

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YOEL WEISSHAUS,

Plaintiff,

vs.

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PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY,

Defendant.

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Case: 11-cv-6616 (RKE)

**AFFIRMATION IN OPPOSITION**

Yoel Weisshaus (hereinafter "Weisshaus"), under the penalty of perjury of 28 U.S.C. § 1746, affirms the following as true to the best of my knowledge:

1. I am the plaintiff in this action, and I have personal knowledge of the facts and circumstances that bear on this motion. I respectfully submit this affirmation in opposition to the motion of the Port Authority of New York and New Jersey ("Port Authority") seeking an order dismissing the verified amended complaint ("amended complaint") dated December 20, 2013, and staying the proceedings. I urge the Court to deny the Port Authority's motion in its entirety.<sup>1</sup>

➤ ***The financial data of the Port Authority never showed any deficit to the ITN.***

2. The Court must deny the Port Authority's motion because the Port Authority failed to dispute the allegations the amended complaint raised, and as such has not established entitlement to the relief prayed for in its motion.

3. The Port Authority may charge a toll to maintain the Integrated Transportation Network ("ITN"; referred to in the amended complaint as "surface river crossings"), which "consists of four bridges, the George Washington Bridge (including a bus station), the Bayonne Bridge, the Goethals Bridge, and the Outerbridge Crossing; two tunnels,

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<sup>1</sup> The motion filed twice is addressed as one motion; compare entries 33 and 34 with 35 and 36.

the Lincoln Tunnel and the Holland Tunnel; the bus terminal at 40th Street and 8th Avenue in Manhattan; the Port Authority Bus Programs; and the PATH railroad system. PATH's lines run from Newark and Hoboken, New Jersey to various points in New York's central business district (the area of Manhattan south of 59th Street)." *Automobile Club of New York v. Port Authority*, 887 F.2d 417, 418 (2nd Cir. 1989). The Port Authority alleges that the ITN operates at a deficit and, based on the 10-Year Capital Plan, by 2020, the deficit will exceed revenues by \$51 million. The Port Authority estimates that it is impossible to spend toll revenues outside the ITN. This allegation is based on a misconception, which does not establish entitlement for judgment. By way of example, the budget balance sheets, show there is no deficit. Exhibits attached ("E") O. Rather they show the net income after deductions from the ITN (including depreciation and amortization) as follows for 2014:

	2012 actual	2013 estimate	2014 estimate
TB&T	\$560,290,000	\$648,652,000	\$783,637,000
PATH	(7,251,000)	(13,964,000)	54,082,000
Total difference	<b>553,039,000</b>	<b>634,688,000</b>	<b>837,719,000</b>

The Preliminary 2012 Budget shows no deficit to the ITN for the following years:

	2010 actual	2011 estimate	2012 estimate
TB&T	365,911,000	400,670,000	691,257,000
PATH	(242,176,000)	(86,331,000)	17,557,000
Total difference	<b>123,735,000</b>	<b>314,339,000</b>	<b>708,814,000</b>

The 2010 Budget shows no deficit for the following years:

	2008 actual	2009 estimate	2010 estimate
TB&T	333,238,000	389,439,000	353,502,000
PATH	(159,700,000)	(81,467,000)	(16,208,000)
Total difference	<b>173,538,000</b>	<b>307,972,000</b>	<b>337,294,000</b>

Moreover, the Port Authority's exhibits to the motion do not mention such *no-deficit* data.

4. Further, under the Governmental Accounting Standards Board ("GASB"), a governmental agency must publish every year a Financial Statement and the Financial Section

of the Comprehensive Annual Financial Reports (“Financial Section” or “financial statements” when referring to them together), which both state the *actual financials* of the governmental agency. *See* also N.J.S.A. 32:1-8. Budgets and projections submitted by the Port Authority as exhibits to its motion are not actual data, because they are estimates. *See* Black’s Law Dictionary, 9th Ed, 221 defining budgets as an estimation of revenues and allocations. Since there is a benefit to reviewing the data related to the past three years and prior thereto, the Port Authority’s exhibits seem to be significantly different from the financial statements.

5. By way of example, the figures that Michael Fabiano (“Fabiano”) calculated in his testimony (*see*, Docket (“D”) 36-9 ) includes a Summary of Cash Flow as a sub-exhibit D, predicting that combined ITN revenues (including PATH) totaled \$1.235 billion for 2011 and \$1.53 billion for 2012. Yet, the combined Financial Section for ITN revenues (PATH included) show \$1.148 billion for 2011, (*see*, E-M); an amount predicted in Fabiano’s exhibit for 2011 excluding PATH. The same Financial Section shows for 2012 the combined total (PATH included) as \$1.337 billion, while in Fabiano’s exhibit (PATH excluded) the amount is \$1.385 billion. The stark differences between the projections of Fabiano (including PATH) from the actual data in the financial statements are intentionally misleading, a difference of over projecting the 2011 budget by approximately \$87 million, and for 2012 by approximately \$183 million. These over projections of \$183 million for 2012 beg the question of whether the \$51 million deficit the Port Authority anticipates for 2020 is a real number or a product of its own imagination.

6. Likewise, the Summary of Cash Flow in the Fabiano sub-exhibit D predicted that ITN Operating Expenses would be \$763 million for 2011, \$790 million for 2012, and \$820.4 million for 2013. In contrast, (*see*, Fabiano sub-exhibit E) the Spending Schedule

shows \$699.9 million for 2011, \$952.8 million for 2012, and \$1,094 billion for 2013. Similarly, the Spending Schedule lists a 2011 deduction for the “capital fund,” but the Operating Expenses in the Summary of Cash Flow for the 2011 capital fund lists *nothing*. The Fabiano exhibit simply does not add up among Port Authority’s own exhibits to explain these discrepancies.

7. Furthermore, the Financial Statement and the Financial section do not distinguish between ITN and non-ITN operating expenses, (*see* E-M). Therefore, the Court at this point cannot verify whether non-ITN revenues are not expensed from ITN revenues.

8. The exhibits submitted by the Port Authority do not sufficiently refute the amended complaint because they fail to disclose the information, which items the governors of New York and New Jersey shelved from their 10-Year Capital Plan to reduce its balance by \$5 billion. In general, the parliamentary procedure for the Port Authority requires its Board of Commissioners to adopt any revisions to the budgets and the 10-Year Capital Plans. According to the Port Authority, the governors in a line-by-line analysis revised on August 18, 2011 the Port Authority 10-Year Capital Plan, and reduced the 10-Year Capital Plan by \$5 billion when formulating the revised increase in the Toll Rate. (*See* D26-1). However, an online review of the minutes of the Board of Commissioners held since August 19, 2011 to the present do not reveal that the Board of Commissioners ever adopted a revised 10-Year Capital Plan with a reduction of \$5 billion after August 18, 2011. (Reviewed on May 30, 2014 at <http://www.panynj.gov/corporate-information/board-minutes-contract-authorizations.html>). This raises a question of fact about the calculation itself, how the governors reached the toll amount for revised Toll Rate increase.

9. Furthermore, N.J.S.A. § 32:1-128 requires the Port Authority, that prior to increasing the Toll Rate, to publish a public notice in a tabular form comparing its financial

budgeting with past to current and anticipated figures explaining how the toll increase will impact its budget. Port Authority's motion Exhibit H confirms that the Notice of Public Hearings did not comply with this requirement. *See* E-F, the legislative resolution of tabular form. The Port Authority's motion exhibit H also confirms that there were no public notices published in the State of New Jersey.

10. The Port Authority proclaims that financial destitution is the reason behind the increase in the Toll Rate. Therefore, a question arises as to the *amount* of revenues the Port Authority needs to fill its proclaimed vacuum of financial destitution. As of today, the various statements coming from the Port Authority have been so imprecise that the real figures are speculative. Nonetheless, paragraphs 51 and 52 in the verified amended complaint cite to the Notice of Public Hearings dated August 05, 2011, wherein the Port Authority announced its intention to increase the Toll Rate, expecting a raise in revenues of \$4.18 billion for the first five years. Neither the Port Authority's motion nor its memorandum dispute these figures stated in the amended complaint.

Year	Anticipated Incoming Needed	Anticipated Revenue Received
2011	720,000,000	720,000,000
2012	720,000,000	1,440,000,000
2013	720,000,000	2,160,000,000
2014	720,000,000 + 290,000,000	3,170,000,000
2015	720,000,000 + 290,000,000	4,180,000,000

Using the same calculation stated in the notice of public hearings, the estimation of revenue needed for 2015 (\$720 million plus 2-years of \$290 million) leads to the yearly anticipation of additional revenue of \$1.01 billion (\$1,010,000,000). Moreover, there was no indication that the increased Toll Rate would be reduced after 2015; the August 5 public notice expected to raise \$1.01 billion for each year of 2016 and onwards. When combining \$4.18 billion with five times \$1.01-billion for the years 2016 through 2020, the calculation leads to \$9.23-billion.

Year	Incoming Revenue	Total Revenue Received
2011-2015		4,180,000,000
2016	720,000,000 + 290,000,000	5,190,000,000
2017	720,000,000 + 290,000,000	6,200,000,000
2018	720,000,000 + 290,000,000	7,210,000,000
2019	720,000,000 + 290,000,000	8,220,000,000
2020	720,000,000 + 290,000,000	9,230,000,000

Under anticipated revenue, the amount the Port Authority proclaimed to the public for its 10-Year Capital Plan *before* the governors of New York and New Jersey revised it on August 18, 2011 was \$9.23-billion.

11. *After* the governors of New York and New Jersey reviewed the 10-Year Capital Plan “in a line-by-line analysis and reduced it by \$5 billion,” the amount the Port Authority needed to raise in revenues between 2011 and 2021 was reduced to \$4.23 billion [9,230,000,000 - 5,000,000,000 = \$4,230,000,000]. Quoting D26-1. Based on these figures, the Port Authority claimed on August 19, 2011 it needed to increase revenues for its 10-Year Capital Plan to raise \$4.23 billion.

12. However, the financial statements do not reflect the exaggeration of \$4.23 billion. By way of example, as E-M attached shows, tolls and fares generated in:

	2010	2011	2012	2013
Tolls and fares	\$1,069,785,000	\$1,148,061,000	\$1,337,372,000	\$1,462,957,000
Revenue Increase from last year	<b>\$1,680,000</b>	<b>\$78,276,000</b>	<b>\$189,311,000</b>	<b>\$125,585,000</b>

The difference in the increase of combined revenues between 2013 and 2010 is \$746 million, an amount far less than the numbers the Port Authority told the public in press releases and showed to the Court. \$746 million does not add up, even remotely, to the exaggeration of \$4.23 billion.

13. Correspondingly, the amounts the Port Authority gave the public in its press release dated August 5, 2011—before the governors revised its 10-Year Capital Plan—show expenses for the ITN capital expenses \$4.66 billion. Amended complaint, exhibit M

George Washington Bridge ropes	\$1 billion
Lincoln Tunnel Helix	1.5 billion
Bayonne Bridge raising	1 billion
Port Authority Bus Terminal new	800 million
Airport security	360 million
340 new PATH cars	???
Total	4.66 billion<

If we deduct Airport Security (\$360 million) from the \$4.66 billion equation, an expense outside the ITN, the 10-year capital expenses amount to \$4.24 billion. At a bare minimum, the Port Authority's statements to the public present a contradiction of facts. (1) All the Port Authority needed, according to its August 5, 2011 statement, to balance its 10-year plan was \$9.23 billion, but the costs published to the public showed a need for only \$4.66 billion. (See table above). (2) On August 18, 2011, the Port Authority announced that the governors of New York and New Jersey reduced the 10-Year Capital Plan by \$5 billion, yet the toll was increased, when all that was needed for new projects before August 18, was \$4.24 billion.

➤ *All claims for relief arise under the dormant Commerce Clause.*

14. The Court should deny the Port Authority's motion because the panel stated in its Mandate the following: "We express no opinion as to the merits of a dormant Commerce Clause claim, and leave it to the district court to determine the best way to address the issue on remand." *Weisshaus v. Port Authority of New York*, 497 Fed.Appx. 102, 105 (2nd Cir. 9-20-2012). The verified amended complaint is therefore in line with the Mandate; neither the law-of-the-case nor the mandate rule applies.

15. There is simply no claim for relief in the amended complaint that does not arise or look for relief under the dormant Commerce Clause. Each claim that contains references to other Constitutional provisions, buttress and enhance the dormant Commerce Clause claim.

➤ *Plaintiff can easily show that toll rate violate the dormant Commerce Clause.*

16. The Port Authority insists that no money can be spent outside the ITN because the ITN operates on a deficit. The Court should deny the Port Authority's motion because each claim shows entitlement for relief. What is not explained in the graphs and affidavits of the Port Authority are the extraneous sponsorships that undermine the Toll Rate increase from being just and reasonable or legitimate under the dormant Commerce Clause, despite proclaiming financial destitution.

17. By way of example, the Port Authority insists that \$1.1 billion in ITN revenue is needed to raise the Bayonne Bridge for post-Panamax ships heading towards Port Newark; otherwise, the Bayonne Bridge would have to be demolished. D37 at 9. At the same time, Port Newark operates in 2014 on the gross operating revenue of \$75,508,000. *See* a E-O and P. Likewise, the Bayonne Bridge operates in 2014 on the gross revenue of \$41,477,000 for 2014. *Id.* It defies common sense, to levy ITN users' \$1.1 billion for the benefit of Port Newark, which cannot return the economic revenue within 20 years to pay off its investment. Nor can the Bayonne Bridge be self sufficient in itself through toll revenues to repay the \$1.1 billion investment within 40 years. Indeed, while the budgets of the Port Authority estimated a net income for the Bayonne Bridge, the actual data showed a deficit for each year. *Id.*

18. Likewise, the budgets and actual data for the Port of Newark predicted and generated for the past four years a negative net income. *Id.* By raising the Bayonne Bridge for the Port of Newark, it is clear that the ITN is subsidizing a non-ITN facility. Notably, even if raising the Bayonne Bridge gives easier maritime access to Port Commerce, there is no way to offset the investment of raising the Bayonne Bridge with the profits of Port Commerce, because E-O reveal that Port Commerce balance sheet ends every year with a significant deficit.



19. Moreover, a question arises how the Port Authority will fund for the capital of Port Commerce to improve its infrastructure when operating on a deficit, if not by having toll revenues subsidize that investment.

20. Even if the Bayonne Bridge were to be demolished, that itself requires bi-state legislature approval.

21. In March 2011, several months before the Toll Rate was increased, the Port Authority designated \$1.8 billion dollars to rebuild the Pulaski Skyway. (*See*, E-G, H, and I; also *see*, D36-12 the 2014 10-Year Capital Plan.) In other words, the Port Authority is funding a state bridge that does not belong to the ITN. (*See* E-G and I.) The Port Authority has somehow managed to afford \$1.8 billion dollars despite claiming the ITN operates on a deficit and needs to raise \$4.23 billion. It is the law: the Port Authority may not finance states bridges without bi-state legislature approval.<sup>2</sup> Here, the Port Authority is financing a state bridge without legislature approval at the expense of the ITN, such as raising new projects of raising the Bayonne Bridge, building a New Goethals Bridge, or the refurbishing of Pulaski Skyway.

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<sup>2</sup> “Furthermore, the Authority may not take on new projects unless expressly authorized to do so by the two state legislatures.” *Port Auth. Police Ben. Ass'n v. Port Auth.*, 819 F.2d 413, 417 (3rd Cir. 1987) (reading from *The Port of N.Y. Authority v. Weehawken Tp.*, 14 N.J. 570 (1954).) “[T]he proposed highway construction cannot be undertaken or funded by the Authority without the affirmative authorization of the respective Legislatures of both states.” *Port Auth. Police Ben. Ass'n* Id at 417. Moreover,

The desires and goals of the Port Authority, or for that matter of any agency, cannot run counter to the legislative mandate. *Newark v. Essex Cty. Bd. of Taxation*, 103 N.J. Super. 41, 60 (Law Div. 1968). To grant the relief which plaintiffs seek would be, in effect, to sanction the Port Authority building, without bi-state approval, not merely the Route 81 project but as many highways as it deems beneficial to the public and in accord with the comprehensive plan. Certainly, this is not the plain intent of the Legislatures, especially where, as here, they have remained silent. Not even an inference of the delegation of power to the Port Authority to construct Route 81 is permissible under the existing legislation.

*State v. Port Authority of N.Y. and N.J.*, 151 N.J. Super. 127, 137-8 (1977)

22. Moreover, the Port Authority earmarked \$1.8 billion in March 2011 for the non-ITN Pulaski Skyway, attached as exhibits H and W. The following August, a Toll Rate increase is announced. A review of the Port Authority 2011-2013 budgets and Financial Statement along with the Financial Section shows that the Port Authority omitted the Pulaski earmark and did not show the \$1.8 billion bonds in reserve.

23. Likewise, despite its financial destitution the Port Authority recently paid from ITN revenue for unsolicited architectural plans for the Bayonne Bridge (E-J), despite the bridge operating at a deficit to the ITN.

24. The Court may also take judicial notice of the *only* joint legislative resolution to fund elevating the Bayonne Bridge that limited the Port Authority to solicit only federal grants. E-D and E. Yet, the resolution urged the Port Authority “to formulate an engineering solution to the impasse at the Bayonne Bridge, and a funding plan to support the engineering solution, in time to seek funding support from available federal transportation funding programs.” When passing this legislation into law, the legislature was fully aware that raising tolls is an option, but never authorized that option. Neither did the resolution authorize raising the bridge without bi-state legislative approval.

25. Interestingly, in 2004 the Commissioner of Investigation of New Jersey investigated the implementation of E-ZPass, and there were several findings, including: (i) by 2012 the capital cost of E-ZPass system would exceed the conservative number of \$1.2 billion; (ii) that “The lion’s share of revenue was to have been drawn from violation fees” to cover the costs of installing E-ZPass. Although, E-ZPass is a legitimate cost under the ITN, the penalty per axle for payment in cash contradicts the fair approximate use of facilities and the benefit conferred. Attached exhibit K. At this point, the Port Authority financial statements and budgets

do not disclose the operating revenues and expenses of tolls collected by E-ZPass. The amended complaint avers that collecting a toll in cash does not cost an additional \$2 per axle; an allegation supported by the investigation report showing that the costs acquiring E-ZPass is greater than collecting the same toll in cash.

26. The Port Authority's motion claims that financial destitution is the reason for its increase in the Toll Rate. However, the amended complaint alleges, that after increasing the Toll Rate for everyone, the Toll Rate was reduced by 50% for Class 1 vehicles and motorcycles that enroll in the Port Authority of New York & New Jersey Staten Island Bridges Plan ("SIB"). The SIB discount reduces the Toll Rate for E-ZPass users by 50% of Peak-Hour rate for those traveling on Staten Island bound bridges.<sup>3</sup> Despite claiming that financial destitution is behind the toll increase for everyone, the SIB discount started September 18, 2011 at \$4.75, a price far lower than \$6 paid before the price adjustment was enacted in 2009 to \$8. It is important to distinguish that Weisshaus does not challenge the general discount for E-ZPass users that was upheld in *Saunders*, but brings attention to the facts that establish that there was no need to increase the Toll Rate on August 19, 2011.

27. There is, however, a parallel to the Port Authority's decline of vehicular traffic since the tolls increase in 2008 (E-M) cited as a trigger for the Toll Rate increase, exhibit M amended complaint. For instance, over the many years, including the early 2000s, despite all the economic downturns, the vehicular traffic for the Port Authority has kept growing. However, since 2008 and onwards, the vehicular volume continually declined because the amount of the

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<sup>3</sup> The verified amended complaint made an inaccuracy by stating that the SIB Plan requires Staten Island *residency*. Weisshaus concedes to the Port Authority that the word *residency* was an error. However, the gist and the substance of the allegation of economic protectionism is still valid, whereas the Toll doubled in price to everyone in 2011 by claiming financial destitution but for those bound to Staten Island with E-ZPass, a price was adjusted to a far lower than paid before 2009.

Toll Rate in 2008 exceeded the earnings of the local hourly wage for the first time. Likewise, that decline of vehicular traffic declined even further after the 2011 Toll Rate was enacted.

Indeed, it is the *price*, not the regional economy, which determines the population using the ITN, because despite the decline of vehicular traffic on bridges and tunnels, the population using the PATH averaged 72-million passengers, and there is no decline to PATH.

➤ *The facts of this case are distinguishable from those in Saunders and Janes .*

28. The Court should deny the Port Authority's motion because the penalty per axel for payment in cash has nothing to do with *Saunders v. Port Authority of New York* 02-Civ-9768 (RLC) (S.D.N.Y. May 13, 2004). On its face, this case challenging the **penalty per axel for payment in cash** is distinguishable from *Saunders* involving the **E-ZPass Discount Program**. In 2004, *Saunders* reviewed the \$6 base rate *per axel*, with a discount from the \$6 base rate to E-ZPass holders of \$1 for Peak Hours and \$2 for Off Peak Hours. In 2008, the Peak Hour discount was eliminated to divert Peak Hour travel to Off Peak Hours. The amended complaint outlines: On August 19, 2011, the Port Authority increased the base rate from \$8 to \$9.50 for Peak Hours; \$6 to \$7.50 for Off Peak Hours; but cash payers are levied an additional "\$2.00 penalty *per axel* for payment in cash" (Peak Hour price), bringing the price to \$12—rounded upwards to the next whole dollar. D26¶16-19. For vehicles classified with two or more axels, a \$3 *penalty per axel* is added for payment in cash, in addition to the already \$2 penalty per axel.<sup>4</sup> A plain reading of the amended complaint reveals that this case does NOT challenge the base rate E-ZPass Discount Program. Therefore, at a minimum, the Court should recognize

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<sup>4</sup> The term *per axel* is divided into classes. Class 1, also known as Passenger Car, is "Vehicles with two axles and single rear wheels." Class 2 is "Vehicles with two axles and dual rear wheels." Class 3 is "Vehicles with three axles and dual rear wheels." Class 4 is "Vehicles with Four Axles." Class 5 is "Vehicles with Five Axles." Class 6 is "Vehicles with Six Axles or more," whereas an additional *per axel* charge is added for axel exceeding six axels.

that the distinguishing facts of the penalty per axel for payment in cash have not been determined in the unpublished opinion of *Saunders*, attached as exhibit X.

29. The following evidence supports the proposition that per axel fee for cash payment is a penalty. First, the Port Authority's Board of Commissioners resolution of August 19, 2011, attached as exhibit S, classifies the cash payment fee as a penalty. Second, the press release dated August 19, 2011 classifies the cash fee as a penalty per axel, for the payment in cash. D26-1. Third, the testimony of Michael Fabiano before the Board of Commissioners on August 19, 2011 to increase the toll rate classifies the fee as a penalty for payment in cash. D36-9, sub-exhibit F.

30. The Port Authority attempts to justify its onerous Toll Rate by comparing itself to the onerous toll rate of the Metropolitan Transit Authority ("MTA"), but two wrongs do not make one right. *Janes v. Triborough Bridge and Tunnel Authority*, 06 Civ. 1427 (PAE) (S.D.N.Y. 10-16-2013) is inapplicable to this case because they are clearly distinguishable from each other. In *Janes* the "Plaintiffs allege that the defendants' differential toll policies, which provide for discounted tolls.... Available only to residents of discrete areas within New York City, are unlawful," *id* at 1; here this suit challenges the amount reasonableness, a penalty for payment in cash, and the sudden 100+ percent rate increase. In *Janes* the Court reached summary judgment after "Defendants have put before the Court two thorough and articulate reports from well-qualified and able experts... Those reports have not been challenged by plaintiffs," *id* at 3; here Weisshaus is challenging the testimony of Michael Fabiano. *Janes* involved an intrastate toll, an in-state created burden with no interstate impact, *id* at 28-29; here the toll is on interstate commerce. In *Janes*, the Court found that the MTA follows the legislature mandate regarding the distribution of toll revenues; here Weisshaus alleges that the

Port Authority is designating revenues for purposes that require bi-state legislature approval, which the Port Authority lacks. In *Janes* the plaintiffs (who are a school psychologist, a teacher, and an accountant) did not allege that the toll forces them to forgo minimum wage work in Staten Island, *id* at 32; here Weisshaus alleges that the toll amount exceeding the hourly wage forces him to forgo minimum wage work in the City of New York. In *Janes*, the City subsidizes the Staten Island ferry to travel between Staten Island and Manhattan, which is free of charge, as an alternative to, and faster ride than, vehicular traffic; here there is no alternative transportation for Weisshaus, indeed the PATH was shut down for three months after hurricane Sandy.

➤ *Extrinsic evidence support the Port Authority's press releases.*

31. The Court should deny the Port Authority's motion because Rule 902 of the Rules of Evidence state that a press release, as an official statement from a governmental entity is admissible at trial. Yet, extrinsic evidence supports the press release statements cited in the amended complaint.

32. The Port Authority in its memorandum states that the "Plaintiff's entire case hinges on erroneous interpretations of press releases, conclusory statements, and allegations that, even under a liberal standard..." upon information and belief, the Port Authority is referring to paragraph 27 in the amended complaint, which referenced to portions from the press release dated August 19, 2011, as exhibit A to the amended complaint (D26-1):

Following direction by Governors Chris Christie and Andrew Cuomo, the Port Authority of New York and New Jersey Board of Commissioners today approved a two-part plan to restore fiscal health to the agency by increasing toll and fare rates at a lower level than originally proposed and demanding accountability through a stringent agency-wide review.

Under the Governors' direction, the Capital Plan was reviewed in a line-by-line analysis and was able to be reduced by \$5 billion. This allowed a reduction in the proposed toll rates while still ensuring the agency's finances would be stabilized.

The \$25.1 billion immediate 10-year capital plan will generate more than 131,000 jobs and was achieved by giving critical attention to safety, security and state-of-good-repair projects, including completion of the World Trade Center, while and phasing in other less immediate projects over more than 10 years. Approximately 60 percent of the plan, \$15 billion, will be invested in the next four years supporting a much needed boost to the regional economy. The immediate projects funded in the plan include:

- George Washington Bridge suspender ropes
- Lincoln Tunnel Helix rehabilitation
- Bayonne Bridge roadway raising
- New Goethals Bridge with both Port Authority and private investment
- PATH Car, signal, and station modernizations
- Airport runway and taxiway modernizations
- Security enhancements at all facilities
- Port infrastructure improvements to rail and roads in the port
- Completion of the World Trade Center

The revised toll and fare rates recognize the severe financial constraints facing the agency and the financial limitations on regional commuters and businesses dependant on the Port Authority's transportation network each day.

The foregoing press release confirm the purpose of the Toll Rate increase, leaving no doubt as to which covenant it is referring. "Considered as a whole, the press release leaves the unmistakable impression that the ARC System exists. By contrast to the true facts, this press release was deceptive, an absolute and unequivocal falsehood." *Secu. & Exc. Co. v. Plat. Wire. Inte. Co.*, 617 F.3d 1072, 1095 (9th Cir. 7-27-2010)(The Ninth Circuit explained that it must accept the facts stated in a press release, otherwise that would implicate the defendant in a falsehood.) The Port Authority's memorandum forgets that this press release is an official document that announced the basis and the new setting of the increased Toll Rate on August 19, 2011.

33. Indeed, these "conclusory statements" (quoting D37 at 9) quoted from the press release cited in the amended complaint as exhibit A (D26-1), were a recitation of the same reasoning and statements Mr. Fabiano made that day before the Board of Commissioners to justify the Toll Rate increase. The Board of Commissioners' basis of the vote to increase the Toll Rate was Fabiano's testimony. See the table below, a comparison of the items in the press



release to which Mr. Fabiano testified before the Board of Commissioners as the basis to increase the Toll Rate.

Michael Fabiano's request to increase the Toll Rate before the Board of Commissioners on August 19, 2011 Port Authority's exhibit I, sub-exhibit F	
Press Release listing: amended complaint exhibit A	Transcript (Page:Line)
George Washington Bridge suspender ropes	10:2
Lincoln Tunnel Helix rehabilitation	10:3-4
Bayonne Bridge roadway raising	9:18
New Goethals Bridge with both Port Authority and private investment	10:1
PATH Car, signal, and station modernizations	10:7-11:4
Airport runway and taxiway modernizations	11:11-23
Security enhancements at all facilities	11:24-12:1
Port Commerce infrastructure improvements	12:2-23
Completion of the World Trade Center	12:24-12:6

The rule is "A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." *See* FRCP 10 (c), it is respectfully fully submitted that the Court take notice that the transcript of Michael Fabiano, upon which the Board the Commissioners acted to increase the Toll Rate is consistent with the statements quoted from the press releases in the amended complaint.

➤ ***Public policy disfavors a stay of the action***

34. The Court should deny the Port Authority's motion because public policy favors that this case proceeds, whereas a stay would bring no benefits.

35. The factual statements made to the public by the Port Authority on August 19, 2011 belie the statements made on August 05, 2011. By way of example, in the August 5 press release, the Port authority stated that the increase in the Toll Rate came after a "\$5 billion in cut projects, and billions more deferred." However, the letter for the Port Authority by the governors, and the August 19, 2011 press release, state that the governors' audit of the Toll Rate increase is what reduced the 10-Year Capital Plan by \$5 billion.



36. There is a need for both the public and the Court to know how the governors reached the revised Toll Rate increase. Recent media reports reveal that the Port Authority's increase in the Toll Rate was a strategic political plan to boost the image of the governors and portray them as some sort of a political saviour for reducing the excessive increase in the Toll Rate. *See* E-Q. Indeed, the aforementioned figures of the 2014, 2012, and 2010 budgets show there was never a prediction of a deficit to the ITN. In addition, on August 6, 2011 Governor Christie claimed to know nothing about the Toll Rate increase, though he admitted on June 7, 2011 to learning for the first time about the \$2 toll increase. E-T, U, and V.

37. As a direct and proximate result, there is a need for the relief pled in the fifth claim of the amended complaint. The Port Authority deprived me of the right to avail myself of the administrative FOI procedure by refusing to comply with my request *or* write a denial letter for the information sought about the governors' review and communication to revise the Toll Rate on August 18, 2011. Without reviewing the same data the governors reviewed when deciding the amount of the Toll Rate, I am incapable in articulating or rationalizing in more detail—than the details already articulated— whether the essential facts behind the increase of the Toll Rate and setting of its amount is just and reasonable. The relief sought is documents and data that will help the Court resolve constitutional question of the dormant Commerce Clause on its merit.

38. The following exhibits are submitted in support to this affirmation:

Exhibit A - Letter by Port Authority to Hon. Preska to stay action - September 25, 2012

Exhibit B - Letter by Port Authority to Hon. Batts to stay action - September 24, 2012

Exhibit C - Order by Hon. Preska to reopen case

Exhibit D - NJ Assembly Resolution No. 54 allowing the Port Authority to solicit federal grants to raise Bayonne Bridge

Exhibit E - NJ Senate Resolution No. 54 allowing the Port Authority to solicit federal grants to raise Bayonne Bridge

- Exhibit F - N.J.S.A. Amendment of 32:1-128 + 32:1-35.52 requiring tabular public notice
- Exhibit G - News: Probe of the Port Authority funding the Pulaski Skyway
- Exhibit H - Port Authority agrees to fund rebuilding Pulaski Skyway - March 29, 2011
- Exhibit I - Call to probe Port Authority for subsidizing state roads
- Exhibit J - ITN pays for unsolicited architectural plans
- Exhibit K - NJ Investigation, E-ZPass the Making of a Procurement Disaster
- Exhibit L - Statistical analysis of Port Authority 2012 Annual Report
- Exhibit M - Port Authority 2013 Financial Statements statistical data
- Exhibit N - Port Authority 2012 Financial Statements statistical data
- Exhibit O - Information of Port Authority Operations by Facility
- Exhibit P - Gross Operating Revenues by Facility
- Exhibit Q - Top Christie appointees devised toll hike plan to bolster image of NJ, NY
- Exhibit R - NY Governor's response to FOIL Request
- Exhibit S - Port Authority resolution enacting Toll Increases - August 19, 2011
- Exhibit T - How much did Gov. Christie know about the toll hikes
- Exhibit U - Governor Christie dismisses a Toll Rate increase for 2011
- Exhibit V - Toll Rates to increase by \$2 for 2011
- Exhibit W - Port Authority board minutes approving consideration of Pulaski Skyway refurbishing.
- Exhibit X - *Saunders v. Port Authority*, May 10, 2004, unpublished

**CONCLUSION**

**WHEREFORE**, Yoel Weisshaus respectfully requests the Court enter an Order:

- (a) Denying the Port Authority's motion to dismiss the verified amended complaint; and
- (b) Denying the Port Authority's application to stay the action; and
- (c) Direct the Port Authority to file an answer to the verified amended complaint; and
- (d) Together with other relief the Court sees as just and reasonable under the circumstances;

*In the alternative*, if any portion of the verified amended complaint is found deficient Yoel Weisshaus respectfully requests from the Court to enter an order:

- (e) Directing Yoel Weisshaus to amend the complaint further to correct the deficiency; and
- (f) Together with other relief the Court sees fit as just and reasonable under the circumstances.

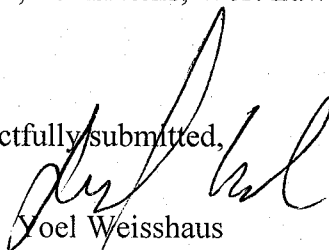
**VERIFICATION**

I Yoel Weisshaus verify to Rule 11(b) of the Federal Rules of Civil Procedure, that I conducted a reasonable inquiry to the facts and laws stated in the foregoing affirmation in opposition, and certify in good faith that under the circumstances:

- 1. The factual allegations stated in the foregoing affirmation in opposition related to myself are true to the best of my knowledge.
- 2. The factual allegations stated in the foregoing affirmation in opposition related to the defendant is made to the best of my knowledge by familiarity of the facts and statements defendant or its agents made available to the public and me, while reserving the right to verify its veracity or dispute them.
- 3. The cited laws were read from Lois Law, LexisNexis, West Law, or Ravel Law.

Dated: June 16, 2014  
Bergen, NJ

Respectfully submitted,

  
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