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.

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

BARCLAY DAMON LLP
Attorneys for Plaintiff
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Tel.: (315) 425-2700

Michael E. Nicholson, *of counsel*
David G. Burch, Jr., *of counsel*

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Plaintiff Cayuga Nation (the "Nation"), through undersigned counsel, respectfully submits this memorandum of law in further support of its motion for attorneys' fees, ECF No. 319, and in reply to the memorandum of law in opposition filed by Defendants Dustin Parker and Nora Weber (together, the "Parker Defendants"), ECF No. 338.[1]

PRELIMINARY STATEMENT

Section 1964(c) mandates the award of reasonable attorneys' fees to a person injured in his business or property by a RICO violation. The jury unambiguously found that the Nation proved a RICO injury and awarded damages, and yet the Parker Defendants insist the damages they were awarded on a separate conversion claim somehow nullify the statute's plain mandate.

That argument fails four times over. First, the premise is wrong. Section 1964(c) requires only that a plaintiff be injured in its business or property; it does not require the award of any particular amount of monetary damages. Second, nothing in § 1964(c) suggests that a defendant's separate judgment on a separate claim factors into the relevant calculation. Third, when the jury's awards are properly calculated and combined, the Nation obtained substantial monetary judgments against the Parker Defendants all the same. And fourth, longstanding public policy supports the Nation's recovery of its fees even if its judgment were ultimately reduced to zero.

The authorities the Parker Defendants cite do nothing to overcome these problems. Some concern different statutes, some address materially different circumstances, and some do not even say what the Parker Defendants attribute to them. None supports nullifying RICO's fee mandate.

[1] Although the Nation has not filed a motion seeking attorneys' fees from the Meyer Defendants, they have filed an opposition to the Nation's motion against the Parker Defendants consisting largely of gratuitous attacks against the Nation's leadership and its attorneys, and a statement of "Public Policy Health Concerns of Smoking Justifying Regulation." ECF No. 339. Should the Court accept and consider their filing, the Nation refers the Court to Section II, *infra*, to the extent the filing makes any arguments relating to the Court's inherent power.

Because the Nation proved its RICO claim and injury, § 1964(c) requires an award of its reasonable attorneys' fees. For the reasons set forth more fully herein, the Nation's motion for attorneys' fees should be granted.

ARGUMENT

I. The Parker Defendants' Arguments Provide No Basis to Deny or Reduce the Nation's Fee Award, and the Nation's Fee Application Should Be Granted

When a plaintiff prevails in a civil RICO action, the award of reasonable attorneys' fees is mandatory. 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); *United Realty Advisors, LP v. Verschleiser*, No. 14-cv-5903, 2023 U.S. Dist. LEXIS 108675, *11 (S.D.N.Y. June 23, 2023) ("In contrast to the SCA's fee provision, which uses permissive language, Section 1964(c) 'mandate[s] an award' of reasonable fees whenever its requirements are met.") (quoting *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1168 (2d Cir. 1993)).

Here, the Nation has prevailed under § 1964(c) on account of the jury's determination that the Parker Defendants are liable for the Nation's § 1962(a) "investment injury claim." Verdict Sheet, ECF No. 310, p. 2 (confirming 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[.]" (emphasis added)). "Because the jury found that the defendant's RICO violations caused injury to the plaintiff[], Section 1964(c) makes an award of reasonable attorney's fees 'compulsory.'" *Verschleiser*, 2023 U.S. Dist. LEXIS 108675 at *13 (quoting *U.S. Football League v. Nat'l Football League*, 887 F.2d 408, 411–12 (2d Cir. 1989)).

The Parker Defendants begin their current efforts to evade this straightforward statutory command by rewriting § 1964(c), replacing Congress's "shall" with "may." ECF No. 338, p. 8 ("RICO's fee-shifting provision, 18 U.S.C. § 1964(c), provides that '[a]ny person injured in his business or property by reason of a violation of section 1962' may 'recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.'"). They quickly pivot, however, and insist that even if § 1964(c) is "characterized as 'mandatory' upon a finding of liability, that principle presupposes a plaintiff who has actually prevailed—that is, one who has obtained meaningful relief." *Id.*, pp. 8–9 (internal citation omitted). The Nation, they say, "has not prevailed in any meaningful sense" because, by the Parker Defendants' calculations, their "counterclaim award of $298,000 exceeds the Nation's recovery nearly fourfold" and "[a]fter setoff, the net judgment is $0 in favor of the Nation." *Id.*, p. 9.

That argument fails under both the facts and the law. To start, the jury awarded the Nation monetary damages against the Parker Defendants in at least the amount of $75,619. ECF No. 310, p. 2. 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 who proves injury to its business or property. *See* 18 U.S.C. § 1964(c). In any case, properly calculated, the Nation obtained substantial monetary judgments against the Parker Defendants even after any recoupment setoff is applied.[2]

[2] 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.

But even if the verdict ultimately resulted in a net-zero recovery, the Parker Defendants could not escape § 1964(c). The statutory mandate is triggered by an "explicit finding of RICO injury," nothing more. *Verschleiser*, No. 14-cv-5903, 2023 U.S. Dist. LEXIS 108675 at *11; *see Ducote Jax Holdings LLC v. Bradley*, 335 F. App'x 392, 402 (5th Cir. 2009). And the jury made that specific finding in response to Question 1 on the Verdict Sheet here. ECF No. 310, p. 2.

The Second Circuit's holding in *Aetna Cas. & Sur. Co. v. Liebowitz,* 730 F.2d 905 (2d Cir. 1984) has nothing to say about any of that. The Parker Defendants characterize *Aetna* as "affirm[ing] the denial of fees where the plaintiff's recovery was minimal in relation to the amounts sought." ECF No. 338, p. 9. But that is simply not accurate. *Aetna* involved a case where the parties settled before trial, 730 F.2d at 907, and where the Court made clear it denied attorneys' fees not because of the amount of recovery, but because the plaintiff did "not litigate his claim through to trial" and therefore did "not obtain[] a final decision on the merits to be eligible for a fee award" under Section 1964(c). *Id.* at 908 (citations omitted).

Setting that aside, the Parker Defendants invoke another Supreme Court precedent, arguing that "in *Texas State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791–92 (1989), the Supreme Court held that a plaintiff must obtain 'actual relief on the merits of his claim' that 'materially alter[s] the legal relationship between the parties' to qualify as a prevailing party," ECF No. 338, p. 9, and because "the Nation's legal position has not been materially improved" it is not entitled to attorneys' fees. *Id.*

The most serious problem with that argument is that neither of the quotations the Parker Defendants attribute to that case appears anywhere in it. The closest possible language is that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute," *Texas State Tchrs.*

Ass'n, 489 U.S. at 792–793, and "[r]espect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail." *Id.* at 792 (citation omitted).

That gives the case a different meaning. The Nation, no doubt, has materially altered the parties' relationship in the required manner, vindicating § 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 federal law. The Parker Defendants can no longer claim their sale of untaxed and unstamped cigarettes on the Nation's Reservation does not violate federal law. And for that very reason, the Pipekeepers store remains shuttered to this day. By any measure, that extraordinary 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).

While the Parker Defendants acknowledge the "degree of success obtained" is highly significant, *see* ECF No. 338, p. 9, they cast aside all the above-stated realities on the ground and maintain the artificially narrow position that "where a plaintiff recovers only nominal damages 'because of his failure to prove an essential element of his claim for monetary relief, the only reasonable fee is usually no fee at all.'" *Id.* (quoting *Farrar v. Hobby*, 506 U.S. 103, 115 (1992)).

But the Parker Defendants stretch *Farrar* far beyond its holding. The attorneys' fee statute at issue there was 42 U.S.C. § 1988, which is permissive, not mandatory; the jury found that while the defendant had "deprived Plaintiff . . . of a civil right," defendant's "conduct was not 'a proximate cause of any damages,'" resulting in the dismissal of his claim; and the nominal damages were not awarded by the jury, but imposed by the Fifth Circuit in a remand judgment. *Farrar*, 506 U.S. at 106–107. This case is nothing like that. Here, the fee statute at issue is mandatory; the Nation proved every essential element of its claim; and the jury awarded the Nation a substantial judgment.[3] *Farrar*, therefore, is entirely inapposite here.

Ducote Jax Holdings LLC is not. It specifically holds that RICO attorneys' fees are mandatory even "if the net damages for Civil RICO violations is reduced to nothing." *Ducote Jax Holdings LLC*, 335 F. App'x at 401. The Parker Defendants dismiss this inconvenient precedent out of hand as a "non-binding, unpublished summary order from the Fifth Circuit that is neither controlling nor persuasive in this Circuit." ECF No. 338, p. 10. 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, or the Second Circuit's own opinion in *Millea v. Metro-North R.R.*, 658 F.3d 154, 168 (2d Cir. 2011), which held it was an abuse of discretion where "[t]he district court conflated a small damages award with a de minimis victory."

The case the Parker Defendants cite to blunt this sweep of Second Circuit precedent, in fact, does no such thing. They represent that the United States District Court for the Southern District of New York in "*Goldman v. Burch*, 780 F. Supp. 1441, 1448 (S.D.N.Y. 1992) den[ied] fees where defendant's counterclaim offset plaintiff's RICO recovery." ECF No. 338, p. 9 (parentheses omitted). There is, however, no page 1448—the opinion ends at page 1447. In any event, reading the opinion up to its final page reveals that the case had nothing to do with RICO at all. It involved a suit filed by a decedent's executors to recover amounts allegedly overpaid to the trustee under a purchase agreement pertaining to hotel operations. *Goldman*, 780 F. Supp. at 1442; *see also Goldman v. Burch*, 778 F. Supp. 781, 782 (S.D.N.Y. 1991) (prior proceeding). The

[3] *See* n.2 *supra*.

attorneys' fees were contractual, sought not under any statute (let alone, § 1964(c)), but under § 14(e) of the purchase agreement. *Goldman*, 780 F. Supp. at 1445.

Relying heavily on *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Parker Defendants go on to argue that the Nation should be denied its attorneys' fees because they are "disproportionate" to the amount of damages it will actually recover. ECF No. 338, p. 10–12. But they fail to disclose that the Second Circuit has all but eliminated that case's reach when it comes to RICO. *See Stochastic Decisions, Inc.*, 995 F.2d at 1168 (recognizing *Hensley* involved attorneys' fees under a discretionary statute, and holding it "'is of limited applicability' to statutes that mandate an award of attorney fees" such as Section 1964(c)).

At bottom, "[t]he 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). What is more, the Supreme Court has more recently rejected any hard notion of a proportionality rule in fee-shifting statutes, and so has the Second Circuit. *See, e.g., City of 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). 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)); *see Ducote Jax Holdings LLC*, 335 F. App'x at 402.

At the same time, the Nation has not, as the Parker Defendants contend, "failed to adequately apportion its fees between work directed at the Parker Defendants and work directed at the Meyer Defendants." ECF No. 338, p. 12. In fact, it specifically represented in its previous filing that it "removed from this Fee Application any time entry relating only to the Paul Meyer Defendants[.]" ECF No. 319-1, p. 5 at ¶ 22. Not only that, but the Nation imposed a voluntary 25% across-the-board reduction to its fees. *Id.*, p. 5 at ¶ 23. It did that even though the Parker Defendants and the Meyer Defendants proceeded mostly jointly and in lockstep throughout the course of the proceedings—and when it came to most discovery disputes, negotiations, motion practice, trial preparation, and even trying the case, the Nation's efforts against both sets of Defendants were inextricably intertwined.

In a last-ditch effort to seek some kind of reduction to the Nation's already substantially reduced fees, the Parker Defendants argue the Nation's "conduct unnecessarily increased the costs of litigation" and warrants a substantial reduction. ECF No. 338, p. 12. At bottom, this argument seeks to recast the ordinary back-and-forth of litigation as "unnecessary" simply because it required the Parker Defendants to actually litigate. Complex federal cases generate discovery disputes, evidentiary disputes, expert challenges, supplemental briefing, and other motion practice. Someone necessarily prevails on any given challenge or motion. But that reality does not transform the ordinary expense of the routine exchanges required by the adversarial process into unnecessary or inflated fees.

In many instances, the Parker Defendants go so far as to attempt to attribute their own litigation decisions to the Nation. Take, for example, their argument about the ultimate exclusion of cannabis damages evidence. ECF No. 338, p. 13. The Parker Defendants could have moved to exclude that evidence at any point in the litigation. They chose not to do so until the eve of trial, and only after the Court invited further motion practice. *See*, *e.g.*, ECF Nos. 226, 241, 246, 247, 250, 256, & 271. That was either a strategic choice or an oversight. Either way, it was the Parker Defendants' decision, and the resulting motion practice was nothing out of the ordinary in a complex federal case. The same goes for the Parker Defendants' motion to exclude certain expert testimony, which was finally briefed over the course of months and decided just three days before trial. *See* ECF No. 301. This is nothing more than the ordinary process of motion practice and judicial deliberation at work.

Nor does the Nation's decision to present at trial its damages theory, as limited by the court, justify a fee reduction as the Parker Defendants contend. The Nation developed a damages theory, supported it with fact and expert testimony, and the Court allowed it to proceed to trial. The fact that the theory did not result in the full measure of damages the Nation sought is of no moment when it comes to the reasonableness of the Nation's fees. *See Millea*, 658 F.3d at 169.

Ultimately, the Parker Defendants' arguments give way under the plain language of § 1964(c), the applicable precedents, and even the authorities they cite. The Nation prevailed on its RICO claim, and § 1964(c) requires an award of its reasonable attorneys' fees.

II. The Parker Defendants' Further Arguments in Support of Their Own Fee Application Should Be Rejected as Unauthorized and Without Merit

This Court should decline to consider the remainder of the Parker Defendants' arguments advocating for their motion for attorneys' fees as unauthorized and beyond the scope of the briefing permitted by the Court's August 5, 2026 Text Order, ECF No. 337. Even so, because the Parker Defendants simply reiterate, in summary fashion, various arguments they already asserted in their initial motion, the Nation respectfully refers the Court to its previously filed opposition, ECF No. 334, and briefly addresses the arguments below.

The Parker Defendants first argue they are entitled to attorneys' fees as "costs" under Rule 68 because "[t]he Nation's net recovery of $0 is manifestly less favorable than the [Parker Defendants'] $1,000 Rule 68 offer." ECF No. 338, p. 15. That argument fails for three independent reasons. First, because Rule 68 has no application if the net recovery is $0 as the Parker Defendants contend. *La. Power & Light Co. v. Kellstrom,* 50 F.3d 319, 333 (5th Cir. 1995) ("If a plaintiff takes nothing . . . Rule 68 does not apply."). Second, because nothing in Rule 68 permits a defendant to reduce the plaintiff's judgment by the amount of a separate judgment obtained by the defendant on an unrelated claim. And third, because the Nation's net recovery was, in fact, more than $1,000 even if the offset factors into the equation.[4]

They next argue the Nation's "litigation conduct . . . constitutes the type of bad-faith conduct that warrants fee-shifting under the Court's inherent power." ECF No. 338, p. 16. While the law is clear that "a district court has the authority to award attorney's fees to the prevailing party when the losing party 'has acted in bad faith, vexatiously, wantonly, or for oppressive reasons,'" *Eisemann v. Greene*, 204 F.3d 393, 395 (2d Cir. 2000) (citations omitted), the problem for the Parker Defendants is twofold. First, they are not the prevailing party, and second, the Nation won a jury verdict on its RICO claim, vindicating its claims and rendering it impossible to claim they were brought in bad faith. *Martin v. Giordano*, 185 F. Supp. 3d 339, 354 (E.D.N.Y. 2016) ("Bad 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.").

Finally, the Parker Defendants argue that "policy considerations" militate against awarding the Nation significant fees in light of the measure of damages it obtained. It is, however, their position that defies public policy, as "calculating attorneys' fees as a proportion of damages runs directly contrary to the purpose of fee-shifting statutes[.]" *Millea*, 658 F.3d at 169.

CONCLUSION

For all of these reasons, together with those set forth more fully in its previous filings, ECF Nos. 319 & 334, the Nation's motion for attorneys' fees should be granted.

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[4] *See* n.2 *supra*.

Dated: September 2, 2026

BARCLAY DAMON LLP

s/ *Michael E. Nicholson*
Michael E. Nicholson
David G. Burch, Jr.

Attorneys for Plaintiff
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202