

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

Case No.: 17-CV-338-bbc

vs.

HEYWOOD, CARI & ANDERSON, S.C.,

Defendant.

**DECLARATION OF JAMES L. DAVIDSON IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND PLAINTIFFS’ UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS’
FEES AND REIMBURSEMENT OF EXPENSES**

I, James L. Davidson, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. My name is James L. Davidson.
2. I am over twenty-one years of age and am fully competent to make the statements contained in this Declaration.
3. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.
4. I am a partner at the law firm of Greenwald Davidson Radbil PLLC, counsel for David W. Veness and Julie K. Veness (“Plaintiffs”), and Class Counsel in the above-titled action. I make this declaration in support of Plaintiffs’ unopposed motion for final approval of the class action settlement, and unopposed motion for approval of an award of attorneys’ fees and expenses.

I have personal knowledge of the matters set forth in this declaration, and if called as a witness, could and would testify competently thereto.¹

5. The purpose of this declaration is to set forth background of this case, and the terms of the settlement. This declaration demonstrates why the settlement is fair, reasonable, and adequate and should be approved by this Court, and why the application for attorneys' fees and expenses is reasonable and should also be approved by this Court.

Class Counsel

6. Greenwald Davidson Radbil ("GDR") has been appointed class counsel in a host of class actions throughout the country, including many brought under the Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.* ("FDCPA"). *See, e.g., Johnson v. NPAS Solutions, LLC*, NO.: 9:17-cv-80393, 2017 WL 6060778 (S.D. Fla. Dec. 4, 2017); *Beck v. Thomason Law Firm, LLC*, Civil Action No. 1:16-cv-00570-WJ-KK2017 WL 3267751 (D.N.M. July 27, 2017); *Brown v. Hunt & Henriques*, No. 15-1111, ECF No. 55 (N.D. Cal. Nov. 18, 2016); *Jallo v. Resurgent Capital Servs., L.P.*, No. 14-449, 2016 WL 6610322 (E.D. Tex. Nov. 8, 2016); *Rhodes v. Nat'l Collection Sys., Inc.*, 317 F.R.D. 579 (D. Colo. 2016); *Gonzalez v. Germaine Law Office PLC*, No. 15-1427, 2016 WL 5844605 (D. Ariz. Oct. 3, 2016); *McCurdy v. Prof'l Credit Serv.*, No. 15-1498, 2016 WL 5853721 (D. Or. Oct. 3, 2016); *Markos v. Wells Fargo Bank, N.A.*, No. 15-1156, 2016 WL 4708028 (N.D. Ga. Sept. 7, 2016); *Cross v. Wells Fargo Bank, N.A.*, No. 15-1270, 2016 WL 4432723 (N.D. Ga. Aug. 18, 2016); *Lehmeyer v. Messerli & Kramer, P.A.*, No. 15-2419, ECF No. 61 (D. Minn. Aug. 10, 2016); *Johnson v. Navient Sols., Inc.*, 315 F.R.D. 501 (S.D. Ind. 2016); *Globus v. Pioneer Credit Recovery, Inc.*, No. 15-152, 2016 WL 4069285 (W.D.N.Y. July 27,

¹ The terms and conditions of the settlement are contained in the Settlement Agreement, dated November 8, 2017 (the "Settlement Agreement"). *See* Dkt. No. 16-1. All capitalized terms not defined herein have the same meanings set forth in the Settlement Agreement.

2016); *Kausch v. Berman & Rabin, P.A.*, No. 15-537, 2016 WL 3944685 (E.D. Mo. July 8, 2016); *Schell v. Frederick J. Hanna & Assocs., P.C.*, No. 15-418, 2016 WL 3654472 (S.D. Ohio July 8, 2016); *Chamberlin v. Mullooly, Jeffrey, Rooney & Flynn, LLP*, No. 15-2361, ECF No. 44 (D.N.J. June 2, 2016); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673 (N.D. Cal. 2016); *Garza v. Mitchell Rubenstein & Assocs., P.C.*, No. 15-1572, ECF No. 22 (D. Md. Apr. 26, 2016); *Baldwin v. Glasser & Glasser, P.L.C.*, No. 15-490, ECF No. 20 (E.D. Va. Mar. 24, 2016); *Whitford v. Weber & Olcese, P.L.C.*, No. 15-400, 2016 WL 122393 (W.D. Mich. Jan. 11, 2016); *Prater v. Mediacredit, Inc.*, No. 14-159, 2015 WL 8331602 (E.D. Mo. Dec. 7, 2015); *McWilliams v. Advanced Recovery Sys., Inc.*, 310 F.R.D. 337 (S.D. Miss. 2015); *Oaks v. Parker L. Moss, P.C.*, No. 15-196, 2015 WL 5737595 (N.D. Ind. Sept. 29, 2015); *Jones v. I.Q. Data Int'l, Inc.*, No. 14-130, 2015 WL 5704016 (D.N.M. Sept. 23, 2015); *Lambeth v. Advantage Fin. Servs., LLC*, No. 15-33, 2015 WL 4624008 (D. Idaho Aug. 3, 2015); *Rhodes v. Olson Assocs., P.C.*, 83 F. Supp. 3d 1096 (D. Colo. 2015); *Roundtree v. Bush Ross, P.A.*, 304 F.R.D. 644 (M.D. Fla. 2015); *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14-24502, 14-20933, 2015 WL 738329 (S.D. Fla. Feb. 23, 2015).

7. Many district courts around the country have commented on GDR's knowledge of, and experience with, class action litigation. For example, Judge Carlton W. Reeves of the Southern District of Mississippi in *McWilliams* recently wrote:

More important, frankly, is the skill with which plaintiff's counsel litigated this matter. On that point there is no disagreement. Defense counsel concedes that her opponent—a specialist in the field who has been class counsel in dozens of these matters across the country—'is to be commended for his work' for the class, 'was professional at all times' ..., and used his 'excellent negotiation skills' to achieve a settlement fund greater than that required by the law.

The undersigned concurs ... Counsel's level of experience in handling cases brought under the FDCPA, other consumer protection statutes, and class

actions generally cannot be overstated.

McWilliams v. Advanced Recovery Sys., Inc., No. 3:15-CV-70-CWR-LRA, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017).

8. Judge James D. Whittemore of the Middle District of Florida noted in certifying three FDCPA classes and appointing GDR class counsel in *Roundtree*: “Greenwald [Davidson Radbil PLLC] has been appointed as class counsel in a number of actions and thus provides great experience in representing plaintiffs in consumer class actions.” 304 F.R.D. at 661.

9. And in *Bellum v. Law Offices of Frederic I. Weinberg & Assocs., P.C.*, Judge C. Darnell Jones II of the Eastern District of Pennsylvania took care to point out that GDR was appointed class counsel “precisely because of their expertise and ability to represent the class in this matter.” No. 15-2460, 2016 WL 4766079, at *5 (E.D. Pa. Sept. 13, 2016).

10. Finally, In *Ritchie v. Van Ru Credit Corp.*, Judge Stephen M McNamee, Senior U.S. District Court Judge for the District of Arizona, stated upon granting final approval of the class action settlement:

I want to thank all of you. It’s been a pleasure. I hope that you will come back and see us at some time in the future. And if you don’t, I have a lot of cases I would like to assign you, because you’ve been immensely helpful both to your clients and to the Court. And that’s important. So I want to thank you all very much.

No. CIV-12-1714 (D. Ariz. July 21, 2014).

11. I worked on this matter along with Michael Greenwald, Aaron Radbil and Jesse Johnson. Mr. Greenwald and I both have more than thirteen years of litigation experience and in excess of ten years litigating class actions. I graduated from law school in 2003 while Mr. Greenwald graduated in 2004. Mr. Radbil, a 2006 graduate, has more than eleven years of litigation experience, during which time he focused his practice entirely on consumer protection litigation,

including class actions. Mr. Johnson graduated from law school in 2009 and has more than eight years of litigation experience, during which time he focused his practice entirely on class action litigation.

12. More information about GDR is available on the firm's website at www.gdrlawfirm.com.

Terms of the Class Settlement

13. As more specifically set forth in the Settlement Agreement, Dkt. No. 16-1, the settlement requires Defendant to create a settlement fund of \$3,000, to be distributed pro-rata to each class member who participates in the settlement. Each class member who does not exclude himself or herself from the settlement will receive a pro-rata share of the settlement fund. Thus, if every class member elects to participate in the settlement, each participating class member will receive \$61.22. To the extent any settlement checks go uncashed after the claims administrator takes all reasonable steps to forward checks to any forwarding addresses, such funds will be disbursed to the Marquette University Law School Legal Clinic, a non-profit entity selected by the parties as a *cy pres* recipient.

14. Additionally, Defendant will no longer engage in the conduct complained of in the Class Action Complaint.

15. Subject to Court approval, the costs of class notice and administration, an award of attorneys' fees and expenses, and statutory damages for Plaintiffs will also be paid by Defendant, separate and apart from the settlement fund. To that end, Defendant has agreed to pay statutory damages to each Plaintiff of \$1,000—the maximum they are entitled to under the statute.

16. In light of, among other things, the cap on statutory damages under the FDCPA, Class Counsel believe that the \$3,000 common fund is an excellent result for the Class. Indeed,

the \$3,000 common fund exceeds one percent of Defendant's net worth under a *Sanders v. Jackson*, 209 F.3d 998 (7th Cir. 2000), analysis.

Class Counsel's Reasonable Attorneys' Fees

17. GDR's requested attorneys' fees are both fair and reasonable given the work put into this case and the resulting settlement. Class Counsel's work in developing Plaintiffs' and the Class's claims, navigating the risks of contingent class action litigation, and ultimately bringing this matter to a favorable resolution for all class members is deserving of the reasonable fee and expense award herein requested.

18. GDR worked effectively—and efficiently—to litigate this case in the Class's best interests, negotiate with Defendant to secure a class-wide settlement providing excellent benefits to the class members, and then guide said settlement through the approval process.

19. In so doing, as of the date of this declaration, GDR attorneys have spent a total of 53.3 hours litigating this case to date. I—the lead attorney on the case—have spent a total of 43.7 hours. Three of the firm's other attorneys—Mr. Greenwald, Mr. Radbil, and Mr. Johnson—have spent a total of 9.6 hours. More specifically, Mr. Greenwald has spent 3.5 hours, Mr. Radbil has spent 2.3 hours, and Mr. Johnson has spent 3.8 hours.

20. The time incurred by Mr. Greenwald, Mr. Radbil and Mr. Johnson largely entailed reviewing and revising pleadings and other documents, and engaging in litigation and settlement strategy for the benefit of Plaintiffs and class members.

21. Additionally, I conservatively estimate that this case will require an additional 25-40 hours of my own time to complete, which will be spent preparing briefing to obtain final approval of the settlement; preparing for, traveling to, and attending the final approval hearing set for May 16, 2018 in Madison; finalizing the settlement and conferring with class members and

First Class—the settlement administrator— as necessary; and handling any other related matters necessary to bring this matter to a successful conclusion.

22. I, along with Mr. Greenwald and Mr. Radbil—all partners at the firm—billed on this case at a rate of \$400 per hour. Mr. Johnson billed on this case at a rate of \$350 per hour. These hourly rates were specifically approved within the past three years in similar FDCA class actions overseen by GDR. *See, e.g., McWilliams*, 2017 WL 2625118, at *3 (“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.”).

23. Multiplying the hours incurred by each GDR attorney by his applicable hourly rate—and including my additional estimated time necessary to conclude this matter—yields a total estimated lodestar of between \$31,130 and \$37,130. Of note, this estimate does not include any of the time expended by co-counsel Matt Lein.²

Reimbursement of Litigation Expenses Incurred

24. Subsumed within GDR’s fee and expense request is the reimbursement of litigation costs and expenses reasonably incurred in connection with the prosecution of this action. Such expenses are reflected in the books and records maintained by undersigned counsel, which are an accurate recording of the expenses incurred. To date, Class Counsel have incurred reimbursable expenses in the total amount of \$520.

25. These expenses include the filing fee for the complaint (\$400) and service of process of the complaint on Defendant.

² Mr. Lein has billed approximately 5.8 hours on this matter to date, and bills at a rate of \$400 per hour.

26. Further, GDR may incur additional expenses associated with travel to Madison for the final approval hearing, including airfare, hotel, airport parking in Ft. Lauderdale, Florida, transportation, and related meals during travel. Class counsel conservatively estimates that these additional expenses will total approximately between \$900 and \$1,300.

27. I respectfully submit that the unopposed requested fee and expense award of \$22,500—which represents a discount compared to Class Counsel’s total estimated lodestar—is eminently reasonable for this certified class action, particularly in light of the excellent recoveries obtained, including Defendant’s changed business practice.

Conclusion

28. For the reasons stated above and in the accompanying motions, I respectfully submit that: (i) the settlement is fair, reasonable, and adequate and should thus be approved; and (ii) Plaintiffs’ motion for approval of an award of attorneys’ fees and reimbursement of expenses should be granted in its entirety.

Executed on February 27, 2018.

By: s/ James L. Davidson
James L. Davidson