

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

PUERTO RICO SOCCER LEAGUE NFP
CORP., *et al.*,

Plaintiffs,

v.

FEDERACION PUERTORRIQUEÑA DE
FUTBOL, INC., *et al.*,
Defendants.

Civil No. 23-01203 (RAM)

Re: CIVIL RICO; ANTITRUST

**FPF DEFENDANTS' OPPOSITION TO PLAINTIFF FUTBOL BORICUA
(FBNET), INC.'S EMERGENCY MOTION FOR INJUNCTIVE RELIEF AND
INCORPORATED MEMORANDUM OF LAW**

TO THE HONORABLE COURT:

COMES NOW defendants Federación Puertorriqueña de Futbol, Inc. (“FPF”) and Iván Rivera-Gutierrez, José “Cukito” Martínez, Gabriel Ortiz, and Luis Mozo Canete (collectively with FPF, the “FPF Defendants” or “defendants”), through the undersigned attorneys, respectfully submit this opposition the *Plaintiff Futbol Boricua (FBNET), Inc.’s Emergency Motion for Injunctive Relief and Incorporated Memorandum of Law (ECF No. 122)* (hereinafter, the “Second Motion for Injunction”) filed by Futbol Boricua (FBNET), Inc. (“FBNET” or “plaintiff”) requesting a preliminary injunction:

I. INTRODUCTION

Facing an increasingly weak position in this case, with several dispositive motions fully briefed and awaiting the Court’s consideration, plaintiff has resorted once again to burdening the FPF Defendants with a baseless and unsubstantiated request for a preliminary injunction. This *Second Motion for Injunction* is a misguided attempt by FBNET to bolster its stance, hoping that something might stick. However, much like their original request for an injunction, which was

flatly rejected by the Court earlier this year, this *Second Motion for Injunction* also fails under appropriate legal scrutiny. While some elements have been modified from the original request, this second motion cannot be considered "new" as it essentially involves the same type of controversy already addressed and rejected by this Court on January 12, 2024 (the "January 12, 2024 Order"). **See ECF No. 64 and 78.**

In essence, plaintiff asks the Court to issue a preliminary injunction against FPF, the Confederation of North, Central and Caribbean Association Football (CONCACAF), the Fédération Internationale de Football Association (FIFA) to restrain them from "blocking Plaintiff Futbol Boricua (FBNET), Inc. and its sports [sic] news reporters from exercising their constitutionally protected rights under the First and Fourth Amendments to the U.S. Constitution, to cover and report on the Puerto Rico National Team ("Selección Nacional") soccer matches, and other Federation endorsed matches." **See ECF No. 122, p. 1.** The motion centers around FPF's refusal to grant "press" access to FBNET personnel for the Puerto Rico v. Anguilla World Cup Qualifier match on June 11, 2024, in Bayamón, Puerto Rico. *Id.*, at pp. 5-6.

Plaintiff views this as a violation of its First Amendment rights, warranting injunctive relief. *Id.*, at pp. 1, 6-7. However, the Court should deny Plaintiff's motion as it seeks to relitigate an issue already resolved by the Court in the **January 12, 2024 Order**. *See Harlow v. Children's Hospital*, 432 F.3d 50, 55 (1st Cir. 2005). There is no practical difference between plaintiff's first and second requests for injunction. Both motions deal with press access to an international match sponsored by FPF and assert alleged constitutional protections, requesting the same remedy. Like the first motion for injunctive relief, on the *Second Motion for Injunction* is disconnected from the *Third Amended Complaint* which does not include First Amendment or civil rights claims but

merely alleges tortious interference under Puerto Rico's general torts statute. See **ECF No. 33**, pp. 41-42.

Alternatively, even if the Court finds plaintiff is not barred from relitigating under the law of the case doctrine, they are not entitled to injunctive relief. FBNET has not shown a likelihood of success on the merits, irreparable harm, that the balance of hardships favors them, or that the public interest supports their request. See Sindicato Puertorriqueño de Trabajadores v. Fortuño, 699 F.3d 1, 10 (1st Cir. 2012). Beyond that, plaintiff's request against defendants, which are private parties, has no likelihood of success since there is no State action involved.

For these reasons, as detailed below, FBNET's *Second Motion for Injunction* fails to meet the necessary criteria and should be denied.

II. DISCUSSION AND ANALYSIS

A. The Court should deny FBNET's *Second Motion for Injunction* under the law of the case doctrine

The similarities between the first and second motions for injunction filed by Plaintiff makes it clear that FBNET is attempting to relitigate the issue of their "press" passes to FPF football matches through a request for injunctive relief. This issue, however, has already been decided by the Court in its *January 12, 2024, Order*. See **ECF No. 78**. Accordingly, the Court should reiterate its prior ruling and deny plaintiff's request for injunctive relief under the law of the case doctrine. "As most commonly defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. Law of the case directs a court's discretion; it does not limit the tribunal's power." Harlow v. Children's Hospital, 432 F.3d 50, 55 (1st Cir. 2005) (citing Arizona v. California, 460 U.S. 605, 618 (1983)). As defined by the First Circuit, the law of the case doctrine has two branches. The one applicable here provides that "unless corrected by an appellate tribunal, a legal decision made at one stage of

a civil or criminal case constitutes the law of the case throughout the pendency of the litigation.” Ellis v. U.S., 313 F.3d 636, 646 (1st Cir. 2002) (*citing* Filibotte v. Pa. Truck Lines, Inc., 131 F.3d 21, 25 (1st Cir. 1997)).

While this doctrine does not impede the Court’s review of the instant motion, the practice of not revisiting previously decided matters is essential to our justice system for various reasons:

For one thing, the law of the case doctrine affords litigants a high degree of certainty as to what claims are—and are not—still open for adjudication. For another thing, it furthers the abiding interest shared by both litigants and the public in finality and repose. Third, it promotes efficiency; a party should be allowed his day in court, but going beyond that point deprives others of their days in court, squanders judicial resources, and breeds undue delay. Fourth, the doctrine increases confidence in the adjudicatory process: reconsideration of previously litigated issues, absent strong justification, spawns inconsistency and threatens the reputation of the judicial system. [. . .]

Id., at p. 647 (references omitted).

A side-by-side comparison of FBNET’s original request for injunctive relief (**ECF No. 64**) and the instant motion (**ECF No. 122**) leaves no doubt as to the privity and identity between the issues brought up in both motions. Any differences are purely cosmetic or circumstantial, these being: 1) that the filing of the first motion was indistinctly done by all plaintiffs; 2) that the first request for injunction was made after a Women’s Gold Cup match of the female National Team of Puerto Rico, while the instant motion was filed after a male National Team of Puerto Rico for a World Cup qualifier match, and 3) the *Second Motion for Injunction* includes two, albeit unrelated, exhibits in support of its claims. But the core issue remains the same, FBNET’s quest for a court-mandated press passes for its personnel for FPF’s sponsored matches. To that end, their arguments remain the same, that FPF’s exercise of its prerogatives as the event organizer to refuse the right of entry to the event and control over media accreditation for the event somehow infringe upon Plaintiff’s First Amendment rights. *C.f.* **ECF No. 64, p. 4-6; ECF No. 122, p. 6-8**. Finally,

the remedy requested in both motions is practically the same – a restraining order against the FPF Defendants (although this time farther reaching, as they seek to enjoin FIFA and CONCACAF as well).

C.f. ECF No. 64, p. 6; ECF No. 122, p. 8-9.

The Court has already ruled against FBNET on this exact same controversy, thus entertaining the *Second Motion for Injunction* would be a waste of judicial resources, unnecessarily delay the case, and would be unfair to the defendants. Specifically, the Court in its *January 12, 2024, Order* found that **“a party moving for a preliminary injunction must necessarily establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint.”** See ECF No. 78 at p. 4 (*citing* Devose v. Herrington, 42 F.3d 470, 471 (8th Cir 1994) (emphasis by the Court)). The Court observed that plaintiffs failed to establish a connection between the injury identified in the motion for injunctive relief and the conduct outlined in the operative complaint. Specifically, the Court found that the irreparable harm claimed in the motion for injunction—namely, the individual members of plaintiff FBNET’s right to free association, right to mingle with colleagues, right to attend soccer matches, and damage to their reputations—was entirely separate from the operative complaint. The operative complaint involves claims of monopolistic activity, fraud, abuse of power, breach of fiduciary duty, tortious interference, and negligence against Defendants (ECF No. 78 at p. 5).

In the *Second Motion for Injunction* Plaintiff’s claim violations to its right of freedom of speech freedom to assembly and freedom of the press, which are again wholly distinct from those of the operative complaint.

Plaintiff has not made any effort to demonstrate grounds for the Court to reconsider its original ruling at this stage of the proceedings, nor have they provided compelling reasons for the Court to do so. The doctrine that courts should not revisit issues already decided is firmly based

on sound legal principles, and the extraordinary showing required to prompt the Court to reconsider its own ruling, after nearly six months, is conspicuously absent here. Therefore, the Court should decline to entertain the *Second Motion for Injunction* and deny the requested remedy.

B. Alternatively, there are insufficient grounds for a preliminary injunction

When faced with particular facts, “federal courts possess general equitable power to issue prejudgment injunctions in the nature of freeze orders so as to ensure the adequacy of post judgment remedies” Charlesbank Equity Fund II v. Blinds To Go, Inc., 370 F.3d 151, 158 (1st Cir. 2004) (citing United States v. First Nat’l City Bank, 379 U.S. 378, 385 (1965); DeBeers Consol Mines, Ltd. v. United States, 325 U.S. 212, 220 (1945)). “The aim of a preliminary injunction is to preserve the status quo, freezing an existing situation so as to permit the trial court, upon full adjudication of the case’s merits, more effectively to remedy discerned wrongs.” Matos ex rel. Matos v. Clinton School Dist., 367 F.3d 68, 72 (1st Cir. 2004) (citations omitted). However, the Supreme Court has established that the “preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (emphasis original, references omitted).

When a motion is brought pursuant to Federal Rule of Civil Procedure 65, courts are to weigh four factors: “(1) the likelihood of success on the merits; (2) the potential for irreparable harm if the injunction is denied; (3) the balance of relevant impositions, i.e., the hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues; and (4) the effect (if any) of the court’s ruling on the public interest.” Bl(a)ck Tea Soc’y v. City of Bos., 378 F.3d 8, 11 (1st Cir. 2004). While all four factors must be weighed, the moving party’s likelihood of success on the merits is “the touchstone of the preliminary injunction inquiry.” Philip

Morris, Inc. v. Harshbarger, 159 F.3d 670, 674 (1st Cir.1998). “[I]f the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity.” Maine Educ. Ass'n Benefits Trust v. Cioppa, 695 F.3d 145, 152 (1st Cir. 2012) (citations omitted).

i. The Court lacks power to issue the requested injunctive relief.

As this Court unequivocally recognized in its *January 12, 2024 Order* “[...] a court's equitable power lies only over the merits of the case or controversy before it, when a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not have the authority to issue an injunction.” See **ECF No. 78 at p. 4** (citing Devoe v. Herrington, 42 F.3d 470, 471 (8th Cir. 1994); Pac. Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633 (9th Cir. 2015)) (emphasis omitted).¹ The showing of a relationship between the injury sought in the preliminary injunction and the pleadings alleged in the complaint has also been held by sister districts in the First Circuit as a threshold requisite for preliminary injunctions. *E.g.*, Kosilek v. Misi, 630 F.Supp.3d 328, 334 (D.Mass. 2022); Beers v. Warden, New Hampshire State Prison, Civ. No. 20-968 (LM), 2021 WL 6883209 at p. 1 (D.N.H. December 15, 2021); Purugganan v. AFC Franchising, LLC, Civ. No. 20-00360 (KAD), 2021 WL 268884 at p. 2 (D.Conn. January 27, 2021); Aranella v. Cregg, Civ. No. 14-14764 (FDS), 2016 WL 1555680 at p. 2 (D.Mass. April 15, 2016); Lebrón v. Armstrong, 289 F.Supp.2d 56, 61 (D.Conn. 2003).

Here, the purported harm cited in the injunction motion—such as interference with the plaintiff's rights to free association and reputational damage—stands wholly detached from the operative complaint's allegations of monopolistic activity, fraud, breach of fiduciary duty, and negligence against the defendants. Therefore, because the *Second Motion for Injunction* fails to

¹ Westlaw reference: *Puerto Rico Soccer League NFP, Corp. v. Federación Puertorriqueña de Fútbol*, Civil No. 23-1203 (RAM), 2024 WL 149618, at p. 2 (D.P.R. January 12, 2024) (slip copy).

establish a nexus between the asserted injury and the actionable conduct delineated in the complaint, this Court lacks the authority to grant the requested relief. Granting injunctive relief in such circumstances would exceed the court’s equitable jurisdiction and undermine the integrity of the litigation process, contrary to established legal principles outlined in prior rulings. Consequently, plaintiff’s motion should be denied on the grounds that it fails to satisfy the requisite standard for injunctive relief under the prevailing legal framework.

ii. *Plaintiff is unlikely to prevail on the merits of its claim.*

Even if, *arguendo*, plaintiff could overcome the threshold issues we previously discussed, the *Second Motion for Injunction* fails as a matter of law because they fail to meet the standard for injunctive relief. As a matter of fact, movant provides no discussion of the four key factors required under Fed. R. Civ. P. 65 and the applicable caselaw. Therefore, we will be succinct in our arguments.

The First Circuit has reaffirmed that “likelihood of success on the merits is the most important of the four preliminary injunction factors,” Doe v. Trustees of Boston Coll., 942 F.3d 527, 533 (1st Cir. 2019); Weaver v. Henderson, 984 F.2d 11, 12 (1st Cir.1993). To demonstrate a likelihood of success on the merits, plaintiffs must show “more than mere possibility” of success—rather, they must establish a “strong likelihood” that they will ultimately prevail. See Sindicato Puertorriqueño de Trabajadores v. Fortuño, 699 F. 3d 1, 10 (1st Cir. 2012).

The moving party has failed to establish any likelihood of success on the merits of their claims, whether their newfound “constitutional” grievances or their tortious interference claim as pled in the operative complaint. FBNET has not explained how their claims in the *Third Amended Complaint* relate to their *Second Motion for Injunction*, nor have they demonstrated likelihood of success on the merits. This point is underscored by the pending motions to dismiss and the

opposition to the first Motion for Injunction, both of which FPF Defendants incorporate herein by reference. Plaintiffs' claims for tortious interference with contract fail to meet the plausibility threshold (**ECF No. 44** at p. 26-29; **ECF No. 65** at p. 5-8). Because no plausible claim for tortious interference has been alleged, it logically follows that injunctive relief cannot be based on a legally insufficient claim.

Furthermore, even if the instant motion could be considered on the basis of First Amendment arguments, FBNET cannot demonstrate any likelihood of success on the merits of their constitutional claims, particularly because there is no state action involved. The protections afforded by the Bill of Rights are primarily safeguards against governmental infringement. As stated in Manhattan Community Access Corp. v. Halleck, 587 U.S. 802, 808; 139 S.Ct. 1921, 1928 (2019), “the First Amendment typically protects citizens from the government, not from each other.” This principle is inherent in the text of the First Amendment itself: “Congress shall make no law [...] abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.” U.S. Const., Amend. I. Therefore, because every First Amendment claim necessitates state action in some form, FBNET’s constitutional arguments lack a basis for success. See McGuire v. Reilly, 386 F.3d 45, 60 (1st Cir. 2004) (“**Obviously, only the government can violate First Amendment rights: every First Amendment claim thus requires state action in some sense.**”)(emphasis added); see, also, Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001); Hudgens v. NLRB, 424 U.S. 507, 514–21 (1976); Yeo v. Town of Lexington, 131 F.3d 241, 248, 255 (1st Cir. 1997)).

Therefore, in order to distinguish between the government and an individual or private entities for purposes of claims arising under the First Amendment the Supreme Court has developed the State Action Doctrine. Under this doctrine “a private entity can qualify as a state

actor in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function; (ii) when the government compels the private entity to take a particular action; or (iii) when the government acts jointly with the private entity.” Manhattan Community Access Corp. v. Halleck, *supra* at p. 809 (citations omitted). Plaintiff, however, has not argued that the defendants are governmental actors. Therefore, they have not met the threshold necessary to invoke First Amendment protections against actions by private entities, reinforcing the conclusion that the claims for injunctive relief lack a legal basis under current jurisprudence.²

Additionally, contrary to what was glancingly implied by the plaintiff in its motion, the football match was not a public event in a public place, but rather a private event in a stadium that was leased for said purposes. In order for the general public to gain admittance to the match they had to pay for a ticket, and in order for media to be admitted as press to the event they had to be cleared by corresponding the FPF staff beforehand. This is a private and discretionary act. The fact that the stadium itself is owned by the Municipality of Bayamón does not alter this reality, nor does it convert it into a state action. “[T]he First Amendment does not guarantee access to property simply because it is owned or controlled by the government.” MacIver Institute for Public Policy v. Evers, 994 F.3d 602, 609 (7th Cir. 2021) (citing U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns, 453 U.S. 114, 129 (1981)).

Finally, FBNET cannot even show that they were being discriminated against or singled out by FPF, since their own exhibits show that other more seasoned reporters from credible media

² Notwithstanding, it is worth stressing that, FPF is a private non-profit corporation organized under Puerto Rico law, as acknowledged by FBNET in their *Third Amended Complaint* and *Second Motion for Injunction* (See **ECF No. 122** at p. 2; **ECF No. 33** at p. 6). More importantly, regulating organized sports at the Olympic or federative level is not considered a traditional or exclusive function in the U.S. or Puerto Rico. To that end, the U.S. Supreme Court has ruled that bodies like the U.S. Olympic Committee are not state actors under the First Amendment, despite their federal charter. See San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee, 483 U.S. 522, 542-546 (1987). Similarly, neither COPUR, its federations, nor FPF are considered governmental entities or state actors under federal or Commonwealth law. By law, the Government of Puerto Rico does not intervene in the operations of these entities. See P.R. Laws Ann. Tit. 1 § 444p.

organizations were also denied press credentials for the match. *See ECF No. 122 at p. 14-18.*

As such, movant cannot establish a substantial likelihood of success on the merits for the supposed violation of their constitutional rights under the First Amendment.

iii. Plaintiff will not suffer irreparable harm if the injunction is issued.

Plaintiff has also failed to show that it will suffer irreparable harm if a provisional remedy is not granted. The ‘mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction’. U.S. Fidelity and Guar. Co. v. Díaz Matos, 2007 WL 878571, 2007 WL 878571 *6 (D.P.R. March 21, 2007). It is also well settled in this Court that monetary loss does not amount to irreparable harm. Itek Corp v. First Nat’l Bank, 730 F. 2d 19, 22 (1st Cir. 1984). Plaintiff bears the burden of demonstrating that the denial of preliminary injunctive relief is likely to cause irreparable harm and such showing must be “grounded on something more than conjecture, surmise, or a party’s unsubstantiated fears of what the future may have in store.” ESSO Standard Oil Co. v. Mujica Cotto, 327 F. Supp. 2d 110, 130-31 (D.P.R. 2004).

In their *Second Motion for Injunction*, FBNET has failed to substantiate any claim of irreparable harm. Importantly, the alleged lack of access to the match has not hindered its ability to cover the event on its website. Furthermore, the exhibits included with the motion do not support any theory of irreparable harm and are not entirely pertinent to FBNET’s own claims. By neglecting to address this critical element of the preliminary injunction criteria, Plaintiff has effectively waived any arguments pertaining to irreparable harm. *See U.S. v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

iv. The balance of hardships weighs heavily in favor of the FPF Defendants.

Granting an injunction would tilt the balance of hardships against FPF. FPF has established comprehensive policies and procedures governing the management of its matches, including the regulation of press and media access. Forcing FPF to alter its admission policies and procedures

would constitute a significant intrusion on its rights as a private entity. Mandating FPF to issue a press pass to FBNET for all events would impose undue burdens and set a precedent that could encourage unfettered claims of rights to free speech and press at private events across Puerto Rico. Plaintiff has not engaged in any meaningful discussion on the balance of hardships or demonstrated how granting them a press pass would serve the public interest. Consequently, both arguments should be deemed waived. See U.S. v. Zannino, 895 F.2d at 17.

III. CONCLUSION

The *Second Motion for Injunction* is fundamentally flawed and lacks merit. It represents an attempt to re-litigate issues already adjudicated in the Court's earlier denial of the original Motion for Injunction (**ECF No. 64 and 78**) earlier this year, and at worst, it appears to be a tactic aimed at prolonging litigation and imposing undue burden on defendants through vexatious and frivolous claims. There are multiple grounds on which the current motion should be denied. First, under the law of the case doctrine, the Court may reject the motion as FBNET seeks to revisit previously settled matters. Second, the claims underlying the current motion for injunctive relief are distinct from those in the *Third Amended Complaint*, thereby depriving the Court of jurisdiction to grant preliminary injunction. Third, FBNET has failed to satisfy the criteria for preliminary injunction under Fed. R. Civ. Proc. 65 by not demonstrating likelihood of success on the merits or addressing irreparable harm. The First Circuit and this Court have consistently emphasized that parties must present clear and developed arguments, failing which issues are considered waived. See Rivera-Velázquez v. Regan, 102 F.4th 1, 13 (1st Cir. 2024) (citing *Zannino*, op. cit.); see, also, Candelario del Moral v. UBS Financial Services Inc., 290 F.R.D. 336 (D.P.R. 2013). As such, the Court should decline to entertain the *Second Motion for Injunction*.

WHEREFORE, the FPF Defendants respectfully requests the Court to enter an order denying plaintiffs' *Second Motion for Injunction (ECF No. 122)* and to impose costs and attorney's fees upon the moving party, FBNET.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 9th day of July 2024.

CERTIFICATION: An electronic copy of the foregoing motion was filed with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to opposing counsel of record.

**ADSUAR MUÑOZ GOYCO
SEDA & PÉREZ-OCHOA, P.S.C.**

P.O. Box 70294
San Juan, PR 00936-8294
Tel.: 787.756.9000
Fax: 787.756.9010

/s/Edwin Seda-Fernández
Edwin J. Seda-Fernández
USDC-PR No. 205212
Email: seda@amgprlaw.com

/s/Eric Pérez-Ochoa
Eric Pérez-Ochoa
USDC-PR No. 206314
Email: epo@amgprlaw.com

/s/Alexandra C. Casellas-Cabrera
Alexandra Casellas Cabrera
USDC-PR No. 301010
Email: acasellas@amgprlaw.com

/s/Andrés Daniel Santiago-López
Andrés D. Santiago López
USDC-PR No. 309508
Email: asl@amgprlaw.com

Attorneys for the FPF Defendants