

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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

Case No: 5:22-cv-
00128-BKS-ATB

Plaintiff,

v.

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, AND C.B.
BROOKS LLC, AND JOHN DOES 1-10,

Defendants.

**DEFENDANTS REPLY MEMORANDUM OF LAW TO
PLAINTIFFS OPPOSITION TO THE MOTION
FOR JUDGMENT ON THE PLEADINGS PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 12(C)**

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Defendants Paul Meyer, Justice for Native First People, LLC, and C.B. Brooks, LLC, (collectively “Meyer Defendants”) by their undersigned Counsel, submits this reply memorandum of law in response to Plaintiff Cayuga Nation’s (“Plaintiff”) opposition to Meyer Defendants’ Motion for Judgment on the Pleadings as follows:

PRELIMINARY STATEMENT

The Plaintiff has had some three years to seek to amend its Complaint and still has not done so. Even in response to this Motion, the Plaintiff could have attempted to amend its Complaint, but it knows that such an attempt would be futile. The Plaintiff is correct that the Meyer Defendants’ Motion for Judgment under Rule 12(c) of the Federal Rules of Civil Procedure (“FRCP”) is limited to the four corners of the pleadings. This Court has already dismissed Counts 1 and III on August 12, 2022, in that the Complaint fails to allege facts that would allow a plausible inference that the Meyer Defendants participated in the operation or management of the RICO enterprise (Dkt. No. 59).

The Plaintiff in its opposition emphasize that the enterprise or scheme is to “... steal away Nation’s revenues through their illegal sale of untaxed and unstamped cigarettes, cannabis, and other illicit items.” (Dkt. No. 191, p 1). However, the problem is that the Plaintiff’s Complaint fails to plead that the alleged injury arises from the Meyer Defendants alleged investment of proceeds from the enterprise and not the predicate acts themselves. In addition, Count I, which has been dismissed, cites to the same damage that it plead in Count II. If the Plaintiff was truly alleging a distinct injury under 18 U.S.C. 1962(a) then the damages would be different then those alleged under 18 U.S.C. 1962(c).

ARGUMENT

In order to keep its Complaint alive, the Plaintiff contends that the Meyer Defendants have cited to a passage out of their Motion to Dismiss Counts I and III, which is tantamount to disputing the veracity of the Complaint's allegations. (Dkt. No. 162-2 p 5 of 9). However, that passage, was clearly aimed at the Complaint's paragraphs 40 and 65 which were based "upon information and belief." The Meyer Defendants were simply making the point that the Plaintiff has no actual knowledge of the transactions. However, that does not change the Plaintiff's allegations which are made "upon information and belief." Those allegations are still speculative and could not support a cause of action under Counts I and III and could not support a cause of action under Count II. Therefore, the door is not open as contended by the Plaintiff to introduce evidence beyond the scope of the Complaint.

Next, the Plaintiff argues that this Court's previous determination regarding Counts I and III do not have any bearing on Count II. The Court's previous dismissal of Count I (18 U.S.C. § 1962(c)) and Count III (18 U.S.C. § 1962(d)) is directly relevant to the analysis of Count II. Count II incorporates the identical factual allegations through paragraph 77 that formed the basis for the dismissed counts. If those factual allegations were insufficient to support an 18 U.S.C. § 1962(c) claim, they are equally insufficient to support an 18 U.S.C. § 1962(a) claim, particularly given the more stringent requirements for proving distinct investment injury under 18 U.S.C. § 1962(a).

The *Atl. Intl. Movers, LLC v Ocean World Lines, Inc.*, 914 F Supp 2d 267 (EDNY 2012) decision provides clear guidance on the requirements for 18 U.S.C. § 1962(a) claims, and Plaintiff's Complaint fails to meet those requirements. The Plaintiff's opposition improperly

attempts to cure these pleading deficiencies by referencing evidence outside the Complaint, which is not permitted under FRCP Rule 12(c) practice.

The cause of action allegations in paragraphs 85 - 89 of Count II are nothing more than conclusory allegations which are insufficient to establish a claim under 18 U.S.C. § 1962(a). These paragraphs merely repeat in a summary fashion the elements for a cause of action under 18 U.S.C. § 1962(a) without providing the factual specificity required under modern pleading standards. The Plaintiff's reliance on a small number of factual allegations scattered throughout the Complaint cannot cure the fundamental pleading deficiency. The Complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, not merely conclusory statements that track the statutory language.

Even assuming the facts are not based "upon information and belief" and have been properly alleged, the Plaintiff still has not shown that the alleged injury is separate and distinct from the predicated acts. The Plaintiff in its opposition papers on pages 6 – 7 agrees with the Meyer Defendants that the Plaintiff must allege an injury that is separate and distinct from the predicate acts but disagrees that the Plaintiff have not done so. However, the Plaintiff has failed to plead the fundamental requirement under 18 U.S.C. § 1962(a) that any injury arises "... from Defendants' alleged investment of proceeds from the enterprise." *Atl. Intl. Movers* at 276. The alleged damages appear to stem directly from the predicate racketeering activities themselves, i.e. the sale of untaxed cigarettes and other contraband, rather than from any specific investment of racketeering proceeds. The Plaintiff attempts to characterize the brick-and-mortar store as distinct from the predicate acts and ignores the fundamental requirement that the injury must stem from the investment itself, not from the underlying racketeering activity. Courts have held that where the investment of racketeering proceeds back into the same RICO enterprise is

alleged, the injuries stem proximately not from the investment, but from the predicate acts that make up the racketeering activity. *Id.* The Complaint contains no factual allegations demonstrating how Plaintiff was injured by an investment of racketeering proceeds as opposed to the underlying alleged criminal conduct.

The fact that both the dismissed 18 U.S.C. § 1962(c) claim and the remaining 18 U.S.C. § 1962(a) claim seek identical damages further demonstrates the deficiency in Count II. If Plaintiff were truly alleging a distinct investment injury under 18 U.S.C. § 1962(a), the damages would necessarily be different from those alleged under 18 U.S.C. § 1962(c). The identical damages theory suggests that Plaintiff is attempting to re-plead the same claim under a different RICO subsection without addressing the fundamental pleading deficiencies.

CONCLUSION

As stated above, the *Atl. Int'l Movers* decision provides clear guidance on the requirements for 18 U.S.C. § 1962(a) claims, and Plaintiff's Complaint fails to meet those requirements. Count II suffers from the same fundamental deficiencies that led to the dismissal of Counts I and III, incorporates identical factual allegations, and fails to plead the distinct investment injury required under 18 U.S.C. § 1962(a). Plaintiff's opposition improperly attempts to cure these pleading deficiencies by referencing evidence outside the Complaint, which is not permitted under FRCP Rule 12(c) practice. The Plaintiff has caused enough damage to the Meyer Defendants by pursuing an action against the Meyer Defendants that the Plaintiff knows that it cannot exist under any circumstances. For the reasons stated herein, it is respectfully requested that the Court grant the Meyer Defendants Motion for Judgment on the Pleadings.

Dated: Auburn, New York
October 2, 2025

Respectfully submitted,

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