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GMG:

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:10-CV-22236-ASG
District Ct. Judge: Alan S. Gold

Magistrate Judge: Chris M. McAiley

HOWARD ADELMAN and
JUDITH SCLAWY-ADELMAN, as
Co-Personal Representatives of THE
ESTATE OF MICHAEL SCLAWY-
ADELMAN,

Plaintiffs

vs.

BOY SCOUTS OF AMERICA, a foreign
corporation, THE SOUTH FLORIDA
COUNCIL, INC., BOY SCOUTS OF
AMERICA, PLANTATION UNITED
METHODIST CHURCH, HOWARD K.
CROMPTON, individually, and
ANDREW L. SCHMIDT, individually,

Defendants

**DEFENDANT PLANTATION UNITED METHODIST CHURCH'S ANSWER, FIRST
AMENDED AFFIRMATIVE DEFENSES, AND DEMAND FOR JURY TRIAL**

Defendant, PLANTATION UNITED METHODIST CHURCH, by and through the undersigned counsel, in accordance with the Federal Rules of Civil Procedure and Florida law, hereby files this Answer, First Amended Affirmative Defenses, and Demand for Jury Trial and responds as follows to the Plaintiffs' Amended Complaint:

1. Admitted.
2. Admitted.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
4. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
5. Admitted that there were two minor Boy Scouts on the Hike. Otherwise, denied.
6. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
7. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
8. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
9. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
10. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
11. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.
12. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

-THE PARTIES-

The Plaintiffs

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

Defendant Boy Scouts of America

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

16. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

17. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

18. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

Defendant South Florida Council

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

21. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

Defendant Plantation United Methodist Church

24. Admitted.

25. Admitted that Defendant, Plantation United Methodist Church, received a charter from the Defendant, Boy Scouts of America that allowed Defendant, Plantation United Methodist Church, to host a Boy Scout troop. Otherwise, denied.

26. Denied.

27. Denied.

Defendant Howard K. Crompton

28. Admitted.

29. Admitted.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

Defendant Andrew L. Schmidt

31. Admitted.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

33. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation and therefore denies the allegation.

JURISDICTION

34. Admitted.

COUNT I

NEGLIGENCE OF HOWARD K. CROMPTON

The allegations contained in Count I are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 35 through 44 (Count I).

COUNT II

NEGLIGENT SUPERVISION BY HOWARD K. CROMPTON

The allegations contained in Count II are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 45 through 52 (Count II).

COUNT III

NEGLIGENCE OF ANDREW L. SCHMIDT

The allegations contained in Count III are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 53 through 62 (Count III).

COUNT IV

NEGLIGENT SUPERVISION BY DEFENDANT ANDREW L. SCHMIDT

The allegations contained in Count IV are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant,

Defendant denies the truth of each and every allegation set forth in paragraphs 63 through 70 (Count IV).

COUNT V

NEGLIGENCE OF BOY SCOUTS OF AMERICA

The allegations contained in Count V are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 71 through 94 (Count V).

COUNT VI

NEGLIGENCE OF THE SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA

The allegations contained in Count VI are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 95 through 111 (Count VI).

COUNT VII

THE SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA: NEGLIGENT SELECTION AND RETENTION OF SCOUTMASTERS

The allegations contained in Count VII are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 112 through 133 (Count VII).

COUNT VIII

THE SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA: NEGLIGENT SUPERVISION

The allegations contained in Count VIII are not directed at this Defendant and therefore a response is not required. However, to the extent that any allegations implicate this Defendant, Defendant denies the truth of each and every allegation set forth in paragraphs 134 through 139 (Count VIII).

COUNT IX

NEGLIGENCE OF PLANTATION UNITED METHODIST CHURCH

Defendant denies the truth of each and every allegation set forth in paragraphs 140 through 151 (Count IX) and demands strict proof thereof.

COUNT X

NEGLIGENCE OF PLANTATION UNITED METHODIST CHURCH: NEGLIGENT SELECTION AND RETENTION OF SCOUTMASTERS

Defendant denies the truth of each and every allegation set forth in paragraphs 152 through 173 (Count X) and demands strict proof thereof.

COUNT XI

PLANTATION UNITED METHODIST CHURCH: NEGLIGENT SUPERVISION

Defendant denies the truth of each and every allegation set forth in paragraphs 174 through 179 (Count XI) and demands strict proof thereof.

COUNT XII

PLANTATION UNITED METHODIST CHURCH: VICARIOUS LIABILITY FOR ACTS OF HOWARD K. CROMPTON

Defendant denies the truth of each and every allegation set forth in paragraphs 180 through 191 (Count XII) and demands strict proof thereof.

COUNT XIII

**NEGLIGENCE OF PLANTATION UNITED METHODIST CHURCH: VICARIOUS
LIABILITY FOR ACTS OF ANDREW L. SCHMIDT**

Defendant denies the truth of each and every allegation set forth in paragraphs 192 through 204 (Count XIII) and demands strict proof thereof.

Each and every allegation within Plaintiffs' Complaint not specifically admitted herein is denied.

DEMAND FOR JURY TRIAL

PLANTATION UNITED METHODIST CHURCH hereby demands trial by jury.

FIRST AFFIRMATIVE DEFENSE

The Decedent's negligence contributed to and was the proximate cause of the tragic and unfortunate death and the injuries complained of by the Plaintiffs in this action. By reason of said negligence, any recovery by the Plaintiffs in this case should be correspondingly reduced in accordance with that negligence of the Decedent which contributed to the causing of the incident, in accordance with the principles of comparative negligence as adopted by the Florida Supreme Court.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' negligence contributed to and was the proximate cause of the tragic and unfortunate death of the Decedent and injuries complained of by Plaintiffs in this action. By reason of said negligence, any recovery by the Plaintiffs in this case should be correspondingly reduced in accordance with that negligence of the Plaintiffs which contributed to the causing of the incident, in accordance with the principles of comparative negligence as adopted by the Florida Supreme Court.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' damages herein were partially or totally caused by non-parties or persons over whom these Defendants had no dominion or control and, therefore, Defendants seek entitlement to the defenses and privileges set forth in Section 768.81(3) Florida Statutes, with respect to apportionment of fault principles. Specifically, Defendant affirmatively avers that any alleged damages were the result of negligence on the part of the U.S. Department of the Interior National Park Service (which processed a Backcountry Use Permit for the subject hike), and which was not under the care, custody or control of Defendant; and therefore, the Plaintiffs are unable to recover in whole or in part as against this Defendant. See Fabre v. Marin, 623 So.2d 1182 (Fla. 1993). Pursuant to Nash v. Wells Fargo Guard Service, Inc., 678 So.2d 1262 (Fla. 1996), this Defendant may seek amendment to identify other such non-parties or persons as they become known and with due notice to Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs expressly and/or impliedly consented to all, or part of actions, which Plaintiffs allege were the cause of any/or all of their alleged damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against PLANTATION UNITED METHODIST CHURCH are barred, in whole or in part, by the doctrine of waiver, pursuant to the terms and conditions of the "PARENT PERMISSION FORM" executed by Michael Sclawy-Adelman's parent/guardian on August 20, 2008.

SIXTH AFFIRMATIVE DEFENSE

Defendants are entitled to a set-off for all sums of money, by settlement or judgment or otherwise entered into and received by Plaintiff from any party or non-party to this action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against PLANTATION UNITED METHODIST CHURCH are barred, in whole or in part, by the doctrine of release, pursuant to the terms and conditions of the "PARENT PERMISSION FORM" executed by Michael Sclawy-Adelman's parent/guardian on August 20, 2008.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against PLANTATION UNITED METHODIST CHURCH are barred because Plaintiffs expressly assumed the risks of the hike, and therefore they may not recover.

NINTH AFFIRMATIVE DEFENSE

Defendant PLANTATION UNITED METHODIST CHURCH exercised no control over the scouting activities of Troop No. 111. Thus, as a matter of law, PLANTATION UNITED METHODIST CHURCH did not exercise sufficient control over the scouting activities of Troop No. 111 to give rise to any duty owing to the Decedent as a participant in those activities.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one December 3, 2010, I electronically filed the foregoing with the Clerk of the Southern District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

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