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 MOTION FOR ATTORNEYS' FEES AND COSTS

NIXON PEABODY LLP
677 Broadway, 10th Floor
Albany, New York 12207
Telephone: (518) 427-2650
Counsel for Defendants
Dustin Parker and Nora Weber

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Dustin Parker and Nora Weber (together, the "Parker Defendants"), by and through their undersigned attorneys, respectfully submit this Memorandum of Law in support of their Motion for Attorneys' Fees and Costs.

PRELIMINARY STATEMENT

Following a four-day jury trial, the Parker Defendants emerged as the prevailing parties in this action. While the jury found in favor of the Cayuga Nation (the "Nation") on its 18 U.S.C. § 1962(a) RICO claim in the amount of $75,619, it also found in favor of the Parker Defendants on their related conversion counterclaim and awarded them $298,000 in damages. Because the Parker Defendants' counterclaim recovery far exceeds the Nation's RICO recovery (even if trebled), net judgment favors the Parker Defendants, and the Nation will recover nothing.

This outcome is the direct result of the Nation's decision to weaponize RICO as a tool to enforce its monopoly over tobacco sales on Cayuga reservation territory and to punish the Parker Defendants for operating a competing business. From the outset, the Nation pursued this litigation not to remedy any genuine injury, but to destroy the Parker Defendants' livelihood. The Nation seized the Parker Defendants' inventory without legal justification, filed expansive RICO claims carrying quasi-criminal stigma, invoked sovereign immunity to shield itself from reciprocal liability, and sought spoliation sanctions against the very defendants whose property it had confiscated. The jury's verdict-awarding the Parker Defendants nearly four times the Nation's RICO recovery-confirms that the Nation, not the Parker Defendants, was the true wrongdoer in this dispute.

Accordingly, the Parker Defendants respectfully request that this Court: (1) declare the Parker Defendants to be the prevailing parties; (2) award them their taxable costs under Rule

54(d)(1); (3) order the Nation to pay the Parker Defendants' post-offer costs, including attorneys' fees, under Rule 68(d); (4) award them attorneys' fees under the Court's inherent power and other independent fee-shifting doctrines; (5) deny the Nation's motion for attorneys' fees under 18 U.S.C. § 1964(c); and (6) grant such other relief as the Court deems just.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367 and 18 U.S.C. § 1964(c).

PROCEDURAL HISTORY AND THE JURY VERDICT

A. Procedural History

The Nation commenced this action on February 12, 2022, alleging multiple civil RICO violations under 18 U.S.C. §§ 1962(a), 1962(c), and 1962(d) against the Parker Defendants and others. (Dkt. No. 1). The Nation's RICO claims were part of a broader campaign to eliminate competition in the tobacco market on the Cayuga reservation territory. Just weeks before filing this lawsuit, on January 1, 2022, the Nation forcibly seized the Parker Defendants' entire Pipekeepers inventory, without legal process or justification. The Nation then sold the seized inventory in its own competing store, profiting from the very goods it had confiscated. The Parker Defendants vigorously defended against these claims and asserted counterclaims, including a conversion claim arising from the Nation's unlawful seizure. (Dkt. No. 60).

On August 12, 2022, the Court dismissed the Nation's substantive RICO claim under 18 U.S.C. § 1962(c) and its RICO conspiracy claim under 18 U.S.C. § 1962(d), leaving only the Nation's 18 U.S.C. § 1962(a) investment injury claim. (Dkt. No. 59). On January 9, 2023, this Court addressed the Parker Defendants' counterclaims. (Dkt. No. 86). Because the Nation invoked tribal sovereign immunity, this Court permitted the conversion counterclaim to proceed only as a recoupment claim, *i.e.* one that could reduce or eliminate the Nation's RICO recovery but not result in an affirmative money judgment against the Nation.

This ruling created a fundamental asymmetry: the Nation wielded RICO as a sword while shielding itself behind sovereign immunity to prevent the Parker Defendants from asserting any affirmative counterclaims, including a counter-RICO claim, that could result in an affirmative money judgment against the Nation. This asymmetry is directly relevant to the fee analysis that follows.

Throughout this litigation, the Nation engaged in vexatious and oppressive conduct designed to harass and financially destroy the Parker Defendants. Among other things, the Nation sought spoliation sanctions against the Parker Defendants while simultaneously refusing to account for its own handling and sale of the seized inventory. Furthermore, despite repeated requests and numerous discovery conferences, the Nation refused to articulate its damages theory until after the close of discovery, resulting in rounds of motion practice. Ultimately, the Nation's primary case evidenced, by its own experts' testimony, that its unstamped cigarette business is indistinguishable from the Defendants' operations, underscoring the hypocrisy of its RICO allegations. The Nation's true objective was never to vindicate legitimate legal rights, but to leverage the federal courts as an instrument of its campaign to monopolize cannabis and tobacco sales on Cayuga reservation lands.

B. The Jury Verdict

In pre-trial rulings, this Court further limited the Nation's § 1962(a) claim to non-cannabis damages only—a significant victory for the Parker Defendants that dramatically narrowed the scope of the Nation's potential recovery before trial.

Following nearly four years of litigation, including extensive discovery and a four-day jury trial held December 8–11, 2025, the jury returned its verdict. The jury awarded the Nation $75,619 in RICO damages against the Parker Defendants, finding that the Nation had not proven its case against any of the Meyer Defendants. (See Verdict, Dkt. No. 310.) The jury also awarded the Parker Defendants $298,000 on their conversion counterclaim. (*Id.*) As the Court confirmed, the RICO award is subject to set off by the counterclaim award. The set off exceeds the Nation's award, yielding a net judgment for the Parker Defendants.

C. Rule 68 Offer of Judgment

On November 21, 2025, the Parker Defendants served the Nation with a Rule 68 Offer of Judgment in the amount of $1,000 for complete resolution of the action, inclusive of all attorneys' fees and costs accrued by the Nation up to and including that date. *See* Declaration of Daniel Hurteau, Ex. D. The Nation did not accept the offer within the 14-day period prescribed by Rule 68(a). The Nation proceeded to trial and obtained a judgment that, when properly calculated after set off, is not more favorable than the unaccepted $1,000 offer.

ARGUMENT

I. THE PARKER DEFENDANTS ARE THE PREVAILING PARTIES

The threshold question for all relief sought in this motion is whether the Parker Defendants are the prevailing parties, which they are under any calculation.

A. Legal Standard

A party is a "prevailing party" when it succeeds on any significant issue that achieves some of the benefit sought. *Texas State Teachers Ass'n v. Garland Ind. School Dist.*, 489 U.S. 782, 791–92 (1989). The touchstone is the "material alteration of the legal relationship between the parties." *Farrar v. Hobby*, 506 U.S. 103, 111–12 S. Ct. 566 (1992). Courts recognize that when a defendant's counterclaim recovery exceeds the plaintiff's recovery, the defendant is the prevailing party. *See* 10 Wright, Miller & Kane, *Federal Practice & Procedure* § 2667, at 191 (1983) ("[A] successful counterclaimant generally will be considered the prevailing party when plaintiff fails to recover or is awarded less than defendant receives on the counterclaim."); *Goldman v. Burch*, 780 F.Supp. 1441, 1448 (S.D.N.Y. 1992).

B. The Net Judgment Favors the Parker Defendants

Although this Court's sovereign-immunity ruling limits the Parker Defendants' counterclaim to a set off, precluding an affirmative money judgment against the Nation for the excess, the net result of the jury's verdict is that the Nation will recover *nothing* from the Parker Defendants. This outcome materially alters the legal relationship between the parties and establishes the Parker Defendants as the prevailing parties. *See Farrar*, 506 U.S. at 111–12.

C. The Parker Defendants Remain Prevailing Parties Even Under Treble Damages

Even if the Nation were entitled to treble damages under 18 U.S.C. § 1964(c) (which it is not), the Parker Defendants still prevail. Notably, the Second Circuit has not resolved whether treble damages under § 1964(c) must be applied before or after deducting counterclaims or settlement credits. Courts within the circuit—including the Eastern District of New York—have applied setoff *after* trebling, consistent with RICO's mandatory treble-damages structure, but upon review, no binding Second Circuit precedent exists. Using either approach, the Parker Defendants prevail.

Under any calculation, the Nation's RICO recovery is entirely consumed by the setoff, and the Nation will recover nothing. The Parker Defendants are the prevailing parties.

II. THE PARKER DEFENDANTS ARE ENTITLED TO COSTS UNDER RULE 54(d)(1)

Federal Rule of Civil Procedure 54(d)(1) provides that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs-other than attorneys' fees-should be allowed to the prevailing party." As the Supreme Court has explained, Rule 54(d)(1) "codifies a venerable presumption that prevailing parties are entitled to costs." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 377 (2013). "[S]uch an award against the losing party is the normal rule in civil litigation, not an exception," and accordingly "the losing party has the burden to show that costs should not be imposed." *Whitfield v. Scully*, 241 F.3d 264, 270 (2d Cir. 2001); *see also Bucalo v. E. Hampton Union Free School Dist.*, 238 F.R.D. 126, 129 (E.D.N.Y. 2006) ("Pursuant to Fed. R. Civ. P. 54, costs are awarded to the prevailing party as a matter of course.").

As established in Section I, the Parker Defendants are the prevailing parties. Accordingly, they are entitled to recover their taxable costs under Rule 54(d)(1).

III. THE PARKER DEFENDANTS ARE ENTITLED TO POST-OFFER COSTS UNDER RULE 68

A. The Legal Standard

Rule 68 is a cost-shifting mechanism designed to encourage settlement. If a plaintiff rejects a Rule 68 offer and subsequently obtains a judgment that is not more favorable than the unaccepted offer, "the offeree must pay the costs incurred after the offer was made." Fed. R. Civ. P. 68(d). The Second Circuit has held that "Rule 68 reverses Rule 54(d) and requires a prevailing plaintiff to pay a defendant's post-offer costs if the plaintiff's judgment is less favorable than the unaccepted offer." *Stanczyk v. City of N.Y.*, 752 F.3d 273, 281 (2d Cir. 2014).

Rule 68 is a neutral rule favoring settlement of all lawsuits. As the Supreme Court explained in *Marek v. Chesny*, "[t]he plain purpose of Rule 68 is to encourage settlement and avoid litigation. The Rule prompts both parties to a suit to evaluate the risks and costs of litigation, and to balance them against the likelihood of success upon trial on the merits." *Marek v. Chesny*, 473 U.S. 1, 5 (1985). The rule "is a cost-shifting rule designed to encourage settlements without the burdens of additional litigation." *Stanczyk*, 752 F.3d at 280.

Critically, where the relevant statute defines "costs" to include attorneys' fees, such fees are included for Rule 68 purposes. *Marek*, 473 U.S. at 9. Section 1964(c) expressly defines the "cost of the suit" to include "a reasonable attorney's fee." 18 U.S.C. § 1964(c). Accordingly, Rule 68's cost-shifting encompasses attorneys' fees in RICO cases.

Importantly, in determining whether a plaintiff has obtained a judgment more favorable than the Rule 68 offer, courts consider the net judgment, which accounts for any setoffs or counterclaims. *See Local 32B-32J, SEIU v. Port Auth.*, 180 F.R.D. 251, 253 (S.D.N.Y. 1998) If the net judgment is less favorable than the unaccepted offer, the plaintiff must bear the defendant's post-offer costs. *See Marchuk v. Faruqi & Faruqi, LLP*, 104 F.Supp.3d 363, 369 (S.D.N.Y. 2015) ("Because Plaintiff's ultimate recovery was less favorable than the Rule 68 Offer, she is not entitled to collect costs or fees accrued after" the date of the offer).

B. Application to This Case

The Parker Defendants' November 21, 2025 Rule 68 Offer of Judgment satisfies all requirements for cost-shifting under Rule 68(d).

First, the offer was made timely. Rule 68(a) requires that an offer be made "[a]t least 14 days before the date set for trial." Fed. R. Civ. P. 68(a). The Parker Defendants served their $1,000 offer on November 21, 2025, well before the December 8, 2025, trial date.

Second, the offer was rejected. The Nation did not accept the offer within 14 days, and the offer was deemed withdrawn pursuant to Rule 68(b). See Fed. R. Civ. P. 68(b) ("An unaccepted offer is considered withdrawn."); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 162 (2016) ("An unaccepted settlement offer-like any unaccepted contract offer-is a legal nullity, with no operative effect." (*quoting Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 84 (2013) (Kagan, J., dissenting))). Critically, while an unaccepted offer has no effect on the plaintiff's claims, the rejection does trigger Rule 68's cost-shifting provisions if the plaintiff fails to obtain a more favorable judgment. *See Kirkland v. Speedway LLC*, 260 F.Supp.3d 211, 216 (N.D.N.Y. 2017) ("[T]he consequence of declining an offer is that, if the plaintiff receives a less favorable judgement, it 'must pay the costs incurred after the offer was made.'") (quoting Fed. R. Civ. P. 68(d)).

Third, the judgment finally obtained by the Nation is not more favorable than the unaccepted offer. After application of the $298,000 counterclaim setoff, the Nation's net recovery is zero-manifestly less favorable than the $1,000 offered. Even if treble damages apply, the Nation's net recovery remains zero (as demonstrated in Section I.C above).

Accordingly, the Nation must pay the Parker Defendants' post-offer costs, including attorneys' fees, pursuant to Rule 68(d).

C. The Nation's Contrary Arguments Fail

The Nation advances three arguments against Rule 68 cost-shifting (Dkt. No. 319), each of which fails.

1. The Nation's Gross Damages Argument Ignores the Setoff

The Nation argues that "$75,619 is more than $1,000." This ignores the $298,000 setoff. The "judgment finally obtained" is the net judgment after setoff-which is zero. *See Marchuk*, 104 F.Supp.3d at 369 (considering net recovery in Rule 68 analysis).

A net-negative recovery is manifestly not more favorable than the $1,000 offered by the Parker Defendants.

2. The Nation's "Judgment Finally Obtained" Argument Confirms the Parker Defendants' Position

The Nation argues that the "judgment finally obtained" includes pre-offer fees and costs. But as demonstrated in Section V below, the Nation is not entitled to those fees and costs. Regardless, this argument is circular: the Nation cannot bootstrap its way to a favorable judgment by adding fees to a net-negative recovery. Adding pre-offer fees to a net-negative recovery does not convert it into a judgment "more favorable" than $1,000. This argument confirms the Parker Defendants' position.

3. The Nation's Pre-Offer Fees Argument Underscores the Magnitude of Post-Offer Costs

The Nation argues that Rule 68 operates only to bar post-offer costs. Correct, and those post-offer costs are substantial. The Parker Defendants' offer was made just 17 days before the four-day trial commenced. According to the billing records attached to Dkt. No. 319-2, the Nation's counsel billed a total of approximately **$218,952.76** in attorneys' fees for work performed from November 21, 2025 through the conclusion of trial on December 11, 2025. (Dkt. No. 319-2). All trial preparation and trial costs are post-offer costs that the Nation must bear under Rule 68(d). Moreover, this argument does not avail against shifting the Parker Defendants' post-offer costs to the Nation-Rule 68(d) expressly requires that "the offeree must pay the costs incurred after the offer was made," and RICO's definition of "costs" includes attorneys' fees. The Nation cannot escape this obligation.

In sum, Rule 68 required that the Nation pay the Parker Defendants' post-offer costs, including attorneys' fees, incurred from November 21, 2025 through the conclusion of trial. Notably, the Nation was fully aware of the magnitude of the Parker Defendants' counterclaim before rejecting the offer, as the expert reports exchanged during discovery and the Nation's own inventory records made clear the value of the inventory which comprised the counterclaim. Despite this knowledge, the Nation rejected the $1,000 offer and proceeded to trial, resulting in post-offer costs that represent a substantial portion of the litigation expense. The Nation's decision to reject a reasonable $1,000 offer and proceed to trial-only to obtain a net-zero recovery is precisely the conduct Rule 68 is designed to discourage and penalize.

IV. THE PARKER DEFENDANTS ARE ENTITLED TO ATTORNEYS' FEES UNDER INDEPENDENT FEE-SHIFTING DOCTRINES

The Parker Defendants seek attorneys' fees not under RICO, but through independent fee-shifting doctrines: the Court's inherent power, 28 U.S.C. § 1927, Rule 11, and principles of fairness and deterrence. These doctrines converge here because the Parker Defendants obtained a net-positive verdict while the Nation, after deploying RICO's powerful remedial scheme, recovered nothing.

A. The Court's Inherent Power

Federal courts possess inherent authority to impose sanctions, including attorneys' fees, against parties who engage in bad-faith conduct. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991). The Supreme Court has recognized that courts may assess fees when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Roadway Express v. Piper*, 447 U.S. 752, 766 (1980); *Hall v. Cole*, 412 U.S. 1, 5 (1973); *F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974) ("[I]t is unquestionably true that a federal court has the inherent power to assess attorneys' fees against a party who has litigated in bad faith.").

The Second Circuit has similarly recognized that an award of attorneys' fees under the court's inherent power is appropriate when a party's actions are "brought in bad faith-that is, motivated by improper purposes such as harassment or delay." *Eisemann v. Greene*, 204 F.3d 393, 396 (2d Cir. 2000); *see also Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 38 (2d Cir. 1993) ("Bad faith may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation.").

Here, the Nation pursued RICO claims that produced no net recovery while simultaneously invoking sovereign immunity to prevent reciprocal counterclaims. The Nation rejected a reasonable $1,000 settlement offer and proceeded to a four-day trial, only to emerge owing the Parker Defendants money on a net basis. Throughout this litigation, the Nation engaged in vexatious conduct designed to weaponize RICO as a tool to enforce its monopoly over tobacco sales on reservation territory and to punish the Parker Defendants for operating a competing business. The jury's substantial counterclaim verdict confirms that the Nation's own misconduct - seizing the Parker Defendants' inventory without legal justification and selling it from the Nation's own store - far exceeded any wrongdoing by the Parker Defendants. This conduct warrants fee-shifting under the Court's inherent authority.

B. RICO Plaintiffs Must Exercise Special Care

Courts recognize that RICO is a "drastic remedy" carrying quasi-criminal stigma and substantial burdens. *See Sedima, S.P.R.L. v. Imrex Co*., 473 U.S. 479, 499 (1985); *Katzman v. Victoria's Secret Catalogue* , 167 F.R.D. 649, 655 (S.D.N.Y. 1996) ("A RICO claim is an extremely serious charge, and its elements must be clearly and specifically set forth."); *Schmidt v. Fleet Bank*, 16 F.Supp.2d 340, 346 (S.D.N.Y. 1998) ("RICO is a drastic remedy" requiring careful pleading).

The heightened scrutiny applied to RICO claims is warranted for several reasons. First, RICO allegations carry a quasi-criminal stigma that can cause significant reputational harm to defendants, even if the claims are ultimately unsuccessful. *See Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (noting RICO's "stigmatizing effect"). Second, RICO claims impose substantial burdens on defendants through extensive discovery obligations, high litigation costs, and the threat of treble damages. Third, plaintiffs can weaponize the treble-damages provision to coerce settlements, regardless of the merits of their claims. *See Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987) (recognizing RICO's "in terrorem" effect).

Because of these considerations, courts have emphasized that bringing a weak or speculative RICO claim is precisely the kind of conduct that justifies sanctions or fee-shifting. *O'Malley v. .N.Y.C. Transit Auth.*, 896 F.2d 704, 706 (2d Cir. 1990) (The Second Circuit justified imposing sanctions partially on the plaintiff's refusal to follow the magistrate judge's advice that the RICO claim lacked merit and suggested that it be withdrawn, finding that this tended to show bad faith by the plaintiff.)

Because of RICO's heightened consequences, plaintiffs must exercise special care before filing. When, as here, a RICO plaintiff ultimately recovers nothing on a net basis, while the defendant's counterclaim demonstrates that the plaintiff was the greater wrongdoer-fee-shifting is warranted as both a remedial and deterrent measure.

C. Fee Recovery Prevents RICO from Becoming a No-Risk Weapon

Without a mechanism for defendants to recover fees, RICO's asymmetric fee structure creates perverse incentives. Plaintiffs can file tenuous RICO cases knowing that even if they lose, they will not compensate defendants for their litigation expenses. This asymmetry is particularly troubling here, where the Nation pursued this litigation from behind the shield of tribal sovereign immunity, preventing any affirmative counterclaims or treble damages against itself. Awarding fees to the Parker Defendants prevents the Nation from using RICO as a one-sided weapon with no risk of adverse consequences.

D. Policy Considerations Support Fee-Shifting

Awarding fees advances important policy objectives: (1) discouraging misuse of RICO; (2) promoting accurate pleading; (3) compensating defendants for the unique burdens of RICO defense; and (4) encouraging settlement and reducing strain on federal courts. Courts have long recognized that fee-shifting serves multiple salutary purposes beyond compensating the prevailing party. *See Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978) (recognizing that fee awards serve to deter frivolous litigation); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (noting the role of fee-shifting in encouraging meritorious claims and discouraging frivolous ones).

The Nation's rejection of a $1,000 offer, only to proceed to trial and obtain a net-zero recovery, exemplifies the litigation conduct that fee-shifting is designed to deter.

E. Sanctions Under 28 U.S.C. § 1927 and Rule 11

The Parker Defendants reserve their right to seek sanctions under 28 U.S.C. § 1927 and Federal Rule of Civil Procedure 11 pending the outcome of post-verdict briefing.

V. THE NATION IS NOT ENTITLED TO ATTORNEYS' FEES UNDER 18 U.S.C. § 1964(c)

The Nation seeks $662,350.90 in attorneys' fees and costs under 18 U.S.C. § 1964(c), arguing that RICO fee awards are "mandatory" upon a finding of liability. (Dkt. No. 319). This motion must be denied.

A. RICO Does Not Mandate Fees When the Plaintiff Recovers Nothing

Section 1964(c) provides that a prevailing plaintiff "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c). This provision is predicated, however, on the plaintiff having "sustained" recoverable damages. Where, as here, a counterclaim setoff results in a net judgment in favor of the defendant, the plaintiff has not obtained a recovery that supports an award of attorneys' fees. *See Aetna Cas. & Sur. Co. v. Liebowitz*, 730 F.2d 905, 907–08 (2d Cir. 1984) (noting that Congress did not intend to authorize fee awards under § 1964(c) "for enforcement efforts short of full recovery" and distinguishing RICO from statutes that allow fees for parties who "substantially prevail").

The Nation's reliance on *United Realty Advisors, LP v. Verschleiser* is misplaced. *United Realty Advisors, LP v. Verschleiser*, No. 14-cv-5903, 2023 U.S. Dist. LEXIS 108675 (S.D.N.Y. June 23, 2023). In *Verschleiser*, the court awarded attorneys' fees to a RICO plaintiff who obtained a jury verdict of nominal damages ($1) because "the jury's explicit finding of RICO injury" entitled the plaintiff to fees under § 1964(c). *Id.* at *11-12. But *Verschleiser* is distinguishable in a critical respect: the plaintiff in that case recovered a judgment against the defendant. Here, the Nation's gross RICO award of $75,619 is entirely consumed by the Parker Defendants' $298,000 counterclaim setoff. The Nation will recover nothing from the Parker Defendants.

A net-zero recovery is categorically different from a nominal damages award, because the plaintiff who recovers nominal damages has still obtained a judgment in its favor, while the plaintiff whose recovery is entirely offset has obtained *nothing*.

B. The Nation's Reliance on Ducote Is Misplaced

The Nation relies on *Ducote Jax Holdings LLC v. Bradley*, 335 F. App'x 392 (5th Cir. 2009), for the proposition that fees are mandatory even if net damages are reduced to nothing. But Ducote is distinguishable: it did not involve a Rule 68 offer, and it did not consider the equitable factors present here, including that the Nation's own misconduct exceeded the Parker Defendants' alleged wrongdoing. Moreover, *Ducote* is a non-binding, unpublished Fifth Circuit decision, and is inconsistent with the Second Circuit's approach to RICO fee awards.

C. The Timing of Trebling Versus Setoff Does Not Aid the Nation

The Second Circuit has never resolved whether treble damages under § 1964(c) must be applied before or after deducting counterclaims or settlement credits. Courts within the circuit-including the Eastern District of New York have applied setoff after trebling, consistent with RICO's mandatory treble-damages structure, but no binding Second Circuit precedent exists.

This open question does not aid the Nation. If setoff is applied after trebling, the Nation's trebled award of $226,857 is still exceeded by the $298,000 counterclaim, yielding a net-negative recovery. If setoff is applied before trebling, the Nation's compensable damages are reduced to zero before any trebling occurs, again yielding no recovery. Either way, the Nation recovers nothing and is not entitled to attorneys' fees.

D. The Degree of Success Obtained Weighs Against a Fee Award

Even under fee-shifting statutes, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar*, 506 U.S. at 114. Where a plaintiff achieves no net recovery, "the only reasonable fee is usually no fee at all." *Id*. at 115. The Supreme Court went on to explain that "a nominal damages award . . . highlights the plaintiff's failure to prove actual, compensable injury." *Id.*

The Nation acknowledges this standard but attempts to evade it by arguing that "it would be an abuse of discretion to conflate the amount of this damages award with a *de minimis* victory for purposes of determining the amount of an attorneys' fees award." (Dkt. No. 319-9, at 12)

But the Nation's argument makes no sense. While fee awards need not be strictly proportional to damages, the degree of success obtained remains "the most critical factor" in determining the reasonableness of a fee award. *Farrar*, 506 U.S. at 114.

The Nation's "degree of success" is zero: after application of the counterclaim setoff, the Nation will recover *nothing*. A fee award of over $660,000 for a net-zero recovery would be manifestly unreasonable.

E. The Fee Request Is Disproportionate

The Nation seeks $662,350.90-more than eight times the jury's award of $75,619, and infinitely larger than the Nation's net recovery of zero. The purpose of RICO's fee-shifting provision is to incentivize private enforcement by ensuring successful plaintiffs are made whole. Where, as here, the plaintiff's own misconduct exceeds the defendants, as demonstrated by the jury's counterclaim verdict, the rationale for fee-shifting evaporates.

F. The Nation's Interpretation of the Verdict Sheet Is Erroneous

The Nation's preferred interpretation of the Verdict Sheet, that the $75,619 was awarded against each Parker Defendant individually rather than jointly and severally, contradicts the record and is without merit. Regardless, the Parker Defendants will address this assertion in opposition to the Nation's motion to Alter the Judgment (Dkt. 323).

G. Rule 68 Independently Bars the Nation's Fee Recovery

As established in Section III, the Nation's rejection of the Parker Defendants' $1,000 Rule 68 offer triggers cost-shifting that includes attorneys' fees under *Marek v. Chesny*. The Nation cannot recover post-offer attorneys' fees regardless of its arguments under § 1964(c).

H. The Nation's Fee Application Fails to Account for the Meyer Defendants

Even if the Nation were entitled to some fee recovery, its fee application is facially unreasonable because it fails to account for the Nation's complete failure against the Meyer Defendants. The jury found that the Nation had not proven its RICO claim against any of the Meyer Defendants, yet the Nation seeks to recover the full measure of its attorneys' fees from the Parker Defendants alone.

The Nation's supporting declaration claims that counsel "removed from this Fee Application any time entry relating only to the Paul Meyer Defendants or other defendants who were dismissed from this action." (Dkt. No. 319-1 at 22.) This representation is misleading. The Meyer Defendants were not dismissed; they remained parties through the four-day trial, where the jury returned a verdict in their favor. The Nation's approach of excising only those time entries that relate "only" to the Meyer Defendants is woefully inadequate. Indeed, the billing records attached to the Nation's motion repeatedly reference work performed in connection with the Meyer Defendants, belying the claim that entries encompassing work related to those Defendants were removed. And relatedly, Plaintiff's argument in Section II, lists several sets of papers it prepared related to the Meyer Defendants. The vast majority of the Nation's litigation efforts, including discovery, motion practice, trial preparation, and trial itself-were directed at all defendants collectively. A plaintiff who fails entirely against a subset of defendants cannot recover the full lodestar from the remaining defendants without an appropriate reduction.

Courts routinely reduce fee awards to reflect a plaintiff's limited success. *See Hensley*, 461 U.S. at 436–37 ("If . . . a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount."). Here, the Nation succeeded against none of the Meyer Defendants, who were represented by separate counsel and defended through trial. The Nation's failure to apportion its fees to reflect this complete lack of success against a significant portion of the named defendants renders its fee application unreasonable on its face.

I. Reservation of Rights

The Parker Defendants reserve the right to further brief their opposition to the Nation's motion for attorneys' fees pending the outcome of the post-verdict briefing currently before the Court. The resolution of those issues, including the proper interpretation of the Verdict Sheet and the calculation of any judgment, may have a direct bearing on the Nation's entitlement to fees, and the Parker Defendants intend to supplement their opposition as appropriate.

VI. THE AMOUNT OF COSTS AND ATTORNEYS' FEES RECOVERABLE

The Parker Defendants are entitled to recover:

1. Costs Under Rule 54(d)(1): As prevailing parties, the Parker Defendants are entitled to taxable costs under 28 U.S.C. § 1920. *See* Declaration of Daniel Hurteau, Ex. A. Pursuant to Local Rule 54.1, a verified bill of costs will be filed within thirty days after entry of judgment.

2. Post-Offer Costs Under Rule 68: Pursuant to Rule 68(d), the Nation must pay the Parker Defendants' costs incurred after November 21, 2025, including attorneys' fees for trial preparation and the trial itself.

3. Attorneys' Fees Under Independent Doctrines: Pursuant to the Court's inherent power and, if appropriate, 28 U.S.C. § 1927 and Rule 11, the Parker Defendants are entitled to reasonable attorneys' fees incurred in defending against the Nation's claims. *See* Declaration of Daniel Hurteau, Ex. B.

The Parker Defendants reserve the right to supplement this motion with a detailed accounting of costs and fees as required by the Court and Local Rules.

A. The Requested Hourly Rates are Reasonable in this District

"According to the forum rule, courts should generally use the hourly rates employed in the district in which the reviewing court sits in calculating the presumptively reasonable fee." *Restivo v. Hessemann*, 846 F.3d 547, 590 (2d Cir 2017) quoting *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 174 (2d Cir. 2009) (internal quotation marks omitted); *see also Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (providing that, in calculating the lodestar amount, the rates used generally "are the market rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation" (internal quotation marks omitted).

"The rates to be used in calculating the . . . lodestar are the market rates 'prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" *Vista Outdoor Inc. v. Reeves Family Tr.*, No. 16 CIV. 5766, 2018 WL 3104631, at *5 (S.D.N.Y. May 24, 2018) (*quoting Blum v. Stenson*, 465 U.S. 886, 895 (1984)); *see also Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany and Albany County Bd. of Elections*, 522 F.3d 182, 190 (2d Cir. 2008) (stating that the focus is on setting a reasonable hourly rate, taking account of all case-specific variables).

In addition to the geographic location, courts also look to the "area of legal practice at issue" in assessing a reasonable rate. *Zero Carbon Holdings, LLC v. Aspiration Partners, Inc.*, No. 23-CV-5262, 2024 WL 3409278, at *5 (S.D.N.Y. July 15, 2024) (*quoting Blum*, 465 U.S. at 895 (1984)).

Here, the blended rate of $400 is reasonable for this District and considerably lower than the asserted rates by opposing counsel. (Compare Declaration of Daniel Hurteau ¶ 16 with Dkt. No. 319-1 ¶¶ 12-16). This rate represents between 50% and 175% discount from our national rates. Declaration of Daniel Hurteau ¶ 17. Considering the complex nature of this RICO action, this rate is reasonable. *See Zero Carbon Holdings, LLC*, 2024 WL 3409278, at *5.

B. The Hours Spent Litigating This Case were Reasonably Necessary to Obtain a Successful Outcome for the Parker Defendants

Litigating this case required a substantial amount of attorney time, reflecting the overarching complexity of the subject matter. Courts examine "whether the number of hours billed was reasonable based on an objective reasonableness standard." *See Gong v. Sarnoff*, No. 23-CV-

343, 2024 WL 1621347, at *6 (S.D.N.Y. Apr. 15, 2024); *see also Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992) ("The relevant issue . . . [is] whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures.").

Through the course of this litigation, counsel for the Parker Defendants undertook the work reasonably necessary to secure the Parker Defendant's successful outcome, including, but not limited to: (1) conducting initial factual diligence and legal research; (2) extensive motion practice related to the claims and counterclaims; (3) managing intensive discovery; (4) addressing and resolving discovery disputes; (5) taking two key party depositions and defending two party depositions; (6) preparing and litigating a summary judgment motion; (7) preparing and litigating extensive pretrial motions and Court-requested briefing, and (8) preparing for and trying the case defending against the Nation's RICO claim and advancing the Parker Defendants' related counterclaim. Each of these tasks was necessary and proportional to the issues in dispute and directly contributed to the favorable results obtained for the Parker Defendants.

For the foregoing reasons, the Parker Defendants respectfully request that this Court order the Nation to pay the Parker Defendants' attorneys' fees in the amount of $400,415.10.

REQUESTED RELIEF

For the foregoing reasons, the Court should issue an Order Court issue an Order: (1) declaring the Parker Defendants to be the prevailing parties in this action; (2) awarding the Parker Defendants their taxable costs pursuant to Rule 54(d)(1); (3) ordering the Nation to pay the Parker Defendants' costs, including attorneys' fees, incurred after November 21, 2025, pursuant to Rule 68(d); (4) awarding the Parker Defendants their reasonable attorneys' fees pursuant to the Court's inherent power, principles of fairness and deterrence, and, if the Court finds appropriate, 28 U.S.C. § 1927 and Federal Rule of Civil Procedure 11; (5) denying the Nation's motion for attorneys' fees under 18 U.S.C. § 1964(c); and (6) granting such other and further relief as the Court deems just and proper.

Dated: Albany, New York
January 21, 2026

NIXON PEABODY LLP

By: ______________________________
Daniel Hurteau, Esq.

Kasey Kaspar Hildonen, Esq.
Robert McManigal, Esq.
Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, New York 12207-2996

dhurteau@nixonpeabody.com
khildonen@nixonpeabody.com
rmcmanigal@nixonpeabody.com

Attorney for Defendants
Dustin Parker and Nora Weber