Nos. 11-12413, 11-12931 and 11-12937 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ANTHONY W. ZINNI,
Plaintiff-Appellant,

v.

ER SOLUTIONS, INC.,

Defendant-Appellee.

BLANCHE M. DELLAPIETRO,
Plaintiff-Appellant,

v.

ARS NATIONAL SERVICES, INC.,

Defendant-Appellee.

NAOMI M. DESTY,
Plaintiff-Appellant,

v.

COLLECTION INFORMATION BUREAU, INC.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida

JOINT REPLY BRIEF FOR APPELLANTS ANTHONY W. ZINNI, BLANCHE M. DELLAPIETRO, AND NAOMI M. DESTY

Donald A. Yarbrough
2000 E Oakland Park Boulevard
Suite 105 PO Box 11842
Fort Lauderdale, FL 33339
(954) 537-2000

Gregory A. Beck
Scott L. Nelson
PUBLIC CITIZEN LITIGATION GROUP
1600 20th St. NW
Washington, DC 20009
(202) 588-1000

Counsel for Plaintiffs-Appellants

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes and Rules

Other Authorities

The defendants argue that these cases are moot because their informal settlement offers of $1,001 in statutory damages, plus an unspecified amount of attorneys' fees, gave the plaintiffs all the relief to which they are entitled on their Fair Debt Collections Practices Act (FDCPA) claims. In reality, the defendants' position would deprive the plaintiffs of *any* relief, and any means of obtaining relief, on their claims. The district court's holding that settlement offers—which had never been accepted, much less reduced to a formal agreement—mooted the cases left the plaintiffs with neither a judgment nor a settlement agreement on which to obtain relief for their claims, and left the court without authority to award attorneys' fees or even determine the amount of a fee award. The district court's decision is thus self-defeating. By holding that the defendants' offer provided the plaintiffs with full relief, the court eliminated any possibility that the plaintiffs could recover the relief on which the court's determination was based.

Article III does not require that paradoxical result. A settlement agreement that resolves all of a plaintiff's claims moots a case because it removes the plaintiff's "personal stake" in the dispute. *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 403 (1980). As the Supreme Court has explained, "the purpose of the 'personal stake' requirement … is to assure that the case is in a form capable of judicial resolution," with "sharply presented issues in a concrete factual setting and self-interested parties vigorously advocating opposing positions." *Id.* The

defendants' offers here did not remove the plaintiffs' personal stake in the litigation for two primary reasons. First, because the plaintiffs never accepted the defendants' offers, there was no settlement that could have affected the plaintiffs' stake in the cases. Second, the defendants' offers—even if they had been accepted—would not have provided the plaintiffs with the full relief they are seeking because the offers did not resolve the issue of attorneys' fees.

I. The Defendants' Informal, Unaccepted Settlement Offers Do Not Moot the Plaintiffs' Claims.

A. The Offers Provided the Plaintiffs with Neither a Binding Agreement Nor an Enforceable Judgment.

1. The plaintiffs do not dispute the general principle that a settlement or the *actual* complete satisfaction of a plaintiff's claims moots a plaintiff's action. *See Lake Coal Co. v. Roberts & Schaefer Co.*, 474 U.S. 120 (1985). But a settlement is a kind of contract, and thus has no legal effect unless there has been "a meeting of the minds." *Johnson v. Univ. Coll. of Univ. of Ala. in Birmingham*, 706 F.2d 1205, 1209 (11th Cir. 1983). Because the plaintiffs never *agreed* to the defendants' offers, the cases cannot be moot because of settlement. *See Stewart v. Prof'l Computer Centers, Inc.*, 148 F.3d 937, 939 (8th Cir. 1998) ("Principles of contract law are applied to test whether there has been a valid offer and acceptance under Rule 68."). And because the defendants undisputedly did not ever *provide* any of

the relief to which the plaintiffs were entitled, the plaintiffs' claims are not moot on that basis either.[1]

Dismissal of the plaintiffs' claims in the absence of a valid settlement agreement leaves the plaintiffs with *no* means of recovery. The plaintiffs thus retain the same stake in the litigation after rejecting an offer of settlement as they had at the initiation of the case: the difference between winning their cases and losing is the difference between full recovery and no recovery. *See Mackenzie v. Kindred Hospitals E.*, L.L.C., 276 F. Supp. 2d 1211, 1219 (M.D. Fla. 2003) ("I fail to see how the plaintiff's claim could become moot if he does not receive any relief."); *see also Manfred v. Focus Receivables Mgm't, LLC*, No . 10-60597, slip op. (S.D. Fla. Apr. 6, 2011) (holding that a plaintiff's FDCPA claims "cannot rationally become moot where he does not receive any relief").

2. Although they concede that there was no Rule 68 offer of judgment in this case, the defendants rely on a handful of cases in which courts—without clear explanation—effectively compelled plaintiffs to accept Rule 68 offers over the plaintiffs' objections. *See, e.g., Greif v. Wilson, Elser, Moskowitz, Edelman &*

[1] Defendant ER Solutions states that it sent a check for $1,001 to the plaintiffs' counsel to settle one of the cases, which was never deposited. *See* Answer Br. of ER Solutions & Collection Information Bureau, Inc. (ER Solutions & CIB Br.) at 5 n.1. That tender—which is not in the record and was not a basis for the district court's decision—was not in the *full amount* of the offer because the offer was for $1,001 *plus* reasonable attorneys' fees, and the defendant did not tender any attorneys' fees.

Dicker LLP, 258 F. Supp. 2d 157 (E.D.N.Y. 2003). None of these decisions acknowledges, much less reconciles itself with, Rule 68's requirement that an unaccepted offer is "deemed rejected." Fed. R. Civ. P. 68(b); *see Harter v. Beach Oil Co., Inc.*, 3:10-0968, 2011 WL 1458726 (M.D. Tenn. Apr. 15, 2011) (holding that, because "[a]n unaccepted offer is considered withdrawn, … the Court continue[d] to have Article III subject matter jurisdiction").

Holding that an unaccepted offer does not moot a plaintiffs' claims would not, as the defendants suggest, allow plaintiffs to hold courts "hostage" by rejecting reasonable settlement offers. ER Solutions & CIB Br. at 10. Rule 68 itself solves that problem by providing that, if a plaintiff recovers less than a defendants' offer of judgment, all costs incurred from the date of rejection are shifted to the plaintiff. *See* Fed. R. Civ. P. 68(d). As the Supreme Court has recognized, the rule serves as a disincentive for a plaintiff's attorney to continue litigating after the defendant has made a reasonable settlement offer. *Marek v. Chesny*, 473 U.S. 1, 10 (1985). The district court's holding that an offer of judgment requires immediate dismissal of the case would undercut Rule 68's balanced scheme.

Moreover, even if plaintiffs *could* be compelled to accept a Rule 68 offer of judgment, the plain language of the rule would require the court not to dismiss for lack of jurisdiction, but to "enter judgment" based on the offer. *See Mackenzie*, 276 F. Supp. 2d at 219 ("There is certainly nothing in Rule 68 that supports a dismissal

of the case without an award of the proffered relief. Further, if this situation is analogous to a default judgment . . . then the proper step would be to enter judgment in accordance with the default."). Indeed, that was the result in many of the cases on which the defendants rely. *See, e.g.*, *Greif v. Wilson, Elser, Moskowitz, Edelman & Dicker LLP*, 258 F. Supp. 2d at 161 (ordering "that the Court shall retain jurisdiction to determine the amount of reasonable attorney's fees and costs of the suit and then the Court of the Clerk [sic] will be directed to enter judgment against the defendant in accordance with its Rule 68 offer of judgment").[2]

The defendants are, of course, correct that Rule 68 cannot "trump" Article III's case or controversy requirement. The question, however, is not whether Rule 68 resurrects an otherwise moot case, but whether the offer renders the case moot in the first place. In the absence of either a judgment or a settlement agreement (or some other satisfaction of their claims), the plaintiffs have not received any relief and thus retain an active stake in the case. *See Simmons v. United Mortgage & Loan Inv., LLC*, 634 F.3d 754, 764-65 (4th Cir. 2011) (explaining that, although Rule 68 does not resolve the issue of constitutional standing, an insufficient offer cannot render an action moot)*; Muldrow v. Credit Bureau Collection Servs., Inc.*,

[2] *See also, e.g., Yates v. Applied Performance Technologies*, 205 F.R.D. 497, 502-03 (S. D. Ohio 2002); *Ambalu v. Rosenblatt*, 194 F.R.D. 451, 453 (E.D.N.Y. 2000).

No. 09-61792, 2010 WL 5393373, at *3 (S.D. Fla. Dec. 22, 2010) (holding that dismissal without a judgment would allow the defendant to "clearly derive an unfair advantage").

In support of dismissal, the defendants point to the Seventh Circuit's decision in *Rand v. Monsanto Corp.* for the proposition that a plaintiff who fails to accept a Rule 68 offer "loses outright." 926 F.2d 596, 598 (7th Cir. 1991). This Court, however, has never adopted the Seventh Circuit's approach, and both the Second and Sixth Circuits have rejected it. *See O'Brien v. Ed Donnelly Enters., Inc.*, 575 F.3d 567 (6th Cir. 2009); *McCauley v. Trans Union L.L.C.*, 402 F.3d 340 (2nd Cir. 2005). As the Second Circuit explained, dismissing the case in response to a settlement offer would mean that the "defendant [is] relieved of the obligation to pay the money it admittedly owed," thus leaving the plaintiff with "nothing." *McCauley*, 402 F.3d at 341-342*; see O'Brien*, 575 F.3d at 575 ("disagree[ing] … with the Seventh Circuit's view that a plaintiff loses outright when he refuses an offer of judgment that would satisfy his entire demand."). If an unaccepted offer could properly be treated as binding under Rule 68, "the better approach [would be] to enter judgment in favor of the plaintiffs in accordance with the defendants' Rule 68 offer of judgment." *O'Brien*, 575 F.3d at 575.

3. This Court, in any event, need not resolve that disagreement because there is no dispute that the defendants did not make an offer of judgment in this case.

The only court of appeals decision to directly address the effect of an *informal* settlement offer like the defendants' offers here held that "the failure of the Defendants to make their attempted offer for full relief in the form of an offer of judgment prevented the mooting of the Plaintiffs' … claims." *Simmons*, 634 F.3d at 766. The Fourth Circuit in *Simmons* held that an "offer[] for the parties to enter into a settlement agreement" is not an offer of "full relief in th[e] case" because, if the plaintiffs had prevailed on their claims, "the district court would have entered a *judgment* against the Defendants." *Id.* at 764-65 (emphasis added); *see also Balthazor v. ARS Nat. Services, Inc.*, 2011 WL 3627701, at *2 (S.D. Fla. Aug. 18, 2011) ("The Court does not find that the action is moot as Plaintiff has not been afforded the relief of an enforceable judgment.").[3]

As *Simmons* explained, "[f]rom the view of the Plaintiffs, a judgment in their favor is far preferable to a contractual promise by the Defendants in a settlement agreement to pay the same amount." 634 F.3d at 765. Although "district courts have inherent power to compel defendants to satisfy judgments entered against them," they "lack the power to enforce the terms of a settlement agreement

[3] In contrast to the decisions below, other judges in the Southern District of Florida have concluded for this reason that offers cannot moot a plaintiff's claims when they do not include an offer of judgment. *See Manfred v. Pentagroup Fin., LLC*, No. 10-61378, slip op. (S.D. Fla. July 22, 2011); *Nicholas v. Bronson, Cawley & Bergmann, LLP*, No. 11-60012, slip op. (S.D. Fla. Aug. 3, 2011); *Arlozynski v. ARS National Servs., Inc.*, No. 11-196, slip op. (M.D. Fla. Apr. 19, 2011).

absent jurisdiction over a breach of contract action for failure to comply with the settlement agreement." *Id*. Thus, "should a settlement not embodied in a judgment come unraveled, the court may be without jurisdiction to proceed in the case, which often becomes a breach of contract action for failure to comply with the settlement agreement." *Id.* (internal quotation omitted); *see also Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994) (holding that federal courts lack jurisdiction to enforce private settlement agreements); Charles A. Wright, Arthur R. Miller & Edward H. Cooper, 12 *Fed. Prac. & Proc. Civ. 2d* § 3002 ("[F]rom the plaintiff's perspective the willingness of the defendant to allow judgment to be entered has substantial importance since judgments are enforceable under the power of the court."). As even the Seventh Circuit has recognized, a defendant's *promise* to pay in the future is not the same as obtaining full relief. *Selcke v. New England Ins. Co.*, 2 F.3d 790, 792 (7th Cir. 1993) (holding that, even where a promised payment is "highly likely," it is "not certain until made, and a case does not become moot merely because it is highly likely to become moot shortly").

The possibility that defendants in FDCPA cases will not honor their agreements is not just a theoretical concern. As the plaintiffs noted in their opening brief (at 6), plaintiffs' counsel has repeatedly been forced to bring collections actions against debt collectors who obtained dismissals in FDCPA cases based on settlements equivalent to the ones that the defendants proposed here. *See*

Dellapietro Doc. 15 at 4-5; Desty Doc. 16 at 4-5; Zinni Doc. 14 at 3-4. Under the district court's approach, the defendants' offers (even if they were accepted, or deemed somehow to establish a contract without acceptance) thus would leave the plaintiffs worse off than if the FDCPA action had never been filed—with no FDCPA claim and nothing but a state-law claim for breach of contract against the defendants. Such a claim hardly constitutes full satisfaction of the plaintiffs' FDCPA claims.

The defendants respond to this point by arguing that the right to a "judgment" does not appear in the FDCPA. A district court's authority to issue judgments, however, is not provided by statute; it is inherent in the "judicial Power" provided by Article III. *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995) ("[A] 'judicial Power' is one to render dispositive judgments."); 18 Wright, Miller & Cooper, § 3002, at 649 ("[T]he notion of judicial power itself embraces the authority to enter judgments … ."). A statute that creates a right of action necessarily carries with it an entitlement to receive a judgment on a meritorious claim, because inherent in the authority of the district courts to decide cases is the power to "enter judgments that are conclusive between the parties." *United States v. County of Cook*, 167 F.3d 381, 386 (7th Cir. 1999). Exercise of that power is not optional—in cases where a district court has authority to decide a case, it has a "virtually unflagging obligation" to do so. *Deakins v. Monaghan*, 484

U.S. 193, 203 (1988). Indeed, a district court would lack authority to render a final decision in favor of plaintiffs *without* granting a judgment, because such a decision would be, by definition, an advisory opinion. *See Plaut*, 514 U.S. at 218-19.

B. The Offers Did Not Resolve the Plaintiffs' Claims for Attorneys' Fees and Costs.

1. The defendants' offers in these cases—even if they had been accepted—would not have fully resolved the plaintiffs' claims because they left the amount of attorneys' fees and costs unresolved. Although the defendants offered "reasonable" attorneys' fees, they did not specify the amount of attorneys' fees that they considered reasonable. On the contrary, the offers contemplated that the reasonableness of fees might have to be determined through further litigation in the district court. Because the offers left a key issue to be resolved by the court, they did not moot the case. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (internal quotation marks omitted) (explaining that a case becomes moot when it is "impossible for the court to grant any effectual relief whatever to the prevailing party").[4]

The issue of attorneys' fees "is material to an offeree's ability to evaluate an offer." *Horowitch v. Diamond Aircraft Indus., Inc.*, 645 F.3d 1254, 1258 (11th Cir.

[4] Of course, a Rule 68 offer of judgment need not specify the amount of fees and costs, but in the Rule 68 setting, the court will retain jurisdiction to determine those amounts if the parties do not agree. *See Marek v. Chesny*, 473 U.S. 1.

2011); *see Stewart*, 148 F.3d at 939-40 (holding that there was no meeting of the minds in the absence of an agreement on fees). In cases where the plaintiff has paid a fee for a lawyer's time, the maximum of $1,000 in statutory damages provided by the FDCPA would likely fail to cover the plaintiff's out-of-pocket expenses. Even where a lawyer charges no fee, as is common in FDCPA cases, costs (including the $350 filing fee) would consume a substantial portion of the plaintiff's recovery.

Not only did the offers fail to determine the amount of fees and costs, but the district court's dismissal for lack of subject matter jurisdiction left no proceedings pending in which the court could have made those determinations. Like other statutory fee-shifting provisions, the FDCPA provides for attorneys' fees only to prevailing plaintiffs. *See* 15 U.S.C. § 1692k(a) (providing for fees "in the case of any successful action"); *Dechert v. Cadle Co.*, 441 F.3d 474, 476 (7th Cir. 2006) (holding that a "successful action" under the FDCPA is "one in which the plaintiff was a prevailing party"). A plaintiff is a prevailing party for purposes of federal fee-shifting statutes only if the plaintiff obtains an "enforceable judgment[] on the merits" or a "court-ordered consent decree[]." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001). If, after dismissal, the defendants took the position that a very low fee was "reasonable," or if they refused to pay *any* fee, the district court would have lacked jurisdiction to

award fees or otherwise resolve the dispute. Thus, the district court's dismissal of the case as moot effectively nullified the offer to pay fees determined by the court.

The defendants argue that the plaintiffs brought this problem on themselves by failing to accept the agreements. But the plaintiffs would have been no better off if they had accepted the offers, because the district court would still have been without jurisdiction to award fees. A private settlement, such as the one the defendants proposed here, does not "create the material alteration of the legal relationship of the parties necessary to permit an award of attorney's fees." *Buckhannon*, 532 U.S. at 604. In contrast to judgments and consent decrees, private settlements "do not entail … judicial approval and oversight," and, therefore, "federal jurisdiction to enforce a private contractual settlement will often be lacking." *Id.* at 604 n.7; *see Kokkonen*, 511 U.S. 375.[5]

2. The plaintiffs did not—as defendants ER Solutions and ARS National Services contend—waive their argument regarding fees in the district court.[6] In opposing ARS National Services' motion, Dellapietro argued that the offer was

[5] Although acknowledging that the plaintiffs "may be technically correct" on this point, defendant ARS National Services argues that the problem "could have been easily remedied by requesting that the court retain jurisdiction to enforce the terms of the settlement." ARS Br. at 16. But the point of the Supreme Court's decision in *Kokkonon* was that a district court *cannot* retain jurisdiction to enforce a private settlement unless it is embodied in a judgment or consent decree. 511 U.S. at 381. The defendants here did not offer a judgment or consent decree.

[6] Defendant Collection Information Bureau does not argue that Desty waived the fee issue. *See* ER Solutions & CIB Br. at 19.

"conditional" because "if the parties cannot agree upon attorney's fees, … the issue will be submitted to the Court." Dellapietro Doc. 15 at 4, 7, 8. Dellapietro also argued that the offer "does not provide the complete relief to which Plaintiff is entitled" and that "[a] settlement offer that does not include a time for payment or an attorney's fees clause or any consequences at all for non-payment does not resolve the lawsuit with finality." *Id.* at 1, 5. Similarly, Zinni argued that the offer did "not provide the complete relief to which … [the plaintiffs are] entitled" and contained "no enforceable settlement terms." Zinni Doc. 14 at 1, 4. The issue is therefore preserved.[7]

3. The defendants' argument that attorneys' fees are "collateral" to the merits misses the point. It is true that, when a defendant moots a case by unilateral action, the plaintiff's desire to continue prosecuting the case to create an

[7] Even if the plaintiffs had not raised the issue of attorneys' fees in the district court, they would not be prohibited from raising it here. Although issues not raised in the district court cannot be made for the first time on appeal, "parties are not limited to the precise arguments they made below." *Yee v. Escondido*, 503 U.S. 519, 534 (1993). "Once a … claim is properly presented, a party can make any argument in support of that claim." *Id.*; *see also Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 78 n.2 (1988). The plaintiffs unquestionably contended in the district court that the informal settlement offer did not moot the case, and an additional reason in support of that contention would be, at most, "a new argument to support what has been [a] consistent claim." *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 893 (2010) (internal quotation marks and alterations omitted); *see also Pugliese v. Pukka Dev., Inc.*, 550 F.3d 1299, 1304 (11th Cir. 2008) ("Although new claims or issues may not be raised, new arguments relating to preserved claims may be reviewed on appeal.").

entitlement to attorneys' fees is not sufficient to maintain a live controversy. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 480 (1990). But the defendants here are arguing that the plaintiffs' claims are mooted by an offer of *settlement*. Nothing obligates the plaintiffs to moot their own cases by accepting an indefinite and unenforceable offer of fees.

Moreover, the rationale of the decisions on which the defendants rely cuts against their position. By calling the issue of fees "collateral," those cases hold that district courts *retain* jurisdiction to decide the issue after the court has entered judgment, and even after jurisdiction over the merits has been transferred to a court of appeals. *See W. Group Nurseries, Inc. v. Ergas*, 167 F.3d 1354, 1358 (11th Cir. 1999). None holds that resolution of the merits *deprives* the district court of jurisdiction over the fee issues by terminating any cognizable case or controversy. If the defendants were correct that resolution of the merits mooted the issue of fees, district courts would routinely be without jurisdiction to decide fee motions, which the Federal Rules of Civil Procedure allow to be filed up to fourteen days after final judgment. *See* Fed. R. Civ. P. 54(d). In addition, courts of appeals would lack jurisdiction to review district courts' fee awards in cases where the merits are no longer at issue. *But see, e.g., Danow v. Law Office of David E. Borack, P.A.*, 367 F. App'x 22, 23 (11th Cir. 2010) (deciding appeal limited to the issues of attorneys' fees and costs).

Despite the "collateral" nature of the fee issue, the Supreme Court held in *Deposit Guaranty National Bank v. Roper* that the named plaintiffs' interest in shifting "fees and expenses that have been incurred in [the] litigation" is a sufficient "personal stake" to support federal jurisdiction. 445 U.S. 326, 349 (1980). The defendants attempt to distinguish *Roper* on the ground that the case involved a class action, and thus "never considered … whether a single plaintiff, who has been offered full potential recovery to which he/she is entitled, can appeal a dismissal on the basis that the fee claim was not resolved." ER Solutions & CIB Br. at 19. In concluding that the individual plaintiffs' claims were not moot, however, the Supreme Court in *Roper* disclaimed any reliance on the class's interests. 445 U.S. at 331-32. The question before the Court was thus whether the *individual* plaintiffs had standing to appeal the dismissal of a class action based on the defendants' tender of full relief. Resolving that issue "require[d] consideration *only of the private interest* of the named plaintiffs." *Id.* (emphasis added). The Court concluded that "[n]either the rejected tender nor the dismissal of the action over plaintiffs' objections mooted the plaintiffs' claim on the merits so long as they retained an economic interest in class certification." *Id.* at 332-33.

Here the essence of the defendants' position is that merely by sending an email with the terms of their offer, they deprived the federal court of jurisdiction, including jurisdiction to determine the full scope of relief that the offer left

uncertain. That is, by offering the plaintiffs $1,001 plus reasonable attorneys' fees, they effectively *denied* plaintiffs the ability to obtain the fees that were purportedly offered. That result cannot possibly be correct.

II. The District Court's Dismissal of the Plaintiffs' Claims With Prejudice Is Not a Waivable Error.

In response to the plaintiffs' argument that the district court erred in dismissing with prejudice, the defendants argue that the issue is waived because it was not raised in the district court. But if the district court were correct that the defendants' offers rendered the case moot, the district court would have had no jurisdiction to enter a judgment with prejudice. *See Goldin v. Bartholow*, 166 F.3d 710, 718 (5th Cir. 1999). That issue is not waivable because a "district court has no power to decide moot causes" and a court of appeals "cannot leave undisturbed a decision that lacked jurisdiction." *Id.*; *see also Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1341 (11th Cir. 2005) (holding that a district court without jurisdiction "lacked the power" to enter a dismissal with prejudice).

CONCLUSION

The district court's decision in each of the consolidated cases should be reversed and remanded.

Respectfully submitted,

/s/Gregory A. Beck

Gregory A. Beck
Scott L. Nelson
PUBLIC CITIZEN LITIGATION GROUP
1600 20th St., NW
Washington, DC 20009
(202) 588-1000

December 27, 2011

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief contains 4,244 words.

/s/Gregory A. Beck
Gregory A. Beck

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2011, I caused a copy of the foregoing to be delivered to a third-party commercial carrier for delivery within two business days to the Office of the Clerk and to the following counsel:

Barbara Fernandez
Hinshaw & Culbertson LLP
9155 S Dadeland Boulevard
Suite 1600
Miami, FL 33156-274

Counsel for defendants-appellants in *Zinni v. ER Solutions, Inc.*, No. 11-12413 and *Desty v Collection Information Bureau, Inc.*, No. 11-12937

Dale Thomas Golden
Golden & Scaz, PLLC
201 North Armenia Avenue
Tampa, FL 33609

Counsel for defendants-appellants in *Dellapietro v. ARS National Services, Inc.*, No. 11-1293

/s/Gregory A. Beck
Gregory A. Beck