

# EXHIBIT A

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

AMERICAN FREEDOM DEFENSE  
INITIATIVE; PAMELA GELLER; and  
ROBERT SPENCER,

Plaintiffs,

v.

SUBURBAN MOBILITY AUTHORITY  
for REGIONAL TRANSPORTATION  
("SMART"); GARY L. HENDRICKSON,  
individually and in his official capacity as  
Chief Executive of SMART; JOHN  
HERTEL, individually and in his official  
capacity as General Manager of SMART;  
and BETH GIBBONS, individually and in  
her official capacity as Marketing Program  
Manager of SMART,

Defendants.

2:10-cv-12134-DPH-MJH

**PLAINTIFFS' FIRST  
REQUEST FOR PRODUCTION  
OF DOCUMENTS**

Hon. Denise Page Hood

Magistrate Judge Hluchaniuk

Plaintiffs American Freedom Defense Initiative ("FDI"), Pamela Geller, and Robert Spencer (collectively "Plaintiffs") request that Defendant Suburban Mobility Authority for Regional Transportation ("Defendant" or "SMART"), pursuant to Fed. R. Civ. P. 34, produce and permit inspection and copying at an agreeable and convenient time and place of the following documents and records within thirty (30) days from the date of this request.

**INSTRUCTIONS**

1. In responding to this request, furnish all documents, however obtained, that are available to or in possession or control of yourself, your agents, and your attorneys.
2. Please produce documents in reasonably useable form.
3. Identify any documents responsive to this request that have been destroyed and state the circumstances of their destruction.

4. If you cannot respond to this request in full after exercising due diligence to secure the documents, so state and respond to the extent possible, specifying your inability to provide the remaining documents, stating whatever information or knowledge you have concerning the remaining documents, and detailing what you did in attempting to secure the documents.

5. If you object to a request on the grounds of privilege or work product, provide documents or portions of documents with such non-privileged information as is responsive, identify the nature of the information withheld as privileged, and specify the basis for your claim of privilege. List all documents or other information withheld pursuant to the claim of privilege, provide a general description of the information withheld pursuant to the claim of privilege, and identify the specific privilege(s) which provide(s) the basis for nondisclosure of each piece of responsive information.

6. This request shall be deemed to be continuing until and during the course of trial. Information sought by these requests and that you obtain after you respond to these requests must be disclosed to Defendants by supplementary responses.

### **DEFINITIONS**

1. The term “Plaintiffs” refers to any one or all of the Plaintiffs in this matter.

2. The terms “you,” “yourself,” or “your,” as used herein, refer to the individual or entity to whom these requests are addressed, or any person acting expressly as your employee, agent, and/or representative in connection with the matters at issue in this litigation and in connection with the specific documents or other non-privileged items, requested.

3. The term “document,” as used herein, is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without

limitation, electronic or computerized data compilations, videos, recordings, emails, text messages, and photographs. A draft or non-identical copy is a separate document within the meaning of this term.

4. The words “and” and “or,” as used herein, shall be construed either conjunctively or disjunctively, as required by the context, to bring within the scope of these requests any information that might be deemed outside their scope by any other construction.

5. As used herein, the terms “any” and “all” shall both mean “any and all” as appropriate to bring within the scope of these discovery requests information and documents that might otherwise be considered to be beyond the scope.

6. The following grammatical considerations shall be applicable in reading and responding to the following requests:

- a. the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa;
- b. the use of the masculine form of a pronoun shall also be considered to include within its meaning the feminine form of the pronoun so used, and vice versa; and
- c. the use of any tense of any verb shall also be considered to include within its meaning all other tenses of the verb so used, and the disjunctive includes the conjunctive, and vice versa.

7. The term “Plaintiffs’ Advertisement,” as used herein, refers to the advertisement which is at issue in this litigation and as reproduced as Exhibit B to the Declaration of Pamela Geller filed in support of Plaintiffs’ motion for temporary restraining order and/or preliminary

injunction (Doc. No. 8-4).

8. The term “Advertisement Agreement,” as used herein, refers to the agreement reflected in the documents reproduced as Exhibit E to the Declaration of Pamela Geller filed in support of Plaintiffs’ motion for temporary restraining order and/or preliminary injunction (Doc. No. 8-7).

9. The term “Plaintiffs’ Emails,” as used herein, refers to the emails reflected in the documents reproduced as Exhibits F, I, and J to the Declaration of Pamela Geller filed in support of Plaintiffs’ motion for temporary restraining order and/or preliminary injunction (respectively, Doc. Nos. 8-8, 8-11, and 8-12).

10. The term “Pro-Atheism Advertisement,” as used herein, refers to the advertisement approved by SMART and reproduced as Exhibit G to the Declaration of Pamela Geller filed in support of Plaintiffs’ motion for temporary restraining order and/or preliminary injunction (Doc. No. 8-9).

11. The term “Advertisement Guidelines,” as used herein, refers to the advertisement guidelines, policies, and procedures in use by SMART and applied to deny Plaintiffs’ Advertisement at the time relevant to this litigation.

12. The term “Written Advertisement Guidelines,” as used herein, refers to the written advertisement guidelines reflected in the documents reproduced as Exhibit H to the Declaration of Pamela Geller filed in support of Plaintiffs’ motion for temporary restraining order and/or preliminary injunction (Doc. No. 8-10).

13. As used herein, the term “relating to” means and includes “constituting,” “referring to,” “pertaining to,” “evidencing,” “reflecting,” “describing,” or “has anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any

reference or relationship that either (1) provides information with respect to the subject of inquiry, or (2) might lead to individuals who or documents that might possess or contain information with respect to the subject of inquiry. Additionally, the terms “pertaining to,” “relating to,” “related,” “related to,” “relates to,” “regarding,” “referring to,” or “concerning” are used in the broadest sense to mean in any way, whether directly or indirectly, involving, concerning, relating to, referring to, being appropriate for, considering, underlying, modifying, amending, confirming, endorsing, evidencing, representing, supporting, qualifying, terminating, revoking, canceling, or negating.

14. The terms “plaintiffs” and “defendant(s),” as used herein, as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, board members, directors, employees, agents, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

### **PRODUCTION REQUESTS**

1. A copy of any and all documents evidencing or relating to SMART’s Advertising Guidelines.

#### **Response to Request:**

2. A copy of any and all documents evidencing or relating to any advertising guidelines, policies, and procedures utilized by SMART at any time up to and including the rejection of Plaintiffs’ Advertisement not otherwise included in request for production No. 1 above.

#### **Response to Request:**

3. A copy of any and all documents evidencing or relating to SMART's Written Advertisement Guidelines.

**Response to Request:**

4. A copy of any and all documents evidencing or relating to SMART's written advertisement guidelines, policies, and procedures utilized by SMART at any time up to and including the rejection of Plaintiffs' Advertisement not otherwise included in request for production No. 3 above.

**Response to Request:**

5. A copy of any and all documents evidencing or relating to Defendants' decision to adopt the advertisement guidelines, policies, and/or procedures utilized by SMART to deny Plaintiffs' advertisement.

**Response to Request:**

6. A copy of any and all documents evidencing or relating to communications, notes, and/or memoranda related to or referencing Plaintiffs' Advertisement, including correspondence related to the decision to deny Plaintiffs' Advertisement.

**Response to Request:**

7. A copy of all documents evidencing or relating to advertisements to date that were accepted by SMART under the Advertisement Guidelines, including all correspondence related to the decisions to accept such advertisements.

**Response to Request:**

8. A copy of all documents evidencing or relating to the Pro-Atheism Advertisement.

**Response to Request:**

9. A copy of any and all documents relating to Plaintiffs' Emails.

**Response to Request:**

10. A copy of any and all documents evidencing or relating to the Advertisement Agreement.

**Response to Request:**

11. A copy of all documents evidencing or relating to advertisements to date that were rejected by SMART under the Advertisement Guidelines, including all correspondence related to the decisions to reject such advertisements.

**Response to Request:**

12. A copy of any and all documents evidencing or relating to the revenues earned by SMART for advertisements from 2005 to the present.

**Response to Request:**

13. A copy of any and all documents evidencing or relating to communications from persons not affiliated directly with Defendants expressing opinions about the content or propriety of Plaintiffs' Advertisement.

**Response to Request:**

14. A copy of any and all documents evidencing or relating to communications from persons not affiliated directly with Defendants expressing opinions about the content or propriety of advertisements reflected in the documents responsive to request for productions Nos. 8 and 12.

**Response to Request:**

[Signature page follows.]



Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2013, a copy of the foregoing was served upon all counsel of record by email service per prior written agreement.

/s/ David Yerushalmi  
David Yerushalmi