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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/Appellee.

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STATE OF OKLAHOMA

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APPELLANT'S REPLY BRIEF

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

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September 15, 2026

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ARGUMENT AND AUTHORITIES

Plaintiffs devote considerable effort to explaining why, in their view, a $9.3 million fee might be reasonable. But the district court never performed this analysis. It never mentioned the 5.9 lodestar multiplier over the claimed hourly rates, never explained why this case warranted a multiplier almost four times the level Oklahoma courts "rarely permit," and never connected the statutory factors to the extraordinary enhancement it awarded. *See Strack v. Cont'l Res., Inc.*, 2021 OK 21, ¶ 26, 507 P.3d 609, 618. The district court did not evaluate any of this, but simply "determined" without elaboration that the fee was "fair and reasonable." Approval ¶ 19.[1]

Plaintiffs confirm that the evidence supposedly supporting the lodestar was never available to Cleveland. They acknowledge that Class Counsel first tendered their detailed billing records in camera at the fairness hearing. Ans. 7. But *Strack* squarely holds that withholding descriptive time records from an objector is "improper and an abuse of discretion." 2021 OK 21, ¶ 37, 507 P.3d at 621. Plaintiffs contend that this precedent is not controlling because Cleveland never filed a motion, (Ans. 12, 23) but this is no distinction at all—the *Strack* objector did not file a motion either. Like Cleveland, that objector simply "requested copies of his own counsel's [i.e., class counsel's] time records." *Id.* at ¶ 7, 613. Appellees' contention that Cleveland "never asked for them" is inconsistent with the record where, weeks prior to the fairness hearing Cleveland not only requested that Class Counsel comply with precedent by filing the hours allegedly supporting

[1] The same abbreviations from Cleveland's Opening Brief ("**Br.**") are used herein: Appellees' Answer Brief ("**Ans.**"), 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.**").

their fee request, but also expressly reserved his right (and the right of all class members) to renew and supplement their objections after the record is completed. Obj. 7. As in *Strack*, denying adversarial testing of the required evidence for the fee request was an abuse of discretion inconsistent with the "fiduciary role to the class when awarding fees" under "Oklahoma's class action attorney fee statute." 2021 OK 21, ¶ 37, 507 P.3d at 621.

Plaintiffs cannot belatedly cure that error by supplying on appeal the analysis and authorities that neither Cleveland nor the district court had when the fee was awarded.

The Court need not decide whether a 5.9 multiplier could ever be justified. It need only hold that such an extraordinary enhancement cannot be sustained by reasons the district court never gave and evidence the objector was never permitted to test.

I. The Answer Brief cannot supply the findings the district court never made.

The abuse of discretion standard does not insulate a decision whose rationale the reviewing court cannot discern. An abuse of discretion occurs when a ruling lacks "rational basis in the evidence" or rests on erroneous legal conclusions. *Hess v. Volkswagen of Am., Inc.*, 2014 OK 111, ¶ 9, 341 P.3d 662, 665. District courts must reasonably "set forth with specificity the facts, and computation to support" supporting their fee awards. *State ex rel. Burk v. City of Okla. City*, 1979 OK 115, ¶ 22, 598 P.2d 659, 663. Failure to follow those requirements and issue an award consistent with the evidence "constitutes an abuse of discretion requiring reversal." *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, ¶¶ 9-10, 171 P.3d 890, 894-95.

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. It did not even recite the percentage or lodestar multiplier of the award, nor explain why the case should garner the "rarely permit[ted]"

multiplier above 1.5—much less why it should be appropriate to grant nearly four times more than this benchmark. *Strack*, 2021 OK 21, ¶ 26, 507 P.3d 609, 619.

Plaintiffs attempt to fill the enormous gaps in the district court's discretion by reciting miscellaneous findings concerning the settlement itself: Class Counsel adequately represented the class; negotiations were at arm's length; settlement relief was adequate; the settlement avoided additional litigation; and Class Counsel acted to protect the class. Ans. 15-16. Plaintiffs even cite boilerplate from the preliminary approval order—filed months before their fee request, because the final approval order is so sparse. Ans. 13-14. These recitations are scarcely relevant because Cleveland did not object to approval of the settlement. Cleveland challenges the unexplained decision to compensate counsel at 5.9 times their claimed lodestar—an effective (and undisputed) blended rate of $4,258 per hour. Br. 3, 20. The order never mentions that multiplier, much less justifies it.

That omission matters because *Strack* requires the court to "compare the results of both methods" and determine whether the resulting award is reasonable in the particular case. 2021 OK 21, ¶¶ 17-19, 507 P.3d at 616-17. The Answer Brief now supplies pages of possible reasons why a 5.9 multiplier might survive that comparison. Ans. 17-29. But appellate counsel cannot exercise discretion entrusted by § 2023(G) to the district court. *Galloway v. Kan. City Landsmen*, LLC, 833 F.3d 969, 973 (8th Cir. 2016) ("emphatically agree[ing]" that the district court, not class counsel, elects fee methodology). The record must reveal *why* the district court chose the award under review. It does not.

Class Counsel argues that the "district court meaningfully engaged with the substance of both Class Counsel's fees and Appellant's objection," but the record does not show that. The district court's order and its few remarks at the hearing do not mention *Strack*, explain why Cleveland and other class members were denied access to the detailed billing, or address

Cleveland's request to supplement his objection after disclosure of that billing. Plaintiffs favorably compare the fee award to *Strack* where "[a] mere conclusory statement from an expert witness cannot support a 317% enhancement," Ans. 16 (quoting *Strack*, 2021 OK 21, ¶ 29, 507 P.3d at 619-20), but the district court here provided much less. In *Strack*:

> ¶28. In this case, the district court identified a few of the § 2023(G)(4)(e) factors in its award, including that the case was complex, involved novel and difficult questions of law, and required counsel with substantial experience in oil and gas royalty actions. Yet a district court must examine the evidentiary support for these factors beyond a cursory glance. When class counsel filed this case in 2010, this type of class action was highly desirable. Class counsel submitted a compilation of 56 Oklahoma royalty underpayment class actions and acknowledged that these cases had similar claims to those in this case. Further, the novelty and complexity of the issues appear to be fully reflected in the number of billable hours recorded by class counsel. And while the district court found that this case prevented class counsel from spending time on other matters, four attorneys and two paralegals expended 7,961 hours over a period of seven years of litigation.
>
> ¶29. The district court's order incorporated expert witness testimony who compared the lodestar calculation and the 40% of common fund calculation by stating: "the resulting lodestar multiplier using that [percentage calculation] would be 3.17." This conclusory statement by the district court to support the fee award does not withstand scrutiny. A mere conclusory statement from an expert witness cannot support a 317% enhancement.

Id. ¶¶ 28-29.

The shortcoming in *Strack* was not simply relying on an expert's conclusion, but in *only* providing conclusory justifications for such a high multiplier. But the conclusory *Strack* award is thorough compared to the award appealed here. The entire analysis of the attorneys' fee award is contained in a single paragraph. Fee Order 7. The reversed *Strack* district court at least made conclusory assertions about the § 2023(G)(4)(e) factors in support of a specific percentage and lodestar multiplier. The order here evinces no awareness of the factors, no awareness of the

objection (which is not named or accurately summarize), no awareness of the percentage actually awarded (which Class Counsel changed at the hearing), no awareness of the multiplier awarded, and not even any indication whether the attorneys' fee was awarded on the basis of lodestar or percentage methodology, let alone why no cross-check should be performed. -

A. *Chieftain* reinforces the requirement of a reasoned, evidence-based departure from *Strack*.

Plaintiffs rely heavily on the Tenth Circuit's recent decision in *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, but *Chieftain* does not hold that *Strack*'s benchmarks may simply be ignored. 166 F.4th 34 (10th Cir. 2026). It holds that they are not "set in stone" and permits departures where an award is "carefully tailored to the characteristics of the case rather than the product of an off-the-rack statistical analysis." *Id.* at 41-42. Thus, when a court departs from *Strack*'s presumptive ranges, "its departure must be based on the factors and supported with evidence." *Id.* at 42. The district court here did not even provide off-the-rack statistical analysis.

The fee award in *Chieftain* highlights the deficiency here. The *Chieftain* district court considered all thirteen statutory factors, performed a lodestar crosscheck, expressly identified the resulting 2.15 multiplier, and then again analyzed the statutory factors to determine whether that particular multiplier was reasonable. *Id.* at 38-39. Notably, class counsel publicly filed detailed, albeit partially-reconstructed billing records, as required by prior appeal. *See Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 464 (10th Cir. 2018) (vacating percentage-based fee award, noting that counsel failed to "present 'detailed time records' and 'evidence as to the reasonable value for the services performed'" (quoting *Burk*, 598 P.2d at 663)). Following an adversarial testing of the evidence, where objectors had the opportunity to review and critique the detailed billing, the Tenth Circuit affirmed because the district court actually performed and explained its analysis.

Here, by contrast, the district court never mentioned the multiplier. It never determined that 5.9 was warranted under any § 2023(G) factor. It never explained why a multiplier nearly four times the level Oklahoma courts "rarely permit" was appropriate. *Strack*, 2021 OK 21, ¶ 26, 507 P.3d at 618. And it certainly did not perform the factor-by-factor analysis of the multiplier.

Thus, the considered 2.15 multiplier in *Chieftain* does not rescue the unanalyzed and unremarked 5.9 multiplier here.[2] It demonstrates what a reviewable exercise of discretion looks like. The order here bears little resemblance to it.

B. Cases approving one-third fees do not answer the lodestar-crosscheck question.

Plaintiffs devote considerable attention to decisions awarding 30%, one-third, or more of common funds. Ans. 17-19. Cleveland has never argued that a 31% award is categorically impermissible. That is beside the point.

The purpose of *Strack*'s crosscheck is precisely to determine whether an otherwise conventional percentage produces an unreasonable result in a particular case. 2021 OK 21, ¶¶ 17-19, 507 P.3d at 616-17. If identifying other cases awarding one-third sufficed, the crosscheck would accomplish nothing: a percentage could generate a multiplier of 2.1, 5.9, or 20, and the answer would always be that other courts have awarded one-third.

Strack itself illustrates the error. The Court did not end its inquiry upon observing that percentage awards are permissible. It reversed a 40% award after examining the actual work

[2] The blended hourly rate in *Chieftain* was $565.11 ($8,044,667.75 for 14,235.49 hours), enhanced to $1,217.61/hour under the awarded multiplier. *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, No. CIV-11-177-D, 2022 WL 2252614, 2022 U.S. Dist. LEXIS 110355, at *33 (W.D. Okla. June 22, 2022). Here, Class Counsel claimed a significantly higher unmodified blended rate of $723.01 ($1,578,907.46 for 2,183.80, Fee Mot. 6), which becomes an enhanced blended $4,258.63/hour under the granted multiplier.

performed, the resulting hourly compensation *in that case*, and the lack of evidence supporting the enhancement. *Id.* ¶¶ 25-31, 507 P.3d at 618-20. Oklahoma law asks whether the resulting fee is reasonable, not whether its percentage can be found in another case. Curiously, while Plaintiffs criticize Cleveland for citing persuasive authority outside of Oklahoma (Ans. 8), they exclusively cite federal courts in other states for the proposition that percentage awards above 33% are sometimes acceptable. Ans. 18 n.3 & 20 n.7. Oklahoma law makes a cross-check mandatory, a requirement that does not exist in most other courts. *Strack*, 2021 OK 21, ¶ 19, 507 P.3d at 616. Even so, Plaintiffs' own comparator *Novant Health* performed a lodestar cross-check precisely to determine whether its percentage award was "excessive relative to the hours reportedly worked by counsel" or produced an unreasonable multiplier. *In re Novant Health, Inc.*, No. 1:22-CV-697, 2024 WL 3028443, at *11-12, 2024 U.S. Dist. LEXIS 107949, at *30-31 (M.D.N.C. June 17, 2024) (granting fee award with 1.86 lodestar multiplier). Nine decisions establishing that one-third is a commonplace percentage cannot establish that 5.9 is a reasonable multiplier in *this case.*

II. The purported lodestar crosscheck violated *Strack* and cannot support the award.

A. Plaintiffs admit that Cleveland was never permitted to examine the detailed billing records.

The Answer Brief confirms Cleveland's argument: he and other class members had no access to the requisite detailed billing that purportedly supported the fee award they're asked to pay. Br. 4-5, 16-18. Class Counsel's filed fee materials supplied aggregate totals but withheld the descriptive billing records Cleveland needed to test the claimed lodestar. Cleveland specifically objected to that omission. Obj. 5-7. Class Counsel did not thereafter file the records or permit Cleveland to inspect them. Instead, Plaintiffs acknowledge that the district court "examined the

detailed billing records tendered by Class Counsel ***in camera*** **at the Final Approval Hearing**." Ans. 7 (emphasis added); see Tr. 7.

That is the procedure *Strack* held improper.[3] There, the fee applicant provided detailed records to the district court but withheld them from the objector. The Oklahoma Supreme Court held: "Denying McClure 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 621. The Court emphasized the district court's fiduciary obligation to afford requested fees "full adversarial scrutiny." *Id.* ¶ 36, 507 P.3d at 620.

Plaintiffs attempt to distinguish *Strack* because Cleveland did not file a separate motion to request Class Counsel's time records or attend the fairness hearing. Ans. 12, 23. They claim that *Strack* stands for the proposition that "the district court acted contrary to its fiduciary duty to the class by denying the objector's specific motion to obtain the class counsel's time records." *Id.* at 12. The main problem with this argument is that no such motion was filed in *Strack*. Cleveland's timely objection specifically challenged Class Counsel's failure to provide contemporaneous billing records and complete billing information necessary to substantiate their claimed lodestar, much as in *Strack*, where the objector similarly "requested copies of his own counsel's [i.e., class counsel's] time records" without filing a motion. *Id.* at ¶ 7, 613. Nothing in *Strack* makes a second motion to compel a prerequisite to the district court's fiduciary obligation. The Court condemned the procedure because the detailed records "were never subjected to an adversarial contest at the evidentiary hearing" and the district court instead conducted an "*ex parte* assessment" of them. *Strack*, 2021 OK 21, ¶ 37, 507 P.3d at 621. The district court's fiduciary duty was "to give full

[3] The holding in *Strack* is why Class Counsel's quote from *Burk* requirement of submission "***to the trial court***" does not save their fee award. Ans. 22 (emphasis in Plaintiffs' quote). Submission to the court is mandatory, but access to class members is also required.

adversarial scrutiny to the attorney's fees requested," including an opportunity for a class member "to review or meaningfully challenge" the records supporting fees paid from the class's recovery. *Id.* ¶¶ 36-37, 507 P.3d at 620-21. That reasoning does not turn on whether an objector anticipates that counsel will later submit undisclosed evidence *in camera.* One federal appeals court sustained an objection about the lack of notice and process regarding class counsel's fee request even though the objector had not even raised an *objection* to it, let alone filed a separate motion, in the district court. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992-95 (9th Cir. 2010).

Presumably Class Counsel is hanging its hat on the fact that Cleveland did not appear at the hearing, as he informed the parties and the Court weeks earlier in his objection (Obj. 7), but *Strack* imposes no such requirement. Notice to class members, along with the Settlement Agreement itself emphasize that objectors need not attend. S.A. ¶ 70. Class Counsel oddly claims that Cleveland is seeking a "windfall for the strategy they pursued, which was to lodge a written objection, decline to participate in the evidentiary hearing, leave the record bare, request nothing from the Plaintiffs' counsel or the district court, and then hold their procedural complaints for appeal." Ans. 29-30. This characterization is odd because Cleveland clearly *did* request the detailed billing, and we know this was understood because Class Counsel brought the detailed hours to the hearing, which the district court also understood to be in response to the objection. Fee Order ¶ 19.

The timing illustrates the problem with Class Counsel's "windfall" argument. Cleveland objected on November 20 that the application lacked the records necessary to verify counsel's claimed hours. Obj. 5-7. Class Counsel's December 2 final-approval motion still did not provide them. Final App. Mot. 2, 13. The records appeared only at the December 12 hearing, where the district court stated near the end of the eight-page transcript: "I'm reviewing those now." Tr. 7. Cleveland thus had no opportunity to determine whether work was duplicated among the

numerous plaintiffs' firms, whether hours were excessive, whether nonlegal work was billed at attorney rates, whether the records supported the summaries, or whether counsel exercised billing judgment. Nor could Cleveland bring any discrepancy to the court's attention before it ruled. That is not the "full adversarial scrutiny" *Strack* requires. 2021 OK 21, ¶ 36, 507 P.3d at 620.

Plaintiffs claim that the district court "prob[ed]" the records and ultimately found the fees appropriate. Ans. 7. The transcript does not reveal any such probing. More importantly, *Strack* does not make disclosure contingent on whether the trial judge believes he can adequately audit counsel's bills without adversarial presentation. Section 2023(G) expressly permits class members to object to a fee motion. 12 O.S. § 2023(G)(2). That statutory right has little meaning if the evidence necessary to test the application may be shown only to the judge at the hearing minutes before the fee is awarded.

Respectfully, the only "windfall" achieved through these maneuvers was by Class Counsel, which reaped $4,258.63/hour while attempting to freeze out participation by absent class members whose recoveries directly funded that extraordinary fee. Class Counsel knew from Cleveland's objection that he would be out of state and would rely on his written submission, yet gave no notice that the missing evidentiary support would first be tendered at the hearing. In contrast, Cleveland *could not have known* Class Counsel would do this; they did not suggest that they would in their motion for final approval. In any event, Cleveland's objection anticipated any belated disclosure by requesting an opportunity to supplement the record in view of the detailed billing. Obj. 7. Class Counsel cannot claim prejudice in defending a process that denied the class the adversarial scrutiny *Strack* requires. Requiring absent class members to attend in person in the event that Class Counsel belatedly responds to well-reasoned objections would compromise courts' ability to act as fiduciaries for class members with the assistance of adversarial presentation.

A class member who timely objects that the fee applicant has failed to substantiate its lodestar need not appear at the hearing to discover whether counsel will cure the defect by handing evidence only to the judge. Section 2023(G)'s adversarial safeguard would mean little if the fee applicant could answer a written objection with evidence the objector never sees.

B. The Answer Brief cannot retroactively establish the lodestar with evidence and authorities not presented in the fee proceeding.

The same problem infects Plaintiffs' defense of their hourly rates. Cleveland pointed out that Class Counsel offered no competent market evidence establishing that rates reaching $1,150 per hour represented prevailing Oklahoma rates. Br. 19-20. *Burk* requires a reasonable hourly rate as part of the lodestar calculation, 1979 OK 115, ¶¶ 20-22, 598 P.2d at 663, and the fee applicant bears the burden of establishing it. *See Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).

The Answer Brief now cites an array of Oklahoma fee awards and data-breach settlements in defense of those rates. Ans. 25-27. But the question is not whether appellate counsel can now construct an evidentiary case for the rates. The question is whether Class Counsel carried their burden when requesting $9.3 million and whether the district court made the determination Oklahoma law entrusted to it. The order identifies no relevant market, makes no findings concerning reasonable rates, and says nothing explaining why the particular rates employed in Class Counsel's lodestar were reasonable.

The defect is especially consequential because Plaintiffs invoke the lodestar as a defense of an otherwise extraordinary award. An unreliable lodestar cannot provide the meaningful crosscheck *Strack* requires.

III. Even on Plaintiffs' own figures, nothing identified by the district court justifies a 5.9 multiplier.

Accepting every hour and rate Class Counsel claimed, their lodestar was $1,578,907.46. Fee Mot. 18. The $9.3 million award therefore represents approximately 5.9 times that figure and an effective blended rate of approximately $4,258 per hour. Br. 3.

Strack begins from "a strong presumption that the lodestar method alone will reflect a reasonable attorney fee." 2021 OK 21, ¶ 26, 507 P.3d at 618 (quoting *Hess*, 2014 OK 111, ¶ 39, 341 P.3d at 671). And although enhancement is sometimes appropriate, the Court observed that Oklahoma has been "modest": "we rarely permit a multiplier above 1.5." *Id.*

As *Chieftain* interprets it, that figure is not a hard ceiling. 166 F.4th at 41-42. But eliminating a ceiling does not vitiate the need for justification. Quite the opposite: *Chieftain*, consistent with *Strack*, requires departures to be based on the statutory factors and supported by evidence. *Id.* at 42. The farther an award departs from *Strack*'s benchmark, the more important the explanation becomes. Here there is none.

A. This early-settled litigation does not supply a justification for an extraordinary enhancement.

The procedural history makes the absence of explanation especially consequential. This case settled before adjudication of Integris's partial motion to dismiss; before class certification; before merits discovery other than limited confirmatory discovery; before summary judgment; before trial; and before any merits appeal. S.A. 132; Br. 21-22.

Plaintiffs emphasize the quality of the settlement and risks inherent in data-breach litigation. Ans. 22-25. Those considerations can support compensation and perhaps some enhancement. But they do not self-evidently explain why counsel should receive **nearly six times** their claimed lodestar. Plaintiffs' examples of comparably large multipliers are uniformly out-of-

state, some quite far afield. More importantly, each court identified extraordinary circumstances supporting the multiplier—circumstances absent from the order here.

- *In re Merry-Go-Round Enters.*, granted an award under the Bankruptcy Act, not common fund doctrine, found consideration of lodestar multiplier inappropriate under the statute. 244 B.R. 327, 335 (Bankr. D. Md. 2000).
- *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, concerned a class of 90 sophisticated corporations who were capable of opting out of settlement and pursuing their own litigation, as some putative class members did, but none objected to the request, which the district court still slashed from 30 to 20%. 2005 WL 1213926, 2005 U.S. Dist. LEXIS 9705 (E.D. Pa. May 19, 2005).
- *In re Rite Aid Corp. Sec. Litig.*, was a fee order remanded after the original request was vacated for failing to provide a detailed analysis, just as Cleveland urges here. 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005).
- *Health Republic Ins. Co. v. United States*, like *Rite Aid* was a remand fee award that was slashed in half to 2.5% and justified its "above-the-norm multiplier" because class counsel would have otherwise earned even more money representing its large individual corporate clients under its 25% contingency agreement, which would have deprived class members of all benefit, so constitute poor public policy. 173 Fed. Cl. 508, 526 (2024).

Again, Cleveland does not ask this Court to declare that early settlements can never justify substantial fees on a lodestar or percentage basis. Early settlements may sometimes be highly beneficial to a class. But § 2023(G), *Burk*, and *Strack* place the responsibility on the district court to explain why the facts of this case justify the fee actually awarded. Plaintiffs' appellate speculations cannot fill that void.

B. Plaintiffs cannot retroactively enlarge the settlement to make $9.3 million appear to be a 20% fee.

Plaintiffs alternatively defend the award as only "20% of the total settlement value." Ans. 17. That figure did not appear in Class Counsel's motion or any written request; in fact, the record materials Plaintiffs now cite as supporting their 20% fee claim say things like "Class Counsel request this Court award attorneys' fees in the amount of $9,300,000.00 (31% of the Settlement Fund)." Federman Decl. ¶ 14 (cited at Ans. 2 n.3). The figure does not appear in the district court's order or in any written filing available to class members.

Most strikingly Class Counsel claims that credit monitoring from the settlement is "valued at over $10,000,000" (Ans. 9) even though they do not contest that the actual cost of credit monitoring is simply deducted from the $30 million settlement fund.[4] Br. 23; S.A. ¶¶ 21, 33, 36(a) & 43. In other words, they claim the settlement value includes the entire cash value of the fund and also add the purported value of what some of the cash was used to buy on top of that.

Class Counsel seeks credit for providing cake and a separate credit for eating it too.

Class Counsel argues (Ans. 19) that 12 O.S. § 2023(G)(4)(f) means that non-cash value from the credit monitoring must be credited when setting the fee award, but this argument misses the point and further calls the fee award into question. The rule says "if any portion of the benefits recovered for the class ... are in the form of coupons, discounts on future goods or services or other similar types of noncash common benefits, the attorney fees awarded in the class action shall

[4] Even in the Answer Brief, it's unclear how Class Counsel reckons the settlement to be worth $49 million. They say it "includes a $30 million common fund, $900,000 in remedial measures, and credit monitoring offered to all class members valued at over $10,000,000.00." Ans. 9. The only way this works mathematically is if the credit monitoring—a benefit paid by deducting from the $30 million settlement fund—somehow expands to another $18 million when spent on credit monitoring. Plaintiffs do not dispute this fact and still do not disclose how many class members actually signed up for monitoring. Br. 4.

be in cash and noncash amounts in the **same proportion as the recovery for the class**." 12 O.S. § 2023(G)(4)(f) (emphasis added). Class Counsel received their fee award in all cash—not as credit monitoring.

Anyhow, Cleveland does not argue that class attorneys can *never* receive credit for valuable non-cash relief, but the estimate here is specifically problematic for at least three reasons. First, as discussed above, the noncash relief comes from the fund for cash relief, so adding the two simply double-counts the alleged benefit. Second, class counsel never disclosed and still have not disclosed the basis for their valuation, making it impossible for objectors to challenge. Third, the valuation of credit monitoring services in particular seems implausibly large. In any event, these problems are academic because the district court did not issue a percentage award and did not estimate the value of the fund whatsoever.

The only clue Plaintiffs provide for their estimate is a citation to *Pan v. Atlas Real Est. Grp., LLC* (Ans. 2 n.3), which counted the alleged retail value of credit monitoring at $10/month in support of a "***2.5%***" fee award with 2.19 lodestar multiplier. No. 23-cv-009100-DDD, 2025 WL 750324, 2025 U.S. Dist. LEXIS 43019, at *20 (D. Colo. Mar. 10, 2025). Counting the alleged retail value of credit monitoring is incorrect: it "conflicts with the general principle that 'compensation in kind is worth less than cash of the same nominal value.'" *In re Anthem Inc. Data Breach Litig.*, 2018 WL 3960068, at *7 (N.D. Cal. Aug. 17, 2018); Br. 25.

Throughout the proceedings prior to the hearing, Class Counsel described the settlement as a "$30,000,000.00 non-reversionary settlement." Final App. Mot. 2. They characterize this fund value, and the fee request as 31% even *after* Cleveland objected. *Id.* Class Counsel neither identified a total settlement value exceeding $30.9 million nor assigned an alleged dollar value to credit monitoring. Final App. Mot. 5-6.

A $9.3 million fee does not become a 20% fee because counsel later assigns millions of dollars of value to benefits it did not quantify when requesting the fee.[5] Much less here, where they *still* do not demonstrate the alleged benefit or even explain how deducting money from the settlement fund means it should count as a new and separate benefit. And again, Plaintiffs identify no district court findings assigning the fund any particular value at all.

Findings matter. Plaintiffs now defend the same $9.3 million award as simultaneously 31% of a $30 million fund and 20% of a substantially larger hypothesized settlement value. Ans. 17. The district court never said which denominator it used. This Court cannot review an exercise of discretion by selecting on the district court's behalf among rationales supplied by partisans after judgment—particularly where the asserted valuation was never documented in the public record.

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[5] Class Counsel goes to some length to misunderstand Cleveland's citation of *Dennis v. Kellogg Co.* (Ans. 11), which was not cited regarding the treatment of *cy pres* relief in particular but instead for the proposition settlement valuations cannot simply be assumed without scrutiny—let alone without evidence whatsoever as Class Counsel proposes here. The *Dennis* settlement contained an in-kind provision, which the panel found unsuitable as the basis for fee award:

> The settlement states only that Kellogg will donate "$5.5 million *worth*" of food. (emphasis added). But the settlement document gives no hint as to how that $5.5 million will be valued. Is it valued at Kellogg's cost? At wholesale value? At retail? The exact answer to this question has important ramifications relating to the accurate valuation of the constructive common fund and thereby the reasonableness of attorneys' fees.

Dennis v. Kellogg Co., 697 F.3d 858, 867 (9th Cir. 2012).

The *Dennis* panel goes on to suggest that wholesale cost is the correct measure and faults the settlement for not making this clear. But by that measure, credit monitoring should be valued at its wholesale cost, which is exactly what the settlement administrator pays for it. Class money does not become *more* valuable when class members have *less* choice in how it's awarded.

IV. A remand merely for additional findings on the existing record cannot cure the denial of the process *Strack* requires.

Plaintiffs finally suggest that, if the district court should have "said more," this Court should remand merely for additional findings on the existing record. Ans. 16. That remedy would address only half the problem.

The error was not merely inadequate prose. Class Counsel withheld the descriptive billing records from Cleveland and submitted them *in camera* at the fairness hearing, and Plaintiffs acknowledge this happened. Ans. 7. *Strack* holds that denying an objector access to those records is itself "improper and an abuse of discretion." 2021 OK 21, ¶ 37, 507 P.3d at 621. A remand instructing the district court to write a fuller explanation of evidence Cleveland still has never been permitted to test would perpetuate rather than cure the error.

The proper remedy is therefore the limited relief Cleveland requested: vacate the fee award, leave settlement approval undisturbed, and remand for a renewed fee proceeding in which Class Counsel submit a properly supported application, class members receive a meaningful opportunity to respond, and the district court makes findings permitting appellate review. The Settlement Agreement expressly provides that it "shall remain in full force" notwithstanding modification, reversal, or vacatur of a fee award. S.A. ¶ 81. Thus, enforcing Oklahoma's procedures for awarding attorneys' fees places none of the class's settlement recovery at risk.

CONCLUSION

The Answer Brief asserts arguments Class Counsel could have made and findings the district court could have reached—but did not. Therefore, it cannot demonstrate that the district court actually exercised discretion as Oklahoma law entrusted it to. The unexplained 5.9 multiplier and the undisclosed billing records independently require vacatur.

Appellant-Objector Bryan Cleveland respectfully requests that this Court vacate the December 12, 2025 attorneys' fee award and remand for a renewed fee proceeding consistent with *Burk*, *Strack*, and 12 O.S. § 2023(G), while leaving the remainder of the judgment undisturbed.

Dated: September 15, 2026

Respectfully submitted,

Bryan Cleveland (Sep 15, 2026 10:40:22 EDT)

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2026, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following:

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Integris Reply Brief

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