

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

**THE PARKER DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

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Dated: January 29, 2026

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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 opposition to Plaintiff’s Motion to Alter or Amend Judgment Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

Make no mistake, the Cayuga Nation’s (the “Nation”) motion to alter or amend the judgment is simply seeking to continue its relentless legal abuse of the Parker Defendants.

For three years, and from the outset of this case, the only aspect of the Cayuga Nation’s damages theory that remained consistent: the Defendants were jointly and severally liable. The Nation pled its case on a joint-and-several basis; throughout discovery, the Nation reaffirmed that position; and at trial, the Nation asked the jury to hold Defendants collectively liable for an indivisible sum, functionally, joint and several liability. After the verdict, the Nation endorsed the Court’s interpretation that the damages reflected on the verdict form were joint and several, which effectively eliminated any damages recoverable from the Parker Defendants. Dissatisfied with that outcome, the Nation now asks this Court to alter the judgment, effectively setting aside the verdict and augmenting its damages. The Court must reject that request and must not disregard the record developed over the entirety of these proceedings to accommodate the Nation’s post-verdict change in position.

As a preliminary matter, the Nation’s motion must be denied because the Nation failed to object to the Court’s interpretation of the verdict when the jury was empaneled. By failing to object, the Nation effectively waived its opportunity to seek to amend and alter the judgment post entry. For this reason alone, the Court should deny the Nation’s request to alter the judgment.

Assuming arguendo the Nation did not waive its opportunity to amend the judgment, altering or amending judgment is an “extraordinary remed[y], that is permissible only upon a

showing that a clear error of law or manifest injustice will result should the judgment remain. Despite the Nation's attempts to manufacture an error in the law or a manifest injustice, it is unable to meet this burden. It is clear there was no error, all the parties and this Court understood the intentions of the jury immediately after the verdict was returned. Even if there were an error, it would not warrant amending the judgment.

Because of these reasons, and the others explained below, this Court should deny the Nation's motion to alter or amend the judgment.

STANDARD OF REVIEW

Altering or amending judgment is an “extraordinary remed[y] to be employed sparingly in the interests of finality and conservation of scarce judicial resources.” *Fireman's Fund Ins. Co. v. Great Am. Ins. Co.*, 10 F. Supp. 3d 460, 475 (S.D.N.Y. 2014). A district court may alter or amend a judgment, pursuant to Federal Rule of Civil Procedure 59(e), in order “to correct a clear error of law or prevent manifest injustice.” *Munafu v. Metro. Transp. Auth.*, 381 F.3d 99, 105 (2d Cir. 2004) (citations and internal quotation marks omitted); *Endo Pharm. Inc. v. Amneal Pharm., LLC*, No. 12 CIV. 8060 (TPG), 2016 WL 1732751, at *1 (S.D.N.Y. Apr. 29, 2016) (A district court may grant a Rule 59(e) motion to correct manifest errors of law or fact at trial.) An alteration or amendment “is appropriate if the court in the original judgment has failed to give relief on a claim on which it has found that the party is entitled to relief.” *Am. Tech. Ceramics Corp. v. Presidio Components, Inc.*, 490 F. Supp. 3d 593, 623 (E.D.N.Y. 2020) (quoting *Continental Cas. Co. v. Howard*, 775 F.2d 876, 883 (7th Cir. 1985)).

For a Rule 59(e) motion, the burden of proof is on the movant. *See Rafter v. Liddle*, 288 F. App'x 768, 769 (2d Cir. 2008) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)). “The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court

overlooked.” *Id.*; see also *Ramratan v. New York City Bd. of Elections*, No. 06CV4770(NGG)(RML), 2006 WL 2614256, at *1 (E.D.N.Y. Sept. 11, 2006).

I. The Court Should Not Reach the Merits Because the Nation Failed to Timely Preserve its Objection

As a threshold matter, the Court must first address whether the Nation waived the right to challenge the jury’s damages verdict. Waiver is a procedural issue, to be determined by Second Circuit law. *Am. Tech. Ceramics Corp. v. Presidio Components, Inc.*, 490 F. Supp. 3d 593, 623 (E.D.N.Y. 2020). Generally, a party waives its objection to challenge the jury’s damages verdict if it fails to object prior to the court excusing the jury. *Anderson Grp., LLC v. City of Saratoga Springs*, 805 F.3d 34, 46 (2d Cir. 2015). The requirement of a timely objection is not merely a technicality, but rather, “function[s] ... to give the court and the opposing party the opportunity to correct an error in the conduct of the trial.” *Kosmyinka v. Polaris Indus.*, 462 F.3d at 83 (2d Cir, 2006).

Here, the Nation brings a motion to amend or alter the judgment, effectively contesting the judgment entered post-trial. However, the Nation waived its opportunity to amend the judgment because it failed to object to the Court’s interpretation of the jury’s damage allocation, and it allowed the empaneled jury to be dismissed. Specifically, as reflected in the transcript, immediately after the jury read its verdict, the Court stated its interpretation of the jury’s award as joint and several liability on the Parker Defendants and asked counsel to confirm the effect of the written awards. The Nation’s Counsel confirmed the Court’s interpretation:

COURT: I want to confirm with counsel, it's my understanding that because there is joint and several liability, this is a damages award of a total award of \$75,619. Do all counsel agree?

PLAINTIFF: Your Honor, I mean, that is how we pled, joint and several liability, and it is a confusing arithmetic that was done here. I don’t know if your Honor’s willing to ask the jury for clarification on what they intended there, but certainly we pled joint and several liability.

COURT: So given this verdict, you would agree that the total damages awarded to the plaintiff would be \$75,619?

PLAINTIFF: Yes, your Honor.

COURT: I think that's the question I just wanted to shore up, so I'm ready for the jury.

ECF No. 318, pg. 88.

As the transcript makes clear, the Nation agreed with the Court as to the amount of the damages awarded. When this Court explicitly inquired whether its interpretation of the verdict as joint and several liability was accurate, the Nation offered no objection, failed to raise any meaningful challenge, and suggested no alternative apportionment as to the damages allocation. The Nation's failure to object was not a mere oversight. By failing to raise a contemporaneous objection when the jury was still empaneled, and when the Court could have addressed any perceived ambiguity with the allocation of damages, the Nation failed to preserve the issue for post-trial review and relief. *See Bseirani v. Mahshie*, 881 F. Supp. 778, 784 (N.D.N.Y. 1995) (“[W]here counsel is or should be aware of the inconsistency in the verdict, and where resubmission to the jury would resolve the ambiguity,” waiver is appropriate “to promote the efficiency of trials by allowing the original deliberating body to reconcile inconsistencies without resort to the presentation of evidence to a different body.”)

Because it agreed, the Nation actively invited the Court to enter the judgment as it is currently entered. The Nation's conduct constitutes affirmative waiver. During the colloquy shortly after the verdict was read, the Nation affirmatively represented to the Court that we (the Nation) “certainly [] pled joint and several liability,” ECF No 218, pg. 85, thereby acknowledged and aligning their own damages theory with the Court's interpretation of the jury's award. Having effectively steered the Court toward the current entry of judgment, the Nation cannot now claim

that the Court's reliance on the Nation's own pleadings and verbal confirmation constitutes a clear error of the law or manifest injustice.

Moreover, by expressly adopting the Court's interpretation on the record, the Nation has explicitly waived its right to amend the judgment. *See United States v. Cooper*, 131 F.4th 127, 130 (2d Cir. 2025) ("When a party fails to raise an objection to a purported error below, any subsequent challenge may be deemed either waived through explicit abandonment or forfeited through failure to object.") By adopting the Court's interpretation, and not raising an objection, the Nation deprived the Court of the ability to cure a defect at the most efficient – and only - time, before the jury was discharged. Consequently, the Nation is now tethered to the interpretation it adopted in open court.

In its effort to bypass the consequences of its waiver, the Nation offers two separate and contradictory arguments. First, the Nation contends that it was not required to object because the verdict sheet and jury instructions were consistent. Second, the Nation argues that in the alternative, its brief discussion with the Court regarding joint and several liability functions as a "formal objection." ECF No.323, pg. 10. Both arguments fail.

The Nation's first argument that an objection at the close of the proceedings was unnecessary because the separate damages recorded on the verdict form were consistent with the Jury Instructions and the Verdict Form. This position would require finding that, at the time, the Nation perceived no inconsistency between the verdict and the Court's interpretation of it. That contention ignores the colloquy at the close of the proceedings, when the Court asked - point-blank - whether the Nation's Counsel understood the verdict as imposing joint and several liability; and the Nation's counsel confirmed he did. Any contrary assertion now is not credible.

In an effort to argue every angle, the Nation next claims that their brief discussion with the Court regarding the Court's interpretation of the damages awarded by the jury sufficiently preserved their position. ECF No. 323, pg. 10. Specifically, the Nation contends the following, "I don't know if your Honor's willing to ask the jury for clarification on what they intended here," ... "preserv[ed] an objection" on this issue. *Id.* This characterization is flatly contradicted by the record, which clearly demonstrates the Nation made no specific objection to the Court's interpretation of the damages and instead, validated the Court's interpretation of the damages award.

For these reasons, the Nation waived its opportunity to alter or amend the judgment, and this motion should be denied.

II. The Nation Fails to Meet its Burden to Demonstrate a Clear Error of Law or Manifest Injustice Necessary to Invoke the Extraordinary Remedy under Rule 59(e)

A motion to alter or amend a judgment under Rule 59(e) is an extraordinary remedy that may only be granted if the moving party meets the stringent burden of showing an intervening change in the law, the availability of new evidence, or the need to correct a clear error or prevent a manifest injustice. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 43 F. Supp. 3d 369, 373 (S.D.N.Y. 2014). It is well-settled that Rule 59(e) is not a vehicle for a second bite at the apple, or for asserting an argument that could have, and should have, been raised before the entry of judgment. *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012). Where, as here, the Nation's own trial strategy and affirmative representations created the very record they now seek to undo, there is no clear error of law or manifest injustice.

The Nation first contends that the verdict sheet must be read in connection with the jury instruction, and that, if read together, the jury must have intended to separate the damages and allocate them separately to each Parker Defendant. This argument is unavailing because it

disregards the entire litigation history. When reviewing the verdict sheet for a potential inconsistency, a court “must adopt a view of the case, if there is one, that resolves any seeming inconsistency.” *Harris v. Niagara Mohawk Power Corp.*, 252 F.3d 592, 598 (2d Cir. 2001) (quoting *Brooks v. Brattleboro Memorial Hospital*, 958 F.2d 525, 529 (2d Cir.1992); *see also Atl. & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364, 82 S.Ct. 780, 7 L.Ed.2d 798 (1962) (“Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way.”) Here, the only view of the case that harmonizes with the trial record is one of joint and several liability.

First, as recognized by the Nation’s counsel, the Nation pled joint and several liability. This theory of liability has been consistent throughout the past three plus years of litigation. In fact, during the pre-trial conference, the Nation’s counsel explained – in great detail – why they pursued their damages theory as joint and several:

“But our position is that the damages flow from the enterprise. And so when Mr. Meyer and his entities or Mr. Parker and Ms. Weber globally engage in an enterprise, it's that enterprise which is basically unseverable that harms the Nation, and that's why the liability is joint and several. That it's the Pipekeepers' store that flows from the investments that are going into furthering establishing an enterprise that harms the Nation, and you can't pick apart, once that enterprise is going, the specific things it does or doesn't do that harm the Nation, which is the point of joint and several liability, that that all comes together and can't be pulled apart.”

See Hurteau Declaration, Ex. A.

The pre-trial conference set the stage for the trial and clearly demonstrates how the Nation intended to present it to the jury. The record confirms that is how they presented it to the jury. And the verdict form reflects their presentation.

Second, the Nation’s own presentation of evidence dictates this outcome. On direct examination, the Nation’s expert, Mr. Flynn, calculated the total damages as a single, indivisible sum of \$3,150,807, which he specifically linked to Pipekeepers operation. ECF No. 316, pg. 210.

Critically, neither the Nation nor Mr. Flynn ever attempted to assign or apportion specific damages to Dustin Parker or Nora Weber, or any individual defendant for that matter. This was not an oversight, but a deliberate trial strategy that the Nation reinforced during their closing argument. Rather than asking the jury to allocate damages based on the individual's culpability, the Nation's counsel stated:

“That brings me to the verdict, I’m going to ask you to render to the Cayuga Nation. Based on all of the above, we ask you return a verdict in favor of the Cayuga Nation against each and every defendant in the amount of \$3,150,870.00, [the] exact result Mr. Flynn calculated of lost profit to the Nation over the full time period based on Pipekeepers’ own sales records.”

ECF No. 318, pg. 46.

The transcript is clear, and the Nation explicitly requested a single unified award against “each and every” defendant. In doing so, the Nation invited the jury to view liability as collective, a concept aligned with joint and several liability. Because of the Nation's presentation, the jury echoed this exact concept in its verdict, and the Court's judgment reflects the same. Even the Nation, by validating the Court's interpretation when asked about joint and several liability after the verdict was read, understood the jury's intent. Thus, there is no manifest injustice in maintaining the judgment as it currently stands.

The Nation also takes issue with the jury instruction, which it claims failed to instruct the jury on joint and several liability. While judicial guidance suggests that joint and several liability instructions should be provided to the jury to avoid motions to alter and amend judgments, the preclusion of this language is not fatal. *Shade v. Hous. Auth. of City of New Haven*, 251 F.3d 307, 313 (2d Cir. 2001) (New trial was not warranted, under fundamental error standard, on grounds that jury should have been instructed on law of joint and several liability and that verdict sheet calling for apportionment of damages among defendants was erroneous; even if instructions conflicted with law of joint and several liability, such conflict did not rise to level of fundamental

error, and holding defendants to jury verdict which faithfully followed instruction and verdict form that defendants urged upon the court did not give rise to miscarriage of justice.) Nor does the preclusion change the fact that all the Parties knew the jury intention in the immediate aftermath of the verdict being read and interpreted the damages as joint and several.

With regard to the verdict form, the Nation takes issue with the form's lack of a single line for "total damages." The Nation argues that because the form lacked a single line, the jury must have believed that by writing "two numbers on two separate line items," the Parker Defendants were each separately responsible for those amounts. That contention is flawed. The verdict form's per-defendant entries simply captured the jury's findings as to the Defendants' liability.

Moreover, the Nation actively participated in crafting the verdict sheet and never claimed confusion during trial or upon the verdict's return. A comparison of its proposed verdict sheet and the one presented to the jury shows they are nearly identical in structure and format. The following table demonstrates the near-identical structure:

Verdict Form ECF No. 310	The Nation's Proposed Verdict Form ECF No. 237
<u>Question 2</u>	I. DAMAGES
What amount, if any, do you award as damages in connection with Plaintiff's 18 U.S.C. § 1962(a) RICO investment injury claim?	Do you find that Plaintiff has proven by a preponderance of evidence that it suffered any compensatory damages?
Defendant Dustin Parker?	If you answered yes, please proceed to Questions 2-6 below.
Defendant Nora Weber?	2. State the amount of damages, if any you award the plaintiff for violation of 18 U.S.C. § 1962(a) conducted by Defendant Dustin Parker?
Defendant Paul Meyer?	3. State the amount of damages, if any you award the plaintiff for violation of 18 U.S.C. § 1962(a) conducted by Defendant Nora Weber?
Defendant Justice for Native People, LLC?	
Defendant C.B. Brooks LLC?	

	4. State the amount of damages, if any you award the plaintiff for violation of 18 U.S.C. § 1962(a) conducted by Defendant Paul Meyer? 5. State the amount of damages, if any you award the plaintiff for violation of 18 U.S.C. § 1962(a) conducted by Defendant Justice for Native People? 6. State the amount of damages, if any you award the plaintiff for violation of 18 U.S.C. § 1962(a) conducted by Defendant CB Brooks LLC?
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As the comparison table illustrates, the Nation’s own proposed form, submitted as part of their strategy to hold the defendants joint and severally liable, did not ask for “total damages” figure. Instead, it sought each defendant’s contribution for the damages. The Nation, having pressed for the form’s structure, cannot recast its features as error after the fact simply because it is disappointed in the result. *See Shade*, 251 F.3d at 313 (2d Cir. 2001) (The Court does not “see how holding the defendants to a jury verdict that faithfully followed an instruction and verdict form that they themselves urged upon the court could give rise to a miscarriage of justice.”)

Finally, the Nation argues that the jury “inten[ded]” to award separate damages to each of the Parker Defendants. ECF No. 323, pg. 10. This argument is meritless and has no support in the record. The Nation’s attempt, weeks after the trial’s conclusion, to spin the jury’s intent is nothing more than an effort to rewrite the verdict and should not be permitted.

Because there is no clear error of law or manifest injustice in the Court adopting the very interpretation that aligns with the Nation’s case presentation to the jury, this Court should deny the Nation’s request.

CONCLUSION

For the foregoing reasons, the Parker Defendants respectfully request that the Court deny the Nation's Motion to Alter or Amend Judgment in its entirety.

Dated: Albany, New York
January 29, 2026

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