UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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

Plaintiff,

vs.

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.

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

DEFENDANT PAUL MEYER'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INUNCTION

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Introduction

Defendant Paul Meyer and his two limited liability companies, Justice For Native People First, LLC and C.B. Brooks LLC (collectively "Meyer") hereby oppose Plaintiff Cayuga Nation's request for a preliminary injunction in aid of its RICO complaint (ECF 2-3). Meyer expressly adopts and incorporates by reference the opposition papers submitted by Defendants Dustin Parker, Nora Weber and Andrew Hernandez.

As an initial matter, the requested injunction has no bearing on Meyer inasmuch as there is no alleged or actual continuing course of conduct on his part. The sum total of his participation in the alleged RICO "conspiracy" is acting as the landlord in the sublet of commercial property to Dustin Parker at 126 Bayard Street in Seneca Falls, and then as the seller of a commercial parcel to Parker in the town of Montezuma—two, arms-length, market-rate real estate transactions that bespeak no unlawful purpose or intent. (See Declaration of Paul Meyer dated March 13, 2022 ("Meyer Decl.") at ¶¶ 3-18 (Seneca Falls) and ¶¶ 19-24 (Montezuma)). Moreover, these two real estate actions occurred in the past, the last concluded January 11, 2022. (Meyer Decl. at ¶ 22.) There is nothing to enjoin with respect to the future conduct of Meyer.

In addition, Plaintiff comes to this Court with unclean hands. ndeed, every action that the Tribe labels "racketeering" activity or deems "unlawful" is an action that the Tribe routinely takes in selling unstamped cigarettes and marijuana through its retail stores in Seneca Falls and the Village of Union

Springs. Their request for injunctive relief to shut down Parker's business, to promote their own business, is not just an anti-competitive lawsuit, but one that is misguided (circular) and meritless at its core.

Argument

"A preliminary injunction is an 'extraordinary and drastic remedy' . . . ; it is never awarded as of right . . . ." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (internal citations omitted). *H'Shaka v. O'Gorman*, No. 18-628, at *4-5 (2d Cir. Feb. 13, 2019). Rather, generally, in the Second Circuit, a party seeking a preliminary injunction must establish the following three elements: (1) that the party will likely experience irreparable harm if the preliminary injunction is not issued; (2) that there is either (a) a likelihood of success on the merits and a balance of equities tipping in the party's favor, or (b) a sufficiently serious question as to the merits of the case to make it a fair ground for litigation and a balance of hardships tipping decidedly in the party's favor; and (3) that the preliminary injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (reciting standard limited to first part of second above-stated element); *accord Glossip v. Gross*, 576 U.S. 863, 876 (2015); *see also Am. Civil Liberties Union v. Clapper*, 785 F.3d 787, 825 (2d Cir. 2015) (reciting standard including second part of above-stated element); *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 38 (2d Cir. 2010) (holding that "our venerable standard for assessing a movant's probability of success on the merits remains valid [after the Supreme Court's decision in *Winter*]").

Moreover, where a party seeks a mandatory injunction, which disrupts the status quo, the movant must meet a heightened legal standard by showing "a clear or substantial likelihood of success on the merits." *N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018). As discussed below, the Plaintiff does not meet either standard, and their request for an injunction should be denied.

1. Plaintiff cannot establish irreparable harm with respect to Meyer.

As to the first element, "irreparable harm" is "certain and imminent harm for which a monetary award does not adequately compensate." *Wisdom Import Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 113 (2d Cir. 2003). Because the two real estate transactions are complete—the sublet was entered into a year ago and the sale was completed months ago—there is nothing "certain or imminent" to enjoin in the case of Meyer's conduct. Plaintiff's complaint is devoid of even speculation about possible future activity by Meyer. Meyer has no role or connection to Defendant Parker's ongoing business activities. Those activities are the responsibility of Parker and others in using the property Parker purchased from Meyer. Not only does RICO liability not attach to arm's length commercial transactions, an injunction does not lie for purely past conduct, as Plaintiff wrongly seeks to do here in its overbroad request to enjoin Meyer. *See LeClair v. Raymond,* 1:18-cv-0028 (BKS/DJS) 2020 WL 6262144, 2020 U.S. Dist. LEXIS 197053 at *3 (N.D.N.Y Oct. 23, 2020) (stating that "a finding of irreparable harm cannot be based solely upon past conduct"); *see also Dunham v. City of N.Y.*, 11-Civ-1223 (ALC)(HBP), 2013 U.S Dist. LEXIS

35682 at *3 (S.D.N.Y. Feb. 28, 2013) (TRO "cannot provide a remedy for an alleged wrong that has already occurred"). Because Plaintiff has not and cannot allege it is threatened by any future conduct by Meyer, there is no basis for the issuance of injunctive relief to restrain him and his companies.

2. Plaintiff cannot establish the clear likelihood of success on the merits of its RICO claim against Meyer when Plaintiff lacks personal knowledge of the real estate transactions and speculates about their terms.

Plaintiff lacks knowledge of the real estate transactions between Meyer and Parker and instead employs allegations based on information and belief, and then undertakes contrary-to-fact speculation about the bona fides of those transactions. Without any facts to show Meyer participated in the operation of the smoke shops run by Defendant Parker, Plaintiff resorts to misstating the facts of the real estate transactions and offering a vague (indeed legally meaningless) claim that Meyer, when subletting the Seneca property, "knowingly gave dominion to Defendant to operate the enterprise thereon." ECF 2-3 at 3. That contention is not found in the Complaint and is, on its face, so bereft of a standard that it could be used to hold any landlord liable for any renter's actions. Plaintiff cites no case law to support such an extraordinary sweep of the RICO statute. Moreover, as Paul Meyer's Declaration makes clear, he understood Parker would run a Native American smoke shop in keeping with how such Native smoke shops are typically run. Meyer Decl. at ¶ 7. When a question arose as to its legality, Meyer contacted a lawyer who provided an opinion letter squarely establishing that the right to sell

unstamped cigarettes on the Cayuga reservation runs to the individual members of the tribe, not just the tribe, as a matter of law. Meyer Decl. ¶¶ 11-12, Exhibit B. Thus, Meyer confirmed through an independent legal expert the legality of Parker's operation. Such prudent steps as lessor belie any contention that Meyer knew Parker was engaged in illegal activity or "gave dominion to him" (whatever that means).

Likewise Plaintiff's speculation that Parker purchased the Montezuma commercial property at a "grossly inflated price" (Complaint ¶ 65) is belied by the facts of the transaction as recounted in the Meyer Declaration. The sale of the property was at the prevailing market price for such a property after Meyer made extensive renovations to the dilapidated property. Meyer Decl. at ¶¶ 19, 21-24. Parker could have set up shop at any number of equivalent locations at about the same cost. *Id.* at ¶ 24. Under Plaintiff's RICO theory, each seller would be liable because of the source of the funds. This not what RICO provides[1] and Plaintiff cites not authority to support its overbroad claims against Meyer.

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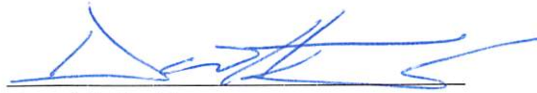
[1]RICO claims can be brought against person who invests in, or (b) acquires or maintains an interest in, or (c) conducts or participates in the affairs of, or (d) conspires to invest in, acquire, or conduct the affairs of; (3) an enterprise; (4) which (a) engages in, or (b) whose activities affect, 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. None of these categories fits the actions of a commercial real estate broker who first sublets and then sells commercial space in arm's length transactions at market rates.

Conclusion

For each of the foregoing reasons, Defendant Paul Meyer and his related companies, Justice for Native First People, LLC and C.B. Brooks LLC, respectfully request the Court to deny Plaintiff's request for a preliminary injunction.

Dated: March 15, 2022

LAW OFFICE OF DAVID TENNANT PLLC



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