

# Eleventh Circuit Says No to Mooting Class Actions with Individual Offers of Judgment

March 25, 2015

Serving a Rule 68 offer of judgment for maximum individual statutory damages before the filing of a class certification motion was once a common strategy used to moot putative class actions alleging claims for violations of the Telephone Consumer Protection Act (TCPA), and Fair Debt Collection Practices Act (FDCPA) which had been approved by several Florida district courts. For example, in *Keim v. MidAtlantic, LLC*, and *Stein v. Buccaneers, Ltd. Partnership*, putative class actions alleging TCPA violations in the form of unsolicited commercial text messages and faxed advertisements respectively, Florida district courts in the Southern and Middle Districts granted the defendants' motions to dismiss the plaintiffs' claims as moot based on offers of maximum statutory damages to the representative plaintiffs. The practice also appeared to be permitted in the Eleventh Circuit Court of Appeals, based on its 2012 decision in *Zinni v. ER Solutions*. In *Zinni*, an FDCPA case, the Eleventh Circuit reversed a dismissal based on mootness after maximum relief was offered based on the fact that the defendant failed to serve a formal Rule 68 offer of judgment. This had been interpreted by lower courts as indicating that claims could be mooted by service of a formal offer of judgment. **However, in December, the Eleventh Circuit reversed both the *Stein* and *Keim* decisions, joining the Third, Fifth, Ninth, and Tenth Circuits to hold that a Rule 68 offer of judgment may not be used to moot a potential class action in the Eleventh Circuit.** Specifically, the court held that a plaintiff's individual claim is not subject to dismissal based on mootness as a result of service of a Rule 68 offer of judgment that is not accepted, and, that an offer that does moot a named plaintiff's individual claim does not moot a class action, even if the offer comes before the plaintiff has moved to certify a class. The reversal of *Stein* and *Keim* has far-reaching strategy implications for class actions based on violations of the TCPA, FDCPA, and other consumer statutes with maximum statutory damages, as it prevents forcibly "picking off" an individual plaintiff by seeking dismissal based on mootness after service of an offer of judgment for maximum statutory damages. While it will still be possible to settle with an individual plaintiff before a motion for class cert is filed, the decision will likely result in increased defense and settlement costs.

# Authored By

---



Aaron S. Weiss

## Related Practices

[Consumer Finance](#)

[Telephone Consumer Protection Act](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.