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)

MEYER DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMSS

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REPLY ARGUMENT

Defendant Paul Meyer and his two solely-owned limited liability companies— Justice for Native First People, LLC and C.B. Brooks LLC—hereby reply in further support of their motion to dismiss.

The Cayugas offer two sentences (Plaintiff's Memorandum of Law in Opposition to Defendants' Motions to Dismiss, ECF 40 at 12) in opposition to the Meyer Defendants' motion to dismiss. Their opposition is notable for what it does not address: the legal principal that commercial entities—such as the Meyer Defendants—are not subject to RICO liability because their business operations are alleged to have enabled the RICO enterprise or facilitated the commission of predicate offenses. *See* Meyer Defendants' Memorandum of Law in Support of Motion to Dismiss ("Meyer Def. Mem.") (ECF 35-1), at 5-6 and cases cited. In order for RICO liability to attach, such commercial entities must participate in the illegal activity. Critically, "[p]erforming tasks necessary or helpful to the enterprise does not meet the requirements of § 1962(c)." *New York v. United Parcel Serv., Inc.*, 15-cv-1136 (KBF), 2016 US Dist. LEXIS 105038, at *12 (S.D.N.Y. Aug. 9, 2016) (citing *United States v. Viola*, 35 F.3d 37, 41 (2d Cir. 1994)). Thus, "providing ordinary but important business services to a RICO enterprise is not itself sufficient to meet the operation or management test." *Id.*, 2016 US Dist. LEXIS 105038, at *12 (citing *City of New York v. Smokes-Spirits.com, Inc.*, 541 F.3d 425, 449 (2d Cir. 2008) *rev'd on other grounds*, *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010)). Indeed, [a] defendant does not 'direct' an enterprise's affairs under § 1962(c)

merely by engaging in wrongful conduct that assists the enterprise." *Id.*, 2016 US Dist. LEXIS 105038, at *12 (quoting *Redtail Leasing, Inc. v. Bellezza*, No. 95-civ-5191 (JFK), 1997 WL 603496, at *5 (S.D.N.Y. Sept. 30, 1997) (cleaned up).

Plaintiff's papers are entirely silent on these recognized limitations on RICO liability for commercial entities interacting with an alleged criminal enterprise. At the same time, Plaintiff ascribes no role to the Meyer Defendants in the ongoing activities of the alleged criminal enterprise and alleges only the two completed commercial real estate transactions. At bottom, Plaintiff alleges that without the commercial real estate transactions with the Meyer Defendants, the Parker Defendants would not have been able to conduct their illegal business. But that allegation, sounding in "but for" causation, falls far short of establishing a recognized foundation for imposing RICO liability. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 456 (2006) (rejecting extension of RICO lability to claimed violation that was a "but for" cause of the plaintiff's injury) (citing *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 265-366 (1992)); *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 283-84 (2d Cir. 2006) (RICO plaintiff must allege "that the asserted RICO violation was the legal, or proximate, cause of their injury, as well as a logical, or `but for,' cause"). Indeed, the same "but for" causation could describe the shipping services provide by UPS, which were necessary for the transport of contraband cigarettes in *United Parcel Serv.*, 2016 US Dist. LEXIS 105038, at *12. RICO liability did not attach to UPS's commercial activities and logically does not

attach to the Meyer Defendants' two completed commercial transactions, which were far from being the proximate cause of Plaintiff's alleged RICO injuries. Moreover, Plaintiff has provided no factual or legal basis to hold a lessor liable for the acts of a lessee, much less a seller of commercial property for the actions of a buyer. Meyer Def. Mem. at 3-4.

Plaintiff nonetheless doubles down on its baseless allegation that the Meyer Defendants profited at above market rates from the sale of the property in Montezuma, even claiming (on information and belief) that Meyer profited 600% on the sale of that property. The factual infirmity of that speculative contention is proper to reach on a motion to dismiss because the pleading is facially deficient under the "plausibility" standards of *Iqbal/Twombly*[1] and because Plaintiff has attached the record of sale (property transfer report) as Exhibit 2 to the Complaint (¶¶ 64-65), and argues inferences from it. Plaintiff has thus opened the door to factual rebuttal. Meyer Def. Mem at 2-3. The inferences drawn by Plaintiff are belied by the actual facts of the transaction. *See* Declaration of Paul Meyer in Opposition to Plaintiff's Motion for Preliminary Injunction, ECF 31-1, at ¶¶ 19-24. Specifically, the sale of the Montezuma property was at market rates, with the selling price reflecting substantial improvements made to the property. *Id.* Plaintiff is fundamentally misinformed in making its speculative suppositions to the contrary.

[1] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

Moreover, Plaintiff has not identified any case law that would impose RICO liability on a commercial entity because it obtained a premium for the commercial services provided to a RICO enterprise. The recognized barriers to liability discussed in the UPS case would still exist because the commercial entity is acting to support its own economic interests rather than the enterprise's. Indeed, the type of price "gouging" alleged to have been carried out by the Meyer Defendants promotes the commercial entity' financial interests at the expense of the alleged RICO enterprise.

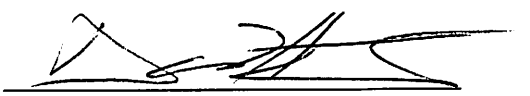
In sum, the Complaints' meager allegations concerning the Meyer Defendants are patently deficient as a matter of law.

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 grant their motion to dismiss the Complaint with prejudice.

Dated: April 18, 2022

LAW OFFICE OF DAVID TENNANT PLLC



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