

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Helen Shirley, Anisha Hendricks, Cristel Rodriguez, Josie Barnes, Arleen Miller, and Rosalba Estevez, Isidore Jules, John Sonson, and Virginie George, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Limetree Bay Ventures, LLC, Limetree Bay Terminals, LLC, and Limetree Bay Refining, LLC,

Defendants.

Case No. SX-21-CV-00411

Jury Trial Demanded

Putative Class Action

Complex Litigation Division

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER TO ENJOIN THE LIMETREE DEFENDANTS FROM MAKING ADDITIONAL OFFERS TO SETTLE WITH PUTATIVE CLASS MEMBERS

Plaintiffs have previously moved for a protective order directing Limetree Bay Ventures, LLC, Limetree Bay Terminals, LLC, and Limetree Bay Refining, LLC (collectively “Limetree” or the “Limetree Defendants”) from continuing to present settlement offers to putative class members. Limetree, however, continues to make misleading offers, and may be reasonably expected to do so for some time given the standard delays with filing a new case.

The Court should not wait for Limetree to enter an appearance. It should enjoin Limetree from making any other settlement offers until the Court can conduct an evidentiary hearing on *Plaintiffs' Motion for Protective Order*.

Limetree’s ongoing efforts to push misleading settlement offers “undermine cooperation with or confidence in [putative] class counsel.” *Cox Nuclear Med. v. Gold Cup Coffee Servs., Inc.*, 214 F.R.D. 696, 698 (S.D. Ala. 2003). These harms cannot be remedied by a money judgment.

1. Legal Standard

This Court may issue a temporary restraining order under V.I. R. Civ. P. 65(b) without a hearing as a stopgap measure to prevent imminent harm. V.I. R. Civ. P. 65(b) (“The court shall consider and rule upon an application for a temporary restraining order as soon as practicable, and may issue a temporary restraining order without written or oral notice to the adverse party or its attorney. . . .”). “The order is designed to preserve the status quo until there is an opportunity to hold a hearing on the application for a preliminary injunction and may be issued with or without notice to the adverse party.” 3 Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 2951.

In deciding whether a temporary restraining order should be entered, the Court must consider the four preliminary injunction factors: “(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.” *3RC & Co., Inc. v. Boynes Trucking Sys., Inc.*, 63 V.I. 544, 550 (2015).

“[T]he Superior Court must evaluate the moving party's showing on all four factors under a sliding-scale standard. . . . [I]t must make findings on each of the four factors and determine whether—when the factors are considered together and weighed against one another—the moving party has made ‘a clear showing that [it] is entitled to [injunctive] relief.’” *Id.* at 557 (citation omitted). “[A] party seeking injunctive relief must demonstrate that the injunction is necessary to avoid ‘certain and imminent harm for which a monetary award does not adequately compensate’—in other words, harm without an adequate legal remedy.” *Id.* at 554 (citation omitted). “[I]n addition to showing that it is likely to suffer irreparable harm without an injunction, the moving party must also make ‘at least *some* showing that [it] is likely to succeed on the merits’ in moving for a preliminary injunction.” *Id.* at 555 (second bracket in original; citation omitted). “[I]n some cases, the showing on the merits

may be as minimal as simply making out a prima facie case if the showing on the moving party's likelihood of irreparable harm is strong enough—and the likelihood that the injunction would cause irreparable harm to the nonmoving party is low enough—to outweigh the weaker showing on the merits.” *Id.* at 555. “Where the moving party makes out a very strong showing on the merits—for example a clear and convincing one—injunctive relief may still be appropriate even where the moving party's showing of ‘certain and imminent harm for which a monetary award does not adequately compensate’ is much weaker, so long as the nonmoving party's likelihood of irreparable harm is similarly very low.” *Id.* at 556 (footnote and citations omitted). “[W]ith regard to the public interest, . . . this factor will typically favor the moving party ‘if [it] demonstrates both a likelihood of success on the merits and irreparable injury.’” *Id.* at 557 (citation omitted).

2. Analysis

a. Likelihood of Success on the Merits

Plaintiffs are very likely to succeed on the merits. Persuasive jurisprudence universally condemns the very thing Limetree is doing—making misleading settlement offers to putative class members without Rule 23(d) guardrails.

Limetree’s form settlement offer is facially misleading. Terms and phrases are worded broadly and imprecisely; Limetree notes the “May 12th Incident” but vaguely defines what it is or what may be related to it. Terms are capitalized without explanation; the form doesn’t explain with Personal Injury means, and it doesn’t explain what Property Damage means. The phrase “compromise of a doubtful and disputed claim” is misleading when Limetree has already acknowledged that Limetree’s oil is on putative class members’ roofs and in their cisterns.

And Limetree’s one-sided presentation is equally misleading. Limetree isn’t informing putative class members about this action or the two others filed in the Superior Court. Limetree is not providing a copy of the complaint; identifying Plaintiffs’ counsel; or informing of the importance in seeking

legal advice.

b. Irreparable Harm to Plaintiffs & the Putative Class

Plaintiffs will suffer irreparable harm if Limetree is not immediately enjoined. Improper settlement agreements can always be voided, but Rule 23(d) protects the very the integrity of judicial process. Misleading settlement offers erode trust in class counsel. *See, e.g., Cox Nuclear Med.*, 214 F.R.D. at 698 This critical intangible cannot be rectified by monetary damages.

c. Harm to Limetree

This factor weighs in Plaintiffs' favor. Rule 23(d) is designed to minimize harm to defendants in putative class actions by restricting speech no more than necessary to cure the likelihood of harm to putative class members.

Ultimately, Limetree will not be harmed by the relief Plaintiffs seek. Plaintiffs' do not seek to stop Limetree from making settlement offers altogether or for forever – just to stop making offers that are misleading – and to temporarily refrain from making any offers until an evidentiary hearing can be convened.

d. Public Interest

The public interest will be served by the issuance of a temporary restraining order. The people of the U.S. Virgin Islands are not served by permitting Limetree to continue to make misleading settlement offers to putative class members.

Plaintiffs note that the west end of St. Croix is a chronically underserved community. As the EPA has cautioned, “Limetree Bay is located in a community that is disproportionately affected by environmental burdens and its repeated incidents raise significant environmental justice concerns” *See* United States Environmental Protection Agency, News Release, *EPA Uses Emergency Powers to Protect St. Croix Communities and Orders Limetree Bay Refinery to Pause Operations* (May 14, 2021), available at [tinyurl.com/55z6w5fj](https://www.tinyurl.com/55z6w5fj).

Perhaps Limetree's actions are above board. Be that as it may, a temporary restraining order serves the public interest by calling a brief timeout until the propriety of Limetree's actions can be ascertained.

e. Security to be Posted

Rule 65(c) requires Plaintiffs to "give security in an amount that the court considers proper to pay the costs and damages sustained any party found to have been wrongfully enjoined or restrained." V.I. R. Civ. P. 65(c). Any damage that may befall the Limetree Defendants if they are wrongfully enjoined or restrained is unlikely. Accordingly, Plaintiffs ask the security be *de minimis*.

WHEREFORE, Plaintiffs pray this motion be granted, that a temporary restraining order issue enjoining the Limetree Defendants from making any more offers to settle before an evidentiary hearing can be held on Plaintiffs' Motion for Protective Order.

DATED: June 9, 2021

Respectfully Submitted,

/s/ H. Rick Yelton

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Rule 65(b)(1) Certification

In accordance with Rule 65(b)(1) of the Virgin Islands Rules of Civil Procedure, undersigned counsel certifies that Plaintiffs did not provide notice to the Defendants as they have not entered appearances. All Defendants have been served with the Summons, Complaint, and the Motion for Protective Order.

Upon information and belief, one or more of the Defendants may be represented by Attorney Carl Beckstedt. The undersigned is emailing Attorney Beckstedt a copy of this Motion contemporaneous with this filing.

/s/ H. Rick Yelton
H. Rick Yelton, Esq.

Certificate of Length

I hereby certify that this document complies the page or word limitation set for in Rule 6-1(e) of the Virgin Islands Rules of Civil Procedure.

/s/ H. Rick Yelton
H. Rick Yelton, Esq.

Certificate of Service

I hereby certify that on this 9th day of June, 2021, I caused a true and correct copy of the foregoing document to be served on Defendants by mailing a copy to their last-known addresses as permitted by Rule 5(b)(2)(C) of the Virgin Islands Rules of Civil Procedure.

/s/ H. Rick Yelton
H. Rick Yelton, Esq.