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 TO DISMISS DEFENDANTS' COUNTERCLAIMS

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Plaintiff Cayuga Nation (the "Nation"), through undersigned counsel, respectfully submits this memorandum of law in support of its motion to dismiss the counterclaims filed by Defendants Dustin Parker, Nora Weber, and Andrew Hernandez (collectively, the "Parker Defendants") [ECF No. 60] and Paul Meyer, C.B. Brooks LLC, and Justice for Native First People, LLC (collectively, the "Meyer Defendants") [ECF No. 61] pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

Defendants have asserted a total of thirteen counterclaims against the Nation. Twelve are state common law claims, and one comes under a federal statute. All of them are barred by the Nation's sovereign immunity. Congress has not abrogated tribal sovereign immunity for any of the counterclaims, and the Nation has not waived it. This Court lacks subject matter jurisdiction over them as a result, and they must all be dismissed.

The counterclaims also run headlong into Rule 12(b)(6). Defendants have not adequately pled any of their causes of action but, instead, have offered only the kind of naked assertions and formulaic recitations the Supreme Court has made clear will not suffice. Several of the claims also fail as a matter of law either because they arise from a void contract or from one that was not actually breached. At bottom, the pleaded facts fall far short of supporting any of the legal conclusions, and Defendants altogether fail to state a claim.

What is more, the scant facts Defendants plead in support of their state law counterclaims do not overlap with the facts underlying the original federal RICO claims in this case. Defendants' state law counterclaims, therefore, are not part of the same case or controversy, and this Court lacks supplemental jurisdiction to hear them.

For these reasons, and as further discussed below, all of Defendants' counterclaims should be dismissed.

BACKGROUND

Defendants have built an illegal business enterprise out of importing and selling contraband cigarettes from a makeshift convenience store they call "Pipekeepers," currently located in the Town of Montezuma. The Nation commenced these RICO proceedings against Defendants to put a stop to that racketeering enterprise. Compl., ECF No. 1. In lieu of answering the Complaint, the Parker Defendants and the Meyer Defendants both filed motions to dismiss. ECF Nos. 34 and 35.

By its August 12, 2022, Memorandum-Decision and Order, this Court denied those motions in part, determining it had subject matter jurisdiction over these proceedings and permitting the Nation's 18 U.S.C. § 1962(a) RICO claim against Defendants to proceed. ECF No. 59. That triggered Defendants' obligations to answer the Complaint, and both groups filed an Answer with Counterclaims on August 26, 2022. ECF Nos. 60 and 61.

Specifically, the Meyer Defendants asserted six counterclaims,[1] and the Parker Defendants asserted seven.[2] Each claim arises from property rights involving a gas station located at 126 East Bayard Street in Seneca Falls (the "Property") that the Meyer Defendants once leased from the Seneca-Cayuga Nation of Oklahoma under a written commercial lease [ECF No. 61, Ex. A] (the "Commercial Lease") and, in turn, claim to have subleased to the Parker Defendants for a four-year term.

[1] Meyer Defs.' Answer with Countercls., pp. 16–19 (Count I (Breach of Commercial Lease Agreement), Count II (Specific Performance), Count III (Tortious Interference with Contract), Count IV (Trespass), Count V (Conversion), and Count VI (Attorneys' Fees and Costs)) ECF No. 61.

[2] Parker Defs.' Answer with Countercls., pp. 19–23 (Count I (Breach of Sub-Lease Agreement), Count II (Trespass), Count III (Tortious Interference with Contract), Count IV (Conversion), Count V (Trespass to Chattels), Count VI (Violation of Computer Fraud and Abuse Act – 18 U.S.C. § 1030), and Count VII (Attorneys' Fees and Costs)) ECF No. 60.

The Nation purchased the Property from the Seneca-Cayuga Nation of Oklahoma free and clear in December 2021, and currently operates its "Lakeside Trading" gas station and convenience store at the location.

STANDARD OF REVIEW

On a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the plaintiff bears the burden of establishing that jurisdiction exists by a preponderance of the evidence. *Makarova v. United States,* 201 F.3d 110, 113 (2d Cir. 2000). In ruling on such a motion, a court may consider evidence outside the pleadings without converting the motion to dismiss into a motion for summary judgment. *Luckett v. Bure,* 290 F.3d 493, 496–497 (2d Cir. 2002).

In considering a motion to dismiss pursuant to Rule 12(b)(6), a court must accept as true the well-pleaded factual allegations set forth in the complaint and draw all reasonable inferences in favor of the plaintiff. *Ashcroft v. Iqbal,* 556 U.S. 662, 677 (2009). In so doing, the Court need not give "credence to plaintiff's conclusory allegations" or legal conclusions offered as pleadings. *Cantor Fitzgerald v. Lutnick,* 313 F.3d 704, 709 (2d Cir. 2002) (internal quotation marks omitted). Indeed, the court should begin by "identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Iqbal,* 556 U.S. at 679. If well-pleaded factual allegations exist, the court must then determine whether they plausibly give rise to entitlement for relief. *Id.*

To withstand dismissal, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "Naked assertion[s]," "labels and conclusions," or "formulaic recitation[s] of the elements of a cause of action will not do." *Id.* at 555, 557. "A claim has facial plausibility when the plaintiff pleads factual

content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. 678. And while a plaintiff need not establish a probability of success on the merits, he or she must demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Id.*

ARGUMENT

I. The Counterclaims Must Be Dismissed Because this Court Lacks Subject Matter Jurisdiction Over Them

"A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova*, 201 F.3d at 113 (citation omitted). This Court lacks subject matter jurisdiction over all of Defendants' counterclaims because they are barred by the doctrine of tribal sovereign immunity. Moreover, Defendants' state law counterclaims should be dismissed for the additional reason that they fail the test for supplemental jurisdiction under 28 U.S.C. § 1367.

A. The Nation's Tribal Sovereign Immunity Bars All of the Counterclaims

"Indian tribes possess the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 51 (1978) (citations omitted). "Like eleventh amendment immunity, foreign sovereign immunity, and qualified immunity, tribal sovereign immunity is immunity from suit, not merely immunity from liability." *Gingras v. Think Fin., Inc.*, 922 F.3d 112, 119–20 (2d Cir. 2019) (citing *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751, 754 (1998)). That immunity applies with equal force to direct suits and cross suits. *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991) (citation omitted). And it extends to both tribal government and commercial activity, whether on or off of Indian lands. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 790 (2014).

All told, "[a]s a matter of federal law, an Indian tribe is subject to suit *only* where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa*, 523 U.S. at 754 (emphasis added). "[A] waiver of sovereign immunity cannot be implied," and Congressional abrogation of tribal sovereign immunity does not arise by implication. *Martinez*, 436 U.S. at 58 (citations and internal quotation marks omitted). Rather, "[t]o abrogate tribal immunity, Congress must unequivocally express that purpose" and "to relinquish its immunity, a tribe's waiver must be clear." *C&L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001). A "tribe does not waive its sovereign immunity from actions that could not otherwise be brought against it merely because those actions were pleaded in a counterclaim to an action filed by the tribe." *Potawatomi*, 498 U.S. at 509 (citation omitted).

The tribal sovereign immunity afforded to the Cayuga Nation as a federally recognized Indian nation bars all of Defendants' counterclaims here and requires their immediate dismissal. In all, the Parker Defendants assert thirteen counterclaims. All but one of those counterclaims come under the New York common law, and fall into two categories: contract and tort. The remaining counterclaim is brought by the Parker Defendants under the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

The Supreme Court has made clear that "[t]ribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." *Kiowa*, 523 U.S. at 760. More broadly, it has stated time and again, without qualification, that the doctrine of tribal sovereign immunity requires dismissal of "*any suit* against a tribe absent congressional authorization (or a waiver)," *Bay Mills*, 572 U.S. at 789 (emphasis added), a principle that does not admit of any exception for tort claims. *See Kiowa*, 523 U.S. at 758 (recognizing that sovereign immunity may preclude suit by "those who are unaware

they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, *as in the case of tort victims*." (emphasis added)). Of course, like other federal statutes, Indian nations also enjoy tribal sovereign immunity from suit under the Computer Fraud and Abuse Act, unless and until Congress "alter[s] its limits through explicit legislation." *Kiowa*, 523 U.S. at 759.

Congress has not abrogated tribal sovereign immunity for the garden-variety state common law claims Defendants assert, nor has it done so for claims under the Computer Fraud and Abuse Act—which does not mention tribal sovereign immunity at all. *See* 18 U.S.C. § 1030; *see also C&L Enters.*, 532 U.S. at 418 (2001) ("To abrogate tribal immunity, Congress must unequivocally express that purpose."). The Nation, for its part, has not in any way waived its tribal sovereign immunity here; and the fact that the Nation brought the underlying action in which the counterclaims are asserted does not change that. *Potawatomi*, 498 U.S. at 509.

Therefore, all of Defendants' counterclaims are precluded under the broad principle of tribal sovereign immunity articulated by the Supreme Court in *Potawatomi*, *Kiowa*, and *Bay Mills*, and "the settled precedent in the Second Circuit . . . that 'courts must dismiss any suit against a tribe absent congressional authorization or waiver[.]'" *Oneida Indian Nation v. Phillips*, 360 F. Supp. 3d 122, 133 (N.D.N.Y. 2018) (quoting *Cayuga Indian Nation v. Seneca County, N.Y.*, 761 F.3d 218, 220 (2d Cir. 2014) (additional citations omitted)).

B. There Is No Supplemental Jurisdiction Over the State Law Counterclaims

There is no question that this Court lacks subject matter jurisdiction over Defendants' state law counterclaims under 28 U.S.C. § 1331 because they do not raise a federal question, and that diversity jurisdiction cannot be found over them because "[a]n Indian Tribe is not a citizen of any state for the purposes of diversity jurisdiction." *Romanella v. Hayward*, 114 F.3d 15, 16 (2d Cir.

1997). Thus, supplemental jurisdiction must be established under 28 U.S.C. § 1367 in order for the counterclaims to proceed. But it cannot, because Defendants' state law counterclaims are not part of the same "case or controversy" for purposes of supplemental jurisdiction.

In short, claims "are part of the 'same case or controversy' within § 1367 when they derive from a 'common nucleus of operative fact'" with the original federal claims. *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 335 (2d Cir. 2006). The "common nucleus" may be found where either (1) "the facts underlying the federal and state claims substantially overlap[]" or (2) "the federal claim necessarily brought the facts underlying the state claim before the court." *Id.* (citation omitted). Neither is the case here.

The original federal claims in this action are the Nation's RICO claims against Defendants. Those claims center on Defendants' association-in-fact racketeering enterprise that, among other things, arrogates the Nation's sovereign right to sell untaxed cigarettes, violates the Contraband Cigarette Trafficking Act, and unlawfully invests racketeering income to fuel the continued acquisition and sale of contraband cigarettes. The facts underlying that conduct, and the attendant federal RICO claims, do not overlap with the facts undergirding Defendants' state law counterclaims. Those facts—the Nation's purchase of the Property from the Seneca-Cayuga Nation of Oklahoma, its use and occupancy of those premises as owner, the terms of Defendants' leases, and the on-site storage of sundry personal property—are completely detached from the original federal claims.

The only possible connection between the parties' claims is that a common piece of real property is mentioned in both, albeit for different reasons. Apart from that, the facts are entirely unaffiliated. That thin reed is not enough to support supplemental jurisdiction. *See Torres v. Gristede's Operating Corp.*, 628 F. Supp. 2d 447, 468 (S.D.N.Y. 2008) (determining supplemental

jurisdiction was not present where "the only possible connection between the parties' claims is that they both arise out of [plaintiff's] employment at [the same store].").

Far from overlapping, the principal counterclaim facts share nothing in common with, and say nothing at all about, the Nation's RICO claim. What logically follows is that the Nation's federal RICO claim did not, and could not, necessarily bring Defendants' state law counterclaims before the Court. For that reason, this Court lacks supplemental jurisdiction over Defendants' state law counterclaims, and they should be dismissed pursuant to Rule 12(b)(1).

II. The Counterclaims Must Be Dismissed Because They Fail to State a Claim

Defendants fail to state a claim on any of their thirteen counterclaims. Simply put, "[t]o survive a motion to dismiss, 'a [pleading] must contain sufficient factual matter, accepted as true to 'state a claim that is plausible on its face.'" *Carlin v. Davidson Fink LLP*, 852 F.3d 207, 212 (2d Cir. 2017) (quoting *Iqbal*, 556 U.S. at 678 (additional citation omitted)). For a number of reasons, Defendants' pleadings do not do so.

A. The Lease Claims Are Inadequately Pled and Fail as a Matter of Law

The Meyer Defendants allege, in conclusory fashion, that the Nation purchased the Property subject to the Commercial Lease. But their pleading does not provide any facts supporting that contention. *See* Meyer Defs.' Answer with Countercls., ECF No. 61. It contains nothing relating to the Nation's discussions or agreements with the Seneca-Cayuga Nation of Oklahoma concerning the purchase of the Property (or the assumption or rejection of the Commercial Lease), and nothing indicating the Nation made any representations to Defendants (or other third parties) that the Commercial Lease or a right to occupy the premises would survive the sale. *See id.*

The Parker Defendants' pleading is equally silent on any of these material facts. *See* Parker Defs.' Answer with Countercls., ECF No. 60. It also does not even mention how any purported

sublease survived the sale, or how that sublease would directly implicate the Nation if it did. *See id.*

Defendants simply plead their breach of contract conclusions as a reality without asserting the facts needed to support their existence. The same goes for the Meyer Defendants' contract-derivative specific performance cause of action, which is presented as nothing more than a labeled cause of action with a partial sketch of the elements. *See* ECF No. 61., p. 17 (Count II). In the end, Defendants' simple "labels and conclusions," "formulaic recitation of elements," and "naked assertions devoid of factual enhancement" about the Commercial Lease and sublease fundamentally fail to state a claim. *Iqbal*, 556 U.S. at 678.

Pleading defects aside, the Parker Defendants' breach of contract claim also fails as a matter of law because their purported sublease is unenforceable. New York's Statute of Frauds provides that real property leases for a period of more than one year must be in writing or they are void. N.Y. Gen. Oblig. Law § 5-703(2). Both Defendants plainly state that the sublease was for a term of *four years*, and neither claim it was in writing. *See* ECF No. 60, p. 17 at ¶ 20 and ECF No. 61, p. 14 at ¶ 13. The Statute of Frauds, therefore, renders the sublease void, and forecloses any claim based upon it. But even if it did not, the Parker Defendants, as subtenants, could not assert a claim against the Nation as the prime lessor because "there is no privity of contract between a landlord and a subtenant." *Neidich v. Gottlieb*, 169 A.D.2d 541, 542 (1st Dep't 1991).

Because Defendants' breach of contract counterclaims fail both as a matter of pleading and as a matter of law, Defendants' separate claims for attorneys' fees for those breach of contract claims must also be dismissed.

B. The Tortious Interference Claims Are Inadequately Pled and Fail as a Matter of Law

"Under New York law, the elements of tortious interference with contract are (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional procurement of the third-party's breach of the contract without justification; (4) actual breach of the contract; and (5) damages resulting therefrom." *Kirch v. Liberty Media Corp.*, 449 F.3d 388, 401 (2d Cir. 2006) (citations and internal quotation marks omitted).

As a matter of pleading, the Meyer Defendants do not even superficially allege, let alone provide factual support for, a claim that the Seneca-Cayuga Nation of Oklahoma breached the Commercial Lease. Without that allegation, they do not, and cannot, claim the Nation procured a breach. Nor do they, or can they, allege facts that trace damages to a breach they do not even claim occurred.

But even putting those deficiencies aside, as a matter of substance, the only thing the Seneca-Cayuga Nation of Oklahoma is alleged by the Meyer Defendants to have done is sold the Property to the Nation. While Defendants may prefer that sale had not occurred, it was not a breach of contract. The Commercial Lease does not contain any provision that prevents or constrains the Seneca-Cayuga Nation of Oklahoma's sale of the Property. *See* ECF No. 61, Ex A. As a result, the Meyer Defendants' claim of tortious interference does not "state a claim for relief that is plausible on its face" and must be dismissed. *Iqbal,* 556 U.S. at 678.

The Parker Defendants assert a tortious interference claim both with respect to the Commercial Lease and their claimed sublease with the Meyer Defendants. To start, that cause of action should be dismissed for repeating the same pleading inadequacies as the Meyer Defendants. But it also suffers from deeper irremediable defects. As a matter of standing, it is impossible for

the Parker Defendants to assert a tortious interference claim on the Commercial Lease because they were not parties to that lease or otherwise in privity. *Neidich*, 169 A.D.2d at 542. And as a matter of substance, there can be no tortious interference claim with respect to the alleged sublease because it is void as a matter of law under the New York State of Frauds.

C. The Trespass and Conversion Claims Are Inadequately Pled

"Trespass is the intentional physical entry onto the property of another without justification or permission." *Woodhull v. Town of Riverhead*, 46 A.D.3d 802, 804 (2d Dep't 2007) (citations omitted). Yet Defendants do not detail how the Nation, as owner of the Property, was without justification or permission to enter upon it. Defendants' bitter disagreement with the Seneca-Cayuga Nation of Oklahoma's decision to sell the Property to the Nation does not make it any less legitimate. Nor does it otherwise diminish the Nation's rights in and to property that it owns.

"To state a claim for conversion under New York law, a plaintiff must allege that he has an immediate superior right of possession to a specific identifiable thing and that a defendant with intent to interfere with such ownership or possession exercised dominion or actually interfered with the property to the exclusion of or in defiance of the plaintiff's rights." *Van Brunt v. Rauschenberg*, 799 F. Supp. 1467, 1473 (S.D.N.Y. 1992) (citation and internal quotation marks omitted). That requires a plaintiff to sufficiently describe the "specific and identifiable property converted by the defendants." *Walden Terrace, Inc. v. Broadwall Mgmt. Corp.*, 213 A.D.2d 630, 631 (2d Dep't 1995). A vague or indefinite description of the property allegedly converted fails to state a claim. *Chang v. Gordon*, 96 Civ. 0152, 1997 U.S. Dist. LEXIS 13570, *27 (S.D.N.Y. Sep. 8, 1997) (dismissing conversion claim where plaintiff did not specifically identify which assets were converted).

The Meyer Defendants broadly allege only that the Nation interfered with their "personal property" [ECF No. 61, p. 19 at ¶ 43], while the Parker Defendants simply lump out broad categories "including but not limited to, inventory, cash, computers, and other personal effects." ECF No. 60, p. 20 at ¶ 57. But it is well settled that "[s]uch a description of the property allegedly converted is too vague and indefinite to support a claim for conversion." *Chang v. Gordon*, 96 Civ. 0152, 1997 U.S. Dist. LEXIS 13570, *27 (S.D.N.Y. Sep. 8, 1997) (dismissing conversion claim where plaintiff did not specifically identify which assets were converted, instead lumping the property into categories of "assets and operations"). Thus, the claim fails on its face here.

Finally, the Parker Defendants' trespass to chattels counterclaim is really a duplicative claim for conversion. While they call it "trespass to chattels," the Parker Defendants allege, with respect to the same obscure personal property, that the Nation has entirely deprived them of possession. *See* ECF No. 60, pp. 21–22. "[W]hen a defendant [allegedly] intrudes or exercises control over property to the extent that a plaintiff is entirely denied of possession, the claim [for trespass to chattels] becomes one of conversion." *Jackie's Enters., Inc. v. Belleville*, 165 A.D.3d 1567, 1573 (3d Dep't 2018) (citations omitted). Therefore, the trespass to chattels counterclaim fails to state a claim on its own terms; and it cannot survive as a conversion claim for the reasons set forth above.

D. The Computer Fraud and Abuse Act Claim is Inadequately Pled

While the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030 "is primarily a criminal statute, § 1030(g) provides a civil cause of action in limited circumstances." *Schatzki v. Weiser Capital Mgmt., LLC*, 10 Civ. 4684, 2012 U.S. Dist. LEXIS 92442, *4 (S.D.N.Y. June 30, 2012). However, "[t]he elements of a private cause of action under this statute are complex[.]"

> [A] civil action under subsection 1030 (g) of the CFAA requires: (1) establishing the elements of the particular substantive (criminal) offense under subsection 1030 (a); (2) establishing that the plaintiff suffered 'damage or loss' as a result of such a violation (although some, but not all, such offenses themselves already require 'damage' and one now requires 'damage and loss'); and (3) establishing one of the five types of conduct specified under subsection (c)(4)(A)(i), which are also required under subsection 1030 (g) (some of which might also constitute 'damage' or 'loss').

Id. (citation omitted).

The Parker Defendants do not even begin to trace out this complex set of elements in their pleading, much less "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. In fact, they do not even claim to know, for sure, that the Nation ever had (or now has) their computer devices—let alone accessed any information on them.

All told, they offer just four conclusory allegations in support of the CFAA civil cause of action: (1) "The seizure also resulted in the Plaintiff taking password protected computers that were the property of Pipekeepers"; (2) "On information and belief, the Plaintiff hacked into the Pipekeepers' computers, taking and using the information and data on those computers, including financial information for the store and personal information for Parker and Weber"; (3) "On information and belief, the Plaintiff obtained access to email and other information between and among the Pipekeepers and others"; and (4) "On information and belief, the Plaintiff continues to have and use the information and data from the Pipekeepers' computers." ECF No. 60, p. 18 at ¶¶ 29, 32, 33, and 34.

Tellingly, there is not a single allegation of who had access to the computers, what they accessed, when they accessed it, or how they used the information. Defendants do not, for that matter, even provide a simple description of the type or number of computer devices allegedly

breached. Indeed, there is not a single well-pled fact, only "conclusory allegations or legal conclusions masquerading as factual conclusions [that] will not suffice to prevent a motion to dismiss." *Smith v. Local 819 I.B.T. Pension Plan*, 291 F.3d 236, 240 (2d Cir. 2002).

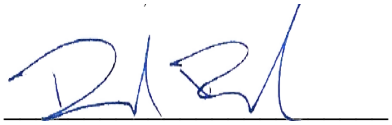
Therefore, the Parker Defendants fail to state a claim against the Nation under the CFAA, and their counterclaim should be dismissed.

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 the motion, Plaintiff respectfully requests that its motion be granted and all of Defendants' counterclaims be dismissed.

Dated: September 30, 2022

BARCLAY DAMON LLP



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