

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JONATHAN K. SMITH, a member of the
Shinnecock Indian Nation,

Plaintiff,

- against -

**PLAINTIFF'S REPLY TO
DEFENDANT ROBERT
TROTТА'S MEMORANDUM
OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

VINCENT FREDRICO, in his individual and
official capacity as Patrol Officer, Suffolk County
Police Department,
ROBERT TROTТА, in his individual and official
capacity as Detective, Suffolk County Police
Department, and
JOHN DOES 1-10,

Case No.: CV-12-4408(ADS)(ETB)

Defendants.

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NOW COMES Plaintiff, Jonathan K. Smith, ("plaintiff" or "Smith"), a member of the Shinnecock Indian Nation, by and through counsel, and respectfully submits this his reply to defendant Robert Trotta's memorandum of law in opposition to plaintiff's motion for a preliminary injunction. (doc. # 25). Defendant, Robert Trotta, ("defendant Trotta"), previously submitted a letter in opposition on October 17, 2012. (doc. # 16) Plaintiff previously submitted a letter reply on October 18, 2012, in which a default as to defendant Trotta was also requested for failure to appear and answer, to the prejudice of plaintiff's request for return of perishable goods. (doc. # 18) To date, defendant Trotta remains in default for failure to answer plaintiff's verified complaint.

Defendants have produced no opposing factual evidence.

At a hearing held on October 19, 2012, Magistrate Judge Boyle expressed skepticism that defendant Trotta, a Suffolk County Detective, was a “federal defendant,” as argued by his counsel, and Judge Boyle requested the parties to focus on the facts of the stop and seizure at oral argument, then scheduled for October 30, 2012¹. Without waiving any legal arguments or issues, this reply reminds the Court of the unopposed facts set forth by plaintiff.

The most significant thing about the instant Trotta opposition is the lack of any opposing factual evidence. At the October 19th hearing, counsel for defendant Trotta only vaguely argued there was a “federal investigation,” a representation by counsel which is insufficient. Defendant Trotta has submitted no evidence to dispute plaintiff’s facts, no evidence of a federal investigation, no evidence of a civil forfeiture proceeding or prosecution, and no evidence in support of a contention that Trotta is a federal defendant. Likewise, defendant Vincent Fredrico has produced no factual evidence in opposition.

Plaintiff’s facts are undisputed. Plaintiff has filed a sworn verified complaint against the defendants, setting forth specific and detailed facts of a legitimate and documented Shinnecock transport of cigarettes (with South and North Carolina taxes paid) from South Carolina to the Shinnecock Indian Reservation by plaintiff’s carrier; a vehicle stop for a reason admitted by defendant Fredrico to be fabricated; a property seizure with a false Suffolk County receipt control number signed by defendant Trotta; and an admission by defendant Trotta that plaintiff’s shipping documents “appeared legitimate.” (*See*, Compl. ¶¶ 18-39)

Plaintiff has submitted tribal verification of his membership in the Shinnecock Indian Nation. (*See*, Compl., Exhibit A) Plaintiff has submitted a Bill of Lading showing the shipment of cigarettes by Shinnecock Trucking Co., from Palmetto Wholesale Tobacco in South Carolina,

¹ The October 30, 2012 oral argument date was cancelled by the Court due to Hurricane Sandy weather conditions.

to Shinnecock [Smoke] Shop on Shinnecock Indian Territory. (*See*, Mot. for Prelim. Inj., Exhibit A) Plaintiff has submitted a copy of the Tobacco License of Palmetto Wholesale Tobacco issued by the South Carolina Department of Revenue. (*See*, Mot. for Prelim. Inj., Exhibit B) And, plaintiff has submitted a copy of the invoices itemizing the shipment in the Bill of Lading. (*See*, Exhibit annexed to Pl. Reply to def. Fredrico Letter, dated October 18, 2012. (doc. # 17) The Shinnecock shipping documents were, and are, in order.

The complete lack of opposing evidence in the face of the specific and detailed facts sworn to and submitted by plaintiff, at best show that the defendants are simply unable to justify their violations of plaintiff's civil and other rights since faced with this lawsuit, and plaintiff respectfully requests the Court grant the preliminary injunctive relief requested.

At worst, the undisputed facts of a lack of any due process legal proceedings since the seizure, save this case, defendant Trotta's conduct, particularly the statement "I don't give a fuck" when plaintiff objected to his searches, and the false control number on the Suffolk County property receipt signed by defendant Trotta, suggests the possible existence of a broader racial practice of targeting Shinnecock and other Native Americans for seizure of their property.

Dated: New York, New York
November 19, 2012

Respectfully submitted,

MOORE INTERNATIONAL LAW PLLC.

/s/

By: _____
Scott Michael Moore, Esq. (SM7478)
Attorneys for Plaintiff, Jonathan K. Smith
45 Rockefeller Plaza, Suite 2000
New York, New York 10111
T. (212) 332-3474
F. (212) 332-3475
E. mmm@milopc.com

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I served a true copy of the annexed Instrument via ECF electronic service to all parties or their counsel of record:

Chris P. Termini, ACA
Office of the Suffolk County Attorney
Counsel of record for Vincent Fredrico, *Defendant*

Loretta E. Lynch, USA
Diane C. Leonardo, AUSA
Office of the United States Attorney, Eastern District of New York, CI
Counsel of record for Robert Trotta, *Defendant*

Dated: New York, New York
November 19, 2012

/s/

Scott Michael Moore, Esq.