UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

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

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, C.B. BROOKS LLC, AND JOHN DOES 1-10,

Defendants.

COMBINED MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS FOR ATTORNEYS' FEES AND IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

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Plaintiff Cayuga Nation (the "Nation"), through undersigned counsel, respectfully submits this memorandum of law in opposition to the motion for attorneys' fees and costs filed by Defendants Dustin Parker and Nora Weber (together, the "Parker Defendants"), ECF No. 327, and the motion for attorneys fees filed by Defendants Paul Meyer, Justice for Native First People, LLC, and C.B. Brooks LLC (collectively, the "Meyer Defendants"), ECF No. 326, and in further support of its own motion for attorneys' fees, ECF No. 319.

PRELIMINARY STATEMENT

The starting point for any request for attorneys' fees is the American Rule, under which each party bears its own fees absent clear statutory abrogation. The Parker Defendants' motion cannot be reconciled with that rule. Civil RICO is not a "prevailing party" statute. It mandates an award of fees only to a prevailing plaintiff like the Nation who has proven an injury to its business or property. Even if the Defendants were the prevailing parties (they are not), RICO would provide no basis to award them attorneys' fees. And Rule 54(d)(1) does not allow Defendants to end run RICO's asymmetric structure or to recast attorneys' fees as "costs."

Rule 68 does not change any of that. The jury awarded the Nation damages of at least $75,619. According to the Nation's calculations, even after applying setoffs, the number is greater. In either case, that defeats the Parker Defendants' $1,000 offer of judgment. Rule 68 does not apply under the Parker Defendants' alternative calculation of a net judgment of $0, because a take-nothing judgment does not trigger the rule in the first place.

Nor do the Court's inherent authority, Rule 11, or 28 U.S.C. § 1927, provide a basis to award Defendants fees. That would require a conjunctive showing that the Nation's claim was entirely without color and that it was brought in bad faith. Defendants cannot begin to make that showing where the Nation's 18 U.S.C. § 1962(a) claim survived early-stage motions to dismiss followed by post-discovery motions for summary judgment and judgment on the pleadings, and then the jury proceeded to find the Parker Defendants liable under 18 U.S.C. § 1962(a) at trial. All of that is in addition to the fact that Defendants' fee requests are barred by the Nation's tribal sovereign immunity.

On the other hand, an award of attorneys' fees to the Nation is mandated by 18 U.S.C. § 1964(c) because it proved injury to its business or property. That would be true even if the jury did not award the Nation monetary damages. But it did. Any damages awarded to the Parker Defendants on their conversion counterclaim are a separate matter altogether, and their reliance on net-recovery or proportionality calculations to defeat the Nation's right to attorneys' fees finds no support in the law.

For the reasons set forth more fully herein, Defendants' motions should be denied, and the Nation's motion for attorneys' fees should be granted.

ARGUMENT

I. The Parker Defendants' Motion for Attorneys' Fees and Costs Should Be Denied

A. The Parker Defendants Are Not Entitled to Attorneys' Fees or Costs Under Civil RICO or Rule 54(d)(1)

The Parker Defendants begin their motion by asserting "[t]he threshold question for *all* relief sought in this motion is whether the Parker Defendants are the prevailing parties[.]" ECF No. 327-6, p. 11 (emphasis added). This all-or-nothing approach ultimately betrays them on the facts and the law. To start, they are not the prevailing parties. But even if they were, their position ignores the legal-fees principle that undergirds the entire United States system.

The "basic point of reference when considering the award of attorney's fees is the bedrock principle known as the American Rule: Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S.

121, 126 (2015) (citation omitted). "Under the 'American Rule' . . . fees are not awarded to the prevailing party 'absent explicit statutory authority.'" *Greenberg v. Perfect Body Image, LLC*, No. 17-CV-5807, 2020 U.S. Dist. LEXIS 194596, *2 (E.D.N.Y. Oct. 20, 2020) (quoting *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001)) (additional citation omitted). Courts only depart from this rule when a party points to a "specific and explicit provision[] for the allowance of attorneys' fees[.]" *Baker Botts*, 576 U.S. at 126.

The only statute at issue in this litigation is the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968.[1] RICO is *not* a "prevailing party" statute. It "provides for the recovery of 'a reasonable attorney's fee' not to the prevailing party, but instead only to one who is 'injured in his business or property' by a RICO violation." *Curtis & Assocs., P.C. v. Bushman*, No. 09-CV-890, 2011 U.S. Dist. LEXIS 23905, *12–*13 (E.D.N.Y. Mar. 9, 2011) (quoting 18 U.S.C. § 1964(c)). In other words, "RICO's fee-shifting provision is asymmetrical, such that attorneys' fee awards are *available only to plaintiffs* who prove a RICO injury." *In re Am. Inv'rs Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 695 F. Supp. 2d 157, 165 (E.D. Pa. 2010) (citing *Aetna Cas. & Sur. Co. v. Liebowitz*, 730 F.2d 905, 907–909 (2d Cir. 1984) (emphasis added)). Defendants are never statutorily entitled to attorneys' fees under RICO, no matter the verdict reached. *See id.*; *see also Curtis*, No. 09-CV-890, 2011 U.S. Dist. LEXIS 23905 at *12–*13.

The Parker Defendants' efforts to repackage a claim for attorneys' fees under Section 1964(c) as one for "costs" under Rule 54(d)(1) likewise fails. In the first place, Rule 54(d)(1) expressly disclaims its application to attorneys' fees. Fed. R. Civ. P. 54(d)(1) ("Unless a federal

[1] The Parker Defendants asserted a common law claim for conversion, ECF No. 60, pp. 20–21, and were awarded a recoupment set off by the jury for that common law claim. ECF No. 310, p. 3. There was no contract claim at issue at trial.

statute, these rules, or a court order provides otherwise, costs—*other than attorney's fees*—should be allowed to the prevailing party." (emphasis added)). To be doubly sure, "Rule 54(d)(1) costs 'are confined to the costs itemized in 28 U.S.C. § 1920'"—which does not include attorneys' fees. *Griffin v. Copper Cellar Corp.*, No. 3:21-CV-100, 2025 U.S. Dist. LEXIS 184207, *6 (E.D. Tenn. Aug. 26, 2025) (quoting *In re Cardizem CD Antitrust Litig.*, 481 F.3d 355, 359 (6th Cir. 2007)); *see* 28 U.S.C. § 1920.

To the extent the Parker Defendants argue that Section 1964(c) defines costs to include attorneys' fees, and thus transforms RICO-related attorneys' fees into "costs" recoverable by a "prevailing party" under Rule 54(d)(1), that argument fails too. Once more, RICO is not a "prevailing party" statute: "attorneys' fee awards are available only to plaintiffs who prove a RICO injury." *Am. Inv'rs Life Ins. Co.*, 695 F. Supp. 2d at 165.

Rule 54(d)(1), by its own terms, cannot transform a federal statute that does not award prevailing-party fees into one that does. *See United Realty Advisors, LP v. Verschleiser*, No. 14-cv-5903, 2024 U.S. Dist. LEXIS 189358, *9 (S.D.N.Y. Oct. 11, 2024) ("Rule 54(d) 'grants costs to a prevailing party as a matter of course in the absence of a countervailing statute or rule[.]'") (quoting *Cosgrove v. Sears, Roebuck & Co.*, 191 F.3d 98, 101 (2d Cir. 1999)). The same goes for standalone costs, because under 18 U.S.C. § 1964(c), "costs"—just like attorneys' fees—are awarded only to a successful RICO plaintiff, not to a "prevailing party." *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 377 (2013) (discussing inapplicability of Rule 54(d)(1) when a federal statute limits discretion to award costs). Rule 54(d)(1) can no more countermand Section 1964(c)'s restriction on awardable costs than it can its restriction on attorneys' fees.

All of the Parker Defendants' prevailing-party arguments fail for a much more basic reason: They are not the prevailing parties. As the Nation detailed in its Motion to Alter or Amend the Judgment, ECF No. 323, whether interpreted as several, or joint and several, the jury's award of damages in these proceedings (trebled under 18 U.S.C. § 1964(c) and offset by the jury's award on the Parker Defendants' recoupment counterclaim) should result in either a final judgment of $77,857 against *each* Dustin Parker and Nora Weber, or a $155,714 judgment against *both* Parker Defendants. ECF No. 323-1, pp. 10–13. Rather than offering a reasoned analysis to the contrary, the Parker Defendants summarily assert "the net result of the jury's verdict is that the Nation will recover *nothing*[.]" ECF No. 327-6, p. 12 (emphasis in original). In reality, the only certainty, no matter how the verdict is read, is that the Parker Defendants will recover nothing from their counterclaim.

Even if the result of the verdict were a net-zero wash, the Nation would still be the prevailing party. "[T]o qualify as a prevailing party, a litigant must demonstrate [it]: (1) attained 'success on any significant issue in the litigation that achieved some of the benefit sought in bringing the litigation'; (2) the relief obtained effected a 'material alteration' of the legal relationship between the parties, that is not merely technical or *de minimis* in nature; and (3) the legal alteration was 'judicially sanctioned.'" *M.F. v. N.Y.C. Dep't of Educ.*, 2024 U.S. Dist. LEXIS 30347, *15 (S.D.N.Y. Feb. 22, 2024) (citation and internal brackets omitted).

The Nation satisfies all three prongs. First, it achieved significant success by obtaining a liability verdict under 18 U.S.C. § 1962(a) that confirmed the illegality of the Parker Defendants' conduct on its Reservation. Second, it materially altered the parties' relationship because the Parker Defendants have shuttered the Pipekeepers store on the Nation's Reservation and can no longer claim its operation does not violate federal law. Third, that legal alteration is judicially sanctioned by the entry of the verdict and the Judgment. The Parker Defendants, for their part, have obtained no tangible relief and have not in any way beneficially altered their relationship with the Nation.

Because the Parker Defendants are not the prevailing parties in these proceedings, they have no claim for prevailing-party fees or costs. But even if they had prevailed, the American Rule and the plain language of RICO foreclose their statutory arguments for fees or costs and their rule-based argument under Rule 54(d)(1).

B. Rule 68 Does Not Entitle the Parker Defendants to Any Post-Offer Costs or Attorneys' Fees in These Proceedings

The Parker Defendants pick up under Rule 68 where they left off under Rule 54, insisting that "[a]fter application of the $298,000 counterclaim setoff, the Nation's net recovery is zero"—and "[e]ven if treble damages apply, the Nation's net recovery remains zero[.]" ECF No. 327-6, p. 15. From this, they say "the Nation must pay the Parker Defendants' post-offer costs, including attorneys' fees, pursuant to Rule 68(d)" because the Parker Defendants made an offer of judgment for $1,000, and $0 is "manifestly less favorable than the $1,000 offered." *Id.*

As detailed above, and as set forth more fully in the Nation's pending Motion to Alter or Amend the Judgment, ECF No. 323, when properly calculated, the Judgment for the Nation is far greater than $1,000. That defeats the offer of judgment under Rule 68. At the same time, even if the Judgment stands as entered, the judgment finally obtained *against* the Parker Defendants would still be $75,619. Defendants do not provide any authority for the proposition that any setoff obtained by a defendant on a separate legal claim factors into the equation. The precedents they cite as supporting the contention that courts consider counterclaims in calculating the "net judgment" do not, in fact, involve counterclaims at all. *See* ECF No. 327-6 (citing *Local 32B-32J, SEIU v. Port. Auth.*, 180 F.R.D. 251, 253 (S.D.N.Y. 1998) and *Marchuk v. Faruqi & Faruqi, LLP*, 104 F. Supp.3d 363, 369 (S.D.N.Y. 2015)).

If that were not enough, the first precedent they cite guts their conclusory argument that the Nation is not entitled to add pre-offer fees to its recovery for purposes of determining whether the "judgment finally obtained" is more favorable than the $1,000 offer the Parker Defendants made. *See* ECF No. 327-6 ("[T]his 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."). *Local 32B-32J*, specifically holds: "In determining whether the judgment obtained by the offeree is more favorable than the offer, one must add pre-settlement fees and costs to the jury verdict to determine the amount ultimately awarded by the court." 180 F.R.D. at 253 (citing *Amato v. City of Saratoga Springs*, 991 F. Supp. 62, 68 (N.D.N.Y. 1998)) (additional citation omitted).

If, as the Parker Defendants would have it, when a setoff is considered, the Nation's net recovery is $0, then Rule 68 has no application. "If a plaintiff takes nothing . . . Rule 68 does not apply." *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 333 (5th Cir. 1995); *White v. Reg'l Adjustment Bureau, Inc.*, No. 3:11-CV-1817-B, 2013 U.S. Dist. LEXIS 202327, *14 (N.D. Tex. June 16, 2013) ("[T]he Supreme Court has made clear that, in situations where a plaintiff receives a 'take nothing' judgment or when the defendant prevails, Rule 68 does not apply." (citing *Delta Air Lines, Inc. v. August*, 450 U.S. 346 (1981)) (additional citations omitted)). The court in *United Realty Advisors, LP v. Verschleiser*, No. 14-cv-5903, 2024 U.S. Dist. LEXIS 189358 (S.D.N.Y. Oct. 11, 2024) also made clear that *Delta Airlines* applies to situations where a plaintiff ultimately recovers a $0 judgment against a defendant. *Id.* at *6–*8 (rejecting defendant's argument that "his offer of $1,000,000 was greater than the judgment that the plaintiff-offerees ultimately obtained against [him] ($0), and that he is therefore entitled to costs and attorney's fees incurred after the offer was made.").

All told, the Parker Defendants' Rule 68 argument fails under any scenario. If the Judgment is properly calculated, the Nation recovered far more than the $1,000 offer. If the Judgment stands as entered, the Nation still obtained a monetary recovery exceeding that offer before any setoff. And if Defendants are correct that the Nation recovered nothing, then Rule 68 does not apply at all. Because Defendants cannot satisfy Rule 68 under any view of the Judgment, they are not entitled to post-offer costs or attorneys' fees.

C. The Facts and the Law Do Not Support Fee-Shifting Under Defendants' Remaining Theories

The merits of the Nation's case have been vindicated from beginning to end. It withstood two separate motions to dismiss from two separate sets of defendants, ECF Nos. 34 & 35, before proceeding through years-long discovery and motion practice and ultimately defeating a motion for judgment on the pleadings, ECF No. 163, and a motion for summary judgment. ECF No. 164. The case was then tried to a jury, and that jury specifically found that the Parker Defendants violated 18 U.S.C. § 1962(a), and imposed monetary damages for those violations. ECF No. 310, p. 2.

Now, after twice losing dispositive motions *and* being found liable at trial, the Parker Defendants claim this action was meritless and vexatious, and that they are entitled to attorneys' fees under "the Court's inherent power, 28 U.S.C. § 1927, Rule 11, and principles of fairness and deterrence." ECF No. 327-6, p. 17. The entire history of these proceedings, along with every applicable rule and authority, renders their arguments completely meritless.

"Under its inherent powers to supervise and control its own proceedings, a district court has the authority to award attorney's fees to the prevailing party[2] when the losing party 'has acted

[2] As set forth in Section IA *supra*, the Parker Defendants are not the "prevailing party."

in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Eisemann v. Greene*, 204 F.3d 393, 395 (2d Cir. 2000) (citations omitted). "Similarly, under § 1927, a district court may award attorney's fees against an attorney or other party authorized to practice before the courts who "multiplies the proceedings in any case unreasonably and vexatiously." *Id.* at 395–396. "To impose sanctions under either authority, a court must find clear evidence that (1) the offending party's claims were entirely without color, and (2) the claims were brought in bad faith--that is, 'motivated by improper purposes such as harassment or delay.'" *Id.* at 396 (citations omitted).

"The test is conjunctive and neither meritlessness alone nor improper purpose alone will suffice." *Martin v. Giordano*, 185 F. Supp. 3d 339, 354 (E.D.N.Y. 2016) (citation omitted). "With respect to the first requirement, a claim is entirely without color when it lacks any basis in law or fact." *Id.* (citation omitted). "With respect to the second requirement, the bad faith standard is interpreted stringently" and "[b]ad faith may be inferred only if actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose such as delay." *Id.* (citations and internal quotation marks omitted).

Neither requirement is met here. Far from being "without color," this Court itself determined the Nation's claim had a valid basis in law when it denied Defendants' motions to dismiss, ECF No. 59, and that it had a valid basis in fact when it denied Defendants' motion for summary judgment, ECF No. 226. The jury confirmed *both* when it rendered a verdict against the Parker Defendants. ECF No. 310. And there has been no showing, or even specific allegation, of counsel engaging in actions "completely without merit" even once during the four-year pendency of this case.

The Parker Defendants' suggestion that Rule 11 entitles them to attorneys' fees fails across the board. To begin with, Rule 11 has strict procedural requirements. "A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b).” Fed. R. Civ. P. 11(c)(2). Because no separate motion has been made here, and because the Parker Defendants have not specifically described violative conduct, Rule 11 cannot be invoked. *See Rafter v. Fleet Bos. Fin. Corp.*, 523 F. App’x 79, 81–82 (2d Cir. 2013).

Even had the Parker Defendants complied with the rule’s requirements, it cannot serve their present purpose because “Rule 11 is not a fee-shifting mechanism and does not create an entitlement to attorney’s fees.” *Arbor Hill Concerned Citizens Neighborhood Ass’n v. Cty. of Albany*, 369 F.3d 91, 98 (2d Cir. 2004) (citations and internal quotation marks omitted). And whatever mistaken tactical benefit they saw in raising Rule 11, that may well backfire here. “A request for sanctions under Rule 11 is not a tactical device,” and “[a]sserting a request for strategic reasons when there is any colorable argument supporting an adversary’s position constitutes an ‘improper purpose’ within the meaning of the Rule.” *Nakash v. United States Dep’t of Justice*, 708 F. Supp. 1354, 1370 (S.D.N.Y. 1988); *E. Gluck Corp. v. Rothenhaus*, 252 F.R.D. 175, 179 (S.D.N.Y. 2008) (“[T]he filing of a motion for sanctions is itself subject to the requirements of the rule and can lead to sanctions.”) (citations omitted)).

Finally, Defendants’ assertion that RICO plaintiffs must exercise “special care” beyond the requirements of the Federal Rules or any of the precedents set forth above misstates the law. For one thing, two of the cases the Parker Defendants cite do not actually contain the quotations their papers attribute to them. *See* ECF No. 327-6, p. 18 (*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)). In any case, the question in those cases was the adequacy of pleading, which the Nation met here.

With respect to a third, *O'Malley v. N.Y.C. Transit Auth.*, 896 F.2d 704, 706 (2d Cir. 1990), Defendants fail to provide the relevant context that the complaint there was dismissed on summary judgment—a consequence the Magistrate Judge previously forecasted to counsel when advising the claim be withdrawn. *See* ECF No. 327-6, p. 19. And to the extent Defendants cite to *Sedima v. Imrex Co.*, 473 U.S. 479, 498 (1985), as narrowly constraining a private cause of action, the case suggests just the opposite. *See id.* ("The statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity. Far from effectuating these purposes, the narrow readings offered by the dissenters and the court below would in effect eliminate § 1964(c) from the statute.").

At bottom, the Parker Defendants' request for attorneys' fees is flatly contradicted by the record and controlling law. Because neither the Court's inherent authority, Rule 11, nor 28 U.S.C. § 1927 permit fee-shifting on this record, the Parker Defendants' motion should be denied.

D. The Parker Defendants' Claims for Costs and Attorneys' Fees are Barred by the Nation's Tribal Sovereign Immunity

Even if the Parker Defendants' arguments had merit (which, as set forth above, they do not), their claim for attorneys' fees is barred by the doctrine of tribal sovereign immunity.

"Indian tribes possess the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 51 (1978) (citations omitted). As a sovereign power, "[t]he doctrine of sovereign immunity bars an award of attorneys' fees . . . unless there is express statutory authorization for such an award." *Joe v. United States*, 772 F.2d 1535, 1536 (11th Cir. 1985) (citing *Fenton v. Federal Insurance Administrator*, 633 F.2d 1119, 1122 (5th Cir. 1981)) (additional citation omitted). And "the RICO statute does not explicitly and clearly, or by its statutory history, establish an intention to waive sovereign immunity[.]" *Wilcox v. Davis*, No. 1:22-cv-01240, 2023 U.S. Dist. LEXIS 151880, *6 (E.D. Va. Aug. 28, 2023).

This Court has previously ruled that tribal sovereign immunity bars all claims for affirmative monetary relief against the Nation, and allowed the Parker Defendants' conversion claim to proceed to trial only as a recoupment claim, which "must request only a set-off of damages, not affirmative recovery[.]" ECF No. 86, p. 14 (citing *Oneida Indian Nation v. New York*, 194 F. Supp. 2d 104, 126 (N.D.N.Y. 2002)). Moreover, it specifically dismissed Defendants' previous claim seeking a judgment for "attorneys' fees and costs" precisely because "[s]uch a judgment is precluded even under the recoupment exception to sovereign immunity." *Id.* (citing *United States v. Forma*, 42 F.3d 759, 765 (2d Cir. 1994) (additional citation omitted). That holding applies equally here.

Rule 54(d)(1) does not provide a workaround. "It is well settled that sovereign immunity prohibits an award of costs . . . unless immunity is specifically waived by act of Congress," and "[s]uch a waiver must be unequivocally expressed in the statutory text." *United States ex rel. Berge v. Regents of the Univ. of Ala.*, No. 99-1270, 2000 U.S. App. LEXIS 1305, *5 (4th Cir. Feb. 2, 2000) (citations and internal quotation marks omitted). "RICO does not mention, much less waive, sovereign immunity." *Bloch v. Exec. Office of the President*, 164 F. Supp. 3d 841, 856 (E.D. Va. 2016) (citation and internal alterations omitted). And far from unequivocally expressing waiver, "Rule 54(d)(1) codifies the principle of sovereign immunity[.]" *Berge*, No. 99-1270, 2000 U.S. App. LEXIS 1305 at *6.

Because sovereign immunity precludes the entry of an affirmative monetary judgment against a sovereign Indian nation, and because neither a federal statute nor the Nation has waived that immunity, any claim for attorneys' fees or costs against the Nation in these proceedings is barred.

II. The Meyer Defendants' Motion for Attorneys' Fees Should Be Denied

The Meyer Defendants, proceeding at this point *pro se*, have filed a roughly-framed request for attorneys' fees, without seeking costs. ECF No. 326. Their motion should be denied for the same reasons set forth with respect to the Parker Defendants above: namely, civil RICO is not a "prevailing party" statute, Rule 54(d)(1) does not change that, and any affirmative monetary judgment is barred by the Nation's tribal sovereign immunity all the same.

Like the Nation's claims against the Parker Defendants, the merits of its claims against the Meyer Defendants were vindicated both by the Court's denial of their motion to dismiss the Nation's Section 1962(a) claim, ECF No. 59, and the denial of their post-discovery motion for judgment on the pleadings—a motion they chose instead of a motion for summary judgment, and in which, they did not "engage[] with the facts alleged in the complaint or provide[] any legal analysis." ECF No. 226, p. 25.

So too here, the Meyer Defendants have elected not to reference a single case or otherwise meaningfully engage with the applicable law. Rather, they rely in large part on gratuitous and conclusory attacks on the Nation's leadership and its business operations while also referencing a claim to have been dispossessed of a vehicle independent of these proceedings. To the extent they seek to "incorporate [the Parker Defendants'] Doc. 324-1 (i. No Cognizable Injury) and I. The In Pari Delicto Doctrine into [their] request for fees," ECF No. 326, p. 2, aside from being presented on an entirely different posture, those arguments are without merit for the reasons fully detailed in the Nation's opposition papers. ECF No. 330, pp. 4–9, 19–22.

Apparently seeking to invoke the Court's inherent powers, the Meyer Defendants request "alternative relief" in the "form of a sanction against the Barclay Damon firm" or a "fine to the Nation." ECF No. 326, p. 3. Any such relief would be inappropriate for the same reasons set forth in relation to the Parker Defendants' request for sanctions under the Court's inherent powers. That is, any contention that the Nation's claim was "without color" is undermined by the Court's denial of the Meyer Defendants' motion to dismiss and its motion for judgment on the pleadings. *See Eisemann v. Greene*, 204 F.3d at 395–396. And there has been no showing, or even specific allegation, of counsel engaging in actions "completely without merit" even once during the four-year pendency of this case. *See id.* In all events, the Meyer Defendants' motion should be denied.

III. The Nation's Motion for Attorneys' Fees Should Be Granted

Section 1964(c) provides that "[a]ny person *injured in his business or property* by reason of a violation of section 1962 of this chapter . . . *shall* recover threefold the damages he sustains *and* the costs of the suit, including a reasonable attorney's fee[.]" 18 U.S.C. § 1964(c) (emphasis added). That is exactly the case here where the Nation undeniably prevailed against the Parker Defendants on its Section 1962(a) claim. ECF No. 310, p. 2. The very first question on the Verdict Sheet confirms that the Nation has "proven by a preponderance of the evidence each and every element of its 18 U.S.C. § 1962(a) RICO *investment injury* claim[.]" *Id.* (emphasis added). Not only that, but the jury specifically determined that injury damaged the Nation in at least the amount of $75,619.[3] *See id.*

The Parker Defendants contend that none of this ever happened for purposes of applying Section 1964(c)'s attorneys' fees mandate. They argue that when a defendant is awarded damages on a counterclaim, and those damages fully offset the plaintiff's recoverable judgment on its

[3] The Nation respectfully refers the Court to its Motion to Alter or Amend the Judgment, ECF No. 323, for its position regarding the proper calculation of any judgment based upon the jury's verdict, and in response to the Parker Defendants' arguments regarding (i) the effect of calculating treble damages and applying any setoff, ECF No. 327-6, p. 22, and (ii) the interpretation of the Verdict Sheet as several, rather than joint and several. *Id.*, p. 23.

principal claim (as they say they do here), "the plaintiff has not obtained a recovery that supports an award of attorneys' fees" under 18 U.S.C. § 1964(c). ECF No. 327-6, p. 21.

That argument finds no footing in the law. In the first place, it overlooks the basic rule that an "explicit finding of RICO injury" is *all* that is required to trigger Section 1964(c)'s attorneys' fees mandate. *Verschleiser*, No. 14-cv-5903, 2023 U.S. Dist. LEXIS 108675 at *11. *Verschleiser* made that clear when it determined that the jury's explicit finding "that defendant's 'violation of RICO' and participation in a 'conspiracy to violate RICO' 'caused injury to the plaintiffs,'" was sufficient to require attorneys' fees under Section 1964(c) even if no damages were awarded. *See id.* at *11–*12 (S.D.N.Y. June 23, 2023) (internal brackets omitted). The jury made that specific finding in response to Question 1 on the Verdict Sheet here. ECF No. 310, p. 2. That resolves the issue. The Parker Defendants' argument that "*Verschleiser* is distinguishable in a critical respect: the plaintiff in that case recovered a judgment against the defendant," ECF No. 327-6, p. 21, misses the whole point of the case. The recovery of a nominal judgment to boot had nothing to do with the right to attorneys' fees under Section 1964(c).

In any event, the jury did, in fact, award the Nation monetary damages. Any damages award the Parker Defendants received on their conversion counterclaim arises from a separate legal claim altogether. That awards for entirely separate claims by opposite parties may later converge in the Clerk's office at the judgment-calculation stage does not matter. Section 1964(c) contains no language that even hints at ministerial post-verdict accounting practices abrogating the statute's plain mandate that awards attorneys' fees to a plaintiff that proves injury to its business or property. *See* 18 U.S.C. § 1964(c).

In support of their anti-textual argument, the Parker Defendants cite *Aetna Cas. & Sur. Co. v. Liebowitz*, 730 F.2d 905, 907–08 (2d Cir. 1984), which they say "not[ed] that Congress did not intend to authorize fee awards under § 1964(c) 'for enforcement efforts short of full recovery' and distinguish[ed] RICO from statutes that allow fees for parties who 'substantially prevail.'" ECF No. 327-6, p. 21. But *Aetna* involved a case where the parties settled before trial. 730 F.2d at 907. And the court, in the very next sentence the Parker Defendants omit, made clear that "short of full recovery" means when a party does not litigate through to trial—not, as the Parker Defendants suggest, when a principal claim is reduced by a setoff. *Id.* at 908 ("As Congress later demonstrated, when it desired to permit attorney's fees to be awarded to a plaintiff *who does not litigate his claim through to trial*, it knew how to say so, using such broad terms as 'substantially prevails' or the 'prevailing party.' It is this broad language, nowhere to be found in civil RICO, that permits one who has not obtained a final decision on the merits to be eligible for a fee award." (emphasis added) (citations omitted)). *Aetna*, therefore, is entirely inapposite here.

Ducote Jax Holdings LLC v. Bradley, 335 F. App'x 392, 401 (5th Cir. 2009) is not. It specifically holds that RICO attorneys' fees are mandatory even "if the net damages for Civil RICO violations is reduced to nothing." The Parker Defendants dismiss this inconvenient precedent out of hand as "a non-binding, unpublished Fifth Circuit decision" that "is inconsistent with the Second Circuit's approach to RICO fee awards." ECF No. 327-6, p. 21. But they fail to in any way explain how it is inconsistent with Second Circuit precedent, including *Verschleiser*, which falls within the Second Circuit's ambit.

No matter how the ultimate damages calculation is resolved, the jury's finding of liability with respect to the Parker Defendants is, without anything more, an extraordinary success, vindicating Section 1964(c)'s aim to "encourage and enlist the civil litigation services of the 'private attorneys general' aiding public law enforcement," *Pieper v. Benerin, LLC*, 972 F. Supp. 2d 321, 329 (E.D.N.Y. 2013) (citations and internal alterations omitted) and confirming the

Nation's longstanding position that the challenged conduct on its Reservation violates United States law. That degree of success is a "critical factor in a district court's determination of what constitutes reasonable attorney's fees[.]" *Glenn v. Fuji Grill Niagara Falls, LLC*, No. 14-CV-380S, 2016 U.S. Dist. LEXIS 51618, *21 (W.D.N.Y. Apr. 18, 2016) (citation omitted).

On the Parker Defendants' telling, "[t]he Nation's 'degree of success' is zero [because] after application of the counterclaim, the Nation will recover *nothing*." ECF No. 327-6, p. 23 (emphasis in original). The Nation disagrees with the Parker Defendants' setoff calculation.[4] But no one disagrees that the Pipekeepers store has been shuttered—and remains shuttered to this day—or that each of the Parker Defendants has been found liable under RICO and can no longer claim their sale of untaxed and unstamped cigarettes and marijuana on the Nation's Reservation does not violate federal law.

Courts have consistently rejected Defendants' deliberately blinkered view of success. *See Millea v. Metro-North R.R.*, 658 F.3d 154, 168 (2d Cir. 2011) (holding it was an abuse of discretion where "[t]he district court conflated a small damages award with a de minimis victory."); *accord Ducote Jax Holdings LLC,* 335 F. App'x at 402 ("This Court has rejected a rule that the award of attorneys' fees should be proportional to the damage award in a civil RICO case." (citations omitted)). The jury's verdict alone will provide a bulwark against future conduct by the Parker Defendants on the Nation's Reservation and any others who would attempt to follow their lead.

The Parker Defendants further argue, without providing any legal authority, that the Nation should be denied its attorneys' fees because they are "disproportionate" to the amount of damages it will actually recover. ECF No. 327-6, p. 23. But the Supreme Court has rejected any notion of a proportionality rule in fee-shifting statutes, and so has the Second Circuit. *See, e.g., City of*

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[4] *Supra* n.3.

Riverside v. Rivera, 477 U.S. 561, 574 (1986) ("We reject the proposition that fee awards under § 1988 should necessarily be proportionate to the amount of damages a civil rights plaintiff actually recovers."); *Cowan v. Prudential Ins. Co.*, 935 F.2d 522, 526 (2d Cir. 1991); *accord Ducote Jax Holdings LLC*, 335 F. App'x at 402. More still, "other circuits have questioned or rejected the application of a proportionality rule under RICO's fee shifting provision." *Nu-Life Constr. Corp. v. Bd. of Educ.*, 795 F. Supp. 602, 607 (E.D.N.Y. 1992) (citing *FMC Corp. v. Varonos*, 892 F.2d 1308, 1316 (7th Cir. 1990); *Ne. Women's Ctr. v. McMonagle*, 889 F.2d 466, 474–475 (3d Cir. 1989)).

In like manner, the Parker Defendants continue that the Nation's fee request should be rejected as "infinitely" disproportionate to the jury's award because "[t]he purpose of RICO's fee-shifting provision is to incentivize private enforcement by ensuring successful plaintiffs are made whole." ECF No. 327-6, p. 23. Once more, Defendants' invented position runs headlong into controlling precedent. "The whole purpose of fee-shifting statutes is to generate attorneys' fees that are *disproportionate* to plaintiff's recovery." *Millea*, 658 F.3d at 169 (emphasis in original) (explaining the purpose of fee shifting is to attract competent counsel even for claims of "modest cash value"). So does their argument that Rule 68 applies in these proceedings and would serve in any way to bar the Nation's recovery of fees.[5]

As a factual matter, the Parker Defendants go on to claim that the Nation "seeks to recover its full measure of attorneys' fees," including for all its efforts against the Meyer Defendants. ECF No. 327-6, p. 23. This, they say, is true notwithstanding the Nation's representation in its fee application to "have removed from this Fee Application any time entry relating only to the Paul

[5] *See* Section IB *supra*.

Meyer Defendants," because, in their view, "the billing records attached to the Nation's motion repeatedly reference work performed in connection with the Meyer Defendants." *Id.*, p. 24.

The Nation's representation that it "removed from this Fee Application any time entry relating *only* to the Paul Meyer Defendants," ECF No. ECF No. 319-1, p. 5 (emphasis added), stands. The Parker Defendants and the Meyer Defendants proceeded mostly in lockstep, and often jointly throughout the course of these proceedings. As such, the Nation, on occasion, targeted its efforts against both Defendants. For example, it filed a single memorandum of law in opposition to *both* the Parker Defendants' and the Meyer Defendants' motions to dismiss, ECF No. 40, frequently targeted discovery against *both* sets of Defendants, and often negotiated discovery-related disputes and case management deadlines with *both* sets of counsel. When it came to trial preparation and the actual trying of the case, its efforts against *both* sets of Defendants were inextricably intertwined. Certain limited entries that mention the Meyer Defendants therefore remain because there is no way to parse the time out. The Nation's voluntary 25% across-the-board reduction to fees, ECF No. 319-1, p. 5, makes full allowance for that.

In sum, under Section 1964(c), a jury's finding that a RICO violation caused injury to a plaintiff's business or property is sufficient to require an award of attorneys' fees. The jury made that finding here. None of the Parker Defendants' arguments change that, and the Nation's motion should be granted.

CONCLUSION

For all of these reasons, together with those set forth in the Nation's opening papers, and any other reasons that may appear to the Court or be presented at any hearing on the matter, Defendants' motions for attorneys' fees should be denied, and the Nation's motion for attorneys' fees should be granted.

Dated: February 11, 2026

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