

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

AMERICAN FREEDOM DEFENSE  
INITIATIVE; *et al.*,

Plaintiffs,

v.

SUBURBAN MOBILITY AUTHORITY  
for REGIONAL TRANSPORTATION  
("SMART"), *et al.*,

Defendants.

No. 2:10-cv-12134-DPH-MJH

**DECLARATION OF ROBERT  
J. MUISE**

Hon. Denise Page Hood

Magistrate Judge Hluchaniuk

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I, Robert J. Muise, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge.

1. I am an adult citizen of the United States and co-lead counsel for Plaintiffs in the above-captioned case. I have personal knowledge of the matters set forth in this declaration.

2. Attached to this declaration as Exhibit A is a true and correct copy of Plaintiffs' First Request for Production of Documents pursuant to Rule 34 of the Federal Rules of Civil procedure that was served on Defendants on February 11, 2013.

3. Attached to this declaration as Exhibit B are true and correct copies of Defendants' response to Plaintiffs' First Request for Production of Documents and certificate of service indicating that Defendants served their responsive documents on March 15, 2013.

4. Attached to this declaration as Exhibit C are true and correct copies of some of the documents produced by Defendants in response to Plaintiffs' First Request for Production of Documents.

5. Attached to this declaration as Exhibit D are true and correct copies of excerpts of the deposition of Defendant SMART taken pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. The designated witness for this deposition was Anthony Chubb, SMART's Assistant General Counsel.

6. Attached to this declaration as Exhibit E are true and correct copies of relevant emails between and amongst counsel for the parties, the contents of which are referenced in Plaintiffs' brief filed in support of their motion to compel.

7. Attached to this declaration as Exhibit F is a true and correct copy of the first privilege log produced by Defendants on June 5, 2013.

8. Attached to this declaration as Exhibit G is a true and correct copy of the revised privilege log produced by Defendants on June 11, 2013.

9. A “meet-and-confer” conference call to discuss the issues presented in Plaintiffs’ motion to compel was held on Monday, June 17, 2013. The conference commenced at approximately 1 p.m. and concluded at approximately 2 p.m. During this conference, the parties were unable to resolve the discovery dispute. At the conclusion of the call, however, Plaintiffs’ counsel, Mr. David Yerushalmi, suggested that the parties file a joint motion requesting an *in camera* review of the documents at issue by the magistrate judge. Defendants’ counsel, Mr. Christian Hildebrandt, requested 48 hours (until Wednesday, June 19, 2013) to consider this option. When Plaintiffs’ counsel reached out to Defendants’ counsel at approximately 5 p.m. on June 19, 2013 (3 hours past the deadline) by email, noting that Defendants had asked for 48 hours and asking for Defendants’ position on the matter, Defendants’ counsel responded by email as follows: “You’re right. My oversight. We do not want to participate in a joint motion. We believe our privilege has been preserved and that our log complies with the Court Rules.” A true and correct copy of the email exchange referenced in this paragraph is included in Exhibit E to this declaration.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 21st day of June, 2013.

/s/ Robert J. Muise  
Robert J. Muise, Esq.