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

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.

**Response/ Memorandum to plaintiffs COMBINED MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS FOR ATTORNEYS' FEES**

1. Where Meyer defendant agrees with Barclay Damon (Doc 334) response.
2. A further analysis of Barclay Damon's false claims pertaining to the false legality of their clients operations and the self serving claims Barclay Damon made against the 17 other "defendants" in this action. Lastly, the frivolous crescendo of Barclay Damon's self serving legal fees.

Table of Authorities

Federal Cases

Oneida Nation of N.Y. v. Cuomo, 645 F.3d 154 (2nd Cir., 2011)

Moe v. Confederated Salish and Kootenai Tribes of Flathead, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 [1976]

Milhelm Attea & Bros., Inc., 512 U.S. at 64, 114 S.Ct. 2028

New York v. Grand River Enters. Six Nations, Ltd., 2020 U.S. Dist. LEXIS 236928

Washington v. ConfederaReted Tribes, 447 U.S. 134 (1980)

New York v. United Parcel Serv., Inc., 942 F.3d 554, 597 (2d Cir. 2019)

California v. Cabazon Band of Indians, 480 U.S. 202

Contraband Cigarette Trafficking Act, 18 U.S.C. §§ 2341-2346

Prevent All Cigarette Trafficking Act ("PACT Act"), 15 U.S.C. §§ 375-378

State Cases

White v. Schneiderman 106 N.E.3d 709 ,N.Y. (2016) Cayuga Nation amici curiae

New York Tax Law §§ 471, 1814, and 480- b.

1. This (Meyer) Defendant agrees in part with the Plaintiffs law firm in that I do want the Court to sanction them and I will further clarify specifics of Counsels misdeeds per their doc 334 pg 19 request. This submission will be my last also.

2. I agree with Barclay Damons assertion that (doc 264, pg 13) Under established federal precedent, the State generally retains the authority to require Indian retailers to collect taxes on sales to non-Indian consumers to prevent tax avoidance, as the legal incidence of the tax falls on the purchaser. Therefore, as a general rule, neither the Nation nor an individual member like Defendant Parker has an inherent right to possess or sell cigarettes to non-Indians without collecting the requisite state taxes.

3. Barclay Damons next assertion, " However, a critical exception to this collection requirement exists under the Supreme Court's Colville and Cabazon decisions, which preclude state regulation when a tribe generates value on the reservation rather than merely marketing a tax exemption." is known to be a completely *false* suggestion by them as pertinent to their Cayuga Plaintiffs. Radford deposition (Pg 113 ) speaks to the "value" of the Native cigarette sales being in their tax free selling to non natives; when asked, "And isn't it true that the greater value is principally driven by the difference in taxable incidence to those sales? Ms. Radford answers, "New York State has the highest state excise tax on cigarettes in the country. So there is -- because we do not have to pay state excise tax we have a huge disparity in pricing." However, Oneida Nation of NY v. Cuomo (2011) Supreme Court has stated that Indian tribes may not market an exemption from State taxation and a States interests in collecting Cigarette tax outweigh a tribes countervailing interest even if it eliminates the Indian retailers business with Non- Natives.

4. Next Baclay Damon recklessly improperly asserts (doc 264, pg 13), "The Nation falls within this exception because it manufactures its own "Cayuga" brand cigarettes and sells other Native- manufactured brands, using the revenue to fund essential governmental programs. This "value generated" on the reservation creates a substantial federal and tribal interest in self-government that outweighs the State's interest in tax collection, thereby permitting the Nation to conduct these specific sales tax-free." Such assertion when applied to the Cabazon standard does not hold up for the following

reasons made clear by Barlay Damons very own client Ms. Radford. Ms. Radford (Pg 28. deposition) describes how almost all employees are not Cayuga Members (unlike Cabazon) plus she details that Cayuga Nation has casinos and gets Federal Funding (pg 81). The Cabazon Court was applied exclusively to their Tribal gambling as this was Cabazons sole source of revenues for the operation of the Tribal Government and the major source of employment for Tribal members; much different than the knowingly self serving false assertion made by Barclay Damon of their client above.

5. Barclay Damon knowingly turns a profitable blind eye not only to schedule 1 controlled substances, untaxed cigarette sales, and even broken Federal laws not even discussed yet; such as the PACT ACT. Ms Radford (deposition pg 109) was asked when Lakeside Trading I and II are selling cigarettes manufactured by Great Swamp, are they tracking to whom those sales are made, members versus non-members? She responds, " No." Is there any reason why the Nation doesn't do that?. "There is no reason to do that." The Cayuga Nation selling non exempt cigarettes triggers CCTA violations and not reporting cigarette sales would certainly violate PACT ACT reporting rules for Persons who sell, transfer, or ship for profit – or who advertise the sale, transfer, or shipment of cigarettes. Even when a tax is not due, such as by a NYS licensed wholesale agent, the Pact ACT reporting requirements apply to ALL; including Native Nations.

6. Tax stamps evidence prepayment of New York cigarette excise taxes and are affixed to cigarettes, or cigarette packaging, by licensed tax-stamping agents, often wholesale dealers, after paying the excise taxes. New York v. Grand River Enters. Six Nations, Ltd., No. 14-cv-910, 2020 WL 12969527, at *3, 2020 U.S. Dist. LEXIS 236928, at *7 (W.D.N.Y. Dec. 15, 2020) (citing N.Y. Tax L. ("NYTL") § 471). See New York v. Mountain Tobacco Co., 942 F.3d 536, 540 (2d Cir. 2019). "All cigarettes sold by agents and wholesalers to Indian nations or tribes or reservation cigarette sellers located on an Indian reservation must bear a tax stamp." NYTL § 471(2). While NYS 471 is referring to a NYS Tax stamp, The Nations trial brief (Doc 241, pg 9) falsely plays with the claim "The Nations stores comply with New York State Tax stamping requirement, ECF 164-2" however, Ms. Dwyer corrects herself and states that it is the Cayuga Nation putting a (Cayuga Nation) stamp on their own cigarettes being sold to non members.

7. The Cayuga Nation must attach NYS Tax stamps to all cigarettes it sells. NYS has a precollection tax stamp system. In <u>Moe v. Confederated Salish and Kootenai</u>

Tribes of Flathead, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 [1976] , , the Supreme Court upheld a precollection tax scheme that required the cigarette seller to prepay the tax and pass the cost on to the purchaser ( 425 U.S. at 483, 96 S.Ct. 1634 ). The tribe argued that the prepayment of the tax constituted an impermissible tax on the tribal retailer. The Court rejected that argument because the tax was, as New York's is, ultimately borne by the non-Indian consumer ( id. at 481–482, 96 S.Ct. 1634 ). The Court explained that the precollection scheme was "not, strictly speaking, a tax at all," and was a "minimal burden" on tribes "to avoid the likelihood that in its absence non-Indians purchasing from the tribal seller will avoid payment of a concededly lawful tax" on non-Indians ( id. at 483, 96 S.Ct. 1634 ; see Milhelm Attea & Bros., Inc., 512 U.S. at 73, 76, 114 S.Ct. 2028 ). Oneida Nation of N.Y. v. Cuomo, 645 F.3d 154 (2nd Cir., 2011)

8. White v. Schneiderman 106 N.E.3d 709 ,N.Y. (2016) Barclay Damon for the Cayuga Nation filed amici curiae, To the extent that the on-reservation "smoke shops" sell to non-Indians upon whom the State has validly imposed a sales tax with respect to the article sold, the State may require the Indian proprietor simply to add the tax to the sales price, and thereby aid the State's collection and enforcement of the tax. Such a requirement is a minimal burden designed to avoid the likelihood that, in its absence, non-Indians purchasing from the tribal seller will avoid payment of a lawful tax, and it does not frustrate tribal self-government or run afoul of any federal statute dealing with reservation Indians' affairs. Pp. 425 U. S. 481-483. There assertion that their Cayuga Client is conducting lawful conduct is beyond believe in context of these clear Court decisions.

9. Cayuga Nation does not have a exemption from implementing NYS tax law 471. The Cayuga Nation does not have any permission from NYS to sell any cigarettes to non natives tax free. Washington v. Confederated Tribes, 447 U.S. 134 (1980) But the Tribes' involvement in the operation and taxation of cigarette marketing on the reservation does not oust the State from any power to exact its sales and cigarette taxes from nonmembers purchasing cigarettes at tribal smokeshops. Principles of federal Indian law, whether stated in terms of preemption, tribal self-government, or otherwise, do not authorize Indian tribes to market an exemption from state taxation to persons who would normally do their business elsewhere.

10. In making the next few points about Barley Damon, contextually relevant is the above debunkment of Barclay Damons Clients "operations legality" with plaintiffs P52 Trial exhibit as to the financial volume of millions in forbidden sales in just their two stores; this does not include their wholesale business. Also that their clients Dwyer (deposition pg 71), asserts "Clint Halftown runs *all* the enterprises with sole check writing authority." It is obvious that Barclay Damon via their client (Clint Halftown) profits by evading the clear tax rules. (see Barclay Damons $700K request for legal fees in this case)

11. Barclay Damon was the only entity (not their client the Cayuga Nation) that signed any complaint in this lawsuit against me and approximately 19 defendants. The volume of defendants was initiated by the Barclay Damon firm prior to making any reasonable investigation into their many unsubstantiated and speculative claims of wrongdoing by others. In the past I detailed how Barclays claims continually changed when confronted. Barclay Damon profited greatly from their Clients illicit business by driving up these defendants costs and intimidating and harassing defendants. Barclay Damon even preposterously proposed that I gift their clients a very expensive 7 acre Commercial property to "avoid further litigation" in this current unsuccessful unjustified action. (attached)

12. In conclusion, Barclay Damon turns a blind eye and enormously profits by knowingly assisting their client violate controlled substance laws, NYS 471 Tax law, CCTA and PACT ACT. Barclay Damon was unjustified to solely bring a lawsuit on behalf of their lucrative client as they had no basis for RICO damages against the bulk of the defendants; also and as the direct Tax harm is not to the Cayuga Nation but to the Government entities (NYS); their Client did not suffer a loss that they were entitled to or deserved to have in the first place.

13. It is for the above reasons, It is appropriate and I agree with the Barcley Damon firm (doc 334 response) and that I do want the Court to sanction them.

The above is know by me to be true.

paul meyer 4/12/2026

BARCLAY DAMON LLP

**David G. Burch, Jr.**
*Partner*

**For Settlement Purposes Only**
**Subject to FRE 408 and CPLR 4547**

November 14, 2025

**VIA ELECTRONIC MAIL**

Joseph A. Camardo, Jr., Esq.
Camardo Law Firm P.C.
127 Genesee Street
Auburn, NY 13021

Re: Settlement Demand in *Cayuga Nation v. Parker et al.* (5:22-cv-128) and *Cayuga Nation v. Fingerlakes Drive In, LLC et al.* (Index No. E2024-0073)

Dear Mr. Camardo:

We write concerning the ongoing disputes between the Cayuga Nation and Paul Meyer, Justice for Native First People, LLC, and C.B. Brooks LLC, including the pending federal action, *Cayuga Nation v. Parker et al.*, 5:22-cv-128 (N.D.N.Y.), and the state boundary-dispute proceeding, *Cayuga Nation v. Fingerlakes Drive In, LLC et al.*, Index No. E2024-0073 (Cayuga County Supreme Court).

This communication is made solely in connection with settlement discussions and is therefore inadmissible under Federal Rule of Evidence 408 and CPLR 4547. Nothing herein constitutes, nor should be construed as, an admission of liability or wrongdoing. The Nation expressly reserves all rights, remedies, claims, and defenses in all forums should a settlement not be reached.

In an effort to avoid further litigation and to resolve all disputes between the parties comprehensively, the Nation has authorized us to present the following settlement demand regarding the above-referenced cases. While the Cayuga Nation remains fully confident in the merits of its claims and is prepared to proceed toward final judgment, it is willing to consider resolution on the terms below.

**1. Transfer of the Drive-In Property**

Mr. Meyer and his affiliated entities shall transfer to the Cayuga Nation full title to the real property currently operated as the Fingerlakes Drive-In, located at 1064 Clark Street Road, Aurelius, New York 13021.

**For Settlement Purposes Only**
**Subject to FRE 408 and CPLR 4547**



**2. Dismissal of Litigation Upon Performance**

Upon execution of a final settlement agreement and full performance by Mr. Meyer, Justice for Native First People, LLC, and C.B. Brooks LLC, the Cayuga Nation will dismiss the pending federal action, *Cayuga Nation v. Parker et al.*, 5:22-cv-128 (N.D.N.Y.), and will dismiss the state boundary-dispute proceeding, *Cayuga Nation v. Fingerlakes Drive In, LLC et al.*, Index No. E2024-0073 (Cayuga County Supreme Court).

Unless withdrawn earlier, this demand will remain open until December 1, 2025, at which time it will expire if not accepted. If we do not receive an acceptable resolution by that deadline, the Nation is prepared to pursue all available remedies in litigation and expressly reserves all rights and remedies.

Very truly yours,

David G. Burch, Jr.

DGB:

cc: David Herkala, Esq.

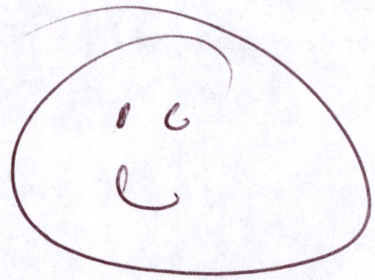
**NORTHERN DISTRICT**

**US District Court Clerk**

100 S Clinton St, Syracuse, NY 13261 ·

Paul Meyer
317 Cliffside dr
Auburn, NY 13021

Please file this Case 5:22-cv-128



Paul Meyer
317 Cliffside dr
Auburn, NY 13021

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