No. 13-16816

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD CHEN and FLORENCIO PACLEB,
on behalf of themselves and all others similarly situated,

Plaintiffs - Appellees,

v.

ALLSTATE INSURANCE COMPANY,

Defendant - Appellant.

On Appeal from the United States District Court
for the Northern District of California
Honorable Phyllis J. Hamilton, District Judge

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT - APPELLANT AND IN SUPPORT OF PARTIAL REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Pacific Legal Foundation, a nonprofit corporation organized under the laws of California, hereby states that it has no parent companies, subsidiaries, or affiliates that have issued shares to the public.

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INTEREST OF AMICUS CURIAE

Pursuant to Ninth Circuit Rule 29(a), Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of Appellant. Though Defendant-Appellant Allstate consented to the filing of this brief, Plaintiff-Respondent Chen withheld consent, necessitating the attached motion.

PLF was founded more than 35 years ago and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF engages in research and litigation over a broad spectrum of public interest issues at all levels of state and federal courts, representing the views of thousands of supporters nationwide who believe in limited government, individual rights, and free enterprise. PLF's Free Enterprise Project seeks, among other things, to uphold the constitutional limitations on government action, including limits on the judiciary mandated by Article III standing requirements. PLF has litigated numerous cases involving Article III standing, as well as its application to class action litigation. *See, e.g.*, *First Am. Fin. Corp. v. Edwards*, 132 S. Ct. 2536 (2012); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011); *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009); *Massachusetts v. EPA*, 549 U.S. 497 (2007); *Bennett v. Spear*, 520 U.S. 154 (1997); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *In re Tobacco II Cases*, 46 Cal. 4th 298 (2009).

PLF believes its public policy experience will assist this Court in considering the merits of this case.

SUMMARY OF THE ARGUMENT

Federal courts cannot hear moot cases. *Mamigonian v. Biggs*, 710 F.3d 936, 942 (9th Cir. 2013). Article III of the Constitution demands that a plaintiff retain a personal stake from the beginning to the litigation's end. *See Burke v. Barnes*, 479 U.S. 361, 363 (1987). When Allstate unconditionally offered to satisfy Pacleb's claims, he lost that stake. There was no longer a "case or controversy" for the court to adjudicate, because Allstate had flatly given in. Pacleb also lost whatever Article III stake he had in certifying a class. Where a plaintiff's own claims become moot, his abstract interest in filing a class certification motion is too theoretical to satisfy Article III.

The district court held that Pacleb could file a motion for class certification even though Allstate's Rule 68 offer has already rendered his own claims moot. Supreme Court precedent does not countenance such an extension of Article III jurisdiction. Even where a plaintiff is entitled to appeal a denial of class certification, the Court has required that the plaintiff have a personal stake in the underlying claim "up to and beyond" the time when certification is denied. *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 (1980). Only then is it certain that a plaintiff will "vigorously advocate" his position, or that the court can decide the case in a "concrete factual setting." *Id.* at 403. Because Pacleb's own claims are moot, and because he has no cognizable legal interest in certifying a class, this lawsuit must be dismissed.

Adherence to Article III is especially important in class action lawsuits, given that attorney-driven class-action litigation is prone to abuse. Where the named plaintiff does not retain a sufficient stake in the litigation, he may engage in unfair practices at the expense of the other class members. Further, class certification itself has a coercive effect on defendants, and often results in settlements without regard to the merits of the underlying claim. Accordingly, this Court should confine Article III standing to those plaintiffs who have an actual, personal interest in the lawsuit.

I

ALLSTATE'S OFFER TO FULLY SATISFY PACLEB'S CLAIMS MOOTS HIS INDIVIDUAL CLAIMS

The Constitution requires that a plaintiff maintain a personal stake in the case throughout the entirety of the litigation. *Geraghty*, 445 U.S. at 397. Where a plaintiff loses that stake due to a change in fact or law, his case becomes moot. *Stratman v. Leisnoi, Inc.*, 545 F.3d 1161, 1167 (9th Cir. 2008), *cert. denied sub nom. Stratman v. Salazar*, 557 U.S. 935 (2009). An overwhelming majority of courts agree that an offer to satisfy a plaintiff's claims—even if unaccepted—constitutes such a change and necessarily moots the plaintiff's lawsuit. *See, e.g., GCB Commc'ns, Inc. v. U.S. S. Commc'ns, Inc.*, 650 F.3d 1257, 1267 (9th Cir. 2011); *Warren v. Sessoms & Rogers, P.A.*, 676 F.3d 365, 371 (4th Cir. 2012); *Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1243 (10th Cir. 2011); *Alliance to End Repression v. City of*

Chicago, 820 F.2d 873, 878 (7th Cir. 1987); *Samsung Elecs. Co. v. Rambus, Inc.*, 523 F.3d 1374, 1379 (Fed. Cir.), *cert. denied*, 555 U.S. 886 (2008); *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 502 (5th Cir. 2005); *Weiss v. Regal Collections*, 385 F.3d 337, 342 (3d Cir. 2004); *cf. O'Brien v. Ed Donnelly Enters., Inc.*, 575 F.3d 567, 575 (6th Cir. 2009) (offer requires court to enter judgment in favor of plaintiff). Once the defendant makes an offer of judgment, there is nothing for the plaintiff to pursue in court. The court can no longer afford the plaintiff relief because the defendant has surrendered.[1] The plaintiff has prevailed, and a plaintiff "can't persist in suing after [he's] won."[2] *Greisz v. Household Bank (Illinois), N.A.*, 176 F.3d 1012, 1015 (7th Cir. 1999).

While the Supreme Court declined to address this issue as applied to Rule 68 offers in *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523 (2013), Justice Kagan in dissent stated her opinion that a Rule 68 offer that would have fully satisfied the

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[1] Supreme Court precedent suggests that this is true whether or not, in addition to providing injunctive relief and paying damages, the defendant admits his behavior was unlawful. For "[n]o matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute 'is no longer embedded in any actual controversy about the plaintiffs' particular legal rights.'" *See Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 727 (2013) (quoting *Alvarez v. Smith*, 558 U.S. 87, 93 (2009)); *see also Spencer v. Kemna*, 523 U.S. 1, 18 (1998) ("We are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong.").

[2] A plaintiff cannot even defend the precedent he has won on appeal if he has lost his stake in the controversy since the judgment was issued. *Camreta v. Greene*, 131 S. Ct. 2020, 2034 (2011).

plaintiff's claims, but which expires without being accepted, has no effect. *Id.* at 1532-34. Based on these remarks, this Court held the same in *Diaz v. First Am. Home Buyers Prot. Corp.*, 732 F.3d 948, 954 (9th Cir. 2013). But *Diaz* is distinguishable, and indeed its reasoning suggests that Allstate's offer did moot Pacleb's claims.

Both Justice Kagan's dissent and *Diaz* turned on the fact that the settlement offers had lapsed. *See Genesis*, 133 S. Ct. at 1533-34; *Diaz*, 732 F.3d at 954-55. Justice Kagan reasoned that a settlement offer that expires without being accepted is a "legal nullity, with no operative effect." 133 S. Ct. at 1533. Its expiration leaves the plaintiff with an unredressed injury. *Id.* at 1534 ("After the offer lapsed, just as before, [the plaintiff] possessed an unsatisfied claim . . . ."). Justice Kagan reinforced this conclusion by observing that Rule 68(b) "prohibits a court from considering an unaccepted offer . . . for the purpose of entering judgment for either party." *Id.* at 1536. She recognized, however, that unconditional offers, which cannot expire, are different, and noted that a court has "discretion to halt a lawsuit by entering judgment for the plaintiff when the defendant unconditionally surrenders." *Id.*

Unlike the offers in *Genesis* and *Diaz*, which expired on their own terms and were therefore rendered nullities with no legal effect, Allstate's offer was extended indefinitely without an expiration date. *Chen v. Allstate Ins. Co.*, No. C 13-0685 PJH, 2013 WL 2558012, at *1 (N.D. Cal. June 10, 2013). Allstate definitively surrendered to the plaintiff's demands. It is analogous to a defendant admitting liability in open court before a judge—and must necessarily moot Pacleb's claims. Pacleb cannot now, or ever, hope for anything more from a court than what Allstate offered him: injunctive relief, damages, and attorney's fees.

II

PACLEB DID NOT RETAIN A PERSONAL STAKE IN FILING A MOTION FOR CLASS CERTIFICATION AFTER HIS OWN CLAIM BECAME MOOT

A. A Plaintiff's Interest in Filing a Class Certification Motion After His Claims Become Moot Is Too Abstract to Satisfy Article III

Nor does Pacleb retain an interest in certifying a class. The Supreme Court has identified two circumstances in which a class action may continue despite the mooting of the named plaintiff's own claims. First, where a class has been certified before the plaintiff's claims become moot, the class' claims do not become moot, because a certified class has a concrete interest of its own. *Sosna v. Iowa*, 419 U.S. 393, 399 (1975). Second, where a plaintiff's claims become moot after denial of class certification, the plaintiff may appeal that denial so long as the plaintiff had a live stake in the controversy at the time certification was denied. *Geraghty*, 445 U.S. at 404.

Some Circuits have held that a plaintiff has an interest in seeking final judgment on a *pending* motion for class certification even if his own claims become moot before the judgment is issued. *See, e.g.*, *Wade v. Kirkland*, 118 F.3d 667, 669 (9th Cir.

1997). But a plaintiff has no legally cognizable interest in filing a class certification motion for the first time after his own claims are mooted. *See Bd. of School Comm'rs v. Jacobs*, 420 U.S. 128, 128 (1975); Daniel A. Zariski, et al., *Mootness in the Class Action Context: Court-Created Exceptions to the "Case or Controversy" Requirement of Article III*, 26 Rev. Litig. 77, 86 n.41 (2007) (noting several circuit courts agree); *but see Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1091 (9th Cir. 2011) (permitting a plaintiff to file a class certification after his claim became moot because his claim was "transitory in nature").

Geraghty—which recognized that a plaintiff has an Article III interest in appealing a class certification denial after his own claims became moot—suggests that Pacleb lacks a legally cognizable interest in filing a certification motion now that his own claims are moot. In *Geraghty*, the plaintiff retained a "personal stake" in having his motion to certify correctly decided, which was "sufficient to assure that Art. III values are not undermined." 445 U.S. at 404. That interest was not an abstract desire to represent a class, but a "concrete" interest in having a properly filed procedural motion adjudicated. *Id.* at 404 n.11. The Court stressed that if the class certification had been properly decided, that "would have prevented the action from becoming moot." *Id.* Further, because the defendant's own claims were not moot when he filed the certification motion, the certification issue was "sharply presented . . . in a concrete factual setting" by "self-interested parties vigorously advocating opposing positions." *Id.* at 403.[3]

Because, unlike in *Geraghty*, the plaintiff's claims became moot *before* he sought class certification, he will not be able to present an argument for certification "in a concrete factual setting." The mootness of his underlying claims means that the named plaintiff can only make abstract arguments on behalf of others who are in a better position to present those arguments directly. *Cf. Powers v. Ohio*, 499 U.S. 400, 410 (1991) ("In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties."). This problem is compounded by the fact that class certification motions are contingent upon concrete facts that are specific to the named plaintiff. Rule 23's requirements of commonality, typicality, and adequacy can only be decided by referencing the character of the plaintiff's claims. These prerequisites "effectively 'limit the class claims to those fairly encompassed by the named plaintiff's claims.'" *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. at 2550 (citation omitted). And yet in situations like Pacleb's, the plaintiff no longer has any viable claims of his own.

[3] The Court has since retreated from such the broad interpretation of Article III which was common at the time *Geraghty* was decided. *See, e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000); *Lujan*, 504 U.S. at 572; *see also Genesis*, 133 S. Ct. at 1530 (declining to extend *Geraghty* to a plaintiff who had not yet moved for certification when his Fair Labor Standards Act claims became moot).

Applying Rule 23 to a plaintiff whose own claims are moot would be a hypothetical exercise with no basis in reality—the plaintiff no longer retains any claims to which the court can compare the class' claims.

Nor is a plaintiff's abstract interest in certifying a class with whom he shares no injury particularized enough to satisfy Article III. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216-17 (1974). An individual who was once injured but has now been made whole has no more right to represent a class than an uninjured individual. And any interest either of the two has in vindicating the class' claims cannot be differentiated from that possessed by every other citizen. If Pacleb can file for class certification, then why couldn't anyone sympathetic to the class' claims, "why not his lawyer? Or a professor of law interested in the 'correct' development of [the issue]?" *See Holmes v. Fisher*, 854 F.2d 229, 233 (7th Cir. 1988). Generalized grievances, common to all members of the public, cannot satisfy Article III—otherwise the judicial process would become "no more than a vehicle for the vindication of the value interests of concerned bystanders." *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 687 (1973). It is not enough that a plaintiff allege an injury; " 'the party seeking review [must] be himself among the injured.' " *Lujan*, 504 U.S. at 563 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)); *see also Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 479 (1990) (the relevant Article III inquiry is whether the plaintiff has a stake in the relief, "not whether the requested relief would be nugatory as to the world at large"). It follows that a plaintiff must not only retain an interest in the underlying case at the time a class certification motion is denied—as in *Geraghty*—but a plaintiff must retain that interest when he files that motion in the first place.

B. The "Inherently Transitory" Doctrine Cannot Save Pacleb's Claims

In *Pitts,* this Court permitted the plaintiff to file a class certification motion despite that his own claims had become moot because the "defendant's litigation strategy" rendered the claims "transitory in nature." 653 F.3d at 1091. While the Supreme Court has not explicitly overruled *Pitts*, it rejected *Pitts*' reasoning in *Genesis*, when it indicated that the "inherently transitory" doctrine is based on the "fleeting nature of the challenged conduct . . . not on the defendant's litigation strategy." 133 S. Ct. at 1531. This exception parallels the well-established mootness exception known as "capable of repetition yet evading review." *See* 653 F.3d at 1090.

No such exception applies here, however. After Allstate tendered Pacleb its Rule 68 offer, he could hope for nothing more. Allstate offered to compensate him for his injuries and to refrain from repeating its injurious behavior in the future. Allstate further offered to pay Pacleb's attorneys' fees, mooting any interest he retained in sharing the costs of litigation with the class.[4] Pacleb cannot have a legally cognizable interest in certifying a class unless he retains his own concrete interest in the underlying case. Finally, Pacleb's claim is not "inherently transitory" because that doctrine is dependent on the conduct giving rise to the claim, not the fact that Allstate later satisfied Pacleb's claim. *Genesis*, 133 S. Ct. at 1531. Thus, this Court must reverse the district court's decision and find Pacleb's claims moot.

III

"NONINJURY" CLASS ACTIONS ARE RIPE FOR ABUSE

A. Article III Ensures the Interests of Absent Class Members Are Protected

If individuals without Article III standing are allowed to represent a class, plaintiffs "would be tripping over each other on the way to the courthouse." *North Shore Gas Co. v. EPA*, 930 F.2d 1239, 1242 (7th Cir. 1991); *see also People Organized for Welfare & Emp't Rights (P.O.W.E.R.) v. Thompson*, 727 F.2d 167, 172 (7th Cir. 1984) ("If passionate commitment plus money for litigating were all that was necessary to open the doors" of the courts, they "might be overwhelmed."). These

[4] The Court recognized this might be a cognizable interest in *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 345 (1980). Its later remarks in *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990), however, undermine that decision. *See id.* at 480 ("This interest in attorney's fees is, of course, insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim.").

concerns are especially worrisome in the context of class action litigation, where attorneys and lead plaintiffs are handsomely rewarded, and class members need extra protection from abuse.

Class action litigation is prone to abuse because the cases "line lawyers' pockets despite the absence of any substance to the underlying allegations." Robert A. Skitol, *The Shifting Sands of Antitrust Policy: Where It Has Been, Where It Is Now, Where It Will Be in Its Third Century*, 9 Cornell J.L. & Pub. Pol'y 239, 266 (1999). These "suits are not, in any realistic sense, brought either by or on behalf of the class members," but by "private attorneys who initiate suit and who are the only ones rewarded for exposing the defendants' law violations." Martin H. Redish, *Class Actions and the Democratic Difficulty: Rethinking the Intersection of Private Litigation and Public Goals*, 2003 U. Chi. Legal F. 71, 77. The prospect of significant attorneys' fees "provide[s] the class lawyers with a private economic incentive to discover violations of existing legal restrictions on corporate behavior." *Id.* Thus, noninjury class actions to recover compensation permit the "private attorneys [to] act [ ] as bounty hunters." *Id.*

Cy pres settlements are symptomatic of this problem. Though originally intended to prevent defendants from receiving the windfall of unclaimed settlement funds, they now often deprive the class from receiving meaningful redress. Because the attorneys and named plaintiffs receive a separate award, they have little incentive to reject *cy pres* settlement offers. For example, the Supreme Court recently denied a petition for certiorari in a privacy lawsuit wherein the named plaintiffs together received $39,000, the attorneys received $3 million, and the remaining plaintiffs were awarded the "benefit" of the creation of a $6.5 million foundation—the board of which includes one of the defendant-company's executives. *See Marek v. Lane*, 134 S. Ct. 8 (2013). Chief Justice Roberts explained that review of that case would have been limited to that case alone, and would have precluded the Court from confronting the "more fundamental concerns" that currently accompany the frequent use of *cy pres* settlements in class action litigation. *See id.* at 9 (statement of the Chief Justice respecting denial of certiorari).

Such settlements, which disproportionately reward plaintiff's attorneys and named plaintiffs and leave the rest of the class without meaningful compensation, are not uncommon. *See, e.g.*, *In re EasySaver Rewards Litig.*, 921 F. Supp. 2d 1040, 1050 (S.D. Cal. 2013) (approving award of over $8.5 million in attorney's fees, $80,000 to the class representatives, $225,000[5] in cash plus coupons to the remaining class members and a *cy pres* award of $3 million to three foundations—one of which was class counsel's alma mater); *Richardson v. L'Oreal USA, Inc.*, No. 13-508 (JDB), 2013 WL 3216061 (D.D.C. June 27, 2013) (approving settlement of nearly $1 million

[5] Though the class was awarded more, only 3,000 class members—or 0.2% of the class—made claims, which together totaled about $225,000. Brief of Appellant at 14, *In re EasySaver Rewards Litig.*, No. 13-55373 (9th Cir. July 12, 2013), ECF No. 11.

in attorneys' fees, $1,000 to each class representative, and mere injunctive relief to the rest of the class); *Albright v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, No. 4:11CV01691 AGF, 2013 WL 4855308 (E.D. Mo. Sept. 11, 2013) (approving settlement entailing over $190,000 in attorneys' fees, $2,500 to each class representative, and $30 cash or up to a $72 value in MetroLink tickets to the remaining plaintiffs). Litigation under California's Proposition 65[6] provides another example. Data from the California Attorney General's office shows that in 2011, 74% of Proposition 65 settlement awards went to attorneys' fees and costs.[7]

Class members need an increased level of protection because they are not present to represent themselves. Because a class action binds absent "litigants," due process requires a class representative both capable of and willing to act in the interest of all the members of the class. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (opining that "the Due Process Clause . . . requires that the named plaintiff at all times adequately represent the interests of the absent class members"). Only when the class representative has a concrete stake in the underlying claim is it certain that he will protect the class from unfair practices, or a settlement that might enrich attorneys without benefitting the class. Otherwise, class members' only alternative

[6] Proposition 65 enables individuals to bring a lawsuit based on a violation of the statute despite not being able to show an injury to themselves. Cal. Health & Safety Code § 25249.7.

[7] http://oag.ca.gov/sites/all/files/pdfs/prop65/Alpert_Report2011.pdf?&(2011);&

to defend their interests is to opt out, but it is hardly fair to place the "risk and burden on the essentially innocent party who happens to have the least information." Jeremy Gaston, *Standing on Its Head: The Problem of Future Claimants in Mass Tort Class Actions*, 77 Tex. L. Rev. 215, 244 (1998).

If this Court were to permit a party with no interest in the outcome of the case to file a motion for class certification, it would throw open the doors of the federal courts for gross misuse of the justice system. Self-interested parties would take advantage of the class action procedure—which is already prone to abuse. Requiring class representatives to have an interest in the underlying claim before filing a motion for certification makes it more likely that those representatives will protect the interests of absent class members.

B. Adherence to Article III Is Especially Important Given the Coercive Effect Class Certification Has on Defendants

"Noninjury" standing, combined with the class action procedure, tends to result in targeted businesses facing what federal appellate judges bluntly term, "blackmail." *In Matter of Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir.), *cert. denied sub nom. Grady v. Rhone-Poulenc Rorer, Inc.*, 516 U.S. 867 (1995); *West v. Prudential Sec., Inc.*, 282 F.3d 935, 937 (7th Cir. 2002) (the effect of class certification is often to "induc[e] settlement to curtail the risk of large awards"); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996) ("[C]lass certification creates insurmountable pressure on defendants to settle, whereas individual trials would not. The risk of facing an all-or-nothing verdict presents too high a risk, even when the probability of an adverse judgment is low." (citation omitted)); *In re GMC Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784-85 (3d Cir.), *cert. denied*, 516 U.S. 824 (1995) ("[C]lass actions create the opportunity for a kind of legalized blackmail: a greedy and unscrupulous plaintiff might use the *threat* of a large class action . . . to extract a settlement far in excess of the individual claims' actual worth.").

Some judges have deemed class action settlements "blackmail" because certification so often results in settlement. "[W]hen damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable. Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims." *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1752 (2011). The Supreme Court and "[o]ther courts have noted the risk of 'in terrorem' settlements that class actions entail." *Id.* (citations omitted). For this reason, the decision to certify is typically the defining moment in the litigation. As the Supreme Court noted, "[c]ertification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476

(1978). *See also Newton v. Merrill Lynch*, 259 F.3d 154, 164 (3d Cir. 2001) (Once the class is certified, defendant companies are under "hydraulic pressure" to settle.). In light of the coercive affect of class action certification, adherence to Article III is especially important so that defendants are not unfairly pressured into settling a case the named plaintiff had no right to bring in the first place.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision below and hold that Allstate's Rule 68 offer moots Pacleb's claims.

DATED: December 20, 2013.

Respectfully submitted,

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DATED: December 20, 2013.

s/ Anastasia P. Boden
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