

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

JAIME TODD, et al.,

Plaintiffs,

v.

ASHLEY FURNITURE INDUSTRIES,
LLC, et al.,

Defendants.

KYLE PAINTER,

Objector.

Case No. 3:24-cv-00615-wmc

CLASS ACTION

Hon. William M. Conley

OBJECTOR KYLE PAINTER'S SUPPLEMENTAL OBJECTION

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
INTRODUCTION.....	1
STATEMENT OF FACTS	3
ARGUMENT	5
I. The Court owes a fiduciary duty to unnamed class members.....	5
II. Plaintiffs continue to inappropriately rely on <i>Southwest Airlines</i> to argue this is not a coupon settlement case.....	6
III. The core relevant factor for the fee award is the realized relief's proportionality to the settlement, and under that standard the entire settlement is unfair unless fees are reduced.....	8
A. As currently structured, class counsel is likely to receive 83-416% of what the class receives, which is unfair as a matter of law.....	8
B. Lodestar cannot be used to rescue the unfair fee award.	10
C. To account for the ultimate settlement value, the Court must defer the fee until the parties provide an accounting of coupon redemptions.....	12
IV. Class counsel's failure of candor regarding <i>Redman</i> and <i>Southwest</i> , even after being put on notice by Painter, requires consequences.	13
CONCLUSION	15

INTRODUCTION

In his first represented objection, Objector Kyle Painter observed the Plaintiffs used the wrong legal standard to determine if the settlement was a coupon settlement under the Class Action Fairness Act (CAFA) § 1712(a). Dkt.83, Objection 6-9. Consequently, Plaintiffs' request (Dkt.65 at 23; Dkt.91 at 14-17) for an attorneys' fee award of 25% of the total face value of the coupons in the settlement violates CAFA's strictures. But Plaintiffs now try to rehabilitate that request with legally irrelevant arguments. Under *Redman*, it is irrelevant that the coupons are called "vouchers," and irrelevant that it's hypothetically possible to use the coupon to buy a full product; the Seventh Circuit squarely rejected that theory, even though the *Redman* vouchers could purchase "6000 items" for under the face value of the voucher. *Redman v. RadioShack Corp.*, 768 F.3d 622, 635-37 (7th Cir. 2014). A full accounting of lodestar (Dkt.91 at 17-22) is also largely irrelevant under the facts of this settlement, except as a cross-check to a request for a proportionate sum. "The reason is that hours can't be given controlling weight in determining what share of the class action settlement pot should go to class counsel." *Id.* at 635; Obj. 9. This case does not fit the rare exception where the settlement relief affords the class "essentially everything they could have hoped for"; the *Southwest Airlines* exception plaintiffs ask for thus does not apply. *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 712 (7th Cir. 2015).

Thus, unless the Court denies part of Plaintiffs' fee request thereby allowing those funds to flow into the contingent cash fund, the settlement is unfair because it awards too much to counsel and not enough to the class. It is likely, given the claims-

made pro-rata structure of the coupon settlement, that somewhere between \$720,000 and \$3,600,000 in relief will actually be redeemed. With Plaintiffs now moving to award three million dollars in attorneys' fees, Dkt.91, that means class counsel will likely get somewhere between 83-416% of what the class gets. Regardless of what end of the spectrum the requested award ultimately falls on, Seventh Circuit caselaw makes clear that such a distribution between counsel and class awards is unfair under Rule 23. *Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014) (69% fee is "outlandish"); *Redman*, 768 F.3d at 630-32 (55%-67% allocation unfair).

Rule 23 tasks this Court with the fiduciary duty to protect class members' interests in the litigation and their accompanying right to a proportionate share of any settlement proceeds. Long past are the days when this Circuit counseled district courts to take deferential approach to avoid "substituting their own judgment" for the judgment of the settling parties. *Pearson*, 772 F.3d at 787. Courts may no longer "assume [that] passive role." *Redman*, 768 F.3d at 629.

And more specifically, CAFA demands vigilant focus on received relief for coupon settlements to ensure the class isn't sold out.

As currently proposed, the settlement is unbalanced and thus unfair. But the provision establishing a contingent cash fund for unawarded attorneys' fees (Settlement ¶¶ 3.3.5, 4.3.1) allows the Court to fix the misallocation by denying approval of any fee award pending the coupon redemption period. When the redemptions ultimately fall short of face value, the Court can then award less than Class Counsel's requested \$3 million award, thus augmenting the class's share of the settlement reciprocally through the contingent cash fund.

Furthermore, the fact that class counsel is repeatedly attempting to evade CAFA and misrepresenting Seventh Circuit law violates class counsel's fiduciary duty to the class and duty of candor to the Court. The Seventh Circuit has repeatedly rejected lopsided settlements. There need to be consequences for class counsel continuing to attempt to "selfish[ly]" extract the majority of the settlement's value for themselves. *Cf. Pearson*, 772 F.3d at 787. If the Court simply applies a 25% basis, then class counsel is no worse off than if they had been forthright with the Court and the class to begin with. Unless there is an additional haircut in this case, future class counsel will have no incentive not to repeat this game of "Heads I win, tails don't count" and no incentive to fulfill their fiduciary duty to the class and duty of candor to the Court.

Accordingly, to avoid violating Rule 23(e) and (h), the Court should DENY without prejudice the motion for attorneys' fees, pending an accounting of the redemption process. At that time, class counsel should be awarded no more than 16.67% of the value of the redeemed coupons, a haircut of about half.

STATEMENT OF FACTS

Painter incorporates the statement of facts and litigation history as provided to the Court in Plaintiffs' brief for preliminary approval, Dkt.65 at 2-9, as well as other objections submitted to the Court (including Painter's first *pro se* filing). Dkt.73, Dkt.74 & Dkt.75. In his previous counseled objection, Dkt.83, Painter informed the Court of three additional facts: (1) Painter is a class member under the class definition and the Settlement; (2) the Settlement contains no injunctive relief; and, (3) that the "voucher" awards from the Settlement are, based on the transaction at issue, potentially worthless.

Dkt.83 at 6-7. Nothing new in the record since Painter filed his previous objection changes these facts. Accordingly, Painter incorporates those facts here.

After the Court approved the new objection schedule in Dkt.87, the class website was updated with new notice that class members had until September 16, 2026 to object to the Settlement. *See* Ex. A. In addition, and after Painter filed his first objections, Plaintiffs moved for attorneys' fees. Dkt.90-91. In the fee brief, Plaintiffs materially reframed their argument around lodestar, rather than the 25% common fund argument that occupied the bulk of the fee discussion in the motion for preliminary approval. *Compare* Dkt.91 at 13, 17-22 (mentioning "lodestar" thirty-two times and arguing for its application in detail over several pages) *with* Dkt.65 (mentioning lodestar as an aside four times). This seeming departure in strategy, coupled with the new objection deadline, prompted additional review by Painter. Because of this, he now writes to (1) make clear that if approved as is, the settlement is not fair, and (2) call for consequences for class counsel's failure to concede that this case is squarely governed by *Redman*, which rejects the arguments class counsel makes.¹

¹ Plaintiffs' rescheduling motion, Dkt.86, moved to extend the "Deadline for Class Members to Object to Class Counsel's Motion for Attorneys' Fees, Costs or Exclude Themselves from the Settlement" to September 16. Dkt.86-1. But the settlement website and settlement notice were revised to state that the deadline to object to the *settlement* was September 16. *See* Ex. 1. Painter writes to object to the settlement as proposed, but whether the Court enforces the website/notice or Dkt.86-1 is immaterial. The remedy is the same for this unfair settlement and unreasonable attorneys' fees request: deferring and then reducing the fee request once the redemption rate inevitably falls short of 100%. This will allow the class members who file claims to, *pro rata*, receive the excess fees in cash instead. *See* Settlement ¶¶ 3.3.5, 4.3.1.

ARGUMENT

I. The Court owes a fiduciary duty to unnamed class members.

A district court must act as a “fiduciary of the class,” safeguarding the rights and interests of absent class members. *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 280 (7th Cir. 2002). “[B]ecause class actions are rife with potential conflicts of interest between class counsel and class members, district judges presiding over such actions are expected to give careful scrutiny to the terms of proposed settlements in order to make sure that class counsel are behaving as honest fiduciaries for the class as a whole.” *Eubank v. Pella Corp.*, 753 F.3d 718, 723 (7th Cir. 2014) (internal quotation omitted). Courts must not “assume the passive role that is appropriate when there is genuine adverseness between the parties rather than the conflict of interest recognized and discussed in many previous class action cases.” *Redman*, 768 F.3d at 629. Rather, the “judge is called to exercise the highest degree of vigilance in scrutinizing proposed settlements of class action.” *In re Subway Footlong Sandwich Mktg. Litig.*, 869 F.3d 551, 555 (7th Cir. 2017) (internal quotation omitted). “When there are objecting class members, the judge’s task is eased because he or she has the benefit of an adversary process.” *Redman*, 768 F.3d at 629. But still the Court must ensure an even playing field and that class counsel not “handicap[]” class members in the exercise of their objection rights. *Id.* at 638.

At the fee-setting stage, when the relationship between class members and their counsel becomes most acutely adversarial, it is incumbent upon the Court to “carefully monitor disbursement to the attorneys by scrutinizing the fee applications.” *Cook v. Niedert*, 142 F.3d 1004, 1011 (7th Cir. 1998) (internal quotation omitted). These

concerns are yet heightened “when the class members are consumers, who ordinarily lack both the monetary stake and the sophistication in legal and commercial matters that would motivate and enable them to monitor the efforts of class counsel on their behalf.” *Creative Montessori Learning Ctrs. v. Ashford Gear LLC*, 662 F.3d 913, 917 (7th Cir. 2011). No individual class member has the financial incentive to object to an exorbitant fee request because any individual “gain from a reduction, even a large reduction, in the fees awarded the lawyers would be minuscule.” *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992). The Court (and good-faith public-minded objectors) serve as the last line of defense against overreaching fee requests. “Active judicial involvement in measuring fee awards is singularly important to the proper operation of the class action process.” Advisory Committee Notes on 2003 Amendments to Rule 23.

II. Plaintiffs continue to inappropriately rely on *Southwest Airlines* to argue this is not a coupon settlement case.

Plaintiffs’ fee brief points to *Southwest Airlines*, 799 F.3d 701, to argue the settlement is not a coupon settlement. Dkt.91 at 11-12. Incorrect. As Painter pointed out in his previous objection, Plaintiffs took *Southwest Airlines*’ language out of context, and failed entirely to bring *Redman* to this Court’s attention. Dkt.65 at 25-26; Dkt.83 at 8-9 (noting the language Plaintiffs used pertains to when “the potential for abuse” in coupon settlements “is greatest”). Yet Plaintiffs’ fee brief clings to the Court’s preliminary approval which used the erroneous *Sw. Airlines* standard—that they provided. Dkt.91 at 11. This is even *after* being put on notice by Painter’s objection.²

² The Plaintiffs’ initial and now continued reliance on the wrong caselaw (*Sw. Airlines*) to analyze whether this is a coupon settlement is core to approval. For class action settlements, the Court has a “need to rely on counsel ... [that leaves] it vulnerable

Seventh Circuit caselaw is clear that when a class award is a medium of exchange that's not "as valuable ... [as] cash," it's a coupon. *Redman*, 768 F.3d at 636-37. It doesn't matter that Plaintiffs refer to the reward as a "voucher" throughout the settlement and their briefs. *See generally* Dkt.91; Dkt.65-1. "[C]oupon" is "interchangeable with voucher." *McKinney-Drobnis v. Oresback*, 16 F.4th 594, 613 (9th Cir. 2021) (Miller J., concurring) (quoting *Redman*, 768 F.3d at 636); *accord Moses v. N.Y. Times Co.*, 79 F.4th 235, 247 (2d Cir. 2023) (offering a similar plain meaning). Nor does it matter that the vouchers alone can be used to purchase a plethora of items from Defendants' websites. Dkt.91 at 12. "The idea that a coupon is not a coupon if it can ever be used to buy an entire product doesn't make any sense." *Redman*, 768 F.3d at 635; *accord Sw. Airlines*, 799 F.3d at 706 ("the replacement vouchers for free drinks on Southwest flights are indeed 'coupons' and hence this settlement is subject to § 1712").

Put plainly, the awards in this case are coupons because they aren't cash: they must be redeemed, they've got a time limit, can only be used at certain stores, require class members to do business with the Defendants again, and they may even be worthless if freely-offered, un-stackable coupons on the websites are better. CAFA § 1712(a) applies.

to being misled, whether by affirmative misrepresentation or by half-truths that deceived through their incompleteness." *Arkansas Tchr. Ret. Sys. v. State St. Corp.*, 25 F.4th 55, 65 (1st Cir. 2022). This very concern seemingly manifested in this case, as *Southwest Airlines* remains inapplicable to, never mind also unsupportive of, their CAFA argument.

III. The core relevant factor for the fee award is the realized relief's proportionality to the settlement, and under that standard the entire settlement is unfair unless fees are reduced.

Plaintiffs saturate the Court with a smorgasbord of wholly distracting justifications for fee approval, with dozens of pages in declarations and supporting exhibits accompanying each. *See generally* Dkt.91 at 13-22. But that gets them neither to settlement approval nor their requested fee. In this Circuit “the ratio that is relevant to assessing the reasonableness of the attorneys’ fee that the parties agreed to [in a class settlement] is the ratio of (1) the fee to (2) the fee plus what the class members received.” *Redman*, 768 F.3d at 630. Because counsel’s award in this case is likely to be somewhere between 83-416% of the award actually received by the class, the settlement is unfair under Rule 23 and must be voided—or corrected by a substantial reduction in fees reflecting actual redemption rates. *See Redman*, 768 F.3d at 630 (“fairness of the division ... between class counsel and class members”); *Pearson*, 772 F.3d at 781-82. Lodestar cannot save the fee request, either, since results—not hours—have “controlling weight” in what’s a fair distribution between the class and its counsel. *Redman*, 768 F.3d at 635; *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th 985, 988 (9th Cir. 2023).

A. As currently structured, class counsel is likely to receive 83-416% of what the class receives, which is unfair as a matter of law.

The settling parties have agreed to pay class counsel \$3,000,000 while the class gets a \$9,000,000 face value coupon settlement—what percentage of that \$9,000,000 top-line number will actually materialize in savings? “Class action coupon redemption rates, particularly absent a market maker and a viable secondary market, typically mirror the annual corporate issued promotional coupon redemption rates of 1-3%.” James

Tharin & Brian Blockovich, *Coupons and the Class Action Fairness Act*, 18 GEO. J. LEGAL ETHICS 1443, 1445 (2005); Dkt.83 at 12-13 (citing cases). In fairness to Plaintiffs, the redemption rate may be higher here, because the settlement is structured so that the only class members getting relief are those already taking the time to fill out a claims form. But coupon cases, regardless of their structure, never come close to their top-line value. *See Briseno v. Henderson*, 998 F.3d 1014, 1020 (9th Cir. 2021) (“Spoiler alert: that never happens — not even close”). The coupons don’t function like cash: they expire, require use at specific places (which harmed class members), and have rules for use.

Based on the table below, which is compiling post-CAFA settlements similar to this one, the redemption rate is likely to be somewhere between 8-40%. *See also* Christopher R. Leslie, *A Market-Based Approach to Coupon Settlements in Antitrust and Consumer Class Action Litigation*, 49 UCLA L. REV. 991, 1035 (2002) (“For the ten cases that had consumers as plaintiffs, the redemption rate was 13.1 percent.”).

Table 1: Redemption Rates in Similar Consumer Class Settlements

Case/Source	Redemption Rate
Declaration of Abel E. Morales, <i>Gold v. Lumber Liquidators, Inc.</i> , No. 14-cv-5373, Dkt. 381-3 (N.D. Cal. 2024)	40%
<i>Cannon v. Ashburn Corp.</i> , No. CV 16–1452, 2018 WL 1806046, at *17 (D.N.J. 2018)	<14%
<i>Stanikzy v. Progressive Direct Ins. Co.</i> , No. 2:20-CV-118, 2022 WL 1801671 (W.D. Wash. 2022), <i>aff’d</i> , No. 22-35524, 2023 WL 4837875 (9th Cir. 2023)	20%
<i>McKinney-Drobnis v. Massage Envy Franchising, LLC</i> , No. 16-CV-06450-MMC, 2024 WL 2808647 (N.D. Cal. 2024), <i>aff’d</i> , No. 24-4095, 2025 WL 1937451 (9th Cir. 2025)	28.8% (roughly \$2.9M of \$10M claimed relief)

<i>Rougvie v. Ascena Retail Grp., Inc.</i> , No. CV 15-724, 2019 WL 944811 (E.D. Pa. 2019)	7.5% (voucher-portion only)
<i>Rael v. Children's Place, Inc.</i> , No. 16-cv-00370, Dkt. 162 (S.D. Cal. 2021)	12%
<i>Tyler v. Michaels Stores, Inc.</i> , 150 F. Supp. 3d 53 (D. Mass. 2015)	33%

Taking these percentages, the actual realized relief to the class from the settlement is likely between \$720,000 and \$3,600,000. This corresponds to attorneys' fees somewhere between 83 to 416% of realized class relief and 45.4% to 80.6% of total settlement value.

Such a ratio of fees-to-relief is plainly outside the scope of a "fair[] division of the settlement pie between class counsel and class members." *Redman*, 768 F.3d at 630. Courts do not condone fee awards like this. *See Eubank v. Pella Corp.*, 753 F.3d 718, 729 (7th Cir. 2014) ("settlement flunked the fairness standard by the one-sidedness of" giving attorneys \$11 million versus \$8 million for class); *Jane Roes 1-2 v. SFBSC Management, LLC*, 944 F.3d 1035 (9th Cir. 2019) (\$950,000 of \$2M gross cash fund is "disproportionate"); *Lechuga v. Elite Eng'g, Inc.*, 559 F. Supp. 3d 736, 745 (N.D. Ill. 2021) ("Counsel offer no justification or authority for an award of attorneys' fees in excess of the total recovery available to the class."). "Especially in consumer class actions" anything above one-third, or at most one-half, of the realized common fund exceeds the presumptive upper limit of a reasonable fee share. *Pearson*, 772 F.3d at 782.

B. Lodestar cannot be used to rescue the unfair fee award.

In this Circuit, "hours can't be given controlling weight in determining what share of the class action settlement pot should go to class counsel." *Redman*, 768 F.3d at 635. That remains true even when applying "the approach of

subsection [§1712] (b)(1).” *Id.* Lodestar is an accompanying, but not controlling, means of determining fees. Nevertheless, Plaintiffs expend considerable portions of their fee brief to justify the award under lodestar. But their argument, which points to *Southwest Airlines’* reliance on lodestar, is misplaced.

Southwest Airlines was unique because the attorneys achieved “essentially complete relief for the class” and the Seventh Circuit noted it was “the model of an adequate settlement.” 799 F.3d at 711. This is because *Southwest Airlines* addressed the defendant-company’s failure to honor vouchers it had already given to the class, not realized economic damages. 799 F.3d at 706. Thus “the subject of [*Southwest Airlines*] is the value of coupons given to replace coupons,” *id.*, and the class award was essentially restitution. In other words, the settlement obtained “essentially everything [the class members] could have hoped for.” *Id.* at 712.

Under *Southwest Airlines*, lodestar is a reasonable means to evaluate fees when the attorneys achieved 100% of what they could get the class, almost as a fee shifting statute operates. *See id.* at 705-06 (no concern in such a case over “defendants and class counsel agree[ing] to provide coupons of dubious value to class members but to pay class counsel with cash”). *Southwest Airlines* took pains to distinguish that exceptional situation from “most cases” where an objection to a lopsided allocation favoring class counsel “would be a powerful argument” and would “ha[ve] considerable force.” *Id.* at 711-12. Thus lodestar that exceeds *compromised* class recovery, as in *Pearson* or *Redman* or this case, remains inappropriate. The factual underpinnings in *Southwest Airlines* that justified its lodestar focus are not present here and Plaintiffs don’t assert as much. This is not a settlement that offers anything close to “complete” relief. Plaintiffs’ complaint asked

for restitution, disgorgement, consequential damages, and punitive damages for a nationwide class action spanning seven years related to the purchase of mattresses (a relatively large-cost, universally-purchased item). While Plaintiffs provide no damages estimate of the class’s claims, the damages their complaint warrants at trial is certainly more (and likely considerably so) than the \$9,000,000 *hypothetical* top-line figure that the settlement allocates (which, as discussed, is in actuality a fraction of this because of the likelihood of the coupons expiring). An *ipse dixit* declaration by Plaintiffs that “the work resulted in a robust settlement fund” does not indicate “complete relief.” Dkt.91 at 14. Class counsel has not met their burden of showing that \$9 million of vouchers is the economic equivalent of what the complaint asked for.

Accordingly, the Court should start where *Redman* requires—with the relief received by the class—and use the lodestar cross-check only to compare against the results achieved. The phone books of declarations and expert submissions on lodestar are legally irrelevant to what the fee award should be here.

C. To account for the ultimate settlement value, the Court must defer the fee until the parties provide an accounting of coupon redemptions.

Under CAFA, it is not only appropriate but at times necessary to defer the award of fees until after redemptions occur. *See, e.g., Drazen v. Pinto*, 106 F.4th 1302, 1350 (11th Cir. 2024); *In re EasySaver Rewards Litig.*, 906 F.3d 747, 760 n.13 (9th Cir. 2018); *Knapp v. Art*, 283 F. Supp. 3d 823, 839 (N.D. Cal. 2017) (deferring fees); *Rougvie v. Ascena Retail Grp., Inc.*, No. 15-cv-00724, 2016 WL 4111320, at *27 (E.D. Pa. July 29, 2016) (same).³

³ In some cases, unlike here, where deferring the fee award is impossible because of the structure of the settlement, it may either be necessary to reject the settlement

This will enable the Court to award fees based on redeemed coupons, consistent with CAFA, and will ensure a fee award that is appropriately proportionate to the actual class benefit. It allows the court to overcome the “uncertainty” about the “value obtained by the Class.” *Fessler v. Porcelana Corona de Mex., S.A.*, 23 F.4th 408, 419 (5th Cir. 2022) (value of post-settlement toilet tank replacement program).

IV. Class counsel’s failure of candor regarding *Redman* and *Southwest*, even after being put on notice by Painter, requires consequences.

Often, a Rule 23(e) or Rule 23(h) proceeding is effectively *ex parte*; many settlements have no attorneys representing objectors. There was “the distinct possibility that no adversary would ever offer any meaningful opposition” to the fee request. *Arkansas Teacher Ret. Sys. v. State Street Corp.*, 25 F.4th 55, 65 (1st Cir. 2022). Attorneys always have a duty of candor, but that duty is far higher when they may be proceeding *ex parte*, as in a Rule 23(h) proceeding. *Id.*

Class counsel’s attempt to put one over on the Court and the class, despite binding Seventh Circuit precedent squarely rejecting the arguments they make, must have consequences. Class counsel is attempting to extract seven digits of settlement value to which they are unentitled. It is insufficient to simply award them what they would have received if they had been forthright to begin with.

In such a world, class counsel has no incentive to fulfill their duty of candor to the court or their fiduciary duty to the class. That would be a free roll: if a judge were required to award a reasonable fee whenever an inflated one is requested, class counsel

outright, or appoint an expert to opine on the estimated value of what coupon redemption will be. *Redman*, 768 F.3d at 634 (citing 28 U.S.C. § 1712(d)); *Drazen*, 106 F.4th at 1350 (same).

“would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked for in the first place. To discourage such greed a severer reaction is needful...” *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980); accord *Baylor v. Mitchell Rubenstein & Assoc.*, 857 F.3d 939, 954, 957 (D.C. Cir. 2017) (Henderson, J., concurring) (“court has discretion to deny an award altogether or ‘impose a lesser sanction, such as awarding a fee below what a “reasonable” fee would have been” (citation omitted)). *Brown* was a Section 1988 case; its reasoning applies even more here, where the proceeding is at risk of being without meaningful opposition and the fee comes at the expense of class counsel’s clients.

State Street suggests that even inadvertent mistakes in a Rule 23(h) request is a breach of ethics, 25 F.4th at 65, but this Court need not reach that issue. Class counsel was on notice after Painter’s counseled objection that they had gotten the law wrong. Even if their initial briefing was in good faith, it is impossible to ascribe good faith to their most recent filings burying the court in legally irrelevant lists of SKUs after Painter put them on notice about what *Redman* says.

The Court has the discretion to deny fees entirely, but, at a minimum, should impose a severe haircut to incentivize future class counsel to not play the game of “Heads I win, tails is a do-over.” *Pearson* was twelve years ago, and has been endorsed by other circuits; *Redman* and *Eubank* reaffirmed the principle of the requirement of proportional recovery in this circuit. Class counsel has no excuse in 2026 to be requesting more than the likely class recovery.

CONCLUSION

For the reasons stated above, the Court must find that CAFA § 1712(a) applies and thus attorneys' fees must be tethered to the relief realized (*i.e.*, the actual coupons redeemed) by the class. Because the fee request is incommensurate with what will be the actual redeemed value of those coupons, approving the fee request would render the settlement unfair in violation of Rule 23(e). To remedy this problem, the Court should defer adjudication of the motion for fees until after redemptions are determined. At that point, any reduction of the fee request will benefit the class through the contingent cash fund.

Under *Brown v. Stackler*, the Court also has the discretion to deny fees entirely. If that is too extreme a result, the Court should, at a minimum, impose a severe haircut once the redemption rate is known.

Dated: September 16, 2026

/s/Theodore H. Frank

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Certificate of Service

I certify I have electronically filed this objection via the ECF system for the Western District of Wisconsin, thus effecting service on all attorneys registered for electronic filing.

Dated: September 16, 2026

/s/Theodore H. Frank