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Meyer, Dyles & Rodshalk
363 S. Lake Street
Gary, IN 46403

United States District Court

NORTHERN DISTRICT OF INDIANA

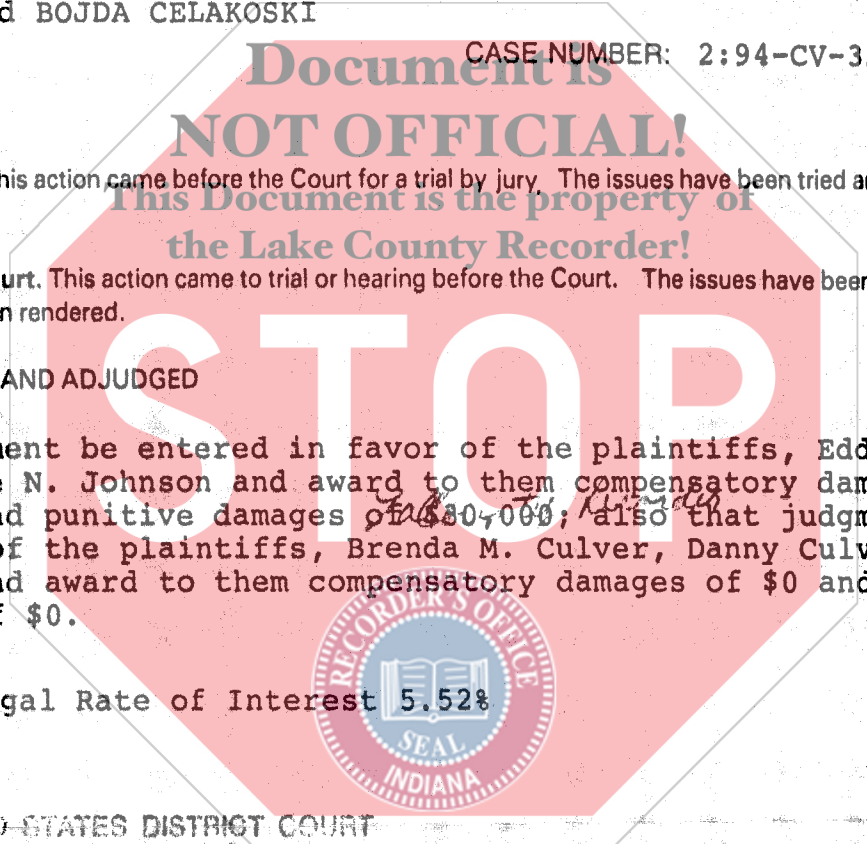
EDDIE C. JOHNSON, FARRIE N. JOHNSON,
BRENDA M. CULVER, DANNY CULVER and
HARRY KOESTER

JUDGMENT IN A CIVIL CASE

v.

NAUM CELAKOSKI and BOJDA CELAKOSKI

CASE NUMBER: 2:94-CV-338 RL



- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that judgment be entered in favor of the plaintiffs, Eddie C. Johnson and Farrie N. Johnson and award to them compensatory damages of \$50,000 and punitive damages of \$30,000; also that judgment be entered in favor of the plaintiffs, Brenda M. Culver, Danny Culver and Harry Koester and award to them compensatory damages of \$0 and punitive damages of \$0.

Current Legal Rate of Interest 5.52%



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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
RECORDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

I hereby certify that the foregoing is a true copy of the original as filed in the court and certified.

STEPHEN R. LUDWIG, CLERK

By Edward Cibr
Deputy Clerk

Date April 23, 1996

October 12, 1995
Date

Stephen R. Ludwig
Clerk

Kurt W. Koch
(By) Deputy Clerk KURT W. KOCH

CR# 13611

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

- FILED -

EDDIE C. JOHNSON, et al.,)

Plaintiffs,)

vs.)

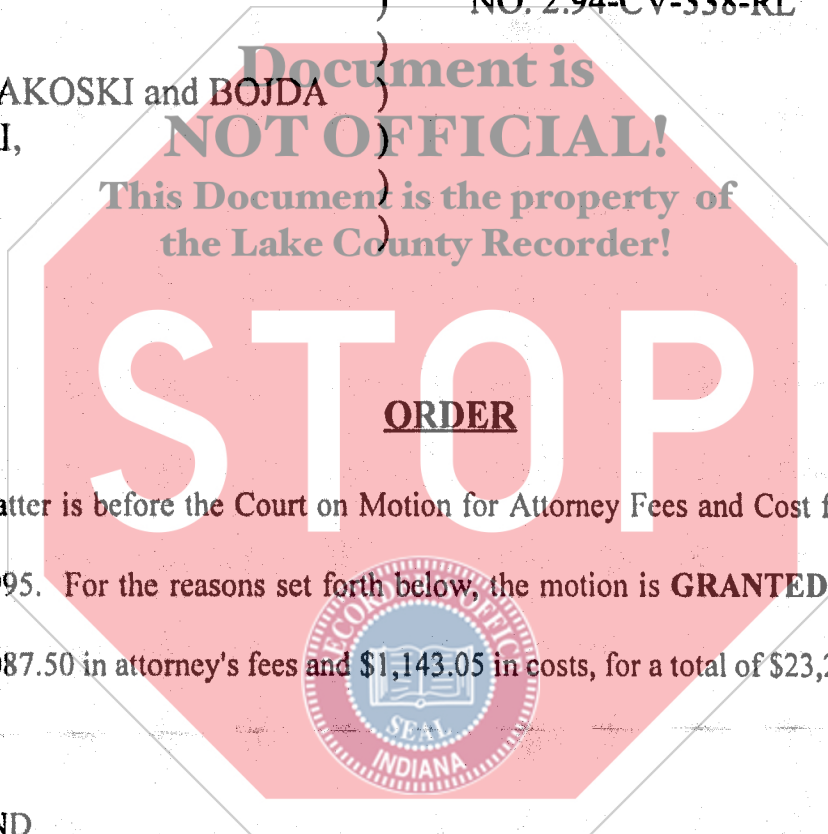
NAUM CELAKOSKI and BOJDA)
CELAKOSKI,)

Defendants.)

FEB 07 1996

AT STEPHEN R. LUDWIG, CLERK M
U. S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

NO. 2:94-CV-338-RL



This matter is before the Court on Motion for Attorney Fees and Cost filed by Plaintiffs on October 25, 1995. For the reasons set forth below, the motion is **GRANTED**. The Court awards Plaintiffs \$22,087.50 in attorney's fees and \$1,143.05 in costs, for a total of \$23,230.55.

BACKGROUND

Plaintiffs won judgment against Defendants in an action brought under Title 42 U.S.C. section 1982 which prohibits housing discrimination. The jury awarded Eddie and Farrie Johnson \$50,000 in compensatory damages and \$30,000 in punitive damages. The jury awarded \$0 damages to the other three Plaintiffs, Brenda and Danny Culver, and Harry Koester.

Following the trial, Plaintiffs filed this motion asking the Court for attorney's fees and costs. According to the records submitted by Plaintiffs' attorneys, they spent a total of 147.25 hours working

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on this case. Plaintiffs request that the Court award them \$23,230.55 in attorney's fees and \$1,143.05 in costs for a total of \$24,373.60. Several weeks after Plaintiffs submitted their motion for attorney's fees, Defendants filed a notice of appeal.

DISCUSSION

Section 1988 of Title 42 of the United States Code gives the district courts discretion to award reasonable attorney's fees and costs to prevailing parties in actions to enforce certain sections of Title 42, including section 1982. While Defendants have filed a notice of appeal, a notice of appeal from judgment does not affect the power of the Court to act on a petition for attorney's fees. *Patzer v. Bd. of Regents*, 763 F.2d 851, 859 (7th Cir. 1985). Because the determination of costs is separate from the determination of merit, a district court may award costs even while the appeal on the merits is pending. *Lorenz v. Valley Forge Ins. Co.*, 23 F.3d 1259, 1260 (7th Cir. 1994). Consequently, the Court will consider Plaintiffs' motion for attorney's fees and costs.

The motion was filed in October 1995. Defendants had 15 days to respond. N.D. Ind. L.R. 7.1. Thus far, they have not responded. Accordingly, the Court will assume that they do not object to the fees and costs requested.

Section 1988 allows the award of fees only to those parties who prevail in the action. *Hanrahan v. Hampton*, 446 U.S. 754, 756, 100 S. Ct. 1987, 1988 (1980). To be a prevailing party, a plaintiff must show a resolution of the dispute which changed the legal relationship between itself and the defendant. *Farrar v. Hobby*, 506 U.S. 103, 113 S. Ct. 566, 572-73 (1992). A plaintiff is a prevailing party if he or she succeeded on a significant issue of the litigation which achieved some

benefit that the plaintiff sought in bringing the suit. *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1278 (7th Cir. 1983).

In this case, the Johnsons clearly prevailed when the jury found against the Defendants and awarded the Johnsons \$80,000 total in damages. The other Plaintiffs in this action also prevailed on the merits, but received no award from the jury. A plaintiff who wins only nominal damages is still a prevailing party under section 1988. *Farrar v. Hobby*, 113 S. Ct. at 573; *Cartwright v. Stamper*, 7 F.3d 106, 108-09 (7th Cir. 1993). However, while plaintiffs that win only a technical victory are still considered prevailing parties, when a plaintiff receives only minimal nominal damages, she should not receive any attorney's fees. *Farrar*, 113 S. Ct. at 575; *Cartwright*, 7 F.3d at 109.

There are exceptions where the award of nominal damages may still represent a significant victory for the plaintiff that merits the award of attorney fees. *Cartwright*, 7 F.3d at 109. When the difference between the judgment recovered and the recovery sought is not significant, when plaintiff prevailed in a significant legal issue, or when the litigation had important public consequences, a plaintiff who obtains nominal damages may still merit the award of attorney's fees. *Id.* The Court does not find that any of these conditions apply to the Culvers or Koester.

In this case, the same attorneys represented both the Plaintiffs who have obtained a high degree of success and the Plaintiffs with only nominal success. The Court believes that in a case like this one, the Court should apply the same approach used when a plaintiff prevails on only some of the claims of a case. When a plaintiff prevails on some claims and is unsuccessful in others, the court may award attorney's fees for work done on unsuccessful claims only if they were related to the claims on which the plaintiff prevailed. *Mary Beth G.*, 723 F.2d at 1279. The court should not award attorney's fees for work done on unrelated unsuccessful claims. *Id.* at 1280. Using a similar

approach in this case, the Court will not award attorney's fees for work done on behalf of the Culvers and Koester unless such work was related to the claims of the Johnsons. If the work was necessary for the Johnsons' case, the Court will grant the fees.

The cause of action of the Culvers and Koester was based on the housing discrimination suffered by the Johnsons. In order to succeed in their claims, they had to prove the Johnsons' claims. Because of this, little or no work done on behalf of these Plaintiffs is unrelated to the Johnsons' claims. Without the benefit of objections by Defendants the Court finds that the attorneys did not do any separate work solely for the Culvers and Koester.

The Court can only award to the prevailing party an amount in fees and costs that is reasonable. When determining whether the amount requested in attorney's fees is reasonable, the starting point is the lodestar: the number of hours reasonably expended by the attorneys multiplied by a reasonable hourly rate. *Blanchard v. Bergeron*, 489 U.S. 87, 94-95, 109 S. Ct. 939, 945 (1989); *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995); *Estate of Borst v. O'Brien*, 979 F.2d 511, 515 (7th Cir. 1992). A prevailing party seeking attorney's fees should submit evidence of the hours spent on the case with a sufficiently detailed description so that the court can determine whether time was reasonably spent. *Fidelity & Deposit Co. v. Krebs Eng'rs*, 859 F.2d 501, 508 (7th Cir. 1988).

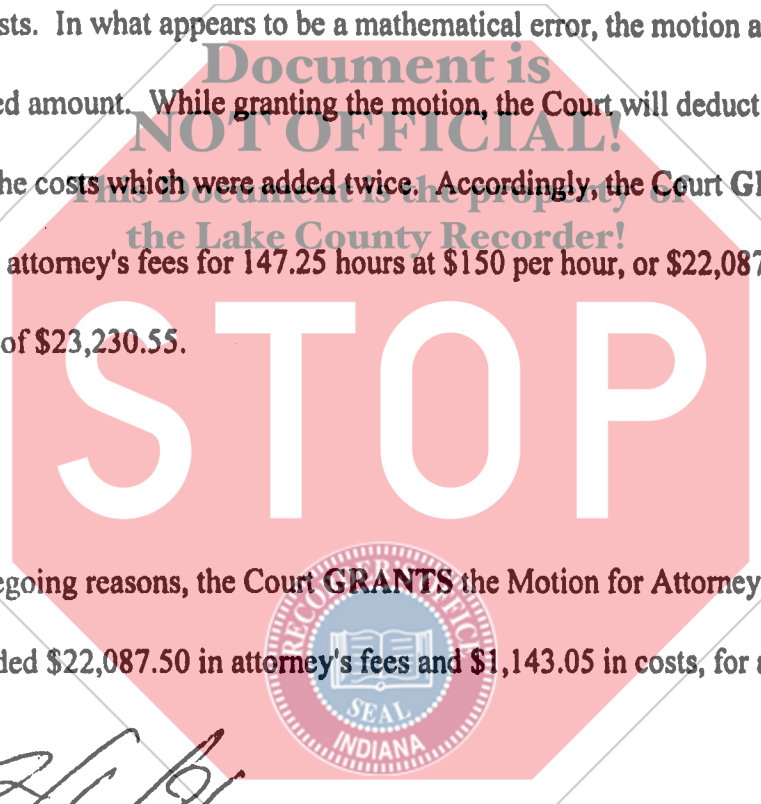
The court should then review the lodestar amount and increase it or decrease it in light of several factors. *Tolentino*, 46 F.3d at 651; *Estate of Borst*, 979 F.2d at 515. Factors to consider when evaluating the fee include:

- (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; *Estate of Borst*, 979 F.2d at 515 n.2.

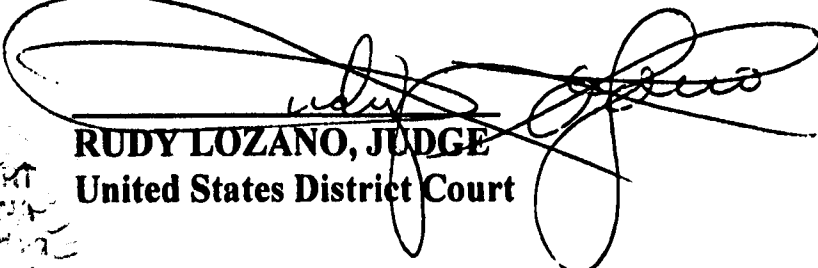
After reviewing the records submitted by Plaintiffs' attorneys and finding no objection from opposing counsel, the Court has no reason to find that the hours and rates submitted by Plaintiffs' attorneys are excessive or unnecessary. The records show work for 147.25 hours at \$150 per hour, and \$1143.05 in costs. In what appears to be a mathematical error, the motion adds the costs twice to the total requested amount. While granting the motion, the Court will deduct from the total amount requested the costs which were added twice. Accordingly, the Court **GRANTS** the motion, awarding Plaintiffs attorney's fees for 147.25 hours at \$150 per hour, or \$22,087.50, and \$1,143.05 in costs, for a total of \$23,230.55.



CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Motion for Attorney Fees and Cost. Plaintiffs are awarded \$22,087.50 in attorney's fees and \$1,143.05 in costs, for a total of \$23,230.55.

ENTER: 7/6/96


RUDY LOZANO, JUDGE
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
I hereby certify that the foregoing is a true copy of the original on file in the court and office of
STEPHEN R. LUDWIG, CLERK
By Edward Ciba
DEPUTY CLERK
Date April 23, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

FILED

OCT 12 1995

EDDIE C. JOHNSON, FARRIE N. JOHNSON,)
BRENDA M. CULVER, DANNY CULVER, and)
HARRY KOESTER,)

Plaintiffs,)

vs.)

NAUM CELAKOSKI and BOJDA CELAKOSKI,)

Defendants.)

AT
STEPHEN R. LUDWIG, CLERK ^M
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

NO. 2:94-CV-338-RL

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VERDICT

WE, THE JURY, find in favor of the Plaintiffs, Brenda M. Culver,
Danny Culver, and Harry Koester, and award to them the following
damages:

COMPENSATORY	\$	0
PUNITIVE	\$	0



DATE: 10-12-95

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

I hereby certify that the foregoing is a
true copy of the original on file in this
court and office.

STEPHEN R. LUDWIG, CLERK

By Edward Ciba
DEPUTY CLERK

FILED April 23, 1994

Caryl Dressel
JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

EDDIE C. JOHNSON, FARRIE N. JOHNSON,)
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HARRY KOESTER,)

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vs.)

NO. 2:94-CV-338-RL

NAUM CELAKOSKI and BOJDA CELAKOSKI,)

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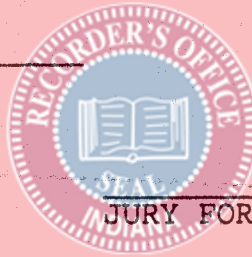
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VERDICT

WE, THE JURY, find in favor of the Defendants and against the
Plaintiffs, Brenda M. Culver, Danny Culver, and Harry Koester.

DATE: _____



JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

FILED

OCT 12 1995

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vs.)

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AT
STEPHEN R. LUDWIG, CLERK
U. S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

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VERDICT

WE, THE JURY, find in favor of the Plaintiffs, Eddie C. Johnson
and Farrie N. Johnson, and award to them the following damages:

COMPENSATORY

\$ 50,000

PUNITIVE

\$ 30,000



DATE: 10-12-95

Caryl Dressel
JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

EDDIE C. JOHNSON, FARRIE N. JOHNSON,)
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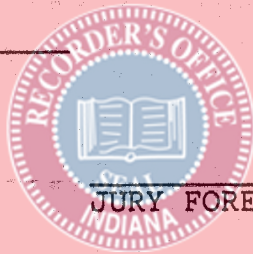
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VERDICT

WE, THE JURY, find in favor of the Defendants and against the
Plaintiffs, Eddie C. Johnson and Farrie N. Johnson.

DATE: _____



JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
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AT
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U. S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

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VERDICT

WE, THE JURY, find in favor of the Plaintiffs, Eddie C. Johnson
and Farrie N. Johnson, and award to them the following damages:

COMPENSATORY

\$ 50,000

PUNITIVE

\$ 30,000



DATE: 10-12-95

Caryl Dressel
JURY FOREPERSON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
I hereby certify that the foregoing is a
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STEPHEN R. LUDWIG, CLERK

By Edward Cebra
DEPUTY CLERK

April 23, 1996

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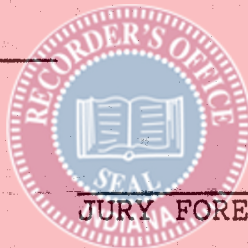
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VERDICT

WE, THE JURY, find in favor of the Defendants and against the
Plaintiffs, Eddie C. Johnson and Farrie N. Johnson.

DATE: _____



JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

FILED

OCT 12 1995

EDDIE C. JOHNSON, FARRIE N. JOHNSON,)
BRENDA M. CULVER, DANNY CULVER, and)
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NAUM CELAKOSKI and BOJDA CELAKOSKI,)

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AT
STEPHEN R. LUDWIG, CLERK^M
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

NO. 2:94-CV-338-RL

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VERDICT

WE, THE JURY, find in favor of the Plaintiffs, Brenda M. Culver,
Danny Culver, and Harry Koester, and award to them the following
damages:

COMPENSATORY \$ 0
PUNITIVE \$ 0



DATE: 10-12-95

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
EDWARD C. COVATTA, CLERK

By Edward Covatta
DEPUTY CLERK

Date April 23, 1996

Caryl Dressel
JURY FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

EDDIE C. JOHNSON, FARRIE N. JOHNSON,)
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JURY FOREPERSON