

THE PORT AUTHORITY OF NY & NJ

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October 18, 2013

VIA FACSIMILE (212-264-1085)

Honorable Richard K. Eaton
United States District Court
Southern District of New York
One Federal Plaza
New York, NY 10278-0001

**Re: Weisshaus v. The Port Authority of New York and New Jersey, et al.
11 Civ. 6616**

Dear Judge Eaton:

This office represents The Port Authority of New York and New Jersey (the "Port Authority") in the above-referenced *pro se* action. Although the Port Authority has not been served with process in this case, it has submitted briefs to the Second Circuit and U.S. Supreme Court to aid the Courts. This letter is submitted in opposition to Yoel Weisshaus's letter of August 21, 2013 requesting leave to amend his complaint challenging the Port Authority's 2011 toll increases at its tunnels and bridges.

While leave to amend is generally freely given, it would serve no purpose at this time since Mr. Weisshaus is only seeking to drop certain named defendants and include an express reference to the Dormant Commerce clause. In its September 20, 2012 Order, the Second Circuit affirmed the District Court's *sua sponte* dismissal of Mr. Weisshaus's claims alleging violations of the U.S. Constitution (i.e., the right to travel), the Robinson Patman Act and state law. *Weisshaus v. Port Authority of New York and New Jersey*, 497 Fed. App. 102 (2d Cir. 2012). The Second Circuit did, however, remand to the district court the limited question of whether Weisshaus has adequately pleaded "a challenge to the reasonableness of the tolls under the Dormant Commerce clause "or should be granted leave to amend the claim." In the alternative, the Second Circuit indicated that the district court should "consider staying the action pending a decision in *Automobile Club of New York, Inc. v. Port Authority of New York and New Jersey*, No. 11-CV-6746 (S.D.N.Y. filed September 27, 2011)", (the "AAA Action").

Any possible claim by Mr. Weisshaus under the Dormant Commerce clause would necessarily be identical to the claim before this Court in the (AAA Action). As per the decision of Judge Richard J. Holwell, the Port Authority's motion to dismiss in the AAA Action was

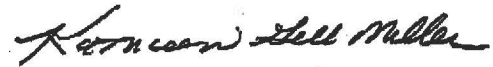
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converted to a motion for summary judgment, which will be heard at the conclusion of discovery and the submission of any additional papers. Since Mr. Weisshaus's claim will be decided by this Court in the *AAA Action*, which is well advanced in the litigation process, proceeding with Mr. Weisshaus's action would merely burden this Court with relitigating the same issues that are before it in the *AAA Action* and could result in unreasonably onerous and duplicative discovery.

For these reasons, the Port Authority respectfully requests that Mr. Weisshaus's application to amend his complaint be denied at this time and that this case be placed on the suspense calendar until the motion for summary judgment in the *AAA Action* has been resolved.

Respectfully submitted,



Kathleen Gill Miller

cc: Yoel Weisshaus
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