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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEWLEAD HOLDINGS LTD.,

Petitioner,

-against-

IRONRIDGE GLOBAL IV LIMITED,

Respondent.

14cv3945

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, District Judge:

Petitioner NewLead Holdings Ltd. moves for a preliminary injunction enjoining Respondent Ironridge Global IV Limited ("Ironridge") from obtaining additional common shares of NewLead in satisfaction of certain liabilities. The motion is denied and the temporary restraining order is dissolved because this Court lacks personal jurisdiction over Ironridge. Further, even if jurisdiction existed, NewLead has not shown it is entitled to preliminary relief.

BACKGROUND

NewLead is an international shipping company that owns dry bulk carriers and mining assets. Decl. of Antonis Bertsos ¶ 44 (attached as Ex. E to Decl. of Richard De Palma (ECF No. 4)). On February 24, 2014, NewLead and Ironridge entered into a term sheet contemplating that Ironridge would invest in NewLead. Decl. of Brendan T. O'Neil (ECF No. 13) ¶ 16, Ex. 6. On March 4, 2014, NewLead and Ironridge signed a share subscription agreement. Bertsos Decl. Ex. H. Ironridge purchased 500 preference shares in NewLead for $2.5 million in cash and an additional 2,250 preference shares for nine promissory notes worth $2.5 million each. Bertsos Decl. ¶ 62. Ironridge may convert the 500 preference shares it

bought for cash into common shares, and it may convert further tranches of 250 preference shares each into common shares on full payment of the note corresponding to that tranche. The agreement prohibits Ironridge from short selling NewLead stock and imposes daily trading limits. Bertsos Decl. Ex. H §§ IV.I, IV.M.

On conversion of its preference shares, Ironridge is entitled to a set number of common shares plus dividends. Bertsos Decl. ¶ 68; O'Neil Decl. ¶ 34, Ex 15 §§ I.G.2, I.C.1. NewLead may elect to pay dividends and defined "embedded dividend liabilities" either in cash or in common shares, with the value of the common shares determined by a formula in the agreement, but always below the value at which it publicly trades. Bertsos Decl. Ex. D § I.C.2. The parties entered into an irrevocable letter of instruction for the NASDAQ transfer agent for NewLead shares, which permits Ironridge to obtain common shares of NewLead without NewLead's authorization. Bertsos Decl. ¶¶ 16-18, Ex. C; O'Neil Decl. ¶¶ 32-33. To prevent Ironridge from becoming an "affiliate" of NewLead, the agreements bar Ironridge from holding 10% or more of NewLead's common shares at any time. O'Neil Decl. ¶ 40.

Ironridge issued conversion notices for 100 preference shares on April 10, 2014 and another 100 on April 17. Bertsos Decl. ¶ 19. On April 14, it received its first common shares. Bertsos Decl. ¶ 40; O'Neil Decl. ¶ 55. Because of the way embedded dividend liabilities are measured, if they are paid in shares, as they were here, Ironridge is entitled to more and more shares if NewLead's stock price drops. Bertsos Decl. ¶ 73, Ex. D §§ I.C.2, I.G.6.g. Almost every trading day since April 14, Ironridge has obtained and sold large numbers of NewLead common shares. O'Neil Decl. Ex. 31. As of June 6, 2014, Ironridge had received over eight million common shares. O'Neil Decl. ¶ 68.

Ironridge's share subscription agreement is set against a precipitous decline in NewLead's share prices. Adjusting for stock splits, in the three months prior to April 14, 2014, the date of Ironridge's first NewLead transaction, NewLead's share price fell by 97.8%, from $225 to $17. O'Neil Decl. ¶ 71; June 9, 2014 Tr. 73:2-4. In the six months before April 14, it fell 99.2%, from $2,085 to $17. O'Neil Decl. ¶ 71; June 9, 2014 Tr. 72:23-74:1. The decline continued after Ironridge began obtaining and selling shares. By May 15, NewLead's share price had fallen to 39 cents. Bertsos Decl. ¶ 11.

By early May, the parties' relationship had soured. Ironridge attributes the deterioration to the fact that they were unable to come to terms on a "favor" to NewLead in which Ironridge would repay one of its notes prior to the time payment was due. O'Neil Decl. ¶¶ 42-47. But according to NewLead, it was because Ironridge was engaging in "death spiral" financing by which it intentionally manipulated NewLead's share price downward. Bertsos Decl. ¶¶ 11-14. According to this theory, a financier purchases convertible stock which can be converted into common stock for less than its market value, and the lower the stock price, the more common shares it receives. Bertsos Decl. ¶¶ 48-49. The financier short sells common stock to drive down the share price, converts its preference shares into common shares at depressed prices, and uses those shares to cover its short positions. Bertsos Decl. ¶ 50.

NewLead accuses Ironridge of short selling shares because according to its calculations, if it was not using the shares it obtained to cover short positions, on April 16, 2014 it would have had 10% or more of NewLead's shares, in violation of the cap. Bertsos Decl. ¶ 90, Ex. L. Ironridge denies short selling NewLead shares, asserts that NewLead's calculation of the

cap violation has a simple arithmetic error, and attaches account records showing no short sales. O'Neil Decl. ¶¶ 54-57.

NewLead also accuses Ironridge of violating the daily trading limits on five occasions. Bertsos Decl. ¶ 82, Ex. J; June 9, 2014 Tr. 48:16-50:19. Ironridge disagrees, arguing one of the measures of the daily trading limit is measured by dollar volume, not by number of shares, in which case it has not violated the trading limits. O'Neil Decl. ¶¶ 59-63, Ex. 31.

By obtaining additional common shares that dilute the value of existing shares, NewLead accuses Ironridge of responsibility for NewLead's plunging stock price. On May 7, 2014, NewLead did not comply with Ironridge's request to convert new preference shares. O'Neil Decl. ¶ 48. On May 9, NewLead informed Ironridge it believed Ironridge had violated their agreement. O'Neil Decl. ¶ 48, Ex. 24. That same day, Ironridge commenced arbitration proceedings against NewLead in Bermuda, as required for disputes under their agreement. O'Neil Decl. ¶ 49, Ex. 26. On May 12, NewLead sent Ironridge Global Partners LLC ("Ironridge Partners"), Ironridge's parent company, a notice of default stating NewLead was terminating the agreements due to Ironridge's material breaches. O'Neil Decl. ¶ 50, Bertsos Decl. ¶ 14, Ex. B. On May 27, NewLead sent Ironridge notice that to the extent their agreements are still valid, it was switching its election and would now pay its dividend and applicable embedded dividend liability in cash, not common shares. Bertsos Decl. ¶ 21, Ex. E. Ironridge continued to demand common shares from the NASDAQ transfer agent in satisfaction of embedded dividend liabilities after this notice. Bertsos Decl. ¶¶ 24-25, Ex. G.

On June 3, 2014, NewLead filed this proceeding and sought a temporary restraining order in aid of arbitration enjoining Ironridge from obtaining additional common

shares. ECF Nos. 2-4. NewLead stated it intended to file arbitration counterclaims seeking a declaration that its agreements with Ironridge are terminated, that even if they are not terminated Ironridge has no entitlement to additional common shares, and for violations of state and federal securities laws. Bertsos Decl. ¶ 8. NewLead asserted preliminary relief was necessary because Ironridge had driven down NewLead's share price from $146.50 on March 13, 2014 (one month before Ironridge's first transaction) to 39 cents on May 15 (more than two weeks before NewLead filed the action). Bertsos Decl. ¶ 11. It argued that it would not survive if Ironridge continued to obtain new shares and drive down the share price. Bertsos Decl. ¶¶ 29-33.

This Court held a conference with counsel for the parties on June 3 shortly after the action was filed to determine whether a temporary restraining order should issue. Though NewLead's motion sought to enjoin Ironridge from receiving any common shares, its counsel conceded Ironrirdge was entitled to convert preference shares. June 3, 2014 Tr. 15:24-16:14. This Court issued a limited temporary restraining order enjoining Ironridge from obtaining additional common shares in satisfaction of embedded dividend liabilities. ECF No. 5. This Court held an evidentiary hearing on June 9, 2014.

DISCUSSION

I. Personal Jurisdiction

The amenability of an out-of-state corporation to suit in a federal district court is determined by the law of the state in which the district court sits. Sole Resort, S.A. de C.V. v. Allure Resorts Management, LLC, 450 F.3d 100, 102-03 (2d Cir. 2006) (citing Fed. R. Civ. P. 4(k)(1)(A)). "A plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit." Penguin Grp. (USA) Inc. v. Am. Buddha, 609

F.3d 30, 34 (2d Cir. 2010). In order to obtain a preliminary injunction, a plaintiff must make more than a "prima facie showing of jurisdiction." Weitzman v. Stein, 897 F.2d 653, 659 (2d Cir. 1990). It must show "a reasonable probability of ultimate success" on the issue of personal jurisdiction. Weitzman, 897 F.2d at 659.

a. General Jurisdiction

A foreign corporation is subject to general personal jurisdiction in New York if it is "doing business" in the state. N.Y. CPLR § 301. A plaintiff must show the defendant "has engaged in such a continuous and systematic course of 'doing business' [in New York] that a finding of its 'presence' [in New York] is warranted." Sonera Holding B.V. v. Cukurova Holding A.S., ---F.3d---, 2014 WL 1645255, at *2 (2d Cir. Apr. 25, 2014) (alterations in original).

Ironridge is a British Virgin Islands company with a principal place of business in Road Town, Tortola, British Virgin Islands. O'Neil Decl. ¶¶ 1, 5. It has two directors, David Sims and Navigator Management, Ltd. O'Neil Decl. ¶ 6. Sims lives in the Cayman Islands, and Navigator is also a British Virgin Islands company with a principal place of business there. O'Neil Decl. ¶ 6. Ironridge has two officers, Sims and Falcon Secretaries, Ltd. another British Virgin Islands company with its principal place of business there. O'Neil Decl. ¶ 6. Ironridge does not have any offices, employees, property, or bank accounts in the United States. O'Neil Decl. ¶ 8. It is not registered to do business in New York or any other state. O'Neil Decl. ¶ 8.

Despite that, Ironridge is not as foreign as it seems. It is a subsidiary of Ironridge Partners, a Delaware limited liability company with its principal place of business in California. O'Neil Decl. ¶ 2. Ironridge Partners has four directors: Brendan T. O'Neil, Keith Coulston, John

C. Kirkland, and Richard H. Kreger. O'Neil Decl. ¶ 7. It maintains an office in Manhattan. O'Neil Decl. ¶ 9. Though Ironridge Partners describes it as a "satellite office" which Kreger "occasionally uses," O'Neil Decl. ¶ 9, SEC filings describe it as Kreger's principal place of business and its website lists it as one of its three offices. Reply Decl. of Antonis Bertsos (ECF No. 14) ¶¶ 11, 39, Exs. 3, 17. All of NewLead's negotiations with Ironridge were conducted by Kreger, Kirkland, O'Neil, and Coulston. Bertsos Reply Decl. ¶¶ 4,6, 8; June 9, 2014 Tr. 35:10-21, 40:22-24. When the relationship between NewLead and Ironridge faltered and Ironridge demanded an arbitration, all Ironridge correspondence continued to come from these individuals. Bertsos Reply Decl. ¶ 6. NewLead has had no interactions with David Sims, the only supposed individual affiliated with Ironridge. Bertsos Reply Decl. ¶¶ 5,7; June 9, 2014 Tr. 34:11-19, 40:25-41:5. Tellingly, it is O'Neil, not Sims, who has personal knowledge of the relevant facts in this action and who submitted a declaration in support of Ironridge.

But the New York activities of a parent corporation do not alone establish a subsidiary's presence in the state. See Jazini v. Nissan Motor Co., 148 F.3d 181, 184 (2d Cir. 1998). NewLead contends Ironridge Partners' New York contacts can be imputed to Ironridge because Ironridge Partners acts as its agent, performing business "sufficiently important to the foreign entity that the corporation itself would perform equivalent services if no agent were available." Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 95 (2d Cir. 2000). But in evaluating general jurisdiction, the Supreme Court recently "expressed doubts as to the usefulness of an agency analysis, like that espoused in Wiwa, that focuses on a forum-state affiliate's importance to the defendant rather than on whether the affiliate is so dominated by the defendant as to be its alter ego." Sonera Holding, 2014 WL 1645255, at *4 (citing Daimler AG

v. Bauman, 134 S. Ct. 746, 759 (2014)). "[T]he inquiry into importance stacks the deck, for it will always yield a pro-jurisdiction answer: Anything a corporation does through [its affiliate] is presumably something that the corporation would do 'by other means' if the [affiliate] did not exist." Daimler, 134 S. Ct. at 759.

Aside from an agency theory, "[w]here a parent corporation is present in New York, its foreign subsidiary may be subject to New York jurisdiction if the subsidiary is a 'mere department' of the parent." Dorfman v. Marriott Int'l Hotels, Inc., No. 99 Civ. 10496 (CSH), 2002 WL 14363, at *2 (S.D.N.Y. Jan. 3, 2002). To be a "mere department," there must first be common ownership. Jazini, 148 F.3d at 184-85. Courts also look to the "financial dependency of the subsidiary on the parent corporation," "the degree to which the parent corporation interferes in the selection and assignment of the subsidiary's executive personnel and fails to observe corporate formalities," and "the degree of control over the marketing and operational policies of the subsidiary exercised by the parent." Jazini, 148 F.3d at 185. While there is common ownership, that alone is not enough to establish jurisdiction, and there is no evidence as to the remaining factors.

NewLead claims Ironridge conducted business in New York on its own behalf by noticing an asset sale to be held in New York City and by participating in a New York state court litigation. Bertsos Reply Decl. ¶¶ 43-48, Exs. 20-23. This is far from the continuous and substantial contacts necessary to support general jurisdiction.

b. Specific Jurisdiction

New York law provides for specific jurisdiction "over any non-domiciliary . . . who in person or through an agent transacts any business within the state." N.Y. CPLR §

302(a)(1). To establish personal jurisdiction under this provision, "(1) [t]he defendant must have transacted business within the state; and (2) the claim asserted must arise from that business activity." Sole Resort, 450 F.3d at 103. A defendant transacts business in New York when it "purposefully avails itself of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. BP Amoco P.L.C., 319 F. Supp. 2d 352, 358 (S.D.N.Y. 2004) (quoting McKee Elec. Co. v. Rauland–Borg Corp., 229 N.E.2d 604, 607 (N.Y. 1967)).

"Contract negotiations in New York will satisfy [the § 302(a)(1)] standard if the discussions 'substantially advanced' or were 'essential to' the formation of the contract or advanced the business relationship to a more solid level." Palmer v. Globalive Commc'ns Corp., 07 Civ. 038 (MGC), 2008 WL 2971469, at *6 (S.D.N.Y. Aug. 1, 2008). "Meetings which are merely 'exploratory, unproductive, or insubstantial are insufficient to establish' personal jurisdiction. Eastboro Found. Charitable Trust v. Penzer, 950 F. Supp. 2d 648, 660 (S.D.N.Y. 2013).

Kreger met with NewLead CFO Antonis Bertsos twice in New York City. June 9, 2014 Tr. 34:20-35:4. In July 2013, they met at a restaurant near Grand Central to discuss Ironridge's initial proposal. Bertsos Reply Decl. ¶¶ 12-13, Ex. 2. After the meeting, Kreger sent Bertsos a proposed term sheet. Bertsos Reply Decl. ¶ 14, Ex. 4. NewLead declined Ironridge's offer. Bertsos Reply Decl. ¶ 19. In December 2013, Kreger and Bertsos planned to meet again in New York, but that meeting was cancelled at the last minute. Bertsos Decl. ¶ 20, Ex. 8. Negotiations resumed in January 2014 by phone and email, with no record that any representative of Ironridge was in New York at the time. Bertsos Decl. ¶¶ 21-27. Two weeks

after the parties signed their agreement on March 4, 2014, Bertsos had dinner with Kreger and Kirkland in Manhattan where they exchanged post-closing pleasantries. Bertsos described the conversation as being about how "it was a smooth closing, it was a quick transaction, and we are looking forward to—to enter and get deeper into this transaction with Ironridge. And they again told us how this is a very big deal for them and they are looking forward to invest more and to become a long-term investor of the company." June 9, 2014 Tr. 44:13-19.

Those are all of this dispute's contacts to New York.[1] The first meeting in July 2013 was exploratory and did not lead to the final agreement. The second meeting, in March 2014, was insubstantial and after the parties' share subscription agreement. NewLead claims Kreger participated in negotiations from New York by phone and email, but NewLead only speculates about Kreger's location. While Kreger sometimes used Ironridge Partners' New York City office, his email signature lists his office in Westport, Connecticut and provides a Connecticut area code for his office line. Bertsos Decl. Ex. 9. The two meetings in Manhattan, the only definite points of contact for this transaction to New York, did not "substantially advance[]" and were not "essential to" the parties' contracts. Palmer, 2008 WL 2971469, at *6. Therefore, NewLead has failed to establish specific jurisdiction over Ironridge.

[1] NewLead also argues that Ironridge's alleged manipulation of a stock on a New York-based exchange counts as a contact for specific jurisdiction. The cases it cites are distinguishable. In re Natural Gas Commodity Litigation, 337 F. Supp. 2d 498 (S.D.N.Y. 2004), involved the Commodity Exchange Act, which provides for jurisdiction "in the judicial district wherein any act or transaction constituting the violation occurs." 337 F. Supp. 2d at 517 (quoting 7 U.S.C. § 25(c)). Similarly, SEC v. Alexander, No. 00 Civ. 7290 (LTS), 2003 U.S. Dist. LEXIS 8504, at *2 (S.D.N.Y. May 16, 2003), involved the Securities Exchange Act of 1934, which "permits the exercise of personal jurisdiction to the limit of the Due Process Clause of the Fifth Amendment." 2003 U.S. Dist. LEXIS 8504, at *2 (quoting Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 988 (2d Cir. 1975)). Here, NewLead has not identified what statutes Ironridge has violated, stating only that it will seek damages based on Ironridge's "violations of the federal and state securities laws." Bertsos Decl. ¶ 8.

c. Rule 4(k)(2)

Finally, NewLead attempts to establish jurisdiction under Federal Rule of Civil Procedure 4(k)(2). Rule 4(k)(2) is designed to "fill a 'gap' in the enforcement of federal law," permitting courts to exercise personal jurisdiction over defendants "having contacts with the United States sufficient to justify the application of United States law . . ., but having insufficient contact with any single state to support jurisdiction under state long-arm legislation." United States v. Int'l Bhd. of Teamsters, 945 F. Supp. 609, 616-17 (S.D.N.Y. 1996) (quoting Fed. R. Civ. P. 4(k)(2) advisory committee's note). Under Rule 4(k)(2), a defendant must not be "subject to jurisdiction in any state's courts of general jurisdiction," and exercising jurisdiction must be "consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2). While Ironridge is not subject to jurisdiction in New York there is no evidence that it is also not subject to jurisdiction in each of the other 49 states.

II. Preliminary Injunction

Even if this Court had personal jurisdiction over Ironridge, NewLead would still not be entitled to a preliminary injunction. A 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 removed). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

a. Likelihood of Success on the Merits

NewLead intends to file arbitration counterclaims seeking a declaration that its agreement with Ironridge is terminated due to material breach, that Ironridge has no entitlement to additional common shares, and for violations of state and federal securities laws. Bertsos Decl. ¶ 8.

The share subscription agreement provides that NewLead's "absolute obligation to issue Common Shares to [Ironridge] upon conversion of Preference Shares is an independent covenant, and any breach or alleged breach of any provision of any Transaction Document by any person shall not excuse performance of such obligation." O'Neil Decl. ¶ 31, Ex. 10 IV.L. At the hearing, NewLead conceded that Ironridge may continue to convert preference shares. June 9, 2014 Tr. 16:19-17:6, 93:3-95:20.

This leaves the question of whether Ironridge can obtain common shares to satisfy embedded dividend liabilities. Initially, Ironridge insisted that NewLead was bound by its original election to pay with common shares. But on June 5, Ironridge informed NewLead it would accept its election to pay cash in satisfaction of past and future liabilities. ECF No. 6 & Ex. B.

This winnows the dispute to whether Ironridge has breached the contract and violated securities laws by short selling common shares and violating daily trading limits, and if so, whether this would prohibit Ironridge from obtaining common shares in satisfaction of embedded dividend liabilities. Ironridge has submitted account statements for all its sales of NewLead shares, which show no short sales and account for all shares it has received. O'Neil Decl. ¶¶ 52-55, Exs. 28-30. And Ironridge showed that NewLead miscalculated when it found

that Ironridge exceeded the 10% cap on April 16—its only evidence of short selling—because it omitted the 2.55 million shares Ironridge received that day from the total number of outstanding shares. O'Neil Decl. ¶¶ 56-57. There is no evidence Ironridge has ever made a short sale of NewLead stock.

The parties dispute whether one of the measures of the daily trading limit is assessed by dollar volume or number of shares. Even if Ironridge did violate the trading limits, NewLead's CFO acknowledged that "the difference between calculating the trading limits on a dollar value as opposed to a share number basis is de minimis." June 9, 2014 Tr. 91:8-14. Five de minimis breaches cannot give rise to a claim for material breach permitting NewLead to terminate the share subscription agreement.

b. Irreparable Harm

"A showing of irreparable harm is 'the single most important prerequisite for the issuance of a preliminary injunction.'" Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 118 (2d Cir. 2009) (quoting Rodriguez v. DeBuono, 175 F.3d 227, 234 (2d Cir. 1999)). "To satisfy the irreparable harm requirement, plaintiffs must demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." Faiveley, 559 F.3d at 118.

NewLead argued Ironridge "has artificially driven down the price of NewLead's Common Shares from $146.50 per share (March 13, 2014) to $0.3899 per share (May 15, 2014) in only two months." Bertsos Decl. ¶ 11. But Ironridge's first NewLead transaction was on April 14, 2014, one month after the alleged manipulation began. NewLead's CFO conceded

Ironridge could not be responsible for any decline in NewLead's stock price before April 14. June 9, 2014 Tr. 72:8-73:6. NewLead's share price has declined precipitously over a period of years. Indeed, in the twelve months prior to April 14, 2014, NewLead's share price dropped from $9,900 to $17. O'Neil Decl. ¶ 71. Adjusting for stock splits, NewLead's share price fell from $3.6 million in 2006. June 9, 2014 Tr. 71:6-14. Ironridge had nothing to do with any of those declines.

And Ironridge is responsible for only a small portion of NewLead's share dilution. Between April 11 and June 6, NewLead issued nearly 69 million shares, only 8 million of which went to Ironridge. O'Neil Decl. ¶ 68. Since April, two other shareholders received and sold more than five times as much NewLead stock as Ironridge. O'Neil Decl. ¶ 67. Between the issuance of the restraining order on June 3 and the evidentiary hearing on June 9, NewLead issued over 34 million shares to other parties, nearly doubling the number of outstanding shares. NewLead will continue to hemorrhage common shares and dilute their value regardless of whether Ironridge is enjoined.

Finally, NewLead could stop Ironridge from obtaining common shares in satisfaction of embedded liabilities without an injunction. As noted, Ironridge agreed to accept cash instead of shares. ECF No. 6 & Ex. B. But NewLead has refused to pay the cash, claiming it is not yet due. June 9, 2014 Tr. 68:16-69:18. Ironridge readily admits it will resort to self-help and instruct the transfer agent to deliver shares if NewLead does not pay. June 9, 2014 Tr. 157:24-158:13. Even if NewLead is correct that the cash is not yet due and Ironridge would be acting wrongfully, NewLead could tender the cash now and assert a claim for damages in the

arbitration, making this a dispute over money and therefore inappropriate for equitable relief. See, e.g., WNET, Thirteen v. Aereo, Inc., 712 F.3d 676, 684 (2d Cir. 2013).

CONCLUSION

For the foregoing reasons, NewLead Holdings Ltd.'s motion for a preliminary injunction in aid of an international arbitration proceeding is denied and the temporary restraining order entered by this Court on June 3, 2014 is dissolved. The Clerk of Court is directed to terminate all pending motions and mark this case closed.

Dated: June 11, 2014
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.

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