

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**CAYUGA NATION, by and through its lawful
governing body, the CAYUGA NATION COUNCIL,**

Plaintiff,

v.

Case No. 5:22-cv-128 (BKS/ATB)

**DUSTIN PARKER, NORA WEBER, JOSE VERDUGO, JR.,
ANDREW HERNANDEZ, PAUL MEYER, BLUE BEAR
WHOLESALE, LLC, IROQUOIS ENERGY GROUP, INC.,
JUSTICE FOR NATIVE FIRST PEOPLE, LLC, C.B.
BROOKS LLC, AND JOHN DOES 1-10,**

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR AN ORDER TO SHOW CAUSE**

Plaintiff Cayuga Nation (“Plaintiff” or the “Nation”), through undersigned counsel, respectfully submits this memorandum of law in support of its motion for an order to show cause why a preliminary injunction should not be entered enjoining Defendants from continuing to unfurl their RICO enterprise through the trafficking and illegal sale of untaxed and unstamped cigarettes, marijuana, and various other merchandise by opening a storefront at 7153 State Route 90N, Village of Cayuga, Town of Montezuma, Cayuga County, New York which will be known as “Pipekeepers” (the “Montezuma Property” or the “New Pipekeepers Store”).

The object of the civil RICO statute, 18 U.S.C. § 1964(c), is “not merely to compensate victims but to turn them into prosecutors, ‘private attorneys general,’ dedicated to eliminating racketeering activity.” *Chevron Corp. v. Donziger*, 833 F.3d 74, 139 (2d Cir. 2016) (citations omitted). As such, the civil RICO statute affords private parties the right to seek equitable relief. *Id.* (holding “the interpretation of § 1964 as authorizing a grant of equitable relief to private

plaintiffs is consistent with Congress’s intent ‘to encourage civil litigation to supplement Government efforts to deter and penalize the prohibited practices.’” (citations and internal alterations omitted)). Now—just as Defendants are setting up shop and preparing to open a new storefront—is the quintessential moment to grant temporary equitable relief.

The problems presented by the ground operation of Defendants’ RICO enterprise are not isolated ones. The enterprise is particularly serpentine, posing a danger while hiding in plain sight and demonstrating a quickness to dart away. Indeed, almost immediately after being expelled from the Town of Seneca, the enterprise dashed east to the Town of Montezuma where Defendants have retrofitted a single-family residence with a drive-thru window and fortified it with security cameras and privacy fences to shelter its illegal activity from law enforcement. The RICO enterprise is all the more insidious because any storefront it opens purports to be operated *by the Nation*, damaging the Nation’s name and good will, bleeding its client base, and causing irreparable harm.

For these reasons, and as further discussed below, Plaintiff’s motion for an order to show cause should be granted.

BACKGROUND

Indian nations exercise exclusive sovereign rights on their federal reservations, including a right, in certain circumstances, to sell goods without paying or collecting taxes. These rights historically extend to specific sales of cigarettes and tobacco products. The Nation has exercised these rights, in part, by manufacturing and selling “Cayuga” and other “native brand” cigarettes on its federal reservation (the “Cayuga Nation Reservation”). *See* Complaint (Compl.), ¶ 1. Led by Defendant Dustin Parker (a Cayuga Nation citizen with no affiliation or authority within the Nation government), Defendants have forged an association-in-fact engaged in an enduring scheme to co-opt the Nation’s sovereign rights, bleed its business and customer base, and steal

away its revenues through the illegal sale of untaxed and unstamped cigarettes, marijuana, and various other merchandise on the Cayuga Nation Reservation. *See* Compl., ¶ 2.

Masquerading as an official leader of the Nation, Defendant Parker helmed this enterprise for four months (from September 4, 2021 through December 31, 2021) from a parcel of real property until recently owned by the Seneca-Cayuga Nation of Oklahoma and commonly known as 126 E. Bayard Street, Seneca Falls, New York: a gas station and convenience store named Pipekeepers Tobacco & Gas (the “Property”) with a large sign in the parking lot that said “Cayuga Nation Bayard Street Store.” *See* Compl., ¶¶ 3 and 43; *see also* Declaration of David Miller, sworn to December 1, 2021 (Miller Decl.) ¶¶ 5 and 8, Exs. A and B. All the while, Defendants engaged in both interstate and foreign commerce by importing contraband cigarettes from Canada and contraband smokeless tobacco from Pennsylvania—which Defendants then sold, unstamped and untaxed, along with bags of illegal “rollie” cigarettes. *See* Compl., ¶ 50; *see also* Miller Decl., ¶¶ 9–14, Exs. C–G. In addition to selling contraband cigarettes from the Pipekeepers storefront, Defendants possessed, distributed, and dispensed marijuana—a Schedule I controlled substance as defined by section 102 of the Controlled Substances Act, 21 U.S.C. § 802—in violation of the Drug Abuse Prevention and Control Act, 21 U.S.C. § 841. *See* Compl., ¶ 52.

Seeking to peacefully stamp out this racketeering, the Nation purchased the Property from the Seneca-Cayuga Nation of Oklahoma (from whom Defendant Justice for Native First People, LLC was leasing the Property, who, in turn, knowingly gave dominion to Defendant Parker to operate the enterprise therefrom) in late December 2021, and declined to renew Defendant Justice for Native First People, LLC’s lease of the Property when it expired on December 31, 2021. *See* Compl., ¶ 4. But the Nation’s peaceful efforts were met with violence, with Defendant Weber stabbing a Nation police officer in the leg and Defendant Parker interfering with her subsequent

arrest. *See* Compl., ¶¶ 4 and 5. The Nation police seized various enterprise paraphernalia and inventory including thousands of unstamped cigarettes and a bag containing approximately \$60,000 cash. *See* Compl., ¶¶ 47 and 51. In just its four-month run, Defendants' RICO enterprise has netted millions of dollars from unlawful activity. *See* Compl., ¶¶ 54.

That history, unfortunately, is only the beginning. Defendants have since packed up the enterprise and moved it to the next county over, where Defendants C.B. Brooks LLC and Paul Meyer transferred the Montezuma Property to Defendant Parker. *See* Compl., ¶ 62, Ex. 2. Defendants have been working day in and day out to convert the Montezuma Property into a makeshift convenience store, outfitting it with a drive-thru window and fortifying its exterior with security cameras and privacy gates more suited for a drug house than a mom-and-pop store. Defendants' illicit use of the Montezuma Property appears designed to siphon licit business from the Circle K it is located directly behind, in addition to welcoming loitering and on-premises drug use, clogging traffic, and creating conflict.

If not enjoined, the New Pipekeepers Store will open any day now, and sow the same chaos for the residents and businesses of the Town of Montezuma as it did for those of the Town of Seneca, while robbing the Nation of its rightful proceeds and the Government and citizens of rightful tax revenue.

ARGUMENT

Plaintiff seeks a temporary restraining order and preliminary injunction in this RICO proceeding prohibiting Defendants from opening or otherwise operating any business from the Montezuma Property.

At the outset, the Second Circuit, in *Chevron Corp. v. Donziger*, 833 F.3d 74 (2d Cir. 2016), has addressed the rights of civil RICO litigants to seek equitable relief from the courts.

Faced with the question of whether a civil RICO plaintiff was entitled to seek a permanent injunction from the courts, the Second Circuit held that it was. *Chevron Corp.*, 833 F.3d at 139 (“we reject [Defendant’s] contention that equitable relief is not available to Chevron under RICO.”). To that end, it “read subsection (c) [of 18 U.S.C. § 1964—RICO’s civil-remedies provision—] as meaning that only a ‘person’ may sue for money damages, but that *that right is in addition to the relief that the court has power to grant under subsection (a).*” *Id.* (emphasis added). Subsection (a), for its part, provides: “The district courts of the United States shall have jurisdiction *to prevent and restrain violations* of section 1962 of this chapter by issuing *appropriate orders*, including, but not limited to [a number of remedies].” 18 U.S.C. § 1964(a) (emphasis added). In other words, subsection (c) looks to subsection (a) for its available remedies.

In dicta reconciling the cross-reference and interplay between Section 1964’s subsections, the Second Circuit proposed: “The most sensible reading of subsection (b), in our view, is that the interim relief identified in that subsection is available only to the United States, which is relief in addition to that which it may be granted under subsection (a).” *Id.* But the Second Circuit did not squarely make a holding on that issue. It held only that subsection (a) provides the remedies available to civil RICO plaintiffs. Accordingly, based upon the broad-based language of 18 U.S.C. § 1964(a) granting the district court power “to prevent or restrain violations . . . by issuing *appropriate orders*” Plaintiff seeks a preliminary injunction from this Court.

This conclusion does not render subsection (b) superfluous. *Chevron Corp.* suggested in passing that if interim relief is available in private civil RICO suits, the following language serves no purpose: “Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.” 18 U.S.C. § 1964(b); *see Chevron Corp.*, 833 F.3d

at 138. But because the availability of interim relief was not actually at issue in *Chevron Corp.*, the Second Circuit did not focus on all the words of subsection (b), including the words specifying that interim relief is available in cases initiated by the United States “*as [the court] shall deem proper.*” 18 U.S.C. § 1964(b) (emphasis added). It is these words that clarify the purpose of subsection (b): to grant courts *expansive* authority to issue preliminary relief in civil RICO cases brought by the government—even beyond the preliminary relief ordinarily available in a civil case—so long as the court deems the preliminary relief to be “proper.”

In other words, subsection (a) grants courts in civil RICO cases all their ordinary powers, including the power to issue preliminary injunctions, while subsection (b) extends courts’ powers even further when the government brings suit. When the government brings a civil RICO suit, for instance, a district court can grant the government a preliminary injunction *even absent a showing of irreparable harm* to the government, so long as the court deems it “proper” to do so. By contrast, such expansive powers are not available to courts in a civil RICO case such as this one brought by a “person” under subsection (c). But in subsection (c) cases courts still retain their ordinary ability to “prevent and restrain [RICO] violations . . . by issuing appropriate orders” under subsection (a). And such appropriate orders include a preliminary injunction where, as here, the ordinary preliminary-injunction test is satisfied.

“A party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest.” *N. Am. Soccer League, LLC v. United States Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018). All of those factors are satisfied here.

1. Plaintiff Can Show Irreparable Harm.

Defendants' RICO enterprise falsely operates under the "Cayuga Nation" flag, claiming Cayuga Nation rights, privileges, customers, and revenues as its own, while being constituted of a criminal faction that has nothing whatever to do with the Nation. In the process, it robs the Nation of its customer base and business revenues, and poses a particular threat to the Nation and its good standing. "If an injury can be appropriately compensated by an award of monetary damages, then an adequate remedy at law exists, and no irreparable injury may be found to justify specific relief. But, irreparable harm may be found where damages are difficult to establish and measure." *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004). That is exactly the case here.

"The loss of reputation and goodwill constitutes irreparable harm," *Really Good Stuff, LLC v. BAP Inv'rs, L.C.*, 813 F. App'x 39, 44 (2d Cir. 2020), and Defendants' operation of an illegal enterprise from a fortified run-down property under the Nation's name is sure to damage the Nation's reputation and destroy its good will. What is more, every day Defendants are permitted to operate their illicit enterprise from the Montezuma Property, the Nation will be deprived of a significant and unknown amount of customers. That is in addition to current and unknown future business opportunities that flow from customers and vendors coming through the doors of rightful Nation businesses: with each customer or vendor with which the Nation does business comes the prospect of expanding its store's offerings or exploring new business opportunities or ventures for the Nation. *See Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (holding a loss of business opportunities constitutes irreparable harm).

Because the damages the Nation will suffer from Defendants' operation of the RICO enterprise from the New Pipekeepers Store are difficult—if not impossible—to establish and measure, the Nation will suffer irreparable harm absent a preliminary injunction.

2. Plaintiff Is Likely to Succeed on the Merits.

In sum, a RICO claim may be brought against: (1) any person; (2) who (a) invests in, or (b) acquires or maintains an interest in, or (c) conducts or participates in the affairs of, or (d) conspires to invest in, acquire, or conduct the affairs of; (3) an enterprise; (4) which (a) engages in, or (b) whose activities affect, interstate or foreign commerce; (5) through (a) the collection of an unlawful debt, or (b) the patterned commission of various state and federal crimes. *See* 18 U.S.C. § 1962.

Defendants are each “persons” (“any individual or entity capable of holding a legal or beneficial interest in property”) within the meaning of RICO. 18 U.S.C. § 1961(3). The Complaint demonstrates Defendants were, and are, intimately intertwined in the affairs of the RICO enterprise: that is to say, the acquisition, transport, or sale of illicit cigarettes or marijuana and other goods, and the handling or benefit of illicit proceeds. And they have engaged in both interstate and foreign commerce by importing contraband cigarettes from Canada and contraband smokeless tobacco from Pennsylvania. Compl., ¶ 50; *see United States v. Robertson*, 514 U.S. 669, 672 (1995) (engaging “in the production, distribution, or acquisition of goods or services in interstate commerce” satisfies RICO’s interstate commerce element). They then openly sold these unstamped cigarettes (and marijuana) in their previous Pipekeepers store—mostly cash transactions and with large amounts of cash on hand. *See* Compl., ¶¶ 37, 50; Miller Decl. ¶¶ 9–14, Exs. C–G. Indeed, the Nation confiscated heaps of unstamped cigarettes and a bag full of cash when it took possession of the Property. *See* Compl., ¶¶ 47, 51.

All of this has been accomplished through a patterned commission of “racketeering activity”: namely, the violation of 18 U.S.C. § 2341 (trafficking in contraband cigarettes), 18 U.S.C. § 1956 (money laundering), 18 U.S.C. § 1957 (engaging in monetary transactions in

property derived from specified unlawful activity), and 21 U.S.C. § 841 (distributing or possessing a Class I controlled substance). *See* Compl. ¶¶ 75–92.

Against this background, there can be little doubt that when Defendants C.B. Brooks LLC and Paul Meyer transferred the Montezuma Property to Defendant Parker just over a month ago, payment was made with illicit proceeds from the RICO enterprise. What is more, the incestuous transfer is plain evidence of an ongoing conspiracy among the Defendants.

Just days ago, on February 4, 2022, the Cayuga Nation Police Department received information that someone was selling marijuana from the Montezuma Property. Declaration of Kenneth Smith, sworn to February 9, 2022 (Smith Decl.), ¶¶ 3 and 4. Various persons have been observed at the Montezuma Property on multiple occasions, having built a drive-thru window and taken other measures to fortify the property. Smith Decl., ¶¶ 6–9, Ex. A. Both the Seneca Falls Police Department and the Cayuga County Sheriff’s Office have been informed of the situation. Smith Decl., ¶ 11.

Plaintiff therefore has a strong likelihood of success on the merits. But even were that not the case, Plaintiff has demonstrated serious questions on the merits, and the balance of hardships decidedly favors the Nation. In the absence of a preliminary injunction, the Nation will face real hardship as Defendants’ deep and irremediable corruption spreads to a new town under the Nation’s name, stealing away its business and damaging its reputation. Meanwhile, the only hardship Defendants will suffer from the issuance of a preliminary injunction is the temporary cessation of their illegal enterprise and the deprivation of monies that flow from it.

3. A Preliminary Injunction Is in the Public Interest.

The public interest favors stamping out an illicit business enterprise that traffics in illegal drugs distributed from a drive-thru window, encourages loitering, attracts police surveillance, sows

unease in the community, and portends imminent conflict and law enforcement intervention. A preliminary injunction stopping Defendants' opening of the New Pipekeepers Store is manifestly in the public interest.

CONCLUSION

For the reasons set forth in this memorandum, and any other reasons that may appear to the Court or be presented at any hearing on this motion, Plaintiff respectfully requests that this Court issue the Order to Show Cause attached as Exhibit A to the motion.

Dated: February 10, 2022

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