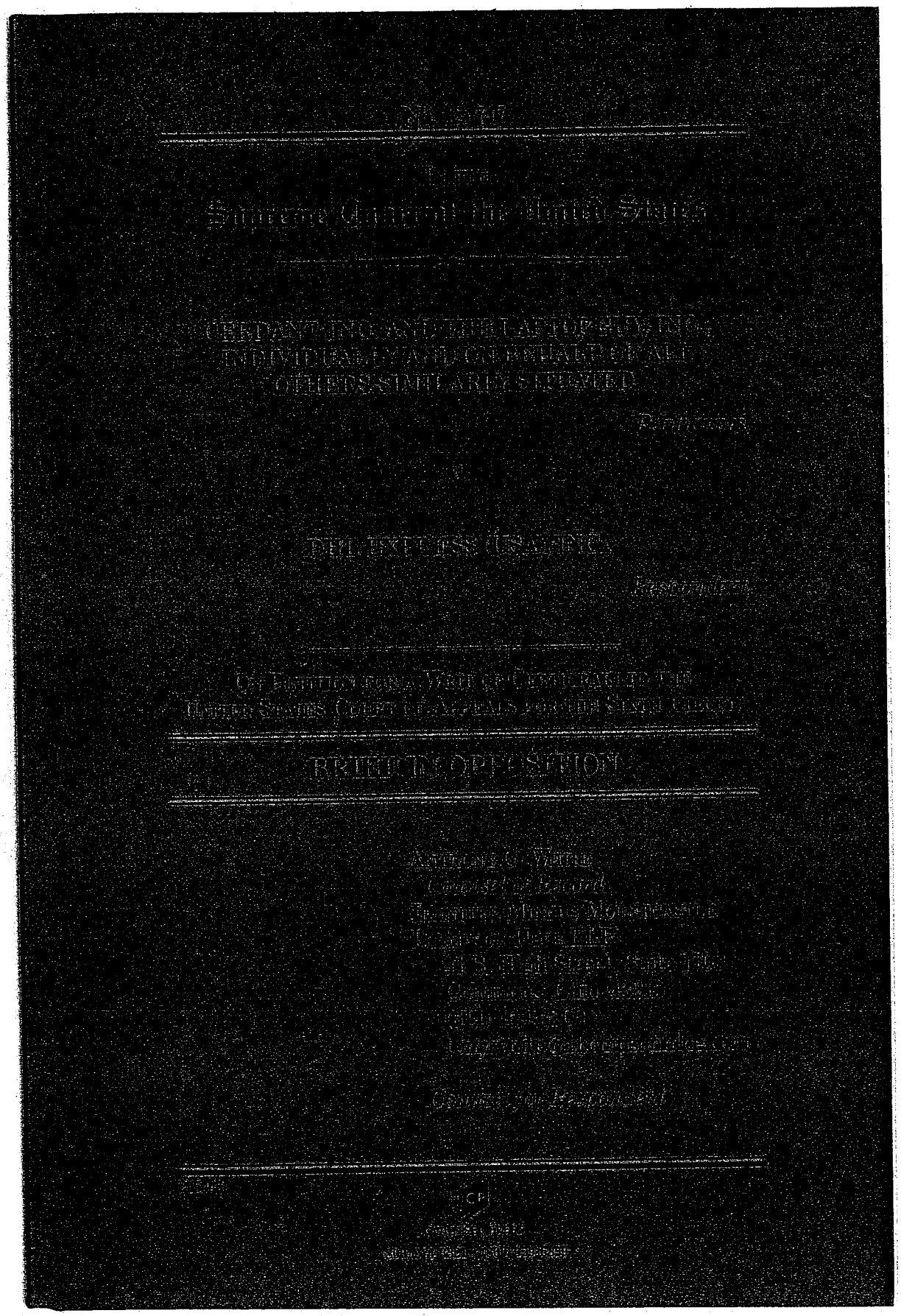

CORPORATE DISCLOSURE STATEMENT

DHL is a wholly-owned subsidiary of DPWN Holdings (USA), Inc. DPWN Holdings (USA), Inc. is held, through a series of corporate entities, by Deutsch Post, AG, a German publicly-traded company. Deutsche Post, AG, does not have a financial interest in the outcome of this litigation.

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COUNTERSTATEMENT OF THE ISSUE PRESENTED

Almost two years after their motion to certify a class action was denied, Petitioners Cerdant, Inc. ("Cerdant") and The LapTop Guy, Inc. ("LapTop Guy") (collectively "Petitioners") voluntarily accepted DHL Express (USA), Inc.'s ("DHL") offers of judgment for an amount that they admit well exceeded their potential recovery at trial. Petitioners made no effort to negotiate their acceptance and did not expressly retain any financial interest. Having voluntarily relinquished any interest in the class action, do Petitioners nonetheless have standing to pursue an appeal of the denial of class certification?

STATEMENT OF THE CASE

Petitioners seek relief from the United States Court of Appeals for the Sixth Circuit's dismissal of their appeal of the District Court's denial of class certification when, two years after class certification was denied, Petitioners chose to accept offers of judgment extended by DHL. Because those offers compensated Petitioners "for *all* damages, attorney's fees, and costs accrued at the time of this offer," Petitioners' choice to accept them extinguished all of their interest in this litigation.

Nonetheless, in an effort to salvage a meritless class action, Petitioners, fully satisfied as to their claims, ask this Court to fashion a blanket rule giving a named class plaintiff the right to appeal denial of class certification where that plaintiff voluntarily accepts an offer of judgment that fully compensates him/her for all of his/her damages. Such a rule, however, would be directly

counter to both the express language and intent of Federal Rule of Civil Procedure 68, would ignore the law of every Federal Circuit Court of Appeals that has considered this issue, and would be unjustified by the facts of this case. Therefore, the Petition for a Writ of Certiorari should be denied.

A. The District Court Denied Petitioners' Bid For Class Certification, And The Sixth Circuit Declined To Hear Their Interlocutory Appeal Of That Decision.

This action has been pending in various forms since 2004 when Petitioner Cerdant brought a class action suit in Broward County, Florida. After the parties had engaged in discovery, Cerdant voluntarily dismissed its action on the morning of the class certification hearing. That same day, Cerdant filed this action in the Franklin County, Ohio Court of Common Pleas, which DHL subsequently removed to the United States District Court for the Southern District of Ohio. Cerdant later amended its Complaint, adding LapTop Guy as an additional named plaintiff. Petitioners sought monetary, declaratory, and injunctive relief on their own behalf and on behalf of a putative class of persons, claiming that DHL inappropriately charged them and the putative class shipping fees and fuel surcharges in connection with DHL waybills (documents generated by Petitioners that initiated DHL's delivery services for individual packages to be shipped by DHL for Petitioners) that Petitioners had created in DHL's electronic waybill systems, but which Petitioners later destroyed, misplaced, or left unused.

On March 16, 2009, the District Court dismissed all but Petitioners' breach of contract claims. On January 19, 2010, Petitioners filed their motion for class certification, which the district court denied on August 25, 2010. Class certification was denied because: (1) Petitioners did not identify an ascertainable class; (2) commonality was lacking because the class necessarily involved multiple distinct contracts; (3) Petitioners failed to establish that their claims were typical of the class's claims; and (4) Petitioners did not establish that they could adequately prosecute the action as class representatives. (*See* Order Denying Class Certification at pp. 9-19.)

On January 5, 2011, the Sixth Circuit denied Petitioners' request for interlocutory review of the District Court's class certification decision, finding that Petitioners failed to establish a likelihood of success on the merits of their appeal. (*See* Order Denying Review.) With no class certified, Petitioners continued the action in their individual capacities.

B. Petitioners Voluntarily Accepted DHL's Offers Of Judgment For Full Compensation Of Their Damages, Attorney's Fees, And Costs In Lieu Of Going To Trial.

Less than one month before trial, and during ongoing settlement negotiations, DHL presented offers of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure to both Cerdant and LapTop Guy. The offers of judgment explicitly compensated Petitioners "for *all* damages, attorney's fees, and costs accrued at the time of this offer." (*See* Offers of Judgment (emphasis added).) As Petitioners concede, the offers of judgment

greatly exceeded the amount of damages Petitioners could possibly receive at trial. DHL specifically drafted broad offers of judgment, covering all of Petitioners' claims, and expressly and intentionally did not include language reserving the Petitioners' right to appeal the class certification decision. (*Id.*)

Within four days, Petitioners voluntarily accepted the offers as written and filed their acceptance of the offers of judgment with the Court. (*See* Notice of Acceptance.) Petitioners' acceptance, which was fully within their control, was not conditioned on retaining class claims, did not carve out the right to appeal, and did not set forth any continued financial interest Petitioners had in the class action. In fact, Petitioners did not request a single revision to the terms of DHL's offers.

The District Court entered judgment against DHL pursuant to the offers of judgment on June 13, 2012. (Judgment Entry.) Petitioners filed a Notice of Appeal to the Sixth Circuit on July 13, 2012. Recognizing that Petitioners had extinguished their interests in the class action, DHL moved to dismiss the appeal for lack of subject matter jurisdiction on August 8, 2012. The Sixth Circuit granted DHL's motion on September 20, 2012, finding that Petitioners voluntarily accepted the offers of judgment and no longer had a financial interest in the outcome of the class action:

> The plaintiffs in the instant case voluntarily accepted DHL's offer of judgment. The ensuing judgment compensates them for all damages, attorney fees, and costs. As a result, they no longer retain any interest in shifting the costs

> of the litigation to the putative class members. The plaintiffs have not demonstrated a personal stake in the litigation, and there is no live case or controversy to support the court's jurisdiction.

(Sept. 20, 2012 Order.)

Despite the Sixth Circuit's express determination that Petitioners had no continuing interest in the class action, which would moot their appeal under the law of all circuits considering this issue, they continue to assert that their appeal was improperly dismissed, wrongly arguing that any acceptance of a Rule 68 offer of judgment in the class action context is "involuntary," and claiming a circuit split that does not exist.

REASONS FOR DENYING THE PETITION

I. PETITIONERS ASK THE COURT TO DECLARE THAT FEDERAL RULE OF CIVIL PROCEDURE 68 IS INAPPLICABLE TO CLASS ACTIONS, WHICH IT CANNOT DO THROUGH THIS LAWSUIT.

The foundation of Petitioners' request that this Court review the decision below is dissatisfaction with Rule 68's application to class actions. In Petitioners' view, virtually every offer of judgment made to an individual purporting to bring a class action undermines public policy: "every defendant of putative class claims could preclude appellate review of the denial of class certification by simply, and relatively inexpensively in most cases, making a Rule 68 offer that fully satisfies the claims of the class representative," (Petition at 6); "[t]he Dismissal [by the

Sixth Circuit] was based on the illusory notion that a class representative faced with a Rule 68 offer accepts it voluntarily even though its other option is not an option at all," (Petition at 10-11).

Thus, what Petitioners really are asking the Court to do is create a blanket rule that would exempt class actions from Rule 68, even where a plaintiff voluntarily accepted an offer of judgment and no longer retains any financial interest in the action. Such a rule not only has been rejected on at least two occasions, it cannot be made by accepting jurisdiction in this case.

A. Rule 68 Applies To Class Actions, And Any Decision To Exempt Them, Which Has Been Considered And Rejected Before, Must Be Carried Out Through The Procedures Set Forth In The Rules Enabling Act.

Rule 68 offers of judgment are designed to encourage settlement and to make the party accepting or rejecting the offer evaluate its claims realistically in advance of trial. *See Day v. The Krystal Co.*, 241 F.R.D. 474, 477-78 (E.D. Tenn. 2007) ("The Rule prompts both parties to a suit to evaluate the risks and costs of litigation, and to balance them against the likelihood of success upon trial on the merits." (internal citations omitted)); *see also* Thomas R. Rowe, Jr., 13-68 Moore's Federal Practice – Civil ¶ 68.02 (3d ed. 2012) ("[T]he modern consensus is that the primary purpose of Rule 68 is to promote settlements and avoid protracted litigation."). Rule 68 serves the important purpose of allowing a party willing to settle an action before trial to protect itself from having "to suffer financially for its adversary's unjustified stubbornness in

forcing the case to be carried further." Thomas R. Rowe, Jr., 13-68 Moore's Federal Practice – Civil ¶ 68.02 (3d ed. 2012) (internal citations omitted).

By its express terms, Rule 68 does not exclude class action cases. *See Weiss v. Regal Collections*, 385 F.3d 337, 344 n.12 (3d Cir. 2004) (noting that "[n]o express statement limits the application of Fed. R. Civ. P. 68 in class actions."). Petitioners nonetheless ask the Court to rewrite Rule 68 through case law, in violation of the Rules Enabling Act, 28 U.S.C. §§ 2071-77, which sets forth the only procedures for amending the Federal Rules of Civil Procedure. Proposed rules must be prescribed and published by the Judicial Conference, *id.* § 2073, and any rule proposed by this Court must also be submitted to Congress before it can go into effect, *id.* § 2074.

Even if this Court wanted to preclude offers of judgment in the class action context, it could only do so through the procedures set forth in the Rules Enabling Act. Notably, however, every effort to make the exact change Petitioners propose has been rejected. *Weiss*, 385 F.3d at 344 n.12; 13-68 Moore's Fed. Prac. – Civil § 68 App. 101 (setting forth the proposed, but unadopted text of Rule 68 from 1983 and 1984, both of which included a provision stating that "[t]his rule shall not apply to class or derivative actions under Rules 23, 23.1, and 23.2."); *see also* Roy D. Simon, Jr., *The Riddle of Rule 68*, 54 Geo. Wash. L. Rev. 1, 51-53 (1985) (finding the rationale behind the Advisory Committee's rejection of a blanket exclusion from Rule 68 for class and derivative actions has "considerable logical force").

Thus, when an offer of judgment is made – and voluntarily accepted – after class certification is denied, Rule 68 operates as it does in any other context. A holding otherwise would improperly read into Rule 68 a limitation that cannot be created through case law and that has been specifically rejected.

B. There Is No Concern Regarding Misuse Of Rule 68 Where, As Here, The Plaintiff Voluntarily Accepts The Offer After Class Certification Has Been Denied.

The concerns Petitioners raise regarding Rule 68's application to class actions do not apply where, as here, the offer of judgment is voluntarily accepted after class certification is denied. To the extent this Court previously has limited Rule 68's application in class actions, those cases involved either unique situations of involuntary acceptances of offers of judgment or a concern that potential class representatives or members were being picked off before class certification. *See, e.g., Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 338-40 (1980) (noting that courts historically have been concerned with efforts to use Rule 68 to pick off potential class representatives by offering the named parties a full recovery and forcing judgment on them against their wishes, mooting their claims before a class can be certified).

Neither concern is implicated by DHL's offers of judgment. Despite Petitioners' insinuation otherwise, there can be no doubt that they willingly accepted DHL's offers of judgment. DHL made its offers in the midst of active settlement negotiations with Petitioners, almost two years after certification had been denied and over a year

after the Sixth Circuit denied Petitioners' interlocutory appeal of that decision. Trial was just over one month away. Petitioners were thus given the choice between (1) pursuing their claims – which admittedly were worth only tens of dollars – and seeking reversal of the class certification decision on appeal, or (2) accepting DHL's offers of judgment – which Petitioners acknowledge greatly exceeded any amount they could hope to recover at trial – and terminating their interest in this action. Petitioners knowingly chose to accept payment for full compensation of their claims in lieu of risking the likelihood of no or minimal recovery at trial. In exchange, they lost their interest in the class action.

The choice Petitioners faced between being compensated more than fully for their claimed damages and risking a trial on the merits is a choice created *by design* in Rule 68, and the same concern faced by other litigants. Indeed, these same concerns would apply to a plaintiff's decision to settle an individual action, even in the absence of a Rule 68 offer of judgment, because settlement offers similarly require a party to choose between receiving compensation for the claim or risking lesser or no recovery after a trial on the merits. Under Petitioners' requested rule, therefore, a party who enters into a settlement agreement would also retain the right to appeal its claim because acceptance of the settlement agreement would be "involuntary."

As a result, denial of class certification would *always* be appealable, whether after trial, after acceptance of an offer of judgment, or after entering into a settlement agreement. The judicial inefficiency in such a rule is apparent: parties would have no incentive to settle claims

before trial and the entire purpose of Rule 68 in the class certification context would be defeated. Courts would be flooded with appeals that otherwise could have been avoided through settlement and offers of judgment. What Petitioners propose cannot be the law, as it is directly contrary to the policy behind Rule 68.

By serving offers of judgment, DHL did not, as Petitioners complain, engage in nefarious conduct. (Petition at 15.) Rather, DHL did exactly what it was permitted to do under Rule 68 for exactly the reason Rule 68 exists – to force Petitioners to evaluate whether it was worthwhile to continue to litigate or instead choose to be made whole, bringing an end to their controversy with DHL. That Petitioners now regret their choice is no reason to attempt to improperly rewrite Rule 68 through this case.

II. THE SIXTH CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENT AND THE PRECEDENT OF OTHER CIRCUIT COURTS OF APPEAL, ALL OF WHICH REQUIRE A PLAINTIFF TO MAINTAIN A CONTINUING INTEREST IN THE CLASS ACTION.

Petitioners' assertion that jurisdiction is appropriate here because there is a circuit split ignores the overriding similarities among how the circuit courts treat appeals where the named plaintiff voluntarily accepted an offer of judgment or settled the claim after class certification was denied. Except in rare circumstances that are not present here, a plaintiff must demonstrate a continuing interest in the class action to appeal denial of class certification.

The Sixth Circuit's dismissal of Petitioners' action is consistent with this rule. Thus, Petitioners' dispute is truly about how the rule of law was applied to it, and not with the rule itself.

A. Circuit Courts Require A Personal Stake In The Action When Acceptance Of An Offer Of Judgment Is Voluntary.

None of the circuit courts have adopted the rule Petitioners urge this Court to adopt: that willing acceptance of a Rule 68 offer of judgment is nonetheless involuntary, and thus, always appealable. Instead, the circuit courts that have considered this issue consistently have determined that a named plaintiff who voluntarily relinquishes all interest he or she has in the class action lacks standing to pursue an appeal on behalf of the proposed class:

Circuit Court of Appeal	*Decisional Law*
Third Circuit	*Lusardi v. Xerox Corp.*, 975 F.2d 964, 979 n. 25 (3d Cir. 1992): "[I]n the absence of an express attempt to retain the right to appeal, a named plaintiff who has settled his claims may not appeal an adverse class certification determination."
Fourth Circuit	*Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d 88, 100 (4th Cir. 2011): Jurisdiction was lacking where the plaintiffs voluntarily dismissed their

claims because they no longer had a sufficient interest in pursuing the litigation.

Toms v. Allied Bond & Collections Agency, Inc., 179 F.3d 103, 106 (4th Cir. 1999): Holding that the named plaintiff released its interest in both personal and class action claims in settlement agreement where it released all claims, including any claims for costs and fees, rendering the case moot on appeal.

Fifth Circuit

Ramming v. Natural Gas Pipeline Co., 390 F.3d 366, 30 (5th Cir. 2004): "A party must reserve its right to appeal prejudgment rulings in the offer of judgment, otherwise no appeals from judgment will be allowed." (emphasis in original).

Dugas v. Trans Union Corp., 99 F.3d 724, 729 (5th Cir. 1996): Where the offer and acceptance of an offer of judgment encompassed all claims, failure to reserve the right to appeal the denial of class certification divested the court of jurisdiction over appeal.

Sixth Circuit

Pettrey v. Enter. Title Agency, Inc., 584 F.3d 701, 705 (6th Cir. 2009): Limiting Supreme Court precedent

to involuntary settlements of claims, noting that "once the plaintiffs had settled and released all of their claims against the defendants, the plaintiffs no longer had a personal stake—i.e., a legally cognizable interest—in the outcome of the litigation."

Seventh Circuit

Epsenscheid v. DirectSat USA, LLC, 688 F.3d 872, 874 (7th Cir. 2012): Recognizing that named plaintiff could expressly retain his right to appeal where he expressly retained the ability to obtain an incentive reward, despite settling his individual claim and no longer having a direct stake in the damages.

Wrightsell v. Cook County., 599 F.3d 781, 783-84 (7th Cir. 2010): Noting, in a survey of the law among the circuits, that "[t]o allow a person to litigate a class action after his personal claim has evaporated, whether by his voluntary acceptance of a settlement offer or by the defendant's making a Rule 68 offer that exceeds the plaintiff's potential stakes in the case, may seem to violate the bedrock principle that at all stages of a case in federal court the plaintiff must have something tangible to gain by winning" but that there are exceptions including involuntary

settlement and inherently transitory claims.

Muro v. Target Corp., 580 F.3d 485, 492 (7th Cir. 2009): Named plaintiff who voluntarily settles her claim and is awarded fees cannot appeal the denial of class certification even where her right to appeal was explicitly reserved because, having gotten all relief sought—including "compensation for both her costs of the action and her reasonable attorney's fees"—she has no personal stake."

Eighth Circuit

Anderson v. CNH U.S. Pension Plan, 515 F.3d 823, 827 (8th Cir. 2008): Finding class action was moot because plaintiffs lacked a continuing interest in the litigation where they agreed to a stipulated judgment that covered their claims and included an additional amount for attorney's fees.

Potter v. Norwest Mtg., Inc., 329 F.3d 608, 614 (8th Cir. 2002): Finding plaintiff lacked an interest in class action after settling claims where the settlement encompassed both the plaintiff's individual claims and failed to present clear evidence that he reserved the right to recover attorney's fees.

Eleventh Circuit

Shores v. Sklar, 885 F.2d 760, 762 (11th Cir. 1989): Where the offer and acceptance of an offer of judgment encompassed all claims, failure to reserve the right to appeal the denial of class certification divested the court of jurisdiction over appeal.[1]

DC Circuit

Richards v. Delta Air Lines, Inc., 453 F.3d 525 (D.C. Cir. 2006): Allowing appeal where class action rights specifically were reserved, noting that a plaintiff who relinquishes all claims, including class claims, or agrees to dismiss the entire action, has ceded its interest and can no longer appeal denial of class certification.

Walsh v. Ford Motor Co., 945 F.2d 1188, 1191 (D.C. Cir. 1991): Noting that the "procedural right" of appeal is one that may be waived, and finding that named plaintiff did so in releasing "any and all ... claims ... whatsoever ... against Ford."

1. In an earlier decision, *Love v. Turlington*, 733 F.2d 1562, 1564-65 (11th Cir. 1984), the Eleventh Circuit found that an appeal was not moot despite settlement of the named parties' claims after denial of class certification. There, however, another student had moved to intervene as a party and the agreement reserved the right to appeal, rendering the issue live. *Id.*

DHL is unaware of any circuit that allows a plaintiff to maintain an appeal of the denial of class certification if the plaintiff voluntarily relinquishes *all* interest he or she has in a class action. The rare exception where courts have allowed a class representative's appeal to proceed despite the loss of his or her personal interest after class certification was denied is where the claim is mooted by occurrences that are out of the plaintiff's control. For example, in *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 340 (1980), the plaintiffs were forced, over their objection, to accept judgment. Subsequently, in *United States Parole Comm'n v. Geraghty*, 445 U.S. 388 (1980), this Court allowed the plaintiff's claim to proceed after he was released from prison, an occurrence that was out of his control.

B. Petitioners Rely On Differences In The Application Of A General Rule To Manufacture A Circuit Split.

In light of the strong authority contradicting their position, Petitioners rely heavily upon two cases from the Ninth Circuit that they claim support their right to appeal. However, those cases show that the Ninth Circuit, like other circuits, including the Sixth Circuit, requires the class representative to maintain an interest in the action in order to proceed with its appeal. For example, in *Evon v. Law Offices of Sidney Mickell*, Nos. 10-16615, 10-17836, 2012 U.S. App. LEXIS 15861 (9th Cir. Aug. 1, 2012), the court, applying *Geraghty*, found that the plaintiff retained an interest based on the specific facts before it. The parties in *Evon* entered into a negotiated offer of judgment, the first draft of which expressly included a relinquishment of class claims as well as an agreement not to appeal

the denial of class certification. *Id.* at *13. The appellant rejected that offer, and the parties entered into a second offer of judgment, which deleted the appellant's express relinquishment of class claims and its agreement not to appeal the denial of class certification. The Ninth Circuit concluded that, on these facts, there was no indication that the appellant had included its class claims in the offer of judgment.

The Ninth Circuit's decision in *Narouz v. Charter Commc'ns, LLC*, is even stronger evidence that the plaintiff must retain a personal stake in the action. There, the settlement agreement explicitly noted that the appellant had the potential to receive a financial incentive award if the class was certified. 591 F.3d 1261, 1265 (9th Cir. 2010). The agreement also stated that "the claim for attorney's fees and costs has not been released, nor will it be, if Narouz is not allowed to pursue an appeal of denial of class certification." *Id.* Thus, the plaintiffs specifically retained the right to appeal the class certification decision. *See id.* And, the parties expressly agreed that settlement only applied to appellant's individual claims, not its class claims. *Id.* at 1265. Given these facts, it was clear that plaintiff retained an interest in the action, including the right to appeal.

The Ninth Circuit's holdings in *Evon* and *Narouz* do not evidence a circuit split. They are, instead, consistent with other circuits that require a continuing interest in the litigation. The Sixth Circuit's dismissal of Petitioners' claims far from exacerbated any perceived circuit split, as Petitioners claim. Rather, its decision was fully consistent with the law in this area: an offer of judgment accepted by a named class plaintiff forecloses appeal if the plaintiff's

acceptance extinguishes his or her personal stake in the litigation, unless the plaintiff's interest was extinguished involuntary. Any difference in the outcomes among the circuit courts results from the application of this principle to the disparate facts of each case, which, pursuant to Supreme Court Rule 10, "rarely" is the basis for granting a petition for writ of certiorari.

III. PETITIONERS LACK STANDING TO PURSUE THEIR APPEAL BECAUSE, AFTER ACCEPTING RESPONDENT'S RULE 68 OFFER OF JUDGMENT, THEY LACKED A CONTINUING INTEREST IN THE OUTCOME OF THE ACTION.

Even if there was a circuit split, which there is not, review is unwarranted here because Petitioners' appeal would have been dismissed under the law of any circuit, including the law of the Ninth Circuit on which Petitioners heavily rely. At base, Petitioners are not asking the court to settle a dispute of law of importance to them. Instead, they are asking the Court to hear this case to right what they perceive is a misapplication of the law to the facts of their case.

Petitioners have no continuing interest in the class action. DHL's offers of judgment explicitly covered "*all* damages, attorney's fees, and costs accrued at the time of this offer." (Offer of Judgment.) While it is true that DHL controlled the language in its offers, Petitioners controlled the terms of their acceptance. Unlike the plaintiffs in *Evon* — where the offer of judgment had been negotiated and the plaintiffs previously had rejected language that expressly would have included their class claims and excluded the right to appeal, 2012 U.S. App.

LEXIS at *13 — Petitioners made no effort to negotiate the terms of their acceptance. They neither requested that the offers of judgment exclude class claims, nor did they condition their acceptance on the exclusion of class claims from the offers. Instead, Petitioners agreed to be satisfied in an amount representing "all" of their damages, costs, and attorneys' fees.

Petitioners' claim that they retained their class claims is belied by the express language of the offers of judgment. Given DHL's unequivocal and intentional language that it was satisfying "all" of their damages, costs, and fees, it was Petitioner's obligation to expressly designate otherwise. The Sixth Circuit, applying sound principles of law, determined based upon the facts before it and its reading of the offers of judgment that Petitioners no longer had an interest in the action: "[a]s a result, [Petitioners] no longer retain any interest in shifting the costs of the litigation to the putative class members." (Sept. 20, 2012 Order.)

And regardless of whether the words "class claims" or "right to appeal" are found in the offers of judgment, Petitioners' purported retention of an interest ultimately is belied by their admission that the offers of judgment were for more than they could have received at trial. (*See* Petition at pp. 3, 5.) In neither the Sixth Circuit nor here have Petitioners explained what money they are still owed. It is evident that Petitioners' purportedly retained "class claims" are simply a fiction invoked in an attempt to create a financial interest where none exists, particularly given that imposing an obligation to expressly refer to "class claims" would not remedy what Petitioners really are complaining about – that Rule 68 applies to class actions. (*Id.* at pp. 5-7, 10-11, 15.)

As set forth in Section II, absent involuntary relinquishment, every circuit requires a named plaintiff to retain some interest in the action in order to pursue an appeal of the denial of class certification. Here, because Petitioners' acceptance was voluntary and the offers compensated them for *all* of their damages, costs, and fees, they have no continuing financial interest in the action. As a result, even if a circuit split existed, it is irrelevant, because Petitioners no longer have an interest that confers upon them the right to continue to pursue this litigation.

CONCLUSION

Petitioners improperly ask this Court to rewrite Rule 68 of the Federal Rules of Civil Procedure, claim a circuit split that does not exist, and ask this Court to reassess the Sixth Circuit's factual determination regarding whether they have standing to pursue an appeal of the denial of class certification. Because Petitioners cannot establish any grounds for jurisdiction set forth in Supreme Court Rule 10, DHL respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

ANTHONY C. WHITE
Counsel of Record
JENNIFER MINGUS MOUNTCASTLE
THOMPSON HINE LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
(614) 469-3200
tony.white@thompsonhine.com

Counsel for Respondent