IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Bryan Cleveland, on behalf of his minor children, Z.C., F.C., and A.D.C.,

Objector/Appellant,

v.

Joseph Bointy, Yovan Brindou, Dia Campbell-Detrixhe, Kimberley Carroll, Yovany Cordero Salcedo, Clendon Detrixhe, Concepcion George, Elizabeth Grimes, Ty Harper, Shawn Johnson, Derek Manek, Brenda Kay Robinson, Zachary Warner, and Samantha King, individually and on behalf of all others similarly situated,

Plaintiffs/Appellees,

and

Integris Health, Inc.,

Defendant/Appellant.

Sup. Ct. No. 123720

APPELLANT'S BRIEF IN CHIEF

District Court of Oklahoma County
Case No. CJ-2023-7235 (The Honorable Brent C. Dishman)
Attorneys' Fee Award in Data Breach Class Action Settlement

Bryan Cleveland, OBA # 33860
6938 Smithfield Blvd
Indianapolis, IN 46237
cleveland.bryan@gmail.com

M. Frank Bednarz (*pro hac vice* forthcoming)
Hamilton Lincoln Law Institute[1]
1440 W. Taylor St # 1487
Chicago, IL 60607
frank.bednarz@hlli.org

ATTORNEYS FOR THE OBJECTORS/APPELLANT BRYAN CLEVELAND
July 20, 2026

[1] Written with assistance of Hamilton Lincoln Law Institute attorneys, who will move to associate once their application is approved by the Oklahoma Bar Association.

INDEX TO APPELLANT'S BRIEF IN CHIEF

SUMMARY OF RECORD

This appeal solely concerns the district court's award of attorneys' fees to class counsel. Appellant Bryan Cleveland does not challenge approval of the class settlement itself. He appeals only the award of $9.3 million in attorneys' fees to Class Counsel.

The $9.3 million fee award is 5.9 times greater than the handsome hourly billing up to $1150/hour claimed by Class Counsel (that is, it has a 5.9 lodestar multiplier). Although the Cleveland Objectors filed a detailed objection, the final approval simply states that "Class Counsel submitted detailed bill records to the Court" and "[a]fter reviewing the detailed bill records and considering the arguments presented in Plaintiffs' Motion for Attorneys' Fees and the Objector's filed Objection, the Court determined that the billing and requested attorneys' fees of Class Counsel was fair and reasonable under 12 O.S. § 2023(G)." Approval at 7-8.[2]

The underlying litigation arises from a 2023 cybersecurity incident affecting the patient data of Integris Health, Inc. It was first filed in Oklahoma state court on December 28, 2023. R. 19. This initial suit, by plaintiff Detrixhe, was the first of an avalanche of similar putative class actions brought by several firms. Seven of the actions were previously filed by the same plaintiffs' firms in federal court. *See* R. 40 (rival plaintiffs' application for appointment), at 1 n.1. Seven plaintiffs' firms agreed to work together and filed a motion for the appointment of a seven-firm steering committee as interim class counsel. R. 39. The sole holdouts, represented by attorneys

[2] Abbreviations used herein are the appealed Final Approval Order of Dec. 12, 2025, R. 107 ("**Approval**"); the Jul. 22, 2025 Preliminary Approval Order, R. 94 ("**PAO**"); the Settlement Agreement, R. 93, Ex. 1 ("**S.A.**"); the Unopposed Motion for Preliminary Approval, R. 93 ("**Mot. for PAO**"); Class Counsel's Initial Motion for Attorneys' Fees, R. 96 ("**Fee Mot.**"); the Cleveland Objection filed Nov. 20, 2025, R. 98 ("**Obj.**"); Plaintiffs' Dec. 2, 2025 Motion for Final Approval, R. 100 ("**Final App. Mot.**"); and the Dec. 12. 2025 Hearing Transcript, R. 109 ("**Tr.**").

from Barnow and Associates and Morgan & Morgan, criticized this "bloated leadership structure," and touted the "efficiency and efficacy" of their much smaller proposed structure. R. 40 at 1-2. The district court appointed the majority group on Feb. 20, 2024. R. 42, 44.

Integris moved to dismiss five of plaintiffs' eight counts, arguing that certain common law torts were precluded by their compliance with HIPAA and other statutes. R. 82. The motion was briefed, but no hearing ever occurred because the parties engaged in mediation, with a settlement offer emerging from mediation on December 12, 2025. *See* Mot. for PAO at 4-5.

The parties executed a settlement agreement establishing a $30 million common fund, from which the Settlement Administrator pays attorneys' fees, administration costs, and "any payments made or other benefits provided to Settlement Class Members," including credit-monitoring services, to the extent that class members apply for it. S.A. ¶ 21. Credit monitoring services are paid by the settlement administrator out of the Net Settlement Fund, and instructions for enrollment in the service are provided only to "Settlement Class Members who submitted a valid and timely claim for [credit monitoring] benefits." *See id.* ¶¶ 33, 36(a) & 43. The agreement authorizes class counsel to seek attorneys' fees of up to one-third of the "total value of the Settlement." *Id.* ¶ 77. The agreement also requires Integris to, at its own expense, make business practice improvements that the agreement asserts "will cost approximately $900,000.00." *Id.* ¶ 31.

On the same day that the motion for preliminary approval was presented, July 22, 2025, the district court granted preliminary approval of the settlement. PAO, R. 94.

On November 7, 2025, class counsel moved for an award of $9.3 million in attorneys' fees plus litigation expenses. In support of that request, counsel represented that the requested award equaled approximately 5.9 times their claimed lodestar, $1,578,907.46 for 2,183.8 hours of attorney time. Fee Mot. at 18. This represents a blended hourly rate of $4,258/hour.[3]

Appellant Bryan Cleveland timely objected to the fee request on behalf of his minor children, members of the settlement class. *See* Obj., R. 96. He argued that Oklahoma law required denial of the requested multiplier because it produced a fee approximately 5.9 times counsel's own lodestar, and because the application lacked the evidentiary support necessary to establish a reasonable lodestar, including contemporaneous billing records, competent evidence of prevailing market rates, and complete billing information. Cleveland extensively discussed *Strack v. Cont'l Res., Inc.*, which reversed approval of a fee award that would have resulted in a 3.17 multiplier, and instructed the district court to provide the objector an opportunity to respond to detailed billing in that case. 2021 OK 21, ¶¶ 25-31, 36-37, 598 P.2d 659, 618-21. He requested that the district court deny the fee application without prejudice, require a properly supported renewed application, and permit renewed objection to fees after the record is completed. Obj. 7. Cleveland also advised that he would not attend the fairness hearing because he did not reside in Oklahoma, so relied on "written arguments and authorities in this objection." *Id.*

---

[3] Class counsel also estimated that additional time in the future would be spent for class benefit. This time was initially claimed as "approximately two hundred (200) additional hours or more." Fee Mot. 5. Class Counsel later reported "expect[ing] to spend an additional 50-100 hours resolving this case." Federman Decl., R. 100, Ex. B, ¶ 15.

That said, this appeal—where Class Counsel are defending their 5.9x windfall fee award—should not be counted. Class Counsel stated that "if an objection is filed and it is appealed, there will likely be hundreds more additional hours incurred." Fee Mot. 5 n.4. This time is not compensable because Cleveland does not challenge settlement approval. Hours spent by counsel on this appeal is for their own benefit and *adverse* to the interests of class members. *E.g., In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). "To permit counsel to collect for hours spent seeking that fee would effectively reward them for *reducing* the size of the common fund, or diminishing their client's return." William B. Rubenstein, NEWBERG ON CLASS ACTIONS § 15:93 (5th ed. 2020).

Class Counsel moved for final approval on December 2. They continued to characterize the settlement as a "$30,000,000.00 non-reversionary settlement." Final App. Mot. 2. While the motion describes the availability of credit-monitoring services as a non-monetary benefit, it is paid from the Settlement Fund as part of the "benefits provided to Settlement Class Members." *Id.* at 5-6. They requested attorneys' fees of one-third "of the total value of the Settlement," and did not identify any total settlement value greater than the $30 million fund or assign any aggregate dollar value to credit-monitoring, nor any other settlement benefit. *Id.* at 6. The motion does not report how many class members actually signed up for credit monitoring as of that date.

Although Cleveland objected that the fee application lacked detailed billing records and sufficient information to verify counsel's asserted lodestar, Class Counsel's written response did not submit contemporaneous billing records or otherwise supplement the evidentiary basis for the requested fee. Instead, Class Counsel argued that the requested fee was consistent with awards in comparable cases and justified by the results obtained and the risks of the litigation. Final App. Mot. 2.[4]

The district court conducted a final approval hearing on December 12, 2025. Based on the transcript and final approval order itself, class counsel brought some sort of "detailed billings" to the hearing. Tr. 7; Approval at 7. The district court reports "I'm reviewing those now" within the last two pages of the 8-page transcript of the fairness hearing. Tr. 7. It is unclear what hours these

[4] Within the motion, Class Counsel reports that a "separate motion filed concurrently herewith" requests the fee award, but no such motion appears on the docket. Final App. Mot. 13. The Motion for Final Approval also erroneously states "no objection" had been received (*Id.* at 3), but Cleveland's objection was filed twelve days earlier, on November 20, and an objection to the settlement itself by Shirley Hendricks was docketed November 21. In any event, Class Counsel filed no written response to objections and denied class members, including objectors, the opportunity to respond to belated alternative bases for the fee award.

bills include; they were not entered into the record.[5]

Class Counsel also purported to distinguish *Strack* by citing four cases, which were never filed in writing, but argued at the hearing without opposition because—as Class Counsel knew in advance—Cleveland was not attending. Tr. 5-7.

Also, for the first time Class Counsel asserted that the settlement value was "over $49 million" based somehow on the "cash fund of $30 million," "a commitment of $900,000 to be deployed to improve their system," and "credit monitoring for everyone who wants it." Tr. 3. At the end of the brief hearing, Class Counsel asserts "[i]f you look at the total value, the benefits provided to the class here, we're under 20 percent as a percent of that." Tr. 8. Neither the transcript nor anything else in the record explains this representation, which directly contradicts class notice, the fee motion, and motion for final approval which uniformly stated that attorneys' fees were one third. Following these remarks, the district court asked for a revised form of order to be submitted for approval. Tr. 8.

The district court entered its Final Approval Order the same day, December 12. The order recites the $9.3 million attorneys' fee award, but does not contain information concerning percentage *or* lodestar multiplier. Approval at 7. The order overruled Cleveland ("one Objector"), because "Class Counsel submitted detailed bill records to the Court at the Final Approval Hearing," and without further explanation found "that the billing and requested attorneys' fees of Class Counsel was fair and reasonable under 12 O.S. § 2023(G)." *Id.* at 7-8.

Cleveland timely appealed.

---

[5] The Court reports reviewing the "invoices of both law firms" (Tr. 8), whereas the fee motion was based on an indeterminate number—likely at least five—"Additional Plaintiffs' Counsel" besides the two co-lead class counsel firms of Federman & Sherwood and Hausfeld, LLP. Fee Mot. 14. Whatever the number of "Additional Plaintiffs' Counsel," it should be more than records from "both law firms" as remarked at the hearing.

ARGUMENT AND AUTHORITIES

This appeal presents a straightforward question under *Strack v. Continental Resources, Inc.*, 2021 OK 21, 598 P.2d 659: may a district court approve a common-fund fee award representing a 5.9 multiplier above class counsel's claimed hourly billing (that is, their "lodestar") without explaining why such an extraordinary enhancement is reasonable? The answer is no.

Oklahoma law does not forbid every generous fee award. It does, however, require courts to independently determine that a requested fee is reasonable, explain the basis for that determination, and meaningfully compare a percentage award against counsel's claimed hours.

The requirements for setting an attorneys' fee award are sensible, straightforward, yet completely omitted by the district court because in fact the $9.3 million fee award—which reduces class recovery by that amount—is neither reasonable nor supported on this record. First, *Burk v. City of Oklahoma City* requires findings sufficient for appellate review. 1979 OK 115, 598 P.2d 659. Second, *Strack* requires a meaningful lodestar crosscheck in common-fund cases. And finally, Section 2023(G) assigns independent responsibility in setting fees to the district court itself. Each procedural requirement went ignored.

The approval announces a conclusion without revealing the reasoning that produced it.

The district court approved a $9.3 million fee, nearly six times Class Counsel's ordinary rates, amounting to a blended rate of $4,258/hour, with little more than the conclusion that the request was "fair and reasonable." It failed to address Cleveland's principal objection, never explained why this early-settled case warranted one of the largest multipliers reflected in Oklahoma common-fund jurisprudence. Because the order does not reveal the reasoning necessary for meaningful appellate review, the fee award should be vacated with instructions.

I. The district court abused its discretion by awarding a 31% common-fund fee without making the findings required by Oklahoma law.

The standard of review for a trial court's determination of reasonable attorney fees is "abuse of discretion," which "occurs where the lower court ruling is without rational basis in the evidence or where it is based upon erroneous legal conclusions." *Hess v. Volkswagen of Am., Inc.*, 2014 OK 111, ¶ 9, 341 P.3d 662 (settlement class action). But a court exercising its discretion must explain the basis for its fee award sufficiently to permit meaningful appellate review. "Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005). The "trial court should set forth with specificity the facts, and computation to support his award." *State ex rel. Burk v. City of Okla. City Two Thousand Classen Bldg. Corp.*, 1979 OK 115, ¶ 22, 598 P.2d at 663. "The failure to follow the directives of *Burk v. Oklahoma City* in setting the attorney fees and to make an award consistent with the evidence presented constitutes an abuse of discretion requiring reversal." *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, ¶ 10, 171 P.3d 890, 895.

Here, the district court approved a $9.3 million fee award—31% of the $30 million common fund and approximately 5.9 times Class Counsel's asserted lodestar—without explaining why that award was reasonable under Oklahoma law.

Objector Cleveland extensively discussed *Strack v. Cont'l Res., Inc.*, which reversed and remanded as excessive a fee award with a comparatively modest 3.17 multiplier (2021 OK 21, ¶ 25, 507 P.3d 609, 618), but the district court offered not a single word to explain why an even more eye-popping multiplier should be granted. *See also* 5 William B. Rubenstein, et al., NEWBERG ON CLASS ACTIONS § 15:87 (5th ed. 2020) (conducting a broad survey that found "most multipliers are in the relatively modest 1-2 range" and advising a "presumptive ceiling of 4, or slightly twice the mean."). The order does not meaningfully address Cleveland's principal objections, does not explain why such an extraordinary multiplier was warranted, and does not reveal how the court reconciled the percentage award with the lodestar crosscheck. Instead, it simply announces the conclusion that the requested fee is reasonable.

This alone constitutes abuse of discretion because it does not permit meaningful appellate review. Class members objecting to fees are entitled to consideration and a "reasoned response" to their nonfrivolous objections. *E.g., Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1262 (11th Cir. 2020).[6] More generally, a court abuses its discretion when it fails to demonstrate that it has actually exercised the discretion entrusted to it by law, including "addressing and responding to nonfrivolous arguments timely raised by the parties before it." *See Golan v. Saada*, 596 U.S. 666, 679 (2022). Those principles align with Oklahoma law. Section 2023(G) requires the district court—not the parties—to determine a reasonable attorney fee, while *Burk* requires findings sufficient to permit meaningful appellate review. The district court's order does neither.

Because it does not reveal the analytical path leading to the $9.3 million award, this Court cannot determine whether the fee reflects the independent analysis required by *Burk*, *Strack*, and § 2023(G), or merely the acceptance of Class Counsel's request after defendant's acquiescence.[7] Vacatur and remand are therefore required.

---

[6] Because Oklahoma's class action rule bears great similarity to Federal Rule of Civil Procedure 23, Oklahoma courts find federal authority "persuasive." *State ex rel. Burk v. City of Okla. City Two Thousand Classen Bldg. Corp.*, 1979 OK 115, ¶ 5, 598 P.2d 659, 660.

[7] One of the few questions the district court asked during the brief fairness hearing is whether the defendant objected to the fee award. Tr. 6.

A. *Strack* and § 2023 require district courts to articulate facts and law in support of an attorneys' fee award.

Oklahoma law demands considerably more than a conclusory response to objections. Three independent sources of Oklahoma law impose on the district court an obligation to independently determine the reasonableness of a requested class-action fee award and explain that determination. First, § 2023 requires judicial approval of class settlements and expressly provides that "[t]he court shall determine the amount of attorney fees." 12 O.S. § 2023(G); *accord* Fed. R. Civ. P. 23(h); *Morrow v. Jones*, 140 F.4th 257, 262 (5th Cir. 2025) (Rule 23(h) imposes non-delegable, non-waivable duties on the district court). Second, *Burk* requires trial courts awarding attorney fees to make findings demonstrating the basis for the award. 1979 OK 115, ¶¶ 20-31, 598 P.2d at 663. Third, *Strack v. Continental Resources, Inc.* confirms that common-fund fee awards must be evaluated by reference to both the percentage recovered and the lodestar crosscheck, ensuring that neither measure obscures the ultimate question of reasonableness (or at minimum that a court explain its reasons for not performing such a check).

On the existing record, it is not even clear that the district court knew what percentage it was awarding. The Approval does not say it, and at the fairness hearing Class Counsel anomalously asserted that the fee award was "under 20 percent." Tr. 7. To the extent that the district court accepted Class Counsel's extemporaneous representation it contradicted prior written filings, and without answering Cleveland's objections to the asserted lodestar. It cannot be meaningfully reviewed and must be vacated.

In *Burk v. City of Oklahoma City*, the Oklahoma Supreme Court held that a district court awarding attorneys' fees must independently determine a reasonable fee using articulated factors rather than accepting the parties' assertions at face value. 1979 OK 115, ¶¶ 20-22, 598 P.2d at 663. *Burk* requires the district court to begin with the hours reasonably expended multiplied by a reasonable hourly rate, and then consider whether other circumstances justify any adjustment. *Id.* The court must make findings sufficient to disclose the basis for its determination and permit meaningful appellate review. *Id.* ¶¶ 30-31. None of this occurred.

Although *Burk* arose in the context of a fee-shifting statute rather than a common fund, *Strack* applies the same principles to common fee awards. In *Strack* the district court recited no law or fact to support the 3.17 lodestar multiplier fee awarded. 2021 OK 21, ¶ 31, 507 P.3d at 620. Here, the approval order does not even *evince awareness* it granted an even more outlandish multiplier.

Strack requires a blended approach, so that courts should consider *both* benchmarks (percentage and lodestar) rather than *neither*. The district court may begin with either the percentage or the lodestar method, but "a court should compare the results of both methods to ensure it is awarding a reasonable fee in a common fund class action." *Id.* ¶ 19; *see also See, e.g.*, Neil M. Gorsuch & Paul B. Matey, *Settlements in Securities Fraud Class Actions: Improving Investor Protection*, WASH L. FOUND. (2005), at 23 (calling the lodestar crosscheck an "important safeguard").[8] Astonishingly, the Approval order not only fails to compare the methodologies, it does not mention either one.

B. Courts have a fiduciary duty to the class as a whole.

Unlike an ordinary settlement, a class action settlement binds absent class members who never personally appear before the court. For that reason, Oklahoma law, like federal law, requires judicial approval before a certified class action may be settled. 12 O.S. § 2023(E). The district court's responsibility therefore extends beyond resolving a dispute between willing litigants. It must independently determine whether the settlement—and any attorneys' fee awarded from the

[8] *Available at* http://www.wlf.org/upload/0405WPGorsuch.pdf.

common fund—is fair, reasonable, and adequate for the absent class members whose rights it is approving. 12 O.S. § 2023(E)(2). District courts have "a fiduciary duty to give full adversarial scrutiny to the attorney's fees requested based on its trust relationship with the class." *Strack v. Cont'l Res., Inc.*, 2021 OK 21, ¶ 37, 507 P.3d at 618; *see also In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (trial court must "act with a jealous regard to the rights of those who are interested in the fund" when awarding fees in class actions).

That fiduciary obligation is particularly important when evaluating attorneys' fees. Every additional dollar awarded to class counsel comes directly from the common fund otherwise available to compensate injured class members. Here, the requested $9.3 million fee reduced the $30 million class Settlement Fund dollar-for-dollar. Settling parties frequently stipulate to an amount of attorneys' fees the defendant will not oppose, as in this case, where the 33.3% "clear sailing" agreement is part of the settlement agreement itself. The interests of class counsel and the class therefore diverged once the settlement amount was fixed, so the adversarial presentation of objectors is especially helpful to courts. *See In re Prudential Ins. Co. Am. Sales,* 278 F.3d 175, 202 (3d Cir. 2002) (observing that "a lawyer with objector status plays a highly important role for the class and the court because he or she raises challenges free from the burden of conflicting baggage that Class Counsel carries").

Because "class-action settlements affect not only the interests of the parties and counsel who negotiate them, but also the interests of unnamed class members who by definition are not present during the negotiations," there is always the possibility that "the parties and counsel will bargain away the interests of unnamed class members in order to maximize their own." *In re Dry Max Pampers Litig.*, 724 F.3d 713, 715 (6th Cir. 2013).

Courts have accordingly cautioned that they must remain alert to attempts to inflate the apparent value of a settlement or otherwise justify an excessive fee by reference to theoretical rather than actual benefits. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012) (rejecting fictitious settlement valuations); *Redman v. RadioShack Corp.*, 768 F.3d 622, 629-30 (7th Cir. 2014) (district court may not assume a passive role in reviewing class settlements); *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (courts should look to "economic reality," not hypothetical value). Those principles are fully consistent with Oklahoma's requirement that the district court independently determine the fairness and reasonableness of both the settlement and the attorneys' fee awarded from it.

Ultimately, "[b]oth the class representative and the courts have a duty to protect the interests of absent class members." *Silber v. Mabon*, 957 F.2d 697, 701 (9th Cir. 1992).

C. No possible justification for a 5.9 multiplier exists.

The district court never identified a single Oklahoma case—nor could it—that upheld a multiplier approaching 5.9 on comparable facts. That omission is telling. Under *Strack*, the question is not whether a one-third contingent fee may sometimes be reasonable. It is whether the requested fee, when compared against counsel's actual lodestar, remains reasonable "given the circumstances of the particular case." 2021 OK 21, ¶ 17, 507 P.3d at 616.

While the district court did not suggest that any particular case law was persuasive, Class Counsel responded to Cleveland's objection for the first time at the fairness hearing, and none of their citations supported such a fee award. Tr. 6-7. Not one of the cases suggests *Strack* does not provide the governing standard, but instead they are three fee awards in federal courts (which use different standards), and one state district court award that predates *Strack*. Even so, every cited award afforded smaller multipliers than 5.9. These cases show that that contingent fees of one-third (or greater) are frequently approved in common-fund litigation. But these authorities answer the wrong question. The fact that one-third may often be an appropriate percentage says nothing about whether a *particular* one-third award becomes unreasonable when it yields a multiplier approaching six times counsel's lodestar.

Class Counsel's citation to *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.* (Tr. 6) affirmatively supports Cleveland's objection. 888 F.3d 455, 464 (10th Cir. 2018). The issue in this appeal was which state's law should be applied to set the fee award. The panel concluded it should apply Oklahoma law due to a choice of law provision, so therefore ***vacated*** the percentage-based fee award, noting that counsel failed to "present 'detailed time records' and 'evidence as to the reasonable value for the services performed.'" 888 F.3d at 464 (quoting *Burk*, 598 P.2d at 663). The panel concluded "[t]he district court will have to decide in the first instance whether ***any*** award can be made in light of the absence of contemporaneous time records. It is unfortunate that class counsel did not do the necessary homework on Oklahoma law." *Id.* (emphasis added). Just as in *Chieftain Royalty*, no detailed billing was provided, so the fee award cannot stand.[9]

Donald D. Miller Revocable Family Tr. v. DCP Operating Co., LP, (cited at Tr. 6-7), involved "federal common law" rather than Oklahoma state law, and a multiplier below 4.[10] No. CIV-18-0199-JH, 2021 U.S. Dist. LEXIS 245982 (E.D. Okla. June 29, 2021). This court *reduced* the requested 40% award from a $9.9 million common fund to 35% in view of the high multiplier,

---

[9] *Chieftain Royalty* also supports Cleveland's argument in Section III.A below. It observed that "there is a strong presumption that the lodestar method, alone, will reflect a reasonable attorney fee." 888 F.3d at 463 (quoting *Hess v. Volkswagen of Am., Inc.*, 2014 OK 111, ¶ 39, 341 P.3d at 671 and *citing Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552-54 (2010)).

[10] The order does not list the multiplier, and presumably it was not precisely calculated because cross-checks have been held to be optional under federal Tenth Circuit law, but the district court believed it was targeting the "ballpark" of 3.7. *See* No. CIV-18-0199-JH, Dkt. 101 (transcript) at 29-30, available online at: https://storage.courtlistener.com/recap/gov.uscourts.oked.27279/gov.uscourts.oked.27279.101.0.pdf.

even though federal law may not require the court to make the comparison as *Strack* does. *Compare Rosenbaum v. MacAllister*, 64 F.3d 1439, 1447-48 (10th Cir. 1995) ("even though the amount of money that changed hands here is great, our conscience is shocked by an award of a 3.16 multiplier."), *with Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1265 (10th Cir. 2023) ("the district court was not required to perform a lodestar cross-check."). The court also made a specific factual finding concerning the high multiplier: "the court concludes it is warranted here in light of the 93% recovery achieved for the Settlement Class." 2021 U.S. Dist. LEXIS 245982, at *19.

Class Counsel's next citation, *Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, **predates *Strack***, so could not possibly answer Cleveland's objection. No. CJ-2010-38, 2015 Okla. Dist. LEXIS 2 (Beaver Cty. Jul. 1, 2015). While this district court did grant a 40% fee award with a multiplier of "about" 5, its conclusory assertion that such a multiplier is "within the parameters of Oklahoma case law" (*id.* at *25) does not "set forth with specificity the facts and computation to support its award" as *Strack* now clearly requires. 2021 OK 21 ¶ 27, 507 P.3d at 619. Conclusory recitation "will not sustain a fee that is not established by evidence." *Id.*

Finally, class counsel cites *Rhea v. Apache Corp.*, which granted a 40% fee award without listing any lodestar multiplier. No. 6:14-cv-00433-JH, 2022 U.S. Dist. LEXIS 237813 (E.D. Okla. June 23, 2022). The order only cited *Strack* for the proposition that percentage awards may be granted, and cites Tenth Circuit law for the proposition that a lodestar crosscheck need not be performed at all. *Id.* at *10. This is inconsistent with *Strack*, but in any event the case is quite different. *Rhea* resolved "more than seven years" of litigation involving "extensive documents and data, depositions, research, accounting review and analysis, consultation by and with expert witnesses." *Id.* at *25. Thus, the risk borne by plaintiffs was significantly greater than here, where the case settled before the resolution of a single contested motion against the defendant. Moreover, while the federal district court failed to apply the findings required by *Strack*, the lodestar in the case was substantial—11,774 hours valued at $5.76 million.[11] Thus, the lodestar multiplier was only 1.73.

Setting aside these inapposite and non-controlling cases (all of which granted *smaller* lodestar multipliers), the facts of this litigation do not justify an extraordinary enhancement. This case settled before class certification, before summary judgment, before trial, and before appeal. Although counsel undoubtedly performed substantial work, they themselves valued that work at approximately $1.58 million. They now seek nearly six times that amount. Nothing in the record identifies exceptional complexity, exceptional risk, or exceptional results sufficient to justify such an extraordinary departure from counsel's own valuation of their services. To the contrary, the record reflects that numerous experienced plaintiffs' firms competed vigorously to be appointed interim lead counsel, confirming that this litigation was viewed as a desirable engagement with a realistic prospect of recovery rather than a speculative undertaking. *See McLaughlin v. IDT Energy*, 2018 WL 3642627, at *20, 2018 U.S. Dist. LEXIS 128347 (E.D.N.Y. July 30, 2018) (lack of risk "evidenced by the fact that plaintiffs' lawyers in three states filed separate actions"); *In re Anthem Inc. Data Breach Litig.*, 2018 WL 3960068, at *27, 2018 U.S. Dist. LEXIS 140137 (N.D. Cal. Aug. 17, 2018) (lack of risk evidenced by the fact that the court "received 18 separate motions to serve as lead counsel").

II. The fee award rests upon an inadequate evidentiary record.

A district court cannot independently determine a reasonable attorney fee, nor can class members raise complete objections, without an adequate evidentiary record. The burden rests

---

[11] No. 6:14-cv-00433-JH, Dkt. 494 (E.D. Okla. May 17, 2022) (motion for approval of attorneys fee award), at 20, available online at: https://storage.courtlistener.com/recap/gov.uscourts.oked.23705/gov.uscourts.oked.23705.494.0.pdf.

squarely on the fee applicant to establish both the amount of time reasonably expended and the reasonableness of the requested hourly rates. *See Burk*, 1979 OK 115, ¶¶ 20-24, 598 P.2d at 663. Because the fee claimant bears that burden, uncertainty created by an inadequate submission falls on counsel seeking compensation—not on the absent class whose recovery is diminished by the fee award. *See In re Samsung Top-Load Washing Machine Mktg., Sales Practices & Prods. Liab. Litig.*, 997 F.3d 1077, 1094 (10th Cir. 2021) (when class counsel has negotiated for clear sailing on its fee request, the court must "resolve[] against class counsel" "any doubts regarding hourly rates and billed hours.").

That principle carries particular force in a common-fund case. Section 2023(G) requires the district court itself to determine a reasonable fee. It cannot discharge that responsibility by accepting unsupported summaries or generalized assurances from counsel. Nor can meaningful appellate review occur unless the record reveals the evidentiary basis for the court's conclusions. *Burk*, 1979 OK 115, ¶¶ 30-31.

Here, Cleveland identified two fundamental deficiencies in Class Counsel's fee application. First, counsel failed to submit contemporaneous billing records or any comparable documentation permitting verification of the hours claimed. Second, counsel failed to establish that the hourly rates used to calculate the asserted lodestar reflected reasonable rates in the relevant Oklahoma legal market. The district court never addressed either objection.

A. Class counsel did not submit contemporaneous billing records.

Class Counsel's fee application did not include contemporaneous time records. Instead, counsel submitted only summary tables reporting aggregate hours by attorney for the two co-lead firms and broad categories of work. Not even a summary was provided for the "Additional Plaintiffs' Counsel" who are reported as contributing about one third of the lodestar—it is not even clear how many "Additional Plaintiffs' Counsel" there are! Fee Mot. 14. Those summaries did not permit absent class members to determine whether the claimed hours were reasonably expended, whether work had been duplicated among firms, whether clerical or administrative tasks had been included, or whether particular time entries were excessive or non-compensable.

Non-compensable work is possible or even probable given that the underlying suits were originally filed in federal court, several of the plaintiffs sought appointment in federal court, and then the attorneys litigated a contested motion for appointment before the district court below. Such work was performed for the attorneys' benefit, not the class, and so the time is not compensable by class members. *See In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 389 (S.D.N.Y. 2013) (discounting time spent by non-lead counsel attempting "to secure appointment as lead counsel"). Additionally, nearly a third of the claimed lodestar—$554,575.96 out of $1,578,907.46—was performed by other firms besides the co-lead class counsel firms, raising serious questions about duplication of effort and overbilling ministerial tastes, even if time spent seeking appointment was properly excluded. *See Taylor v. Chubb Grp. of Ins. Cos.*, 1994 OK 47, ¶ 14, 874 P.2d 806, 809 (only "substantive legal work" that would otherwise be performed by an attorney is compensable). The record simply does not show whether such time was excluded.[12] *Burk*, *Hess*, and *Strack* all agree that a fee request under Oklahoma law requires detailed billing. *See also Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, ¶ 15, 171 P.3d 890, 896.

The district court's order did not reject Cleveland's criticism or explain why summaries alone sufficed. Instead, it noted only that, "[i]n response to the one Objector that objected to Class

[12] Plaintiffs provided only an unelaborated assertion that "Class Counsel reviewed all the time entries billed to this matter and exercised billing judgment to exclude hours that, in Class Counsel's professional judgment, were excessive, duplicative, or otherwise could not be billed to a fee-paying client." R. 96, Ex. 1 (Federman Decl.), ¶ 27.

Counsel's Motion for Attorneys' Fees," Class Counsel provided detailed billing records at the final approval hearing and that the court reviewed those materials before approving the requested fee. Approval at 7. That irregular procedure, which served only to "paralyze[] objectors"[13] did not cure the problem.

Strack specifically preempts Class Counsel's gambit of submitting hours *in camera* before the judge. "Denying [objector] the opportunity to review these records by withholding the descriptive time records in their entirety was improper and an abuse of discretion." *Strack*, 2021 OK 21, ¶ 37; 507 P.3d at 611. This is because by producing billing records for the first time at the hearing, Class Counsel deprived Cleveland and the absent class of any meaningful opportunity to examine those records, identify excessive or duplicative billing, or present a focused response. Section 2023(G) contemplates an adversarial process in which class members may object to a fee request before it is adjudicated. Producing the critical evidentiary support only after the objection deadline and at the hearing itself prevented that process from functioning as intended. *See also Redman*, 768 F.3d at 638 (Rule 23(h) disallows "handicap[ping]" objectors).

Nor did the district court make findings concerning those late-produced records. The order does not identify whether the records were contemporaneous, whether they reflected block billing, whether any hours were excluded, or how the court concluded the claimed time was reasonable. Again, the record remains inadequate to support the award or permit meaningful appellate review.

B. Counsel failed to establish reasonable hourly rates for crosscheck.

The same evidentiary deficiency exists with respect to hourly rates.

[13] *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 286 (7th Cir. 2002).

Under *Burk*, a reasonable lodestar depends not only on reasonable hours but also on reasonable hourly rates. Those rates must reflect the prevailing market for comparable legal services. *See Burk*, 1979 OK 115, ¶¶ 20-24, 598 P.2d at 663. *Strack* likewise depends upon a reliable rates; a percentage award cannot be meaningfully crosschecked against an unsupported figure. "To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence — in addition to the attorney's own affidavits — that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n.11(1984).

Class Counsel never established that the rates underlying their asserted lodestar reflected prevailing Oklahoma market rates. The application identified hourly rates but did not support those rates with affidavits from impartial Oklahoma practitioners, market surveys, prior Oklahoma fee awards, or other competent evidence demonstrating that the claimed rates were reasonable in this jurisdiction. Nor did counsel explain why rates charged by out-of-state attorneys should be treated as prevailing Oklahoma rates for purposes of the *Burk* analysis. The district court followed suit by not mentioning the topic whatsoever, aside from its conclusory finding that "the billing and requested attorneys' fees of Class Counsel was fair and reasonable under 12 O.S. § 2023(G)." Approval at 7-8. Even if this belated *in camera* review were sufficient, it is not clear the district court reviewed all of the rates because he mentions "both law firms" (Tr. 8) so presumably could not have reviewed the indeterminate number of "Additional Plaintiffs' Counsel." Fee Mot. 14.

The district court did not identify the relevant legal market, or cite any evidence that rates as high as $1,150/hour are consistent with the market for legal services in Oklahoma. *See* R. 96, Ex. 1 (Federman Decl.), ¶ 23; *contrast* Ronald L. Burdge, UNITED STATES CONSUMER LAW

ATTORNEY FEE SURVEY, 2017-2018 at 147 (reporting median hourly rate of $363 for class action practitioners).[14]

Because the evidentiary foundation for both the hours claimed and the hourly rates employed was never established, the resulting lodestar cannot serve as the meaningful crosscheck Oklahoma law requires. The fee award should therefore be vacated and remanded for a renewed fee proceeding supported by an adequate evidentiary record.

III. Even accepting counsel's own figures, the multiplier is unreasonable, and the district court failed to address Cleveland's arguments concerning it.

Cleveland's objection does not require the district court to resolve disputed factual issues; this Court can find the 5.9 lodestar multiplier unreasonable even if it accepts Class Counsel's unsupported billing claims.

A. Multipliers are exceptional, and no exceptional circumstance exists.

Oklahoma affords a "a strong presumption that the lodestar method alone will reflect a reasonable attorney fee." *Strack*, 2021 OK 21 ¶ 26, 507 P.3d at 618 (quoting *Hess*, 2014 OK 111, ¶ 39, 341 P.3d at 671). The lodestar may be adjusted up or down depending on circumstances, but "[e]ven in those instances that warrant an enhancement to a lodestar calculation, our Court has been modest. In using the lodestar method, we rarely permit a multiplier above 1.5." *Id.*

Federal law provides a similar presumption. In fee shifting cases, there is a "strong presumption" that an attorney's lodestar is reasonable without an enhancement multiplier, absent plaintiffs establishing "extraordinary circumstances" that justify a higher fee. *Perdue v. Kenny A.*, 559 U.S. 542, 546 (2010). While *Kenny A.*'s limitation on lodestar enhancements was made with

[14] Available online at: https://burdgelaw.com/wp-content/uploads/2021/11/US-Consumer-Law-Attorney-Fee-Survey-Report-w-Table-of-Cases-091119.pdf.

respect to attorneys' fees awarded in a class settlement under 42 U.S.C. § 1988, the standard also applies here. Section 1988 provides that a prevailing party in certain civil rights actions may recover "a reasonable attorney's fee[.]" Section 2023(G) similarly provides that "the court may award reasonable attorney's fees" for class action settlements. It follows that § 1988's limitation on "reasonable" fee awards should apply equally to awards under 12 O.S. § 2023(G). Federal courts have recognized both the common textual standard and public policy reasons that make the presumption of *Kenny A.* equally applicable in the class-action context under Federal Rule 23. *See, e.g.*, *Linneman v. Vita-Mix Corp.*, 970 F.3d 621, 632 (6th Cir. 2020) (reading Rule 23(h) to incorporate *Kenny A.*); *Chambers v. Whirlpool Corp.*, 980 F.3d 645, 665 (9th Cir. 2020) (same); *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liability Litig.*, 867 F.3d 791 (7th Cir. 2017) (applying *Kenny A.* to reduce 1.75 multiplier to 1).

Strack requires that common-fund awards require meaningful comparison between the requested percentage and the lodestar, ensuring that percentage awards do not produce unreasonable windfalls. 2021 OK 21, ¶ 19, 507 P.3d at 617. The lodestar crosscheck would serve little purpose if any multiplier, no matter how extraordinary, could be approved without explanation. The district court did not articulate a reason to depart from 1.0, let alone increase the award to 5.9.

B. This litigation presented no extraordinary circumstances warranting a nearly sixfold enhancement.

Nothing about this litigation resembles the extraordinary circumstances that have historically justified substantial enhancements.

The case settled before the district court ruled on a partial motion to dismiss. Before class certification. Before summary judgment. Before discovery (except for limited paper "confirmatory" discovery that the settlement agreement itself discusses). S.A. ¶ 32. *Well* before trial and pre-trial motions. Investment was limited, and so the magnitude of risk to class counsel was capped. Counsel avoided the most expensive, uncertain, and risky stages of complex litigation—the very stages ordinarily cited to justify enhanced compensation.

While all litigation carries risk, this case was not exceptionally risky. The vigorous competition among nationally recognized plaintiffs' firms to serve as interim lead counsel confirms that experienced class-action practitioners viewed this case as a desirable contingent engagement. Nine well-known firms, many of them quite remote to the Oklahoma-dominated class, rushed across state lines to file, and then argued with each other about who was the first to stake their claim. These lawyerly sooners had good reason to suspect this case would be more valuable than a typical data breach. Hackers ominously calling themselves "Threat Actor" spammed affect class members with emails that included their own Social Security numbers and dates of birth, demanding ransom. R. 19 (complaint), ¶¶ 3-12. This was an unusually visceral and high-profile breach, not an obscure or technical lapse.

While Class Counsel emphasized the favorable result achieved, it ignores the intrinsic value of the claims, which belong to the aggrieved class members. The lurid facts of the breach translated into only a typical data-breach resolution: a fixed common fund providing cash payments together with optional credit-monitoring. Nothing about the settlement's structure or the course of the litigation distinguishes this case from the many other data-breach settlements routinely presented to courts throughout the country.

Indeed, Class Counsel's own authorities demonstrate the point. The Oklahoma common-fund cases they relied upon involved years of heavily contested litigation, complex oil-and-gas royalty disputes, extensive merits proceedings, and materially smaller enhancements than the one awarded here. *See Rhea v. Apache Corp.*; *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*; D*onald Miller v. DCP Operating Co.*; *Fitzgerald Farms, LLC v. Chesapeake Operating, Inc.* None remotely supports multiplying counsel's asserted lodestar by nearly six in litigation that settled before a single contested motion. (Except for class counsels' contest with each other—to win appointment.)

The district court never identified a reason why this case was different. It did not explain why counsel's lodestar understated the value of their services. It did not identify exceptional litigation risks. It did not find unusual complexity. It did not identify a remarkable result unavailable through ordinary litigation. It simply approved the requested fee. The only factors it could have identified were "almost identical" to those that could not support a 3.17 multiplier in *Strack*, 2021 OK ¶ 27 (citing *Burk*). That is precisely the type of unexplained enhancement that *Strack*'s lodestar crosscheck must prevent. Had the district court meaningfully compared the requested percentage with counsel's claimed lodestar, it would have needed to articulate why this early-settled data-breach action warranted one of the largest multipliers in Oklahoma common-fund jurisprudence for a case hardly litigated. Because it did not, reversal is necessary.

C. Record evidence shows the settlement value is only $30 million.

Class Counsel's written submissions below uniformly stated that the settlement value was $30 million, but at the fairness hearing they asserted without explanation it was "over $49 million in value," which meant that the percentage fee award was "under 20 percent." Tr. 3, 8. The Settlement Agreement itself shows otherwise.

The settlement agreement creates only a $30 million fund. Integris's fixed monetary obligation is $30 million; fees, expenses, administration, service awards, and class payments all come from that same fund. The agreement does not require Integris to pay an additional amount for credit monitoring outside the fund. Indeed, the fund itself pays for "any payments made or other benefits provided to Settlement Class Members." S.A. ¶ 21.

Class counsel's own written representations confirm the settlement as a $30 million recovery when seeking approval. Plaintiffs' final-approval motion expressly described the deal as a "thirty million dollars ($30,000,000.00) non-reversionary common fund," with "non-monetary benefits" discussed separately. Mot. Final App. 4. Class counsel sought exactly $9.3 million—31% of $30 million.

At the hearing, Class Counsel referenced the "commitment of $900,000 to be deployed to improve their system" (Tr. 3), but these expenses are for the defendant's own benefit rather than the class. *See Koby v. ARS Natl. Services, Inc.*, 846 F.3d 1071, 1079 (9th Cir. 2017) (injunctive relief of business practices was "presumably to avoid further litigation risk" and had no real settlement value). Even if this amount that Integris agreed to spend on itself could be credited, Class Counsel never explains where the additional $18.1 million in alleged value comes from. The only remaining option is that they believe "credit monitoring for everyone who wants it" is worth the difference. Tr. 3. Class Counsel seemingly invited the court to credit a hypothetical maximum untethered to actual uptake or cost.

The purported additional value was never quantified in the record or by the district court. Eligibility is simply not value. The fact that millions of class members were *eligible* to claim three years of monitoring does not establish that millions enrolled, what Integris or the fund paid per enrollee, or what economic value recipients actually obtained. The notice itself makes clear that class members had to claim the benefit, and all benefit comes from the same $30 million pot. A district court cannot cure an excessive lodestar multiplier by assuming some indeterminate extra value. "[O]nly in the unusual instance where the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained may courts include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees." *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003).

From the perspective of the class, in-kind relief like data monitoring services is less valuable than cash that can be used toward anything that class members do want. *See In re Trans Union Corp. Privacy Litig.*, 2009 WL 4799954, at *14, 2009 U.S. Dist. LEXIS 116934 (N.D. Ill. Dec. 9, 2009) ("A check for $60 is more valuable to most people than getting free credit monitoring services."); *In re Anthem Inc. Data Breach Litig.*, 2018 WL 3960068, at *7 (N.D. Cal. Aug. 17, 2018) ("Plaintiffs' method is that treating credit monitoring as equivalent to cash conflicts with the general principle that 'compensation in kind is worth less than cash of the same nominal value.'" (*quoting In re Mex. Money Transfer Litig.*, 267 F.3d 743, 748 (7th Cir. 2001))). Such relief is often duplicative of other preexisting information monitoring and identity theft protection services maintained by class members. *See* Tomasso Piccirilli, *A Fiduciary Judge's Guide to Improving Outcomes for Victims in Federal Data Breach Class Actions,* 76 FED. COMM'N L. J. 351, 367-68 (2024) (noting that consumers often have protection through banks or credit agencies or other data breach settlements). Scores of data breach settlements every year offer class members credit monitoring relief. *Id.* (noting that at the time of publication, credit monitoring benefits were still active for no less than eleven settlements with combined class sizes of 568 million individuals).

The district court adopted no supported alternative valuation, and any belated attempt by Class Counsel to imply one is waived. Even if noncash relief could theoretically count, there is no finding capable of appellate review.

IV. The appropriate remedy is vacatur of the fee award and remand for a renewed fee proceeding.

The fee award cannot stand because the district court applied an erroneous legal framework. The remedy is vacatur with instructions to reconsider under the correct standard.

Class counsel's original application omitted detailed billing records, omitted rates for substantial claimed time, and lacked competent evidence supporting market rates. Cleveland's objection specifically requested denial pending a properly supported renewed motion and renewed opportunity to object. The secret, hearing-day submission of billing records cannot supply the missing adversarial process.

Reversal of the fee award need not disturb the finality of the underlying settlement. By its express terms the "Settlement Agreement shall remain in full force" if fees are modified, reversed, or vacated. S.A. ¶ 81.

CONCLUSION

The district court was not required to deny Class Counsel's fee request. It was required to explain why the requested fee was reasonable under Oklahoma law and to base that determination on an adequate evidentiary record. It did neither.

Appellant-Objector Bryan Cleveland respectfully requests that this Court vacate the December 12, 2025 attorney-fee award and remand for a renewed fee proceeding at which Class Counsel must submit a properly supported fee application and class members are afforded a meaningful opportunity to respond, and the district court makes findings sufficient to permit meaningful appellate review under *Burk*, *Strack*, and 12 O.S. § 2023(G).

Dated: July 20, 2026

Respectfully submitted,

Bryan Cleveland (Jul 17, 2026 10:39:26 CDT)

Bryan Cleveland, OBA No. 33860
6938 Smithfield Blvd
Indianapolis, IN 46237
(909) 851-9799
cleveland.bryan@gmail.com

M. Frank Bednarz (*pro hac vice* forthcoming)
Hamilton Lincoln Law Institute
1440 W. Taylor St # 1487
Chicago, IL 60607
(801) 706-2690
frank.bednarz@hlli.org

Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2026, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following:

William B. Federman
Federman & Sherwood
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120

Amanda Harvey
Mullen Coughlin LLC
1452 Hughes Rd, Ste. 200
Grapevine, TX 76051

Bryan Cleveland (Jul 17, 2026 10:39:26 CDT)

Bryan Cleveland