

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DAVID W. VENESS and JULIE K. VENESS,  
on behalf of themselves and others similarly  
situated,

Case No.: 17-CV-338-bbc

Plaintiffs,

vs.

HEYWOOD, CARI & ANDERSON, S.C.,

Defendant.

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**PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS'  
FEES AND EXPENSES**

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**Introduction**

As a result of the settlement now before this Court, each class member will receive approximately \$61.00 from a settlement fund that exceeds the statutory damages available under the Fair Debt Collection Practices Act ("FDCPA"). At the same time, Heywood, Cari & Anderson, S.C. ("Defendant") has stopped engaging in the practice complained of in this lawsuit. This change will inure to the benefit not just of class members, but of all consumers who encounter Defendant's debt collection efforts in the future. Underscoring the favorable nature of the settlement is that to date not a single class member excluded himself or herself or lodged an objection, nor did any objections result from notice issued pursuant to the Class Action Fairness Act ("CAFA").

Because this settlement is an excellent result for Wisconsin consumers, and given the work done by their counsel to achieve the settlement, Class Representatives David W. Veness and Julie K. Veness ("Plaintiffs") respectfully request that this Court approve the unopposed request for an award of attorneys' fees and reimbursement of expenses to Class Counsel in the amount of

\$22,500. As detailed herein and in the Declaration of James L. Davidson, filed contemporaneously herewith (“Davidson Decl.”), this request is supported by applicable law and should be approved.

### **Argument**

#### **A. The FDCPA mandates an award of attorneys’ fees to a prevailing plaintiff.**

The FDCPA mandates an award of attorneys’ fees to a successful consumer-plaintiff, and a district court commits reversible error by “[p]aying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace,” which “is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law.” *Tolentino v. Friedman*, 46 F.3d 645, 653 (7th Cir. 1995).<sup>1</sup> Specifically, the Seventh Circuit held:

The reason for mandatory fees is that congress chose a “private attorney general” approach to assume enforcement of the FDCPA.

Given the structure of the section, attorney’s fees should not be construed as a special or discretionary remedy; rather, the act mandates an award of attorney’s fees as a means of fulfilling Congress’s intent that the Act should be enforced by debtors acting as private attorneys general.

*Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991).

\* \* \*

In order to encourage able counsel to undertake FDCPA cases, as congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases. As we noted in *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir.1993),

Our recent cases have stressed that the best measure of the cost of an attorney’s time is what that attorney could earn from paying clients. For a busy attorney, this is the standard hourly rate. If he were not representing this plaintiff in this case, the lawyer could sell the same time to someone else. That other person’s willingness to pay establishes the market’s valuation of the attorney’s services.

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<sup>1</sup> Internal citations, quotations and footnotes are omitted, and emphasis is added, unless otherwise noted.

The Third Circuit has similarly stated:

Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated.

*Student Public Interest Research Group v. AT & T Bell Laboratories*, 842 F.2d 1436, 1449 (3d Cir.1988).

Here, Tolentino prevailed on summary judgment, thereby protecting her rights under the statute, and has recovered the maximum statutory damages allowed to an individual plaintiff. Under *Farrar*, therefore, Tolentino has obtained a high degree of success.

Paying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law. *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 562–63 (7th Cir.1994).

*Id.*

Correspondingly, awards of reasonable attorneys' fees under federal statutes that include fee-shifting provisions, such as the FDCPA, "are not conditioned upon and need not be proportionate to an award of money damages." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986); *see also Lewis v. Kendrick*, 944 F.2d 949, 957 (1st Cir. 1991) ("We believe we made it clear that we were not departing from the recognized principle that the fee is not limited by the size of the recovery, but may, in appropriate instances, greatly exceed it."); *accord Turner v. Oxford Mgmt. Services, Inc.*, 552 F. Supp. 2d 648, 656 (S.D. Tex. 2008) ("The disparity between the final award of damages and the attorneys' fees and expenses sought in this case is not unusual and is necessary to enable individuals wronged by debt collectors to obtain competent counsel to prosecute claims.").

Given the success reached for the Class and Plaintiffs in light of the restrictions on damages imposed by the FDCPA, this Court should award attorneys' fees and expenses totaling

\$22,500, which is unopposed by Defendant.

**B. The hours expended, and class counsel's hourly rates, are reasonable in this certified class action.**

“The lodestar starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Walters v. Mayo Clinic Health System–Eau Claire Hospital, Inc.*, 91 F. Supp. 3d 1071, 1081 (W.D. Wis. 2015) (Conley, J.). “There is a strong presumption that the lodestar calculation yields a reasonable attorneys’ fee award.” *Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 639 (7th Cir. 2011); *see also Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986) (“A strong presumption that the lodestar figure—the product of reasonable hours times a reasonable rate—represents a ‘reasonable’ fee is wholly consistent with the rationale behind the usual fee-shifting statute, including the one in the present case.”).

Class Counsel has expended 53.3 total hours to date performing legal services reasonably necessary to litigate this matter to date. Davidson Decl., ¶ 18. This time included: (a) conducting an investigation into the underlying facts regarding Plaintiffs’ claims; (b) preparing the class action complaint; (c) researching the law pertinent to class members’ claims and Defendant’s defenses; (d) propounding requests for production and interrogatories, and conducting an analysis of Defendant’s net worth; (e) participating in a Rule 26 conference with Defendant’s counsel; (f) negotiating the parameters of the settlement; (g) preparing the parties’ class action settlement agreement and the proposed notice to the class; (h) conferring routinely with Plaintiffs and Defendant’s counsel; (i) preparing Plaintiffs’ unopposed motion for preliminary approval of the class action settlement; and (j) conferring with the class administrator regarding notice and the claims process.

In addition, this case will require an estimated 25-40 additional hours of work to complete.

That time will be spent preparing a motion for final approval of the settlement, preparing for the final approval hearing, traveling from South Florida to Madison, Wisconsin for the final approval hearing, if necessary, participating in the final approval hearing, finalizing the settlement, including conferring with class members and the class administrator, and any other related matters necessary to conclude this case. *Id.*, ¶ 20.

Here, Michael L. Greenwald, James L. Davidson and Aaron D. Radbil—all partners at Greenwald Davidson Radbil PLLC—billed on this case at a rate of \$400 per hour. The firm’s Junior Partner, Jesse S. Johnson, billed at a rate of \$350 per hour. Class Counsel’s rates have previously been found to be reasonable in FDCPA class action litigation. *See, e.g., McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at \*3 (S.D. Miss. June 16, 2017) (“The Court approves a \$400 hourly rate for Michael L. Greenwald, Aaron D. Radbil, and James L. Davidson, as well as a \$350 hourly rate for Jesse S. Johnson.”); *Kemper v. Andreu, Palma & Andreu, PL*, No. 15-21226, ECF No. 54 at 8 (S.D. Fla. Nov. 30, 2016); *Bellum v. Law Offices of Frederic I. Weinberg & Assocs., P.C.*, No. 15-2460, 2016 WL 4766079, at \*10 (E.D. Pa. Sept. 13, 2016); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 689 (N.D. Cal. 2016) (“Given that Class Counsel has been appointed in numerous class actions, including FDCPA cases; courts have awarded them exactly the same rates requested here in previous cases; and courts in this District found similar rates appropriate in FDCPA cases, Class Counsel’s requested rates are reasonable.”); *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14-24502, 14-20933, 2015 WL 738329, at \*4 (S.D. Fla. Feb. 23, 2015) (“Defendant shall pay Class Counsel [Greenwald Davidson Radbil PLLC] \$65,000.00 for attorneys’ fees and expenses, which is based in part upon Class Counsel’s reasonable hourly rate of \$400 per hour.”).

Moreover, Class Counsel’s rates are consistent with prevailing rates previously found to

be reasonable by courts both within, and outside, this Circuit. *See, e.g., Kurgan v. Chiro One Wellness Centers LLC*, No. 10-cv-1899, 2015 WL 1850599, at \*4 (N.D. Ill. April 21, 2015) (finding reasonable hourly rates of \$500 and \$600 for partners in FLSA class action); *Hull v. Owen County State Bank*, No. 1:11-cv-01303-SEB-MJD, 2014 WL 1328142, at \*5 (S.D. Ind. Mar. 31, 2014) (“As a result, the Court awards Mr. Calhoun a total of \$54,152.00 for fees (98 hours at \$550.00 per hour plus 1.8 hours at \$140.00 per hour) and \$2,178.04 in costs.”); *Michel v. WM Healthcare Sols., Inc.*, No. 1:10-CV-638, 2014 WL 497031, at \*18 (S.D. Ohio Feb. 7, 2014) (determining that rates ranging from \$250 per hour to \$400 per hour were reasonable hourly rates in class action); *Lowther v. A.K. Steel Corp.*, 2012 WL 6676131, at \*5 (S.D. Ohio Dec. 21, 2012) (employing a lodestar cross-check, the court concluded that \$500 per hour was a reasonable rate for the two senior attorneys and that rates between \$100 and \$450 per hour were reasonable for other attorneys and involved staff); *Van Horn v. Nationwide Prop. and Cas. Ins. Co.*, 436 F. App’x 496, 498 (6th Cir. 2011) (district court did not abuse its discretion in approving rates ranging from \$250 to \$450 per hour); *Handschu v. Special Servs. Div.*, 727 F. Supp. 2d 239, 246 (S.D.N.Y. 2010) (approving as reasonable hourly rate of \$400 per hour); *Rodriguez v. Pressler & Pressler, L.L.P.*, CV–06–5103, 2009 WL 689056, at \*1 (E.D.N.Y. Mar. 16, 2009) (approving hourly rate of \$450 and \$300 in FDCPA case); *Reade–Alvarez v. Eltman, Eltman & Cooper, P.C.*, No. CV–04–2195, 2006 WL 3681138, at \*9 (E.D.N.Y. Dec. 11, 2006) (approving hourly rate of \$420 in FDCPA case); *Gross v. Washington Mut. Bank*, No. 02–CV–4135, 2006 WL 318814, at \*6 (E.D.N.Y. Feb. 9, 2006) (approving hourly rate of \$400 in FDCPA case).

Further, “[n]umerous district courts in the Seventh Circuit have considered the Consumer Law Attorney Fee Survey Report in analyzing the reasonableness of proposed hourly billing rates.” *Moore v. Midland Credit Mgmt., Inc.*, No. 3:12-CV-166-TLS, 2012 WL 6217597, at \*4 (N.D. Ind.

2012); *see also, e.g., Anderson v. Specified Credit Ass'n, Inc.*, No. 11–53–GPM, 2011 WL 2414867, at \*4 (S.D. Ill. June 10, 2011) (considering the 2010–2011 Consumer Law Attorney Fee Survey in determining the reasonableness of hourly billing rates); *Moreland v. Dorsey Thornton and Assocs. L.L.C.*, No. 10–cv–867, 2011 WL 1980282, at \*3 (E.D. Wis. May 20, 2011) (considering the 2008–2009 Consumer Law Attorney Fee Survey in determining the reasonableness of hourly billing rates); *Suleski v. Bryant Lafayette & Assocs.*, No. 09–C–960, 2010 WL 1904968, at \*3 (E.D. Wis. May 10, 2010) (“the United States Consumer Law Attorney Fee Survey for 2008–09 for the Midwest and California ... supports the reasonableness of the hourly rates sought by counsel in light of their experience as described in their attorney profiles on the Krohn & Moss website.”).

The current edition of the United States Consumer Law Attorney Fee Survey Report was revised on September 1, 2017 (<https://www.nclc.org/images/pdf/litigation/tools/atty-fee-survey-2015-2016.pdf>) (last visited February 15, 2018). According to the Report, the average hourly rate for all attorneys in Milwaukee is \$437, the average hourly rate for an attorney with 11 to 15 years of experience in Milwaukee is \$563, and the median rate for attorneys handling class actions in Milwaukee is \$575.<sup>2</sup> These rates are considerably higher than the rates sought by Class Counsel here.

Multiplying Class Counsel’s hourly rates by the number of hours expected to be expended by the end of this litigation gives an approximate lodestar of between \$31,130 and \$37,130. As a

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<sup>2</sup> Attorney James L. Davidson, who performed the majority of the work in this case, graduated from the University of Florida Levin College of Law in 2003, and has been practicing law for nearly 15 years. Davidson Decl., ¶ 10. Additional information about Mr. Davidson’s practice and experience can be found at [www.gdrllawfirm.com](http://www.gdrllawfirm.com). Likewise, biographical information for the other timekeepers in this matter can be found on the firm’s website.

result, the fees and expenses requested will constitute a discount to Class Counsel's total lodestar.<sup>3</sup> Of note, the fee requested here is in line with (and less than) awards in similar FDCPA class actions, further underscoring its reasonableness. *See, e.g., Good v. Nationwide Credit, Inc.*, No. 14-4295, 2016 WL 929368, at \*15 (E.D. Pa. Mar. 14, 2016) (awarding attorneys' fees and expenses of \$125,000 in FDCPA class action); *Whitford v. Weber & Olcese*, No. 1:15-cv-400, 2016 WL 122393, at \*2 (awarding \$30,000 in fees and expenses); *Gonzalez*, 2015 WL 738329, at \*2 (awarding \$65,000 in attorneys' fees and expenses); *Esposito v. Deatrick & Spies, P.S.C.*, No. 13-1416, 2015 WL 390392, at \*4 (N.D.N.Y. Jan. 28, 2015) (awarding fees and expenses of \$36,750 in class settlement alleging Electronic Fund Transfer Act claims); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-00142, 2015 WL 223764, at \*2 (S.D. Ohio Jan. 16, 2015) (awarding fees and expenses totaling \$30,000 in FDCPA class action); *Donnelly v. EquityExperts.org, LLC*, No. 13-10017, 2015 WL 249522, at \*2 (E.D. Mich. Jan. 14, 2015) (awarding attorneys' fees of \$90,000 and costs and expenses in the amount of \$5,947.58 in FDCPA class settlement); *Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, No. 04-2195, 2006 WL 3681138 (E.D.N.Y. Dec. 11, 2006) (awarding \$50,000 in fees in FDCPA class action).

Thus, Plaintiffs submit that this Court should approve their unopposed fee and expense request.

**C. Class Counsel incurred reimbursable litigation costs and expenses which are subsumed within the unopposed request for \$22,500.**

Class Counsel has incurred \$520 in litigation costs and expenses to date. Davidson Decl., ¶ 24. The categories of expenses for which Class Counsel seek reimbursement are the type of

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<sup>3</sup> Of note, this estimate does not include any of the time expended by co-counsel Matt Lein of Lein Law Offices. Mr. Lein has billed approximately 5.8 hours on this matter to date, and bills at a rate of \$400 per hour.

expenses routinely charged to paying clients in the marketplace and, therefore, the full requested amount should be reimbursed under Rule 23. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) (awarding as reasonable and necessary, reimbursement for “travel, depositions, filing fees, postage, telephone, and copying.”).<sup>4</sup> In addition, should Class Counsel need to travel to the final approval hearing, Class Counsel estimates that they will incur approximately an additional \$900 - \$1,300 for roundtrip travel between Boca Raton, Florida and Madison, Wisconsin.

**D. The other factors to be weighed when determining a reasonable award of attorneys’ fees support the requested fee and expense award.**

As the Seventh Circuit has noted, “[t]here are several factors that a court should consider when calculating attorney’s fees, including (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the plaintiff’s attorney; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.” *Tolentino*, 46 F.3d at 652. These factors support the reasonableness of the requested fee.

First, and as noted above, the time and labor involved support the reasonableness of the requested fee. Second, “[t]he FDCPA is a complex statute, and its provisions are subject to different interpretations.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S.

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<sup>4</sup> Of note, Class Counsel does not seek separate reimbursement for photocopies, postage, telephone, online legal research fees, or any costs associated with attendance at the final approval hearing.

573, 621 (2010) (Kennedy, J., dissenting). While the question at the heart of this case was fairly straightforward, had this case proceeded to summary judgment or trial, and then ultimately to an appeal, there was no guarantee that Plaintiffs would have prevailed on their or the Class's claims.

Third, considering the limitations on damages imposed by the FDCPA, this settlement can only be seen as a complete victory for Plaintiffs and the Class. It bears mention that the FDCPA provides no *minimum* amount of statutory damages to be awarded. Consequently, this Court ultimately could have awarded Plaintiffs and the class some amount less than one percent of Defendant's net worth, or perhaps no money at all, even in the face of victory. *See* 15 U.S.C. § 1692k(b)(2) (among the factors to be considered in awarding class damages: the frequency and persistence of noncompliance by the defendant, the nature of the noncompliance, and whether such noncompliance was intentional). Despite this, the Class will receive more than one percent of Defendant's net worth, plus a change in Defendant's business practices. This result supports the reasonableness of Class Counsel's requested fee and expense award.

Fourth, there is no question that Class Counsel's knowledge and experience significantly contributed to the fair and reasonable settlement reached, particularly the efficient and judicious way it was achieved. Indeed, Class Counsel is extremely experienced in litigating FDCPA class actions. *See* Davidson Decl., ¶ 6. This factor supports counsel's requested attorneys' fees. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 683 (D. Md. 2013) ("As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.").

Fifth, acceptance of this matter impacted Class Counsel's ability to handle other matters. Class counsel—Greenwald Davidson Radbil PLLC—is a relatively small firm that includes four partners, one associate, and one of-counsel attorney. *See* <http://www.gdrlawfirm.com/firm-profile>.

The amount of work that Class Counsel can handle at any given time is accordingly limited. As a result, the time they devoted to this matter curtailed their ability to accept other work.

Sixth, like many consumers bringing claims under the FDCPA, Plaintiffs entered into a contingent attorneys' fee agreement with their counsel. As a result, Class Counsel would only receive payment for their efforts in this matter if they obtained a recovery. Of note, Class Counsel has not received any payment for their work in this case to date. That the attorneys' fee arrangement in this case was contingent "weighs in favor of the requested attorneys' fees award, because [s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered." *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012); *accord Been v. O.K. Indus., Inc.*, No. 02-285, 2011 WL 4478766, at \*9 (E.D. Okla. Aug. 16, 2011) ("Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success.").

Seventh, the results obtained in the settlement strongly support the requested fee. Here, the settlement provides benefits to Plaintiffs, absent class members, and the public at large that could not have been achieved even assuming full victory at trial. To be sure, the \$3,000 settlement fund—while not large in absolute terms—exceeds the statutory damages allowed under the FDCPA, which are capped by statute at one percent of Defendant's net worth. *See* 15 U.S.C. § 1692k(a)(2)(B). In other words, class members will do better by this settlement in terms of statutory damages than had they proceeded to trial and prevailed. And, of course, the settlement provides immediate cash relief, whereas any hypothetical recovery from trial would probably take years to receive considering the likely appeals that would follow.

As well, Plaintiffs' individual recovery of \$1,000 each represents the maximum allowable statutory damages under the FDCPA, which could not have been bested at trial. *See id.*, §

1692k(a)(2)(A). And the change in Defendant’s business practices resulting from the lawsuit—which could not necessarily have been secured at trial since an injunction may not have been available, *see, e.g., Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961 (N.D. Ohio 2009) (“This Court agrees that declaratory and injunctive relief are not appropriate under the FDCPA.”)—serves to benefit *all* consumers who may become the subject of Defendant’s debt collection efforts in the future. Thus, the significant recoveries obtained not just for Plaintiffs and absent class members, but for consumers everywhere—particularly considering statutorily-limited damages and the uncertainties in continued litigation highlighted above—strongly support Class Counsel’s requested fees.

Further, as noted above, this Court need not be concerned with the size of the requested fee award in relation to the amounts recovered for class members. The Supreme Court has counseled that fee awards pursuant to federal fee-shifting statutes “are not conditioned upon and need not be proportionate to an award of money damages.” *Rivera*, 477 U.S. at 576. This is so because, “[i]n order to encourage able counsel to undertake FDCPA cases, as Congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases.” *Tolentino*, 46 F.3d at 653.

Finally, the lack of any objections here from class members weighs strongly in favor of the fee request. Indeed, the class notice apprised absent class members that class counsel would seek an award of attorneys’ fees and reimbursement of expenses of up to \$22,500.00. Significantly, not a single class member has objected to the settlement to date, or to any portion of it. “The absence of objections or disapproval by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.” *Ford v. Sprint Communications Co L.P.*, No. 3:12–cv–00270–slc, 2012 WL 6562615, at \*4 (W.D. Wisc. Dec. 14, 2012) (Crocker, M.J.).

### **Conclusion**

Plaintiffs respectfully submit that the agreed-upon attorneys' fees and expenses are fair and reasonable under the circumstances. As noted, Defendant does not oppose the relief requested herein.

Dated: February 27, 2018

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Counsel for Plaintiffs and the Class

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was filed using the Court's CM/ECF system, on this 27th day of February 2018, which will send notice to Defendant's counsel of record:

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/s/ James L. Davidson  
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