UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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

Plaintiff,

-against-

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.

Case No. 5:22-cv-128 (BKS/TWD)

THE PARKER DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF POST-VERDICT RELIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Dustin Parker and Nora Weber (the "Parker Defendants") respectfully submit this memorandum of law seeking post-verdict relief.

At the close of trial, the Court reserved decision on the Parker Defendants' renewed Rule 50(b) motion for judgment as a matter of law and instructed the parties to submit briefing on the issue combined with any other requests for post-verdict relief.[1] (See Trial Tr. Day 4 at 700:7-17.) For the reasons set forth herein, the Court must: (1) grant judgment as a matter of law under Rule 50(b) in favor of the Parker Defendants on Plaintiff's 18 U.S.C. § 1962(a) claim because the Nation failed to prove a distinct investment/use injury directly caused by the alleged conduct; or (2) *alternatively*, order remittitur to zero under Rule 59 based on the *in pari delicto* doctrine and additional preserved errors regarding expert admissibility, damage allocation, and proximate cause; or (3) a*lternatively*, enter a net judgment for the Parker Defendants by offsetting the $298,000 conversion verdict against the $75,619 RICO award, resulting in no monetary recovery for the Nation.

Additionally, the Cout's judgment must: (1) confirm the categorical exclusion of cannabis-based damages from any judgment and preserve the Parkers' legal position on non-cognizability of cannabis injuries under RICO, consistent with *Shulman v. Kaplan*, 58 F.4th 404 (9th Cir. 2023), and related authority; (2) withdraw the Court's prior indication of spoliation sanctions or limit any spoliation sanction to nominal monetary relief (fees and costs) confined to damages issues, with no adverse inference or effect on liability or non-cannabis damages; and (3) grant such other relief as the Court shall deem just and proper.

[1] In accordance with the Court's Order (ECF No. 322), the Parker Defendants will submit their motion for attorney fees by January 21, 2026.

STATEMENT OF JURISDICTION

This Court has subject-matter jurisdiction over the Nation's federal claims, including its claims under the Racketeer Influenced and Corrupt Organizations Act, because they arise under the laws of the United States within the meaning of 28 U.S.C. § 1331. The Court also has supplemental jurisdiction over any related state-law claims under 28 U.S.C. § 1367(a).

PROCEDURAL POSTURE, VERDICT, AND TRIAL RULINGS

Following the Court's pretrial orders and trial rulings, Plaintiff's 28 U.S.C. § 1962(a) claim proceeded to a jury verdict limited to non-cannabis damages; the Court excluded cannabis lost-profits evidence pretrial and reserved gatekeeping rulings as to portions of the Nation's damages methodology. The jury awarded the Nation $75,619 against the Parker Defendants only, finding that the Nation had not proven by a preponderance of evidence against any of the Meyer Defendants, while awarding $298,000 to the Parker Defendants on their conversion counterclaim. (See Verdict, ECF No. 10.) The Court had previously ruled that any recovery for the Parker Defendants' counterclaim for conversion would be a set-off against the Cayuga Nation's claimed RICO damages, having found that the counter-claim arose from the same transaction that grounded the Nation's main action.[2] (See Memorandum-Decision and Order, ECF No. 86.) The Court had also previously granted the Nation's spoliation motion in principle but denied the Nation's request for case-terminating relief against the Park Defendants, indicating any sanction would be tailored and likely monetary and tied to damages, not liability. (See Memorandum-Decision and Order, ECF No. 226.)

[2] The Court noted "The Defendants' counterclaims arise from the same time period: their allegations revolve around the Cayuga Nation's enforcement action against the alleged racketeering enterprise at 126 Bayard Street." ECF No. 86 at 16.

THE PARKER DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER RULE 50(b)

The Parker Defendants respectfully submit that the Nation has failed to prove the essential elements of its RICO claim, including causation and damages, and that the evidence presented at trial does not support liability for alleged illegal sales or investment injury. Accordingly, they respectfully request that the Court grant judgment as a matter of law under Rule 50(b).

I. STANDARD OF REVIEW

A motion for judgment as a matter of law under Rule 50(b) is governed by a *de novo* standard of review. The Court must determine whether, viewing the evidence in the light most favorable to the non-moving party, there is a legally sufficient evidentiary basis for a reasonable jury to find in favor of that party. If no reasonable jury could find for the non-movant an essential element of the claim, judgment as a matter of law is warranted. See Fed. R. Civ. P. 50; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

II. Civil RICO (§ 1962(a))

To prevail on the remaining § 1962(a) claim, Plaintiff bore the burden of proving by a preponderance of the evidence that:

1. the Parker Defendants received income derived from a pattern of racketeering activity;
2. they used or invested that income in the establishment or operation of an enterprise; and
3. the Nation suffered a distinct "investment/use" injury to its business or property proximately caused "by reason of" that investment or use, not merely by the predicate acts themselves.

"By reason of" requires proximate cause—*i.e.*, a sufficiently direct relation between the alleged RICO violation and the claimed injury. Damages must be proven with non-speculative evidence and cannot be based on legally non-cognizable interests. *Shulman v. Kaplan*, 58 F.4th 404 (9th Cir. 2023).

III. The Nation Failed to Prove distinct 18 U.S.C. § 1962(a) "Investment/Use"

The Nation failed to present legally sufficient evidence of a distinct § 1962(a) "investment/use" injury proximately caused "by reason of" the investment of racketeering income, as opposed to injuries from predicate acts themselves, as required by RICO's proximate-cause jurisprudence.

The Supreme Court in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 458–61 (2006), and *Hemi Group, LLC v. City of New York, N.Y.*, 559 U.S. 1, 9–12 (2010), made clear that RICO requires a direct relation between the alleged racketeering violation and the plaintiff's injury. The Second Circuit has repeatedly affirmed that an attenuated or speculative causal chain is insufficient. *See Empire Merchants, LLC v. Reliable Churchill LLLP*, 902 F.3d 132, 141–45 (2d Cir. 2018) (affirming dismissal where causal chain too attenuated); *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 769–70 (2d Cir. 1994) (rejecting speculative, averaged loss theories); *DeFalco v. Bernas*, 244 F.3d 286, 329–30 (2d Cir. 2001) (RICO damages must be concrete and non-speculative). The Court instructed the jury that § 1962(a) requires a direct relationship between the alleged investment and a non-speculative, use/investment-specific loss, not merely predicate-act harm. The Nation's proof did not meet this standard. (See Trial Tr. Day 3, 557–564.)

i. No Cognizable Injury – Law of the Case

The Nation's claimed damages fail as a matter of law because they are predicated on a property interest comprised of contraband cigarette inventory and revenues derived from federally prohibited trafficking under the Contraband Cigarette Trafficking Act ("CCTA"). Such interests are not cognizable under 18 U.S.C. § 1964(c). This principle aligns with the Ninth Circuit's reasoning in *Shulman v. Kaplan*, already adopted by the Court related to the Nation's claimed damages to its marijuana-business. The same logic applies here: the Nation seeks recovery for alleged injuries to a property interest that federal law either does not recognize or affirmatively excludes—namely, proceeds from conduct that itself violates federal law through contraband cigarette trafficking.

Under the law of the case doctrine, a court's prior ruling on a legal issue governs subsequent stages of the same litigation absent extraordinary circumstances. *See Arizona v. California*, 460 U.S. 605, 618 (1983). Here, the Court has already adopted the reasoning of *Shulman v. Kaplan*, 58 F.4th 404 (9th Cir. 2023), to hold that RICO damages cannot be predicated on injuries to a federally prohibited business interest.

Critically, it was not until trial testimony that the true nature of the Nation's alleged injury became clear: its claimed losses are tied directly to its contraband cigarette business, which—by its own admission—involved unstamped cigarettes in violation of the Contraband Cigarette Trafficking Act ("CCTA"), 18 U.S.C. §§ 2341–2346. (Trial Tr. 191–192.) Because federal law criminalizes this business model, the Nation's asserted injury is legally indistinguishable from the marijuana-related interests excluded in *Shulman*. Under the law of the case doctrine, the Court must apply its prior determination and bar recovery for injuries to property interests that federal law either does not recognize or affirmatively excludes.

Permitting recovery would not only contradict the Court's earlier ruling but also undermine RICO's remedial purpose by rewarding a plaintiff for engaging in the very conduct Congress sought to eradicate. Consistency and equity require that the Court enforce its prior ruling and dismiss the Nation's claim for damages to its contraband cigarette business.

ii. The methodology of the Nation's experts is unreliable and must be rejected.

The Nation's causation case rested on a "zero-sum," one-for-one displacement assumption—that each Montezuma Pipekeepers sale automatically displaced a Nation sale—an assumption the Court scrutinized in pretrial and supplemental briefing concerning Ms. Radford's opinions and Mr. Flynn's derivative model. (See Radford Dep. 75:23–76:25; Flynn Expert Report, ECF No. 164-9; Pretrial Briefing, ECF No. 298.) The Court emphasized that expert opinions must rest on reliable methodology and that shaky assumptions are tested through Daubert and cross-examination, not *ipse dixit*. (See Final Pre-trial conference, 12-1-2025 at 17–18.) *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993) (trial courts must ensure expert testimony is based on reliable principles and methods).

The methodology employed by the Nation's experts, particularly Mr. Flynn, fails for several reasons. As detailed in the testimony of the Parker Defendants' expert, Stephen L. Ferraro, Mr. Flynn's analysis is fundamentally unsupported by sufficient facts or data and relies on unsupported assumptions provided by BJ Radford. (See Trial Tr. Day 3, 501:10–507:13). Mr. Flynn did not review the Nation's contemporaneous income statements, sales journals, or bank records, but instead extrapolated supposed profits solely from data produced by Pipekeepers, resulting in a lost-profits model detached from the plaintiff's actual performance and devoid of plaintiff-side documentation. (See Trial Tr. Day 3, 511:17–513:16). Furthermore, the limited cigarette-sales reports produced by the Nation for Lakeside Trading 1 and 2 show stable or even increasing sales during the alleged loss period - a critical inconsistency that Mr. Flynn ignores and fails to address. (See Trial Tr. Day 3, 534:1–535:24).

Additionally, Mr. Flynn's methodology assumes a closed market in which every sale made by Pipekeepers necessarily displaced a sale by the Nation, an assumption refuted by evidence of other unlicensed stores, tribal outlets, and significant tourism-driven traffic in the region. (See Trial

Tr. Day 3, 510:18–513:16). Mr. Flynn also fails to account for other causal factors such as market wide inflation or deflation, post-COVID supply-chain disruptions, changes in the Nation's own product mix or marketing, and pricing decisions by the Nation's vertically integrated wholesale entities. (See Trial Tr. Day 3, 512:18–517:18; 534:1-535:2).

Mr. Flynn also imposes arbitrary gross-profit margins without independent verification or error testing and fails to conduct any sensitivity analysis to determine how his conclusions might change in response to variations in pricing, margin, traffic volume, seasonality, or the presence of competitive entrants—basic procedures routinely applied in forensic accounting. (See Trial Tr. Day 3, 5:12–513:9).

Additionally, Mr. Flynn fails to account for the Nation's ability to manipulate inter-company pricing between its vertically integrated entities, specifically by increasing the prices charged by Great Swamp Enterprises (the Nation's wholesale tobacco producer) to Lakeside Trading (the Nation's retail stores). As testified at trial, these transactions are not conducted at arm's length and are recorded only as journal entries without actual cash exchanges. (Trial Tr. Day 1, 219:17-25; Day 3, 516:6-517:18). This allows the Nation to artificially inflate the cost of goods sold at Lakeside Trading and can create the appearance of reduced profitability or even losses at the retail level, regardless of actual market performance. Such internal pricing manipulation undermines the reliability of any claimed lost profits and further demonstrates that the Nation has not substantiated its damage with credible, independent financial evidence; Mr. Flynn fails to account for this in his methodology.

For these reasons, as supported by the testimony and analysis of Mr. Ferraro and the record evidence, the methodology of the Nation's experts is unreliable and must be rejected.

Stripped of the flawed one-for-one premise and aggregation/averaging techniques, no reasonable jury could find a directly caused 18 U.S.C. § 1962(a) investment/use injury. *See First Nationwide Bank*, 27 F.3d at 769–70 (rejecting speculative, averaged loss theories); *DeFalco*, 244 F.3d at 329–30 (RICO damages must be concrete and non-speculative). This aligns with *Ideal Steel* and *Hemi*'s requirement of a direct relation between the alleged investment and the plaintiff's loss. (See Trial Tr. Day 3, 557–564.)

iii. The Nation offered no reliable allocation tying any distinct investment by each defendant to any distinct component of alleged injury.

The Nation offered no reliable allocation tying any distinct investment by each defendant to any distinct component of alleged injury, despite the Court's emphasis that joint-and-several concepts from § 1962(c)/(d) do not carry over to § 1962(a). (See Jury Instructions, Trial Tr. Day 3, 557–564.) The Court expressly recognized at trial that investment injury must be isolated to the investments attributable to the particular defendant and that plaintiff could not collapse all acts into an undifferentiated loss figure. (See Trial Tr. Day 3, 562:22–562:25.)

The Nation's undifferentiated loss presentation required the factfinder to speculate as to which alleged investments were attributable to which defendants, and to assume a direct causal link between each defendant's conduct and the claimed injury without specific evidence tying particular investments to particular acts of racketeering. This approach is legally insufficient under controlling precedent.

In *Empire Merchants*, the court emphasized that a plaintiff must demonstrate a direct relationship between the alleged racketeering activity and the injury claimed, rather than relying on generalized or aggregate theories of harm. Similarly, in *Ideal Steel Supply Corp*. and *Hemi*, the Supreme Court held that proximate cause under RICO requires more than a showing that the defendant's conduct was a "but for" cause of injury; the plaintiff must show a direct connection between the defendant's specific conduct and the alleged harm.

Here, the Nation's failure to differentiate among defendants or to identify which investments were allegedly funded by racketeering proceeds forces the jury to engage in impermissible speculation, rather than making findings based on concrete evidence. As a result, the Nation's presentation does not satisfy the proximate cause and investment-injury requirements established by *Empire Merchants, Ideal Steel, and Hemi*, and cannot support a RICO claim as a matter of law. The jury's *de minimis* award relative to the Nation's claimed $3.15 million tobacco-only asserted damages only underscores the failure of proof on causation and quantification. (See Verdict Form, ECF No. 297; Trial Tr. Day 4, 695:2–696:16.)

In addition, the jury's finding of no liability as to Paul Meyer, Justice for Native First People, and C.B. Brooks, confirms that the claimed enterprise reduces to essentially a husband-and-wife pair. The Court instructed that an enterprise may be a "group of people, which is defined as two or more," but also rejected plaintiff's effort to treat undifferentiated acts and injuries as jointly and severally attributable across all defendants under § 1962(a). (See Jury Instructions, Trial Tr. Day 3, 562:22–562:25.) With the Meyer Defendants removed from the damage calculus, any purported association-in-fact collapses to the Parkers' familial unit, underscoring the absence of a broader multi-actor structure, separable investments, or allocable "use/investment" injuries traceable to anyone other than the Parkers themselves. That narrowing reinforces the failure of proof on enterprise, allocation, and proximate cause under 18 U.S.C. § 1962(a) and further warrants judgment as a matter of law.

iv. The Nation's damages model is speculative and unsupported by reliable financial data or expert analysis.

To the extent the Nation's § 1962(a) theory depended on predicate categories as a matter of law (CCTA, cannabis, and money-laundering), these issues were preserved and the Court repeatedly cautioned that plaintiff must prove a non-speculative bridge from predicate, to "racketeering income," to investment/use, to direct investment injury. (See Trial Tr. Day 3, 557–564; Pretrial Briefing, ECF No. 192.) *See Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 323–25 (2d Cir. 2011) (on remand, emphasizing direct-injury requirement); *Empire Merchants*, 902 F.3d at 142–45 (attenuated causal theory fails).

The Second Circuit has made clear that a plaintiff must show a direct, non-speculative link between the alleged racketeering activity and the claimed injury. On this record, that bridge is missing. As Stephen Ferraro explained at trial, the Nation's damages theory fails to establish this connection because it relies on misleading annual sales data that does not account for other significant factors affecting revenue, such as the impact of COVID-19. (See Trial Tr. Day 3, 534:2–535:2.) Ferraro further noted that the Nation's expert, Mr. Flynn, did not use the Nation's own financial data to calculate lost profits, but instead applied the Nation's profit margins to Pipekeepers' sales, assuming every Pipekeepers sale was a lost Nation sale. (Trial Tr. Day 3, 512:18–513:16.) This approach ignores market trends, competition, and other causal factors, and does not demonstrate that any alleged racketeering activity directly caused the Nation's claimed injury. (*Id.*) As a result, the necessary non-speculative bridge from predicate act to racketeering income, to investment/use, to direct investment injury is absent from the record. Accordingly, judgment as a matter of law is warranted.

For these reasons, and consistent with Second Circuit causation doctrine under *Ideal Steel/Hemi/Empire Merchants*, the Court should grant judgment as a matter of law to the Parker Defendants on the Nation's § 1962(a) claim.

In the Alternative:

PARKER DEFENDANTS' MOTION FOR REMITTITUR PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59

If the Court declines Rule 50(b) relief, it must remit the damages award to zero in accordance with the *in pari delicto* doctrine and on multiple, additional preserved grounds. The standard of review for remittitur is whether the jury's award is so excessive or unsupported by the evidence as to be contrary to the weight of the evidence or to constitute a miscarriage of justice. *See Church & Dwight Co. v. SPD Swiss Precision Diagnostics GmbH*, 2018 U.S. Dist. LEXIS 151961, at *53 (S.D.N.Y. 2018) (citing cases).

I. The *In Pari Delicto* Doctrine

This common-law defense, derived from the Latin, *in pari delicto potior est conditio defendentis*: translates "In a case of equal or mutual fault . . . the position of the [defending] party . . . is the better one." It is grounded on two premises: first, that courts should not lend their good offices to mediating disputes among wrongdoers; and second, that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." *Teras Intern. Corp. v. Gimbel*, 2014 US Dist LEXIS 174328, at *12 (SDNY Dec. 17, 2014, No. 13-CV-6788 (VEC)) quoting *Gatt Communications, Inc. v. PMC Assoc., L.L.C.*, 711 F.3d 68, 83 (2d Cir. 2013) (Wesley, J., concurring); quoting *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306 (1985). "In pari delicto provides a defense to both state law actions and to civil RICO causes of action." *Teras Intern. Corp.* at *12 (citing *Republic of Iraq v. ABB AG*, 768 F.3d 145, 163 (2d Cir. 2014)).

As the Court itself observed at the conclusion of trial, there remains a substantial question as to whether the Nation can recover damages under RICO where it is engaged in the same conduct as the Parker Defendants. (See Trial Tr. 700:20–701:3 ("I think there is a question about whether they can recover damages in a case where they are doing the same thing that the defendants were doing, and that's the issue that you raised that I thought was not appropriate before trial but it is something I think that the Court could rule on after trial, and if the plaintiff wanted to appeal that to the Circuit because there is no law, the plaintiff could appeal that to the Circuit.")). This recognition by the Court underscores that, as a matter of law and equity, a damages award must not stand where the plaintiff's own conduct is indistinguishable from the conduct it challenges. In other words, when, as here, the evidence establishes that Plaintiff was not a passive actor but an active participant in a Cayuga Reservation-wide contraband cigarette scheme—the very conduct it challenges—it cannot be permitted to recover damages.

Notably, it was not until after trial and the testimony elicited therein that the full extent of the scheme became evident. During trial, the Nation's CFO, B.J. Radford confirmed that the Nation is engaging in the same unstamped cigarette scheme as the Parker Defendants on the Cayuga Reservation. (See Trial Tr. Day 4, 668:14–669:5.) Indeed, her testimony confirmed that the Nation itself sells unstamped cigarettes (from both Great Swamp Enterprises and other Native Tribes) on the Cayuga Nation reservation; does not maintain records of whether sales are made to non-native customers; and does not collect New York State sales tax on those transactions. As testified by B.J. Radford:

> "Q And those packs of cigarettes that you're getting from these different Native tribes, those do not have New York State stamps on them, do they?
> A No, they do not.
> Q No taxes to New York State are paid on those cigarettes, are they?
> A No, they are not.
> Q And those cigarettes without a stamp, without any taxes, state taxes, they are then sold to customers of the Lakeside stores, correct?
> A Yes.
> Q And they're sold without you gathering any information about whether or not the person they're selling them to is a Native or a non-Native, correct?
> A Correct."

Trial Tr. Day 1, 191:13–192:2; see also 189–190.

Indeed, Ms. Radford testified that the Nation sold the unstamped cigarettes it seized from the Parker Defendants in one of the Lakeside stores. (See Trial Tr. Day 1, 185:16–21.)

Put simply, if the Parker Defendants' conduct constitutes a RICO violation, then the Nation—whose entire trial presentation, from its CFO's testimony to its damages methodology, reflects an active participation in the same contraband cigarette scheme —is likewise engaged in the same RICO violations and bears equal culpability.

The only reason the Parker Defendants could not assert an identical RICO claim against the Nation is its sovereign status. Yet the Nation must not be permitted to wield sovereign status as both a sword and a shield—using it to pursue affirmative claims while simultaneously invoking it to evade liability or block legitimate counterclaims. Such a tactic undermines fundamental principles of equity and justice, allowing the Nation to selectively exploit its sovereign immunity for advantage without bearing the corresponding responsibilities or defenses that apply to all litigants.

This issue, which implicates fundamental principles of equity and the *in pari delicto* doctrine, further undermines the Nation's entitlement to any relief and provides an independent basis for remittitur. The Nation, despite several opportunities provided by the Court through various briefings, failed to present any case law or other authorities demonstrating that it is differently positioned than the Parker Defendants under the CCTA or CSA. And what became glaringly obvious at trial, despite Plaintiff's prior assurance, is that the Nation is engaged in the same predicate acts. Accordingly, under the *in pari delicto* doctrine, the Nation must not be entitled to damages for identical behavior, as both parties are alleged to have participated in the same conduct.

This principle is not theoretical—it has been applied in this Circuit to bar RICO claims brought by a sovereign state. *See Republic of Iraq*, 768 F.3d at 167. In *Republic of Iraq v. ABB AG*, the court affirmed dismissal of Iraq's civil RICO claims, explaining that "[i]t would be anomalous, to say the least, for the RICO statute to make racketeering unlawful in one provision, yet award the violator with treble damages in another provision of the same statute. Congress intended RICO's civil remedies to help eradicate organized crime from the social fabric by divesting the association of the fruits of ill-gotten gains.... [Plaintiff]'s recovery under RICO would not divest RICO violators of their ill-gotten gains; it would result in a wealth transfer among similarly situated conspirators." *Id*.

The Second Circuit's analysis drew support from decisions like the Eleventh Circuit's *Official Comm. of Unsecured Creditors of PSA, Inc. v Edwards*, which likewise applied *in pari delicto* to bar a trustee's civil RICO claims where the debtor itself engaged in the wrongdoing. See *Official Comm. of Unsecured Creditors of PSA, Inc. v Edwards,* 437 F3d 1145, 1155 (11th Cir. 2006). Accordingly, where a plaintiff is equally at fault or has engaged in the same alleged RICO violations, the *in pari delicto* doctrine bars recovery.

II. **Outcome-Determinative Expert Gatekeeping Errors**

The Court reserved gatekeeping rulings and later granted the Parkers' Daubert motion in part, precluding aspects of the Nation's experts' opinions while leaving other issues for trial. (See 'ECF No. 226 at 23–25.) The verdict necessarily rested on Mr. Flynn's model, which assumed that all Pipekeepers tobacco sales equaled Nation losses and employed averaging/aggregation that masked the absence of transaction-level causation. (See Trial Tr. Day 2, 456:6–463:5.) The Court's prior recognition that Flynn's analysis depends on Radford's unreliable causation premise requires post-trial exclusion; at minimum, the damages award must be remitted to zero because the only competent defense expert testimony concluded the Nation failed to prove any damages. (*See id.*; see also ECF No. 226 at 24–25.) (See discussion above.)

III. Lack of Allocation Among Defendants and Investments

The Court highlighted the Nation's failure to articulate a lawful methodology to allocate § 1962(a) injuries among distinct alleged investments by different defendants. (See Trial Tr. Day 3, 557–564; see also ECF No. 226 at 27.) That omission rendered the jury charge and verdict form susceptible to speculation and requires remittitur to zero, as the damages award cannot be lawfully sustained without proper allocation.

IV. Proximate Cause and Non-Speculative Proof

The Nation's "single-retailer" framing and one-for-one displacement assumption were excluded in part as legal conclusions (see ECF No. 226 at 22–23), and, in any event, were insufficiently supported by comparative market, product, and consumer-choice evidence capable of showing a direct, non-speculative injury "by reason of" investment/use. (See Trial Tr. Day 2, 466:9–470:4.) The Court sustained objections to the "exclusive single-retailer" label while allowing factual background, underscoring the evidentiary gap the Nation failed to fill. (*See id*. at 442:1–443:3.) This lack of proximate cause and non-speculative proof warrants remittitur to zero.

Given these preserved issues and the jury's nominal award relative to the claimed $3.15 million tobacco-only damages (see ECF No. 241 at 17), the Court must remit the damages award to zero.

In the Alternative:

ENTRY OF NET JUDGMENT FOR THE PARKER DEFENDANTS

Consistent with the Court's sovereign-immunity rulings and established precedent, the Parker Defendants' conversion verdict operates only as recoupment/set-off against the Nation's recovery and cannot support an affirmative award against the Nation. *See, e.g., Oklahoma Tax*

Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509–10 (1991) (sovereign immunity bars affirmative relief against a tribe except for setoff/recoupment.) If the Court declines to grant the Parker Defendants' renewed motion for judgment as a matter of law under Rule 50(b) or the alternative relief of remittitur under Rule 59, then alternatively, the Court must enter judgment awarding the Nation $0 on its 18 U.S.C. § 1962(a) claim after offsetting the $75,619 civil RICO award by the $298,000 conversion verdict, and specify that the Parker Defendants take nothing on their conversion counterclaim beyond that set-off.

This approach reflects the Court's prior recognition that counterclaims against a sovereign plaintiff are limited to set-off or recoupment, the parties' acknowledgment at trial, and the jury charge authorizing set-off. *See also United States v. United States Fid. & Guar. Co.*, 309 US 506, 513 (1940) (set-off is the only permissible relief against a sovereign in this context). The Court must confirm that even if treble damages were applied, the recovery would still be zero where sovereign immunity limits the defendants to recoupment and the set-off reduces the plaintiff's recovery to zero under 18 U.S.C. § 1964(c).

THE PARKER DEFENDANTS' ADDITIONAL REQUESTS FOR POST-VERDICT RELIEF

I. Confirmation of Categorical Exclusion of Cannabis-Based Damages

The Court ruled that evidence of the Nation's lost profits on cannabis was excluded and tried the case without cannabis-loss components. (See, e.g., Trial Tr. Day 3, 497–499; ECF No. 297 (Order on Motions in Limine).) The Court must confirm that judgment must categorically exclude cannabis damages and preserve the Parkers' legal position that cannabis-business injuries are not cognizable "business or property" under civil RICO. (See ECF No. 297; Trial Tr. Day 3, 497–499); *see Shulman v. Kaplan*, 58 F.4th 404, 414 (9th Cir. 2023) (holding that RICO does not recognize property interests in cannabis businesses because such interests are not protected under federal law); *see also Gonzales v. Raich*, 545 U.S. 1, 14 (2005) (federal law prohibits manufacture, distribution, or possession of marijuana). The exclusion of cannabis-based damages is compelled by federal law and controlling precedent. (See ECF No. 297; Trial Tr. Day 3, 497–499.)

II. Spoliation: Sanction Scope, Limiting Principle, And Monetary-Only Relief

The Court granted the Nation's spoliation motion in principle but denied severe sanctions, holding that the Nation failed to show relevance and declining an adverse-inference instruction or other sanctions against the Nation on its inventory-note destruction, while directing further briefing on sanctions concerning the Parkers' daily cannabis ledgers. See ECF No. 226 (Memorandum-Decision and Order on Spoliation); ECF No. 297. The Court indicated any sanction would be tailored, likely monetary, and focused on damages rather than liability. (See ECF No. 226; ECF No. 297.) *See Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002) (spoliation sanctions must be proportionate and tailored to the prejudice suffered); *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec.*, 685 F.Supp.2d 456, 469 (S.D.N.Y. 2010) (sanctions should not exceed what is necessary to remedy the prejudice).

Consistent with proportionality and the Court's exclusion of cannabis damages from trial, the Parker Defendants maintain that no sanction is warranted, given the outcome, but if any sanction is warranted, a nominal monetary would be sufficient, and should not affect the merits or non-cannabis damages record. (See ECF No. 226; ECF No. 297.)

REQUESTED RELIEF

For the foregoing reasons, the Court should issue an Order:

1. Granting judgment as a matter of law under Rule 50(b) in favor of the Parker Defendants on Plaintiff's 18 U.S.C. § 1962(a) claim because the Nation failed to prove a distinct investment/use injury directly caused by the alleged conduct; or

2. *Alternatively*, ordering remittitur to zero under Rule 59 based on the *in pari delicto* doctrine and preserved errors regarding expert admissibility, damage allocation, and proximate cause; or

3. *Alternatively*, entering a net judgment for the Parker Defendants by offsetting the $298,000 conversion verdict against the $75,619 RICO award, resulting in no monetary recovery for the Nation.

4. Confirming the categorical exclusion of cannabis-based damages from any judgment and preserve the Parkers' legal position on non-cognizability of cannabis injuries under RICO, consistent with *Shulman v. Kaplan*, 58 F.4th 404 (9th Cir. 2023), and related authority.

5. Withdrawing the Court's prior indication of spoliation sanctions or limiting any spoliation sanction to nominal monetary relief (fees and costs) confined to damages issues, with no adverse inference or effect on liability or non-cannabis damages.

6. Granting such other relief as the Court shall deem just and proper.

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Albany, New York

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