

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

**Miami Division**

Howard Adelman and Judith Sclaway-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.

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

District Ct. Judge: Alan S. Gold

Magistrate Judge: Chris M. McAiley

**DEFENDANT'S, SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA,  
ANSWER AND FIRST AMENDED AFFIRMATIVE DEFENSES TO PLAINTIFFS'  
AMENDED COMPLAINT**

COMES NOW, Defendant, South Florida Council Inc., Boy Scouts of America, ("South Florida Council") by and through its undersigned counsel, and pursuant to Local Rule 15.1 of the United States District Court for the Southern District of Florida, Federal Rule of Civil Procedure 15(a)(2) and the Order Establishing Pretrial Dates and Procedures, files its Answer and *First Amended* Affirmative Defenses to Plaintiffs' Amended Complaint as follows:

Each and every allegation of Plaintiffs' Amended Complaint not expressly admitted herein is denied.

1. Admitted.
2. Admitted that Michael Sclawy-Adelman was a member of Boy Scout Troup 111, sponsored by Plantation United Methodist Church which is located in the Pine Island District of the South Florida Council.

3. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3, and therefore denies paragraph 3 in its entirety and demands strict proof thereof.
4. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4, and therefore denies paragraph 4 in its entirety and demands strict proof thereof.
5. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5, and therefore denies paragraph 5 in its entirety and demands strict proof thereof.
6. Defendant denies paragraph 6 in its entirety and demands strict proof thereof.
7. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7, and therefore denies paragraph 7 in its entirety and demands strict proof thereof.
8. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8, and therefore denies paragraph 8 in its entirety and demands strict proof thereof.
9. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9, and therefore denies paragraph 9 in its entirety and demands strict proof thereof.
10. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10, and therefore denies paragraph 10 in its entirety and demands strict proof thereof.

11. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11, and therefore denies paragraph 11 in its entirety and demands strict proof thereof.

12. Defendant admits that Michael Sclawy-Adelman died on May 9, 2009; however, Defendant is without knowledge to either admit or deny the remaining allegations in paragraph 12, and therefore denies the remaining allegations in paragraph 12 and demands strict proof thereof.

## **THE PARTIES**

### **The Plaintiffs**

13. Admitted.

14. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14, and therefore denies paragraph 14 in its entirety and demands strict proof thereof.

### **Defendant Boy Scouts of America**

15. Admitted that the Boy Scouts of America is authorized by the United States Congress to make available the scouting program within the United States, including the State of Florida.

16. Admitted that the Boy Scouts of America Headquarters is located in Irving, Texas.

17. Defendant denies paragraph 17 as worded and demands strict proof thereof.

18. Admitted only that Boy Scouts of America develops programs; and sets and maintains quality standards in training, leadership selection, uniforms, registration records, literature development, and advanced requirements for the scouting movement. Defendant denies the remainder of paragraph 18 as worded and demands strict proof thereof.

19. Admitted.

**Defendant South Florida Council**

20. Defendant denies paragraph 20 in that Defendant does not “do business.” However, Defendant admits that it is a non-profit corporation serving the communities of Broward, Miami-Dade and Monroe County, Florida.

21. Admitted.

22. Defendant denies paragraph 22 as worded and demands strict proof thereof.

23. Defendant denies paragraph 23 as worded and demands strict proof thereof.

**Defendant Plantation United Methodist Church**

24. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24, and therefore denies paragraph 24 in its entirety and demands strict proof thereof.

25. Admitted.

26. Defendant admits that Plantation United Methodist Church is a chartered organization, and either the Church or a troop committee operates Troop 111. Defendant denies the remainder of paragraph 26 as worded and demands strict proof thereof.

27. Defendant admits that Plantation United Methodist Church is a chartered organization, and either the Church or a troop committee operates Troop 111. Defendant denies the remainder of paragraph 27 as worded and demands strict proof thereof.

**Defendant Howard K. Crompton**

28. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28, and therefore denies paragraph 28 in its entirety and demands strict proof thereof.

29. Admitted.

30. Defendant denies paragraph 30 as worded and demands strict proof thereof.

**Defendant Andrew L. Schmidt**

31. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31, and therefore denies paragraph 31 in its entirety and demands strict proof thereof.

32. Defendant denies paragraph 32 as worded and demands strict proof thereof.

33. Defendant denies paragraph 33 as worded and demands strict proof thereof.

**JURISDICTION**

34. Admitted that this Court has original jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. 1441. Also admitted that this cause was removed by the Defendants from the Circuit Court for the Eleventh Judicial Circuit, Miami-Dade County, Florida.

**COUNT I**  
**NEGLIGENCE OF HOWARD K. CROMPTON**

35. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34, as if fully stated herein.

36. The allegations in paragraph 36 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

37. The allegations in paragraph 37 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

38. The allegations in paragraph 38 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

39. The allegations in paragraph 39 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

40. The allegations in paragraph 40 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

41. The allegations in paragraph 41 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

42. The allegations in paragraph 42 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

43. The allegations in paragraph 43 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

44. The allegations in paragraph 44 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

**COUNT II**  
**NEGLIGENT SUPERVISION BY HOWARD K. CROMPTON**

45. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34 as if fully stated herein.

46. The allegations in paragraph 46 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

47. The allegations in paragraph 47 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

48. The allegations in paragraph 48 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

49. The allegations in paragraph 49 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

50. The allegations in paragraph 50 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

51. The allegations in paragraph 51 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

52. The allegations in paragraph 52 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

**COUNT III**  
**NEGLIGENCE OF ANDREW L. SCHMIDT**

53. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34 as if fully stated herein.

54. The allegations in paragraph 54 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

55. The allegations in paragraph 55 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

56. The allegations in paragraph 56 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

57. The allegations in paragraph 57 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

58. The allegations in paragraph 58 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

59. The allegations in paragraph 59 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

60. The allegations in paragraph 60 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

61. The allegations in paragraph 61 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

62. The allegations in paragraph 62 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

**COUNT IV**  
**NEGLIGENT SUPERVISION BY ANDREW L. SCHMIDT**

63. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34 as if fully stated herein.

64. The allegations in paragraph 64 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

65. The allegations in paragraph 65 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

66. The allegations in paragraph 66 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

67. The allegations in paragraph 67 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

68. The allegations in paragraph 68 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

69. The allegations in paragraph 69 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

70. The allegations in paragraph 70 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

**COUNT V**  
**NEGLIGENCE OF BOY SCOUTS OF AMERICA**

71. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34 as if fully stated herein.



72. The allegations in paragraph 72 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
73. The allegations in paragraph 73 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
74. The allegations in paragraph 74 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
75. The allegations in paragraph 75 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
76. The allegations in paragraph 76 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
77. The allegations in paragraph 77 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
78. The allegations in paragraph 78 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
79. There is no paragraph 79 in the Amended Complaint.
80. The allegations in paragraph 80 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
81. The allegations in paragraph 81 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
82. The allegations in paragraph 82 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
83. The allegations in paragraph 83 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

84. The allegations in paragraph 84 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
85. The allegations in paragraph 85 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
86. The allegations in paragraph 86 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
87. The allegations in paragraph 87 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
88. The allegations in paragraph 88 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
89. The allegations in paragraph 89 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
90. The allegations in paragraph 90 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
91. The allegations in paragraph 91 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
92. The allegations in paragraph 92 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
93. The allegations in paragraph 93 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
94. The allegations in paragraph 94 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

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

95. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34 as if fully stated herein.
96. Defendant denies the first sentence of paragraph 96 and demands strict proof thereof. Defendant denies the second sentence of paragraph 96 as worded and demands strict proof thereof.
97. Defendant denies paragraph 97 as worded and demands strict proof thereof.
98. Defendant denies paragraph 98 as worded and demands strict proof thereof.
99. Admitted that Defendant made training classes available; however, Defendant is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 99 (i.e. the extent to which individuals took advantage of the available training), and therefore denies the remainder of paragraph 99 and demands strict proof thereof.
100. Admitted.
101. Defendant denies paragraph 101 as worded and demands strict proof thereof.
102. Defendant denies paragraph 102 as worded and demands strict proof thereof. However, Defendant does admit that it made available training classes, a service center, literature, council owned camps and record keeping for advancements.
103. Defendant denies paragraph 103 as worded and demands strict proof thereof. However, Defendant admits that it retains a record of advancements reported by troops.
104. Defendant denies paragraph 104 as worded and demands strict proof thereof. However, Defendant admits only that South Florida Council makes training available to youth and adult troop members.

105. Defendant denies paragraph 105 as worded and demands strict proof thereof. However, Defendant admits that it maintains membership records and advancement records for youth and adult members of troops.
106. Defendant admits that it owes those duties that are required under Florida law.
107. Defendant denies paragraph 107 and demands strict proof thereof.
108. Defendant denies paragraph 108 and demands strict proof thereof.
109. Defendant denies paragraph 109 and demands strict proof thereof.
110. Defendant denies paragraph 110 and demands strict proof thereof.
111. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 111, and therefore denies paragraph 111 in its entirety and demands strict proof thereof.

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

112. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34, and 96-105 as if fully stated herein.
113. Defendant denies paragraph 113 and stated. However, Defendant admits that in a healthy troop it is anticipated that the younger Boy Scouts will follow the leadership of the older Boy Scouts and the leadership of the parents active in their troop.
114. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations as it relates to Plaintiffs actions or collective state of mind in paragraph 114, and therefore denies paragraph 114 in its entirety and demands strict proof thereof.
115. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations as it relates to Plaintiffs actions or collective state of mind in paragraph

in paragraph 115, and therefore denies paragraph 115 in its entirety and demands strict proof thereof.

116. Defendant admits that Howard Crompton and Andrew Schmidt were qualified to conduct the hike and provide reasonable care for the health, safety and well-being of the participants, as were the older scouts in the hike. All other allegations including those of the Plaintiffs' collective state of mind are denied and Defendant demands strict proof thereof.

117. Defendant admits that it made training sessions available. However, Defendant denies paragraph 117 as worded (in that Defendant does not select or retain scoutmasters; a scout master is identified, selected and retained by the troop sponsor or the troop committee of parents) and Defendant demands strict proof thereof.

118. Defendant denies paragraph 118 as worded. However, Defendant denies paragraph 118 as worded (in that Defendant does not select or retain scoutmasters; a scout master is identified, selected and retained by the troop sponsor or the troop committee of parents) and Defendant demands strict proof thereof.

119. Defendant denies paragraph 119 as worded. However, Defendant admits that it did use the services of a third party provider of background investigations.

120. Defendant denies paragraph 120 and demands strict proof thereof.

121. Defendant denies paragraph 121 and demands strict proof thereof.

122. Defendant denies paragraph 122 and demands strict proof thereof.

123. Defendant denies paragraph 123 and demands strict proof thereof.

124. Defendant denies paragraph 124 and demands strict proof thereof.

125. Defendant denies paragraph 125 and demands strict proof thereof.

126. Defendant denies paragraph 126 and demands strict proof thereof.

127. Defendant denies paragraph 127 and demands strict proof thereof.

128. Defendant denies paragraph 128 as worded and demands strict proof thereof but refers Plaintiffs to Defendant's answer to paragraph number 117.
129. Defendant denies paragraph 129 as worded and demands strict proof thereof but refers Plaintiffs to Defendant's answer to paragraph number 117.
130. Defendant denies paragraph 130, including all subparts, and demands strict proof thereof but refers Plaintiffs to Defendant's answer to paragraph number 117.
131. Defendant denies paragraph 131 and demands strict proof thereof.
132. Defendant denies paragraph 132 and demands strict proof thereof.
133. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 133, and therefore denies paragraph 133 in its entirety and demands strict proof thereof.

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

134. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34, and 96-105, and 113-128 as if fully stated herein.
135. Defendant denies paragraph 135 as worded (in that Defendant holds no supervisory capacity over Howard K. Crompton or Andrew L. Schmidt) and demands strict proof thereof.
136. Defendant denies paragraph 136, including all subparts, and demands strict proof thereof.
137. Defendant denies paragraph 137 and demands strict proof thereof.
138. Defendant denies paragraph 138 and demands strict proof thereof.
139. Defendant is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 139, and therefore denies paragraph 139 in its entirety and demands strict proof thereof.

**COUNT IX**  
**NEGLIGENCE OF PLANTATION UNITED METHODIST CHURCH**

140. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34, as if fully stated herein.
141. The allegations in paragraph 141 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
142. The allegations in paragraph 142 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
143. The allegations in paragraph 143 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
144. The allegations in paragraph 144 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
145. The allegations in paragraph 145 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
146. The allegations in paragraph 146 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
147. The allegations in paragraph 147 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
148. The allegations in paragraph 148 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
149. The allegations in paragraph 149 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
150. The allegations in paragraph 150 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

151. The allegations in paragraph 151 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

**COUNT X**  
**PLANTATION UNITED METHODIST CHURCH:**  
**NEGLIGENT SELECTION AND RETENTION OF SCOUTMASTERS**

152. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33 and 141-145, as if fully stated herein.

153. The allegations in paragraph 153 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

154. The allegations in paragraph 154 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

155. The allegations in paragraph 155 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

156. The allegations in paragraph 156 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

157. The allegations in paragraph 157 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

158. The allegations in paragraph 158 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

159. The allegations in paragraph 159 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

160. The allegations in paragraph 160 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

161. The allegations in paragraph 161 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.



162. The allegations in paragraph 162 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
163. The allegations in paragraph 163 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
164. The allegations in paragraph 164 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
165. The allegations in paragraph 165 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
166. The allegations in paragraph 166 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
167. The allegations in paragraph 167 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
168. The allegations in paragraph 168 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
169. The allegations in paragraph 169 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
170. The allegations in paragraph 170 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
171. The allegations in paragraph 171 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
172. The allegations in paragraph 172 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
173. The allegations in paragraph 173 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

**COUNT XI**  
**PLANTATION UNITED METHODIST CHURCH:**  
**NEGLIGENT SUPERVISION**

174. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34, 141-145 and 153-168, as if fully stated herein.
175. The allegations in paragraph 175 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
176. The allegations in paragraph 176 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
177. The allegations in paragraph 177 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
178. The allegations in paragraph 178 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
179. The allegations in paragraph 179 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

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

180. Defendant re-alleges and incorporates by reference their answers to paragraphs 1 through 34, as if fully stated herein.
181. The allegations in paragraph 181 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
182. The allegations in paragraph 182 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
183. The allegations in paragraph 183 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

184. The allegations in paragraph 184 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
185. The allegations in paragraph 185 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
186. The allegations in paragraph 186 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
187. The allegations in paragraph 187 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
188. The allegations in paragraph 188 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
189. The allegations in paragraph 189 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
190. The allegations in paragraph 190 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
191. The allegations in paragraph 191 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

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

192. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 34, as if fully stated herein.
193. The allegations in paragraph 193 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
194. The allegations in paragraph 194 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

195. The allegations in paragraph 195 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
196. The allegations in paragraph 196 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
197. The allegations in paragraph 197 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
198. The allegations in paragraph 198 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
199. The allegations in paragraph 199 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
200. The allegations in paragraph 200 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
201. The allegations in paragraph 201 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
202. The allegations in paragraph 202 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
203. The allegations in paragraph 203 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.
204. The allegations in paragraph 204 are directed toward another Defendant. As such, the allegations do not require a response from the South Florida Council.

## **AFFIRMATIVE DEFENSES**

205. For its first affirmative defense, Defendant affirmatively avers that Plaintiffs' Complaint fails to state a claim upon which relief can be granted for negligence against The South Florida Council Inc., Boy Scouts of America.
206. For its second affirmative defense, Defendant affirmatively avers that the evidence may show that the death of Michael Sclawy-Adelman was proximately caused by the negligence of the Plaintiffs and/or Michael Sclawy-Adelman, and therefore, Plaintiffs would be barred from recovery against Defendant.
207. For its third affirmative defense, Defendant affirmatively avers that the evidence may show that the Plaintiffs and/or Michael Sclawy-Adelman were comparatively negligent and that to the extent that his death was caused by Defendant in any way, Plaintiffs' recovery shall be reduced in accordance with Plaintiffs' and/or Michael Sclawy-Adelman's respective comparative negligence.
208. For its fourth affirmative defense, Defendant affirmatively avers that the evidence may show that Michael Sclawy-Adelman's death resulted from an intervening and superseding cause not related to any actions or inactions on behalf of the Defendant.
209. For its fifth affirmative defense, Defendant affirmatively avers that it is entitled to a set-off from any and all collateral sources that have compensated the Plaintiffs for their alleged damages.
210. For its sixth affirmative defense, Defendant affirmatively avers that any alleged damages were the result of negligence on the part of Third Parties who were not under the care, custody or control of Defendant, and therefore the Plaintiffs are unable to recover as against this Defendant.

211. For its seventh affirmative defense, Defendant affirmatively avers that it is not liable for Michael Sclawy-Adelman's death as he was not under the direction or control of this Defendant.
212. For its eighth affirmative defense, Defendant affirmatively avers that the evidence may show that the Plaintiffs and/or Michael Sclawy-Adelman assumed the risk related to the incident.
213. For its ninth affirmative defense, Defendant affirmatively avers that the evidence may show that Michael Sclawy-Adelman's death was proximately caused, in whole or in part, by intervening or superseding causes events that were extraordinary under the circumstances and not foreseeable in the normal course of events.
214. For its tenth affirmative defense, Defendant affirmatively avers that Plaintiff's claims are barred, in whole or in part, to the extent that the evidence shows that Michael Sclawy-Adelman's death was caused by a preexisting or unrelated medical condition, disease or illness.
215. For its eleventh affirmative defense, Defendant affirmatively avers that Plaintiff's claims 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.
216. For its twelfth affirmative defense, Defendant affirmatively avers that Plaintiff's claims 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.
217. For its thirteenth affirmative defense, Defendant affirmatively avers that Plaintiff's claims are barred, in whole or in part, by the doctrine of spoliation, because (upon information and belief) an autopsy was scheduled to be performed by the Collier County Sheriff's Department to

determine the cause of death for Michael Sclawy-Adelman, but as a result of Plaintiffs' instructions, was cancelled. The physical condition at the time of death has been placed in controversy by the plaintiffs, and the medical examiner's autopsy would have been the most medically reasonable method to determine Michael Sclawy-Adelman's physical condition at the time of death. *See In re Certain Asbestos Cases*, 113 F.R.D. 612, 614 (N.D.Tex. 1986); *Hammer v. Rosenthal Jewelers Supply Corp.*, 558 So.2d 460, 461 (Fla. 4<sup>th</sup> DCA 1990).

218. For its fourteenth affirmative defense, 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).

219. This Defendant reserves the right to allege other affirmative defenses as they may arise during the course of discovery.

### **TRIAL BY JURY DEMAND**

220. Defendant demands trial by jury of all issues so triable as a matter of right by jury.

By:\_\_\_\_s/Kevin D. Franz \_\_\_\_\_  
William. S. Reese Esq.  
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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true copy of the foregoing was sent January 5, 2011 to: 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., Grove Plaza Building, 5th floor, 2900 Middle Street, Miami, FL, 33133; Greg Gaebe, Esq., Devang Desai, Esq., Gaebe, Mullen Antonelli, Esco & DiMatteo, 420 S. Dixie Highway, Third Floor, Coral Gables, FL, 33146.

By: \_\_\_\_\_s/Kevin D. Franz\_\_\_\_\_

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