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 OPPOSITION TO MEYER DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

BARCLAY DAMON LLP
Attorneys for Plaintiff
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Tel.: (315) 425-2700

Michael E. Nicholson, *of counsel*
David G. Burch, Jr., *of counsel*

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Plaintiff Cayuga Nation (the "Nation"), through undersigned counsel, respectfully submits this memorandum of law in opposition to the Motion for Judgment on the Pleadings, ECF No. 162 (the "Motion"), filed in these proceedings by Defendants Paul Meyer, Justice for Native First People, LLC, and C.B. Brooks, LLC (collectively, the "Meyer Defendants").

PRELIMINARY STATEMENT

For nearly the past four years, the Defendants in these proceedings have been engaged in an enduring scheme to co-opt the Nation's sovereign rights, bleed its customer base, and steal away Nation revenues through their illegal sale of untaxed and unstamped cigarettes, cannabis, and other illicit items. Defendants operate their enterprise from a brick-and-mortar store located on the Cayuga Nation Reservation, under a blueprint where Defendants Dustin Parker and Nora Weber handle the retail operation, and the Meyer Defendants provide a stream of real estate.

All this has been borne out in the several-year discovery process in these proceedings, where the Nation has gathered evidence in the form of property and sales records and receipts, and has taken the depositions of all principal Defendants. Tellingly, the Meyer Defendants have chosen not to confront this evidence and move for summary judgment but, instead, to altogether avoid it and seek judgment on the pleadings—while attempting to introduce limited evidence that suits them.

No matter how framed, the Nation has adequately pled an 18 U.S.C. § 1962(a) cause of action against the Meyer Defendants, and it has uncovered significant issues of material fact that require this case proceed to trial. The allegations in the Complaint detail not just the investment of racketeering income in the enterprise but that the Nation has specifically been injured as a result. And the record makes clear that judgment cannot be issued on the pleadings alone. For all of these reasons, and as set forth more fully herein, the Meyer Defendants' Motion should be denied.

STANDARD OF REVIEW

"In deciding a motion pursuant to Rule 12(c), the Court employs the same standard as in deciding a Rule 12(b)(6) motion to dismiss." *Atl. Int'l Movers, LLC v. Ocean World Lines, Inc.*, 914 F. Supp. 2d 267, 271 (E.D.N.Y. 2012). On a Rule 12(c) motion, "the court considers the complaint, the answer, any written documents attached to them, and any matter of which the court can take judicial notice for the factual background of the case," *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011), "accepting all factual allegations in the Complaint as true and drawing all reasonable inferences in the nonmoving party's favor." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 78 (2d Cir. 2015) (citation and internal brackets omitted).

To survive a Rule 12(c) motion for judgment on the pleadings, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Atl. Int'l Movers, LLC*, 914 F. Supp. 2d at 271 (citations and internal quotation marks omitted). "[O]nly a complaint that states a plausible claim for relief survives . . . and determining whether a complaint states a plausible claim for relief will be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *L-7 Designs, Inc.*, 647 F.3d at 430 (citation omitted). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Ashcraft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Unlike a Rule 12(b)(6) motion which necessarily precedes discovery, a Rule 12(c) motion which follows the close of discovery need not be granted "if evidence that ha[s] already been produced during discovery would fill the perceived gaps in the Complaint." *Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 325 (2d Cir. 2011). That is because "[j]udgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to

judgment as a matter of law." *Rozov v. Bank of Am., N.A.*, No. 24-13034, 2025 U.S. App. LEXIS 14033, *5 (11th Cir. June 9, 2025). If the motion "consider[s] materials outside the pleadings" it must "be treated as one for summary judgment," *Falls Riverway Realty, Inc. v. Niagara Falls*, 754 F.2d 49, 54 (2d Cir. 1985) (citing Fed. R. Civ. P. 12(c)) (additional citations omitted), which requires the Court provide advance notice to all parties, and that "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d).

ARGUMENT

The Nation's RICO claim against the Meyer Defendants comes under 18 U.S.C. § 1962(a), which makes it unlawful for any person who has received income from a pattern of "racketeering activity" to invest or use any part of that income in any operation or enterprise that affects interstate commerce. As this Court specifically explained: "To allege an investment injury under section 1962(a), plaintiff must plead two (2) elements: (1) that defendants used or invested racketeering income to acquire or maintain an interest in the alleged enterprise; and (2) that plaintiff suffered an injury as a result of that investment by defendants." *Cayuga Nation v. Parker*, No. 5:22-cv-000128, 2022 U.S. Dist. LEXIS 144120, *35 (N.D.N.Y. Aug. 12, 2022) (quoting *Atl. Int'l Movers, LLC*, 914 F. Supp. 2d at 275) (footnote omitted).

Taking these two elements in hand, the Meyer Defendants' burden is to demonstrate that the Nation's Complaint does not contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Atl. Int'l Movers, LLC*, 914 F. Supp. 2d at 271.

The Meyer Defendants first attempt to meet this burden by incorporating and restating a previously asserted evidence-based argument. ECF No. 162-2, p. 4 (quoting ECF No. 35-1, pp. 6–7). They say "Plaintiff's claims against Meyer, such as they are, are limited to two completed

commercial real estate transactions with Defendant Dustin Parker: (1) a sublease of 126 East Bayard Street in Seneca Falls that started in June 2021 and ended January 1, 2022 . . . and (2) the sale of a commercial property at 7153 State Route 90N in Montezuma on January 11, 2022." *Id.* Citing to a Declaration of Paul Meyer, ECF No. 31-1, they claim that the Complaint's allegation that "Defendant Justice for Native First People, LLC permitted Parker to operate the Pipekeepers business from the [Bayard Street] Property for a substantial payment each month, essentially profiting from Pipekeepers' illicit cigarette business," ECF No. 1 (Compl., p. 9 at ¶ 40) is "flat out untrue." ECF No. 162-2, p. 4 (citing Meyer Decl., ECF No. 31-1). The same goes for the allegation that "Defendant C.B. Brooks LLC . . . purchased the [Montezuma] Property for only $30,000 and sold it to Defendant Parker at the grossly inflated price of $180,000," ECF No. 1 (Compl., p. 13 at ¶ 65), which they say is "flat out untrue" as well. ECF No. 162-2, p. 4 (citing Meyer Decl., ECF No. 31-1).

That argument doubly defies the limits of Rule 12(c). First, because it seeks to dispute the veracity of the Complaint's allegations, when in deciding a Rule 12(c) motion the Court must "accept all factual allegations in the complaint as true[.]" *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 305 (2d Cir. 2021) (citation omitted). And second, because it principally relies upon a sworn Declaration, when "[i]n deciding a Rule 12(c) motion, the district court may only consider the facts as presented within the four corners of the complaint." *Novartis Pharma AG v. Incyte Corp.*, 777 F. Supp. 3d 340, 354 (S.D.N.Y. 2025) (citation omitted).

At the same time, the Declaration only opens the door to the reality that there are several material facts in dispute that prevent awarding judgment on the pleadings. *Rozov*, 2025 U.S. App. LEXIS 14033 at *5; *see, e.g.*, ECF No. 164-4 (Meyer Dep. 69–71 and Ex. B (testifying to waiving Defendant Parker's monthly mortgage payments and the attendant 12% interest for a year)); *id.*

(Meyer Dep. 155 and Ex E. (testifying to Justice for Native First People, LLC purchasing inventory for the Pipekeepers store and then being reimbursed by a check from Pipekeepers)); *id.* (Meyer Dep. 92–94 and Ex E. (testifying to Justice for Native First People, LLC receiving a $23,079 check from Pipekeepers for "Legal fees")). What is more, because "evidence that ha[s] already been produced during discovery would fill [any] perceived gaps in the Complaint," *Anza*, 652 F.3d at 325, judgment on the pleadings is not appropriate. *Id.*[1]

The Meyer Defendants next attempt to meet their Rule 12(c) burden by tying Count II of the Complaint to the previously dismissed Count I, arguing that because Count I relied upon the facts set forth through paragraph 77 of the Complaint and this Court dismissed Count I, it must also dismiss Count II because it relies upon those same facts. ECF No. 162-2, p. 4.

That much does not follow. "Subsection (a) . . . focuses the inquiry on conduct different from the conduct constituting a pattern of racketeering [under Subsection (c)]." *Anza*, 652 F.3d at 321. While Section 1962(c) is participation-based, focusing on participation in the operation of an enterprise through racketeering, Section 1962(a) is investment-based, focusing on the investment of racketeering income. *See id.* (comparing Sections 1962(a) & (c)). As such, this Court's determination that the Complaint's pleaded facts do not support a Section 1962(c) claim says nothing of, and has no bearing on, whether that same collection of facts supports a Section 1962(a) claim.

A review of those pleaded facts, which focus specifically on the *investment of racketeering income*, demonstrates they do, in fact, support the Nation's Section 1962(a) claim. The Complaint

[1] Should this Court determine to utilize Rule 12(d) and convert the Meyer Defendants' Motion to one for summary judgment, the Nation will avail itself of the opportunity to put in this, and other evidence, in opposition at that time. For the time being, the Court has before it just a Rule 12(c) motion, which is procedurally constrained to its own terms.

alleges that Defendant Dustin Parker leased from Defendant Justice for Native First People, LLC the 126 E. Bayard Street property that was initially used to operate the Pipekeepers store, thus investing Pipekeepers' illicit revenues into a Meyer-owned entity which "profit[ed] from Pipekeepers' illicit cigarette business." ECF No. 1 (Compl., p. 9 at ¶ 40). The Complaint goes on to allege that just months later, Defendant Dustin Parker packed up and moved Pipekeepers to a new location, purchasing the property located at 7153 State Route 90N in Montezuma, New York, from Defendant C.B. Brooks, LLC for $180,000 (a 600% mark-up from the $30,000 C.B. Brooks, LLC just paid for the property), once again investing Pipekeepers' illicit revenues into a Meyer-owned entity. ECF No. 1 (Compl., p. 13 at ¶¶ 64 & 65). All told, Defendant Meyer and his entities took substantial cash investments of Pipekeepers ill-gotten gains and, in exchange, provided the enterprise with its most vital asset: real estate from which to operate a storefront.

That satisfies the necessary two elements that must be pled for a 1962(a) claim. *Atl. Int'l Movers, LLC*, 914 F. Supp. 2d at 275. Plainly, racketeering income was "used or invested" to "acquire or maintain" an interest in the enterprise—not one, but two storefronts. And the Nation has, no doubt, suffered an injury from the investment into those storefronts which have served as the commercial front for the entire RICO enterprise, and whose operation have broadly injured the Nation.

The Meyer Defendants contend that the Nation must allege an injury "separate and distinct from the predicate acts" and that it has not. ECF No. 162-2, p.5. While they are correct that "[i]n the context of subsection 1962(a) . . .the plaintiff [must] allege a 'use or investment injury' that is distinct from the injuries resulting from predicate acts," *Discon, Inc. v. NYNEX Corp.*, 93 F.3d 1055, 1063 (2d Cir. 1996), the Meyer Defendants are incorrect that the Nation has not done so.

It is true that some of the illicit revenue Pipekeepers generates from the commission of Contraband Cigarette Trafficking Act (CCTA) and other predicate act violations is used to purchase more illicit products to retail from the store in cyclical fashion. But that is not all the revenues are, or have been, reinvested towards. They have fundamentally been reinvested and utilized to lease the first store, ECF No. 1 (Compl., pp. 8–9 at ¶¶ 38–40), to purchase the current brick-and-mortar Pipekeepers store for $180,000, and to build its drive-thru for untold other amounts. *Id.* (Compl., p. 13 at ¶¶ 64 & 65).

Surely, the predicate CCTA violations and the reinvestment of revenues from these and other violations to fund more illicit sales damage the Nation. But the sale of illicit cigarettes is not itself an "enterprise"—it is *just a part* of the Pipekeepers business, and *just a building block* of the cognizable Section 1962(a) harm. Just as a grocery store is distinct from the produce it sells, the Pipekeepers brick-and-mortar store is distinct from the CCTA predicate acts or the attendant income. Section 1962(a) is satisfied "by showing the use or investment of *that income* in acquiring, establishing, or operating *an enterprise*." *Zaro Licensing, Inc. v. Cinmar, Inc.*, 779 F. Supp. 276, 283 (S.D.N.Y. 1991) (emphasis added) (citation omitted).

What causes real and lasting harm to the Nation is the Pipekeepers brick-and-mortar enterprise, which operates as a polished and seemingly licit retail store on the Cayuga Nation Reservation, selling various products, blasting out advertisements on the radio waves, and drawing in customers from as far as Florida and Canada. The reinvestment of predicate act income has been used to acquire, establish, and operate the brick-and-mortar enterprise which takes its root in the real estate the Meyer Defendants supplied. And it is the *result* of that investment that injures the Nation and constitutes a distinct and cognizable injury for Section 1962(a) purposes. *Wiltshire*,

421 F. Supp. 2d at 548. The Nation has adequately pled exactly that. *See* ECF No. 1 (Compl., pp. 12–13 at ¶¶ 59–62).

Still, the Meyer Defendants point out that they are mentioned in just nine of the 77 factual allegations that make up the Complaint, *see* ECF No. 162-2, p. 3, as if there is a threshold allegation count required to adequately state a claim. Of course, there is not. And a Complaint attacked under Rule 12(c) does not need to have exhaustively drawn-out or "detailed factual allegations" to survive. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted)). Rather, the "[f]actual allegations must be enough to raise a right to relief above the speculative level, *on the assumption that all the allegations in the complaint are true*[.]*" Id.* (emphasis added) (citations omitted). The Complaint's allegations against the Meyer Defendants undeniably meet that standard.

Finally, the Meyer Defendants assail the Nation for not having amended its Complaint given the length of time that has passed since it was filed, insisting the Complaint does not state a claim in its current form, and it is too late to amend it now.

That attack is misplaced in the context of this Motion for at least three reasons. First, as set forth above, amendment is not necessary because the Complaint does, in fact, state a claim against the Meyer Defendants. Second, even if it did not, "pleadings often may be amended[,] [p]rior to trial, [and] after the time to amend has passed . . . *even at trial*, the court should freely permit amendment to conform to the pleadings and the proof." *Anza*, 652 F.3d at 325. "Indeed, the availability of 'amendment of pleadings' was one of the reasons for Congress's expectation that the private right of action for RICO violations would be an effective tool *Id.* (citing S. Rep. No. 91-617, 82). Third, and in any case, because in the three and a half years this action has been

pending, plentiful evidence has been gathered to buttress the allegations in the Complaint, thus fortifying it against any judgment on the pleadings at this late stage. *See id.*

In all events, the Meyer Defendants have failed to meet their burden under Rule 12(c). And by looking outside the pleadings, and seeking to introduce evidentiary proof, they have altogether left the possibility of relief under Rule 12(c) behind. "[A]ccepting all factual allegations in the Complaint as true and drawing all reasonable inferences in the nonmoving party's favor," *Vega*, 801 F.3d at 78, the Motion should be denied.

CONCLUSION

For the reasons set forth herein, and any other reasons that may appear to the Court or be raised at any hearing on the matter, the Meyer Defendants' Motion should be denied.

Dated: September 15, 2025

BARCLAY DAMON LLP

s/ *Michael E. Nicholson*
Michael E. Nicholson
David G. Burch, Jr.

Attorneys for Plaintiff
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202