended Complaint [D.E. ¶¶134-139]. The allegations regarding the relationship between Defendant South Florida Council, the Defendant Scoutmasters, and Michael Sclawy-Adelman, are set forth in part V herein, and are incorporated in Plaintiffs' claim for Negligent Supervision in Count VIII of the Amended Complaint [D.E. 20 ¶134].

To prevail on a theory of negligent supervision, a plaintiff must prove the existence of a duty on the part of the defendant to protect the plaintiff from injury; the failure of the defendant to perform that duty, and injury to the plaintiff proximately caused by such failure. *See e.g.*, John Morrell & Co. v. Royal Caribbean Cruises, Ltd., 534 F. Supp. 2d 1345, 1350 (S.D. Fla. 2008).

The duty to use reasonable care, and the elements thereof, were discussed in Part III herein. In addition, the Plaintiffs have pled that Defendant South Florida Council permitted Defendant Scoutmasters Howard Crompton and Andrew Schmidt to exercise leadership over Michael Sclawy-Adelman, and other young Boy Scouts, without properly supervising them. In addition to the allegations set forth in Part V herein, the Plaintiffs alleged in Paragraph 136 of the Amended Complaint [D.E. 20 ¶136], that Defendant South Florida Council failed to use reasonable care in the supervision of the Defendant Scoutmasters by:

- Failing to prevent these Scoutmasters from conducting a 20 mile hike through the Florida Everglades in 100 degree Fahrenheit temperatures;
- Failing to ensure that these Scoutmasters were properly and adequately conducting Scouting activities;

- Failing to ensure that these Scoutmasters were properly and adequately instructed and trained in conducting Scouting activities;
- Failing to ensure that these Scoutmasters were properly and adequately abiding by National, State, and Local guidelines and standards, including those of the Boys Scouts of America, for conducting Scouting activities, in particular, hiking;
- Failing to properly and timely review the performance of Scoutmasters Howard K. Crompton and Andrew L. Schmidt;
- Failing to ensure that Howard K. Crompton and Andrew L. Schmidt could competently and safely lead a 20 mile hike in the Florida Everglades in 100 degree heat without endangering the lives of the scouts on the hike;

Once again, the Plaintiffs are not required to prove their case at the pleading stage, which is what the Defendant apparently would have the Plaintiffs do. Fed. R. Civ. P. 8(a), requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." The Plaintiffs have complied with this pleading requirement. As such, Defendant South Florida Council's Motion to Dismiss Count VIII should be denied.

WHEREFORE, The Plaintiffs respectfully request that this Honorable Court enter an order denying Defendant South Florida Council's Motion to Dismiss Counts VII and VIII of the Amended Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 1, 2010, 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/ MARK A. SYLVESTER
MARK A. SYLVESTER

SERVICE LIST

HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN
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BOY SCOUTS OF AMERICA, et al
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

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