

# Did my acceptance of the offer of judgment moot my class action?

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### Final Appealable Order

*Farmers State Bank v. Sponaugle, Slip. Op. No. 2019-Ohio-2518.*

In this appeal to the Ohio Supreme Court, the Court again clarified what constitutes a final, appealable order in a foreclosure lawsuit, noting that an order that addresses the rights and responsibilities of all parties is a final, appealable order.

**The Bullet Point:** Foreclosure actions proceed in two stages, both of which end in a final, appealable judgment: the order of foreclosure and the confirmation of sale. The order of foreclosure determines the extent of each lienholder's interest, sets out the priority of the liens, determines the other rights and responsibilities of each party, and orders the property to be sold by sheriff's sale. On appeal, parties may challenge the court's decision to grant the decree of foreclosure. Once the foreclosure decree is final and upon completion of the appeals process, the rights and responsibilities of the parties under the foreclosure decree may no longer be challenged. As the Court noted, just because an order does not specify the amount owed to a taxing entity or another lienholder does not make the order non-final. Rather, in this situation, "all that remained was for the trial court to perform the ministerial task of calculating the final amounts that would arise during confirmation proceedings... "

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## FDCPA and Ministerial Validation Letters

*Woody v. Aurora Commercial Corp.*, 6th Cir. No. 18-5707 (July 2, 2019).

This appeal involved various state and federal statutory and consumer protection claims borrowers asserted against their mortgage servicers. Specifically, the borrowers sent letters to their loan servicer asking it to “validate” their debt. The borrowers decided the servicer’s response was insufficient and filed suit, alleging it violated the Fair Debt Collection Practices Act (FDCPA). The servicer moved to dismiss the complaint and the district court granted the motion in part, dismissing all but the FDCPA claim. Thereafter the servicer moved for summary judgment on the FDCPA claim which the district court granted, causing the borrowers to appeal.

On appeal the Sixth Circuit Court of Appeals affirmed the district court’s decision finding that the response letter was not sent in connection with the collection of a debt, and thus not subject to the FDCPA.

**The Bullet Point:** Under 15 U.S.C. § 1692e, the FDCPA prohibits “false, deceptive, or misleading representation[s] or means in connection with the collection of a debt.” Not all notices and letters will be considered to be “in connection with the collection of the debt.” As the Sixth Circuit explained, when a statement is a ministerial response to a debtor inquiry, rather than part of a strategy to make payment more likely, the communication is not sent in connection with the collection of a debt and the FDCPA does not apply.

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## Acceptance of Offer of Judgment Mooted Class Action

*Rodriguez v. Premier Bankcard, LLC*, N.D. Ohio No. 3:16CV2541, 2019 U.S. Dist. LEXIS 104334 (Jun. 21, 2019).

In this lawsuit, the plaintiffs, on behalf of a class, alleged that the defendant violated the Telephone Consumer Protection Act (TCPA) by using an automated dialer system to call their cell phones without prior express consent. During discovery, defendants offered to settle the named plaintiffs’ individual claims by paying damages, attorneys’ fees, and costs, and which was accepted. When plaintiffs then sought to move for class discovery and certification, the defendants opposed arguing that the acceptance of the fees and cost offer mooted the case.

The United States District Court for the Northern District of Ohio agreed, finding that the settlement mooted all claims.

**The Bullet Point:** Generally, a settlement of a plaintiff’s claims moots a case. However, special mootness rules exist for class actions. Once a class is certified, the mooting of the named plaintiff’s claim does not moot the action – the court continues to have jurisdiction to hear the merits of the action if a controversy between any class member and the defendant exists. Where, on the other hand, the named plaintiff’s claim becomes moot before certification, dismissal of the action is required. That being said, a class action is mooted if an offer to settle is accepted, if the offer provides full relief on an individual’s claims and there is no certified class or

pending motion to certify. Here by accepting payment for damages, fees, and costs, no further relief to the plaintiff was available; thereby mooting his claim.

One exception to this is known as the “picking off” exception, whereby a defendant grants relief to a named plaintiff (or plaintiffs) in the hopes of mooting a class. This exception does not apply when a plaintiff voluntarily accepts the settlement offer and fully participates in the negotiations. In this case, because full relief was provided, this exception was not applicable.

Another exception to the mootness doctrine is called the “inherently transitory exception.” The inherently transitory exception enables individual plaintiffs to continue pursuing their cases where “the controversy . . . is such that [the case] becomes moot as to them before the district court can reasonably be expected to rule on a certification motion.” The exception requires that plaintiffs show: “(1) that the injury be so transitory that it would likely evade review by becoming moot before the district court can rule on class certification, and (2) that it is certain other class members are suffering the injury.”