[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-11769

ANTHONY SOS,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
a foreign insurance company,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:17-cv-00890-PGB-LRH

Before LUCK, BRASHER, and HULL, Circuit Judges.

BRASHER, Circuit Judge:

We have twice held that a defendant cannot moot a class action lawsuit by buying off the individual claims of the named plaintiff. *See Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030 (5th Cir. 1981); *Stein v. Buccaneers Ltd.*, 772 F.3d 698 (11th Cir. 2014). The Supreme Court, too, has reasoned that allowing a class's claims to "be 'picked off' by a defendant's tender of judgment before an affirmative ruling on class certification could be obtained, obviously would frustrate the objectives of class actions." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980). We have explained that a contrary rule would give defendants "the option to preclude a viable class action from ever reaching the certification stage," which is "precisely what the [Supreme Court] condemns." *Zeidman*, 651 F.2d at 1050.

In this class action lawsuit, Anthony Sos, the named plaintiff, timely filed a motion to certify a class of State Farm policy holders who had been shortchanged when State Farm failed to pay sales taxes and title transfer fees under a standard automobile insurance contract. While that class certification motion was pending, State Farm tried many times to moot Sos's claims so that a class could not be certified. Just hours after Sos filed his class certification motion, State Farm sent Sos's attorneys a check to resolve his individual claims, which his attorneys rejected. Later, State Farm offered

to pay Sos double its earlier offer if Sos would dismiss his putative class suit. After settlement talks failed, State Farm began to send voluntary payments to other members of the putative class, whom State Farm had identified through internal documents, in an express attempt to moot the class claims. Lastly, in one final effort, State Farm sent Sos another check. Sos had filed a motion for summary judgment on behalf of the putative class on the deadline set by the district court. The district court granted Sos's motion for summary judgment on only his individual claims for damages and prejudgment interest, without addressing his claim for statutory attorney's fees under Florida law and without ruling on class certification. The day before a hearing on Sos's long-pending class certification motion, State Farm paid Sos for his individual damages and prejudgment interest as reflected in the district court's summary judgment.

The district court rejected State Farm's repeated argument that its payments to Sos and other members of the class mooted the case. Shortly after the class certification hearing, the district court certified a class of Florida insureds and granted summary judgment in its favor, entitling the class to damages, prejudgment interest, and statutory attorney's fees.

State Farm's appeal requires us to resolve five questions. First, under established precedent and the unique circumstances here, we conclude that State Farm did not moot this case by making unsupervised partial payments to the putative class members or by paying some of Sos's individual claims. Second, we conclude

that the district court did not abuse its discretion in certifying the class action under Rule 23 of the Federal Rules of Civil Procedure. Third, we conclude that State Farm's failure to pay the class members the complete costs of their sales taxes and title transfer fees was a breach of contract under Florida law. Fourth, we conclude that the district court did not abuse its discretion in awarding the plaintiffs prejudgment interest. Fifth, we conclude that the district court's attorney's fee award was an abuse of its discretion because the court used the wrong standard to calculate the applicable hourly rate and added a too-generous 2.5 multiplier. Accordingly, we affirm in part, reverse in part, and remand this case for the district court to recalculate attorney's fees in light of this opinion.

I.

"This case has a lengthy, and heavily litigated, history." *Sos v. State Farm Mut. Auto. Ins. Co.*, No. 617CV890ORL40LRH, 2021 WL 1185685, at *1 (M.D. Fla. Jan. 26, 2021), *report and recommendation adopted in part, rejected in part*, No. 6:17-CV-890-PGB-LRH, 2021 WL 1186811 (M.D. Fla. Mar. 19, 2021). Because this factual history is critical to our decision, we describe it in some detail.

Anthony Sos and unnamed class members each leased a vehicle covered by a State Farm form insurance policy with identical essential terms. The policy provides that, in the event of a "total loss," State Farm will pay the insured the "actual cash value" of his vehicle. But the policy does not define "actual cash value" or explain whether it includes the cost of sales tax or title transfer fees.

State Farm engages in a multi-step procedure for handling total loss claims. After determining that a State Farm insured vehicle is a total loss, a claims specialist calculates the vehicle's actual cash value by entering agreed-upon values into State Farm's Total Loss Settlement Tool ("TLST"), a graphical user interface. State Farm then sends the insured a settlement check equal to the actual cash value calculated by the TLST. From 2012 to 2017, State Farm employed a "business rule" in the State of Florida that set the tax field in the TLST to zero dollars if the total loss claim was for a leased vehicle, rather than an owned one.

In 2016, Sos was in a car accident involving his leased, Florida-registered Lexus, which State Farm declared a total loss. State Farm issued a settlement payment to Sos that, consistent with its business rule, did not include sales tax and included less than the full amount for title transfer fees—$58.75 instead of $75.25.

Sos filed a class action lawsuit on behalf of himself and all others similarly situated, claiming State Farm's failure to pay appropriate sales tax and title fees on leased vehicle total loss claims in Florida breached its auto insurance policy. According to Sos, the policy required State Farm to pay all total loss claimants Florida's six percent state sales tax, applicable local sales tax, and $75.25 in title transfer fees. Sos also alleged that the putative class action satisfied all applicable class certification requirements under Rule 23. The operative class complaint sought compensatory damages, prejudgment interest, attorney's fees, and costs for both Sos and the putative class members.

Sos filed a motion for class certification concurrently with his second amended class complaint. Although the parties had not yet conducted any discovery on the class-wide issues at this early stage, Sos's certification motion stated that Sos "is aware of cases . . . where defendants have attempted to have named Plaintiffs[']claims 'picked off' by offering individual relief in order to render proposed class actions moot and deny relief to the class." Sos believed "the proper way to ensure that a proposed class action is not mooted from the outset is to file a motion for class certification concurrently with the complaint and ask the court to stay ruling on the motion until some discovery is allowed to take place."

Just hours after Sos filed his class certification motion, State Farm sent Sos's attorneys a check for $12,151 purporting to cover "the full value" of Sos's individual claim for taxes, title fees, prejudgment interest, and attorney's fees. The breakdown of the $12,151 check was $2,500 in taxes, $400 in fees, $251 in prejudgment interest, and $9,000 in attorney's fees. In an accompanying letter, State Farm stated that it "expect[ed]" Sos to "accept" this settlement "as full payment of his claim and dismiss his suit." Sos quickly rejected the settlement offer. Not only was it "insufficient to fully compensate [him] for the full extent of his damages," but Sos viewed the offer as an improper "attempt to pick off [his] claims . . . and deny justice to the thousands of State Farm insureds in the putative class." Sos added, however, that he was "more than willing to discuss amicable settlement on a class-wide basis." State Farm did not respond to this proposal.

Having failed to reach a settlement, the parties fashioned a joint case management report "to re-set class certification deadlines to provide time for the parties to engage in discovery and fully brief class certification." The joint report asked the district court to set an October 1, 2018 deadline for briefing on Sos's renewed motion for class certification; a March 1, 2019 discovery deadline; an April 1, 2019 filing deadline for dispositive motions; and a trial start date of September 1, 2019. The district court entered a scheduling order that tracked the sequence set forth in the parties' joint report: the court set a May 1, 2018 deadline for class certification briefing; an August 1, 2018 discovery deadline; a September 4, 2018 deadline for dispositive motions; and a trial start date of January 2, 2019. The district court explained that "[t]his order controls the subsequent course of proceedings," that "[c]ounsel and all parties . . . shall comply with this order," and that "[t]he Court may impose sanctions on any party or attorney . . . who . . . fails to comply with this order." The scheduling order also informed the parties that "[m]otions to extend the dispositive motions deadline . . . are generally denied," and that "at least 4 months are required before trial" for the court to resolve a motion for summary judgment. And the order explained that the court will consider a summary judgment motion "*no earlier than thirty (30) days* from the date it is" filed.

The district court referred this case to mediation, but the parties failed to reach an agreement. Outside the mediation process, State Farm made Sos a second settlement offer with the explicit goal of "resolv[ing] this case on a non-class basis," while still

compensating other underpaid insureds. The settlement offer proposed that, if Sos agreed to voluntarily dismiss his lawsuit, *see* Fed. R. Civ. P. 41(a)(1)(A)(i), State Farm would (1) send a check for taxes and title fees to the "approximately 2,600" underpaid Florida insureds who State Farm said it had identified by "review[ing] its files"; (2) "pay Mr. Sos an additional $1,500.00 in addition to the amounts being paid under his insurance claim"; and (3) pay Sos $75,000 in attorney's fees. Sos responded to State Farm's settlement offer by (1) requesting "confirmatory discovery" to verify that the number of underpaid insureds identified by State Farm and amounts owed are accurate; (2) asking to either negotiate attorney's fees after agreeing upon substantive settlement terms or to submit the question of fees to a mediator; and (3) suggesting that attorney's fees in a "common fund-type case[]" like this one must be calculated using a "percentage of recovery, rather than any lodestar method." After the parties held a telephone conference to continue negotiating potential settlement terms, State Farm offered to "double" its prior offer and pay Sos $150,000.00 in attorney's fees. Sos did not respond.

Around one month later, State Farm began engaging in unilateral "remediations," through which it sought to identify putative class members and send them checks for underpaid taxes and title transfer fees. Around two weeks after it began sending its first round of payments, State Farm wrote Sos to notify him of this process. State Farm told Sos that his "unreasonable demands for attorney's fees" caused a "break down" in settlement negotiations, so "State Farm was going to remediate these claims with or without

[his] cooperation." Accordingly, State Farm completed a round of unsupervised remediation payments in 2017, sending a total of $3,411,110.70 to 2,555 insureds. These payments did not include amounts for attorney's fees or prejudgment interest.

Sos responded to this notification by filing an "attorneys' charging lien for attorneys' fees and costs" upon any recovery Sos or the putative class members obtain in this case. Sos's counsel then wrote State Farm's counsel, asserting that State Farm's remediation payments were incomplete because they "disregard[ed] our entitlement to attorney's fees." State Farm responded that (1) Sos's fee request and charging lien have no "legal basis" because "no class has been certified," and (2) "even if there were a basis for [Sos] to claim fees at this time," the amount requested was "unreasonable."

On March 1, 2018—in compliance with the court's scheduling order—Sos filed his renewed motion for class certification, asking the district court to certify a class of leased vehicle insureds in Florida "whose total loss claim payment did not include full state and local sales tax and tag and title fees" within the past five years. The motion described State Farm's attempted remediation process but argued that the payments were incomplete and omitted some putative class members.

State Farm then identified an additional 704 underpaid insureds it had left out of its first round of payments. Thus, before responding to Sos's class certification motion, State Farm quickly conducted a second round of remediations to pay off these in-

sureds, sending them payments totaling $906,727.71. These remediation payments again did not include attorney's fees or prejudgment interest. Only after completing this second round of payments did State Farm respond to Sos's motion for class certification, arguing that the case was moot because its remediations "fully compensated all putative class members." Sos's reply in support of class certification argued that State Farm's "repeated efforts to moot Sos's individual claim and the claims of the putative class members" have been ineffective because State Farm's remediations (1) "at a minimum, . . . did not include prejudgment interest" and (2) still left out some putative class members altogether. Sos filed supplemental authorities in support of his motion for class certification six days later.

Pursuant to the district court's scheduling order, State Farm filed a motion for summary judgment on September 4, 2018. A few hours later, Sos filed a cross-motion for summary judgment. At this time, the district court had not yet ruled on Sos's March 1, 2018 renewed motion for class certification. Still, both parties treated their summary judgment motions as though they were on behalf of—or, in State Farm's case, against—a class. State Farm, for its part, argued not only that Sos's individual claim became moot when State Farm sent him a check, but also that the putative class claims were moot "because State Farm has similarly compensated everyone in the proposed class." State Farm's summary judgment motion describes its attempted remediations to the putative class members, explaining in detail its efforts to identify and pay each of them. The motion also explores mootness law "in the class action

context," arguing that a named plaintiff who no longer has an individual claim for damages also has no interest in pursuing class relief. Sos's summary judgment motion similarly purports to assert liability on behalf of a class, specifically requesting "summary judgment in favor of Mr. Sos" *and* "in favor of the putative class." Sos requested, for both himself and the class, damages equal to six percent of the value of each class member's leased vehicle plus any applicable local surtax, $75.25 in title transfer fees (offset by any amounts State Farm already paid), prejudgment interest, injunctive relief, and—importantly here—attorney's fees.

The parties submitted the remainder of their pretrial filings in compliance with the district court's scheduling order. Then, on March 13, 2019, with Sos's March 1, 2018 renewed motion for class certification still pending, the district court granted in part and denied in part both parties' motions for summary judgment—but only with respect to Sos *individually*. The court began by rejecting State Farm's argument that Sos's claims were mooted by State Farm tendering him a check. Sos never cashed the check, and "[a]n unaccepted settlement offer . . . does not moot a plaintiff's case." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 165 (2016). Then, the court granted summary judgment for Sos on his breach of contract claim. The court ruled that "actual cash value" under State Farm's insurance policy means "replacement cost minus depreciation," which includes sales tax and title transfer fees equal to that of an owned vehicle. But the court rejected Sos's claims for injunctive and declaratory relief as duplicable of his breach of contract claim. Accordingly, it granted State Farm summary judgment on those

claims. Finally, although it acknowledged that "[b]oth parties move[d] for summary judgment as to the class," the district court expressly "disregarded" their class-wide arguments because the court "ha[d] yet to rule on class certification." The court also did not address Sos's claim for attorney's fees in his complaint and summary judgment motion.

A day later, the district court entered judgment for Sos, entitling him "to damages in the amount of $2,239.12 in sales tax, . . . plus applicable local tax; the amount of $75.25 in title tran[s]fer fees (offset by $58.75 already paid by State Farm) . . . ; and prejudgment interest." The same day, the district court scheduled a status conference on the motion for class certification to occur twelve days later.

The day before the status conference on class certification was scheduled to occur, State Farm sent a check to Sos's counsel for $2,706.65 and filed a "Notice of Satisfaction of Judgment" informing the district court of the payment. Then, during the status conference, State Farm argued that the court's judgment for Sos and State Farm's payment the day prior mooted Sos's claims and the putative class claims. The district judge responded that he did not "understand why entry of summary judgment" before certification "is relevant" to either mootness or Rule 23. The judge noted that "it's not uncommon for summary judgment to precede certification," in part because summary judgment "could be issue-determinative, which helps the parties understand their risk in resolving the class." The district judge also raised concerns about State

Farm's ability to "continuously . . . knock[] off" successive named plaintiffs from the case by satisfying their individual claims before class certification. The court scheduled a hearing on Sos's renewed class certification motion for the following month.

State Farm moved for leave to file supplemental briefing on class certification in advance of the class certification hearing "to address whether the Court's [March 14, 2019] entry of judgment and State Farm's subsequent [March 15, 2019] satisfaction of that judgment extinguish[ed] Plaintiff's standing to act as a class representative or otherwise make him an inadequate class representative." The district court granted State Farm's request, and both parties filed supplemental briefs on class certification the day before the court's scheduled hearing on the issue. During the hearing, Sos criticized State Farm's efforts to "pick off" the claims of Sos and the putative class members and "bypass the certification process." The district judge agreed that ratifying State Farm's efforts to make "the lawsuit go away" would be "[in]consistent with the principles behind class action[s]."

On May 2, 2019—around six weeks after granting summary judgment for Sos—the district court granted in part Sos's renewed motion for class certification. The court certified a Rule 23(b)(3) class of all Florida persons who insured a leased vehicle with State Farm and, within the prior five years, sustained a total loss to the vehicle but did not receive payment for the full amount of sales tax or title transfer fees on their claims.

The district court began its analysis by rejecting State Farm's argument that its remediation process fully compensated the putative class members. The court could not "confirm[]" that State Farm had paid all potential class members because "[t]here was no judicial oversight over the remediation process." But "even assuming State Farm paid the appropriate amount of sales tax and fees to all putative class members, the members are still not made whole because *State Farm did not pay them prejudgment interest or attorneys' fees* in accordance with the [applicable] fee-shifting statute." (Emphasis added). The court was critical of this "unusual [remediation] practice," which it viewed as an attempt "to circumvent the normal class action mechanisms." The court also rejected State Farm's argument that the entry of judgment in Sos's favor destroyed his standing and mooted the remaining class claims.

Next, the court held that the class satisfied all applicable Rule 23 requirements. The numerosity requirement was satisfied because (1) the 3,269 "remediated" insureds were still owed prejudgment interest, and (2) the remediations omitted insureds who received greater than zero but less than the full six percent of sales tax. The commonality requirement was satisfied because "[t]he question of whether State Farm breached its contractual obligations to insureds by not paying full sales tax and fees is common to all putative class members." The typicality requirement was satisfied because "[t]he putative class members' claims and named Plaintiff's claim involve the alleged breach of identical contractual provisions pursuant to State Farm's standard practice," so "proving

the named Plaintiff's claim would necessarily prove claims class-wide." The adequacy of representation requirement was satisfied by both Sos and his counsel. Sos "diligently pursued" the class claims, including by "participat[ing] in depositions and attend[ing] mediations." And his attorneys' charging lien did not create "a conflict of interest between counsel and the class." The sole function of the lien was to notify State Farm that if it paid off the putative class members outside of court, "it would nonetheless be bound to make payment to the attorneys." The court also noted that "counsel is experienced in litigating class actions and has recently enjoyed success in class actions nearly identical to this case." Finally, the court held State Farm waived its "one-way intervention" argument by moving for summary judgment before the court ruled on class certification.

Following class certification, the parties engaged in a court-ordered notice process that identified four additional Florida insureds State Farm underpaid as part of their leased vehicle total loss claims. State Farm moved to decertify the class based in part on the inclusion of these insureds. State Farm reiterated its earlier mootness and Rule 23 arguments and added that these four additional insureds destroyed Rule 23 commonality. Unlike the other class members, who were paid *no* taxes as part of their total loss settlement, these four class members were paid *some* taxes, just not the full six percent required by Florida law. Sos responded in opposition to State Farm's decertification motion and moved for summary judgment on the class claims.

The district court denied State Farm's motion to decertify the class. The court again rejected State Farm's mootness arguments, reasoning that the remediations had not fully compensated the class members because (1) they were not paid prejudgment interest and (2) Florida law is clear that prejudgment interest is a necessary element of compensatory damages. And commonality was satisfied because *all* class members—including those paid between zero and six percent in taxes—"suffered the same injury (i.e., underpayment) *and* a violation of the same provision of law (i.e., breach of contract)."

And the court granted Sos's motion for summary judgment on the class claims. The court rejected, for the third time, State Farm's mootness arguments. Then, the district court held that State Farm breached its contract with the class members. State Farm thus owed each class member damages for six percent of the value of his or her total loss vehicle, applicable local tax, $75.25 in title transfer fees, and prejudgment interest—offset by any amounts already paid. The court also held that Sos and the class were entitled to attorney's fees under Fla. Stat. § 627.428(1). The court referred the calculation of attorney's fees to a magistrate judge.

Sos moved for attorney's fees, requesting $4,415,351.00 in fees on behalf of himself and the class under section 627.428. After holding a hearing and receiving briefing on the issue, the magistrate judge issued a scrupulous Report and Recommendation on Sos's fee request. The R&R advised the district court to grant Sos's

motion in part, but to reduce his requested hourly rates, resulting in fees totaling $2,983,500.00. The district court adopted the R&R in part but rejected the extent of the magistrate judge's rate reduction and applied a "national market" standard. The district court awarded Sos and the class $4,198,566.50 in attorney's fees, $11,235.43 in taxable costs, and prejudgment interest.

The court entered final judgment for Sos and the class. State Farm appealed.

II.

Five standards govern our review. First, we review a district court's Article III mootness conclusions de novo. *United States v. Askins & Miller Orthopaedics, P.A.*, 924 F.3d 1348, 1355 (11th Cir. 2019). Second, we review a district court's Rule 23 class certification rulings for abuse of discretion. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1275 (11th Cir. 2021). Third, we review de novo a district court's interpretation of an insurance contract under state law. *See Caradigm USA LLC v. PruittHealth, Inc.*, 964 F.3d 1259, 1267 n.4 (11th Cir. 2020). Fourth, we review a district court's award of prejudgment interest for abuse of discretion. *Cox Enters., Inc. v. News-J. Corp.*, 510 F.3d 1350, 1360 (11th Cir. 2007). Fifth, we review a district court's award of attorney's fees for abuse of discretion. *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1251 n.2 (11th Cir. 2020). But "that standard of review allows us to closely scrutinize questions of law decided by the district court in reaching the fee award." *Id.* (quoting *Camden I Condo. Ass'n, Inc. v. Dunkle*,

946 F.2d 768, 770 (11th Cir. 1991)). "A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in reaching its decision, or makes findings of fact that are clearly erroneous." *Id.* (cleaned up).

III.

We begin our analysis, as we must, with our jurisdiction. *Vital Pharms., Inc. v. Alfieri*, 23 F.4th 1282, 1288 (11th Cir. 2022). Article III of the United States Constitution limits the jurisdiction of the federal courts to "Cases" and "Controversies." "If an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' at any point during litigation," a case or controversy ceases to exist, and "the action . . . must be dismissed as moot." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477–78 (1990)). But "[a] case becomes moot," the Supreme Court has made clear, "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (cleaned up); *see Keister v. Bell*, 29 F.4th 1239, 1250 (11th Cir. 2022) ("A case . . . become[s] moot . . . if an event occurs that . . . makes redressability by the court an impossibility."), *cert. denied*, 143 S. Ct. 1020 (2023). The court retains jurisdiction "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation." *Knox*, 567 U.S. at 307–08 (quoting *Ellis v. Ry. Clerks,* 466 U.S. 435, 442 (1984)). "The party

seeking dismissal bears the heavy burden of establishing mootness." *Norwegian Cruise Line Holdings Ltd v. State Surgeon Gen.*, 55 F.4th 1312, 1315 (11th Cir. 2022) (cleaned up).

On appeal, State Farm advances two independent arguments that this suit became moot before class certification. First, State Farm argues that its pre-certification remediation payments to the putative class members provided them complete relief, mooting the class claims. Second, it argues that the district court's pre-certification judgment for Sos, and State Farm's pre-certification satisfaction of that judgment, mooted Sos's claims and thereby mooted the class claims as well. We address these arguments in turn.

A.

We can easily dispose of State Farm's first mootness argument. State Farm gives two reasons why its remediation payments mooted the class claims despite omitting prejudgment interest and attorney's fees. First, State Farm contends the class members are not entitled to prejudgment interest under Florida law. Second, it asserts that an interest in attorney's fees does not suffice to keep an otherwise moot claim live.

We agree with State Farm's second contention, as far as it goes. A mere interest in attorney's fees cannot save an otherwise moot case. *See, e.g.*, *Lewis*, 494 U.S. at 480. But this rule does nothing to advance State Farm's position. Even if State Farm's remediation payments *otherwise* fully compensated the putative class

members, their claim for attorney's fees would remain live. *See infra* Part III.B.1.

In any event, the remediation payments did not otherwise fully compensate the class members. For one, State Farm did not pay all class members during its remediations. There remain four class members who received less than the full six percent of sales tax as part of their settlement payment. Further, State Farm has paid none of the unnamed class members their claimed prejudgment interest and has thus accorded none of them the complete relief necessary to moot the class claims. *See Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212, 214–15 (Fla. 1985) (prejudgment interest is a mandatory component of a plaintiff's compensatory damages under Florida law).

And State Farm's first argument is irrelevant to the mootness analysis. Even if we agreed that Florida law does not entitle the unnamed class members to prejudgment interest (we don't, *see infra* Part VI), that argument goes to the merits, not our jurisdiction. *See Chafin v. Chafin*, 568 U.S. 165, 174 (2013) (to find lack of jurisdiction based on "the legal availability of a certain kind of relief" is to "confuse[] mootness with the merits"). The Article III inquiry assumes that plaintiffs are entitled to all the relief they seek and merely asks whether that relief, if granted, would redress the plaintiffs' injury. "A defendant cannot simply assume that its legal position is sound and have the case dismissed because it has tendered everything it *admits* is due." *Gates v. Towery*, 430 F.3d 429, 432 (7th Cir. 2005). That's what State Farm asks us to do here.

State Farm's payments of *some* costs claimed by *some* putative class members did not moot the class claims.

B.

State Farm's second argument is that the district court's pre-certification entry of summary judgment for Sos, the sole named plaintiff, and State Farm's subsequent payment of that judgment, mooted Sos's individual claims and the putative class claims. On this point, the sequence of proceedings below is critical. To refresh, Sos filed his class complaint and moved for class certification shortly after. Pursuant to the district court's scheduling order, and before the court ruled on Sos's pending certification motion, both parties moved for summary judgment. While Sos's certification motion was still pending, the district court granted summary judgment for Sos on his individual claims but not his class claims. The court entered judgment for Sos, entitling him to payment of title fees, state and local taxes, and prejudgment interest. It did not at that time, however, address Sos's claim for attorney's fees made in his complaint and summary judgment motion. State Farm paid these claims in full. About six weeks later, the court granted Sos's motion for class certification.

1.

To start, we are skeptical of State Farm's assertion that either the district court's entry of summary judgment in Sos's favor on his individual merits claims, or State Farm's payment of those claims, mooted Sos's individual action, much less the class claims.

Summary judgment usually doesn't moot a lawsuit in the Article III sense, and State Farm has cited no authority for that proposition. If judgment for the plaintiff mooted the case, we wouldn't allow the defendant to appeal the adverse judgment. This does not mean that plaintiffs may press resolved questions before the court in perpetuity. Doctrines like preclusion prevent parties, in the interest of fairness, from relitigating claims or issues they've already litigated to judgment. *See In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001). But an attempt to continue litigating an already-decided claim is not a *mootness* problem. *See O'Brien v. Ed Donnelly Enters., Inc.*, 575 F.3d 567, 582 (6th Cir. 2009) ("[L]osing a claim on summary judgment in a previous suit does not moot such a claim in a subsequent lawsuit. Rather, the subsequent claim is barred under the doctrine of claim preclusion."), *abrogated on other grounds by Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016).

We are similarly skeptical that State Farm's post-judgment payment of Sos's individual merits claims mooted those claims. We've held that the defendant's satisfaction of a final judgment for the plaintiff moots a case only if "the parties' actions objectively manifest an intent to abandon the issues" resolved in the judgment. *Alliant Tax Credit 31, Inc. v. Murphy*, 924 F.3d 1134, 1140 (11th Cir. 2019) (quoting *RES-GA Cobblestone, LLC v. Blake Constr. & Dev., LLC*, 718 F.3d 1308, 1315 (11th Cir. 2013)); *see also United States ex rel. Morgan & Son Earth Moving, Inc. v. Timberland Paving & Constr. Co.*, 745 F.2d 595, 598 (9th Cir. 1984) ("The usual rule in federal courts is that satisfaction of judgment does not foreclose appeal."). Under

this standard, "payment moots an appeal 'only if the parties mutually intended a final settlement of all the claims in dispute and a termination of the litigation.'" *Murphy*, 924 F.3d at 1140 (quoting *McGowan v. King, Inc.*, 616 F.2d 745, 747 (5th Cir. 1980)). If, on the other hand, the "parties continue[] to litigate the case . . . as though nothing had changed," satisfaction of the underlying judgment won't moot the appeal. *Alvarez Perez v. Sanford-Orlando Kennel Club, Inc.*, 518 F.3d 1302, 1305–08 (11th Cir. 2008). Here, of course, State Farm continued to "vigorously defend[] the legality of" its conduct before the district court, and, indeed, continues to defend it here. *See West Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2607 (2022) (quoting *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007)).

Finally, we note that State Farm never paid Sos's claim for attorney's fees because the district court did not address that claim in its summary judgment order. We decide whether a case is moot "separately for each form of relief sought." *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)). Thus, interim developments that moot a claim for damages do not necessarily moot a claim for attorney's fees. Instead, "[w]here one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy." *Ga. Ass'n of Latino Elected Offs.*, 36 F.4th at 1117 (quoting *Powell v. McCormack*, 395 U.S. 486, 497 (1969)); *see Yunker v. Allianceone Receivables Mgmt., Inc.*, 701 F.3d 369, 372–73 (11th Cir. 2012) ("A case does not become moot . . . where one issue has become moot, 'but

the case as a whole remains alive because other issues have not become moot.'" (quoting *U.S. Fire Ins. Co. v. Caulkins Indiantown Citrus Co.*, 931 F.2d 744, 748 (11th Cir. 1991))). At the time of the district court's class certification decision, Sos's outstanding claim for attorney's fees "present[ed] 'a live controversy with respect to which the court c[ould] give meaningful relief,' and [was] therefore not moot." *Ga. Ass'n of Latino Elected Offs.*, 36 F.4th at 1117–18 (quoting *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001)); *see also Powell*, 395 U.S. at 499 ("reject[ing] respondents' theory that the mootness of a 'primary' claim requires a conclusion that all 'secondary' claims are moot").

It is well established, to be sure, that an outstanding claim for attorney's fees cannot revive otherwise moot claims on the merits. *E.g.*, *Banks v. Sec'y, Dep't of Health & Hum. Servs.*, 38 F.4th 86, 93 n.3 (11th Cir. 2022). But the inverse is also true: the mootness of a plaintiff's merits claims does not moot his unresolved claim for attorney's fees. "[A] controversy over attorneys' fees remains viable on its own"—it just cannot "give life to any other mooted dispute." *Schell v. OXY USA Inc.*, 814 F.3d 1107, 1124 n.11 (10th Cir. 2016); *see Goldin v. Bartholow*, 166 F.3d 710, 721 n.13 (5th Cir. 1999) ("[M]ootness of the underlying action does not moot a controversy over attorney's fees already incurred. In such cases, both parties retain an interest in recovering or retaining the fees even after losing such interest in the underlying action." (citation omitted)); *accord Ctr. for Biological Diversity v. Marina Point Dev. Co.*, 566 F.3d 794, 805 (9th Cir. 2009); *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974); *Dahlem v. Bd. of Educ.*, 901 F.2d 1508, 1511 (10th

Cir. 1990); *Diffenderfer v. Gomez-Colon*, 587 F.3d 445, 452 (1st Cir. 2009).

2.

In any event, we need not decide whether State Farm successfully mooted Sos's individual claims because, even if those claims were moot, we believe Sos retained standing to pursue the class claims under the "relation back doctrine." *See Zeidman*, 651 F.2d at 1045–51; *Stein*, 772 F.3d at 704–09.

a.

We begin with an overview of the law in this area. In general, a putative class action becomes moot if no named plaintiff with a live claim remains at the time of the district court's class certification decision. *E.g.*, *Murray v. Auslander*, 244 F.3d 807, 810 (11th Cir. 2001). Because it is only upon certification that the unnamed class members formally become plaintiffs in the action—and thereby "acquire[] a legal status separate from the interest asserted" by the named plaintiff, *Sosna v. Iowa*, 419 U.S. 393, 399 (1975)—if the named plaintiff's claims are moot before a class is formally certified, "no justiciable claims are at that point before the court and the case must as a general rule be dismissed for mootness," *Zeidman*, 651 F.2d at 1045.

To adapt the mootness doctrine to the class action mechanism, however, the Supreme Court has crafted several exceptions to the general rule that pre-certification mootness of the named plaintiff's claims divests the federal courts of jurisdiction over the

entire action. *See Murray*, 244 F.3d at 811. If one of these exceptions applies, class certification "relates back" to the filing of the complaint, giving the named plaintiff standing to pursue certification despite the intervening mootness of his individual claim. *See, e.g.*, *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 (1980); *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975); *Swisher v. Brady,* 438 U.S. 204 (1977); *Sosna*, 419 U.S. at 403 n.11; *Symczyk*, 569 U.S. at 71 & n.2; *Zeidman*, 651 F.2d at 1050; *Stein*, 772 F.3d at 707.

First, the Supreme Court has held that the district court may certify a class action despite the mootness of the named plaintiff's claim when that claim is "so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *Geraghty*, 445 U.S. at 398–400. This "exception applies when the pace of litigation and the inherently transitory nature of the claims at issue conspire to make" the general mootness rule "difficult to fulfill." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1539 (2018). This "inherently transitory" exception to class action mootness derives from the traditional mootness exception for controversies that are "capable of repetition, yet evading review." *See Sosna*, 491 U.S. at 400. When the named plaintiff's claims are capable of repetition, yet evading review—i.e., are inherently transitory—the relation back doctrine applies to preserve the merits of the case for judicial review. "Application of the relation back doctrine in this context thus avoids the spectre of plaintiffs filing lawsuit after lawsuit, only to see their claims mooted before they can

be resolved." *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011).

The second exception to the general class action mootness rule is the so-called "picking off" exception. This exception cures mootness when a defendant resolves the named plaintiff's claims before class certification—by, for instance, paying the named plaintiff's individual claim or ceasing illegal conduct as to the named plaintiff. The picking off exception originates from the more general exception that a defendant's "voluntary cessation" of its illegal conduct "'does not moot a case' unless it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *West Virginia*, 142 S. Ct. at 2607 (quoting *Parents Involved*, 551 U.S. at 719). And the Supreme Court justifies the picking off exception on the ground that allowing defendants to "buy off" named plaintiffs' individual claims before class certification would undermine the purposes and utility of the class action mechanism, which exists to (1) permit the aggregation of small claims that might otherwise never reach a court; (2) protect defendants from inconsistent obligations; (3) provide a convenient and economical means for disposing of similar lawsuits; and (4) reduce litigation costs by dispersing fees throughout a class. *See Roper*, 445 U.S. at 338–40; *Geraghty*, 445 U.S. at 402–03.

These exceptions—which allow class certification to proceed "despite the loss of a 'personal stake' in the merits of the litigation by the proposed class representative"—"demonstrate the flexible character of the Art. III mootness doctrine" in this context.

Geraghty, 445 U.S. at 400. Consistent with this flexibility, we and other courts have found it appropriate to blend the "picking off" and "inherently transitory" exceptions, holding that if a defendant could pick off the named plaintiff's claims before the district court rules on class certification, those claims are transitory, and the putative class action remains live. *See, e.g.*, *Zeidman,* 651 F.2d at 1050; *Stein*, 772 F.3d at 706; *Pitts,* 653 F.3d at 1091; *Weiss v. Regal Collections*, 385 F.3d 337, 347 (3d Cir. 2004), *abrogated on other grounds by Gomez*, 577 U.S. at 162; *Susman v. Lincoln Am. Corp.*, 587 F.2d 866, 869–71 (7th Cir. 1978).

We have twice applied the relation back doctrine this way. In *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030 (5th Cir. 1981), our predecessor court applied the transitory-because-picked-off exception in a case involving a sequence of events closely analogous to those here. After the named plaintiffs moved for class certification, but before the district court ruled on certification, the *Zeidman* defendants paid the named plaintiffs the full amount of their personal claims. *See id.* at 1032. The district court then dismissed the entire case as moot under the general rule that a putative class action becomes moot upon the pre-certification mootness of the class plaintiffs' claims. *Id.*

The former Fifth Circuit reversed: the class action was not mooted by the defendants' satisfaction of the named plaintiffs' claims. The court asked: "should a purported but uncertified class action be dismissed for mootness upon tender to the named plaintiffs of their personal claims, despite the existence of a timely filed

and diligently pursued pending motion for class certification?" *Id.* The court answered that it should not; the class claims remained live despite the mootness of the named plaintiffs' individual claims.

The appellate court reaffirmed the "general rule" that a putative class must be dismissed for mootness when the personal claims of all named plaintiffs become moot before class certification. *Id.* at 1045. But the court held that "this general rule must yield" in a case like this one. *See id.* "[A] suit brought as a class action should not be dismissed for mootness upon tender to the named plaintiffs of their personal claims," *Zeidman* held, "at least when, as here, there is pending before the district court a timely filed and diligently pursued motion for class certification." *Id.* at 1051.

The court acknowledged that it was not there faced with claims that are "inherently transitory" in the traditional sense. Unlike "the claims asserted [by the named plaintiffs] in *Gerstein* and *Swisher*," the *Zeidman* representatives' damages claims "did not expire with the passage of time." *Id.* at 1049. Instead, they were "rendered moot by purposive action of the defendants in particular, by the defendants' full tender of the plaintiff's individual claims." *Id.* But the court found this distinction immaterial to Article III. Where "the defendants can in each successive case moot the named plaintiffs' claims before a decision on certification is reached, . . . a decision on class certification could"—"as a practical matter"—"be made just as difficult to procure" as in cases involving naturally expiring claims. *Id.* at 1050. Even though picking off named plaintiffs won't be "financially feasible" "for all defendants in all suits

brought as class actions," the court held that "the difficulty inherent in any use of this tactic does not make it acceptable." *Id.* What "the relation back doctrine of *Sosna*, *Gerstein*[,] and *Swisher* condemns" is dismissing for mootness cases in which "the defendants would have the option to preclude a viable class action from ever reaching the certification stage." *Id.*

As support for its holding, the *Zeidman* court relied on related "decisions of several other circuits." *Id.* at 1050–51 (collecting cases). Among these was *Frost v. Winberger*, a Second Circuit decision materially indistinguishable from the case at hand. 515 F.2d 57, 63–64 (2d Cir. 1975) (mootness exception applied when district court granted summary judgment in named plaintiffs' favor before certifying class). *Zeidman* also suggested that the result would be no different in a case in which the named plaintiffs' claims are mooted not by the defendant's purposive acts, but by the district court's delay in deciding class certification. The Fifth Circuit noted that, even "where the [district] court itself unreasonably delays a ruling on class certification," prior precedent established that "unreasonable delay could not be used to justify dismissal for mootness of 'an action that was initially filed as a class action, that has been treated as such by all concerned, and that has been diligently litigated for more than ten years.'" *Zeidman*, 651 F.2d at 1047 n.13 (quoting *Cruz v. Hauk*, 627 F.2d 710, 717 (5th Cir. 1980)).

More recently, in *Stein v. Buccaneers Ltd. P'ship*, 772 F.3d 698 (11th Cir. 2014), we expanded *Zeidman*'s mootness exception to include cases in which the named plaintiff is picked off before he's

even moved for class certification. We believed "[t]he relation-back doctrine allows a named plaintiff whose individual claims are moot to represent class members" in any case where "the named plaintiff will adequately present the class claims and unless the named plaintiff is allowed to do so the class claims will be capable of repetition, yet evading review." *Id.* at 707. We again recognized that *Stein* did not involve claims like those "in *Sosna*, *Gerstein*, *Swisher*, and *McLaughlin*," which "were capable of repetition, yet evading review, because the passage of time inevitably mooted claims of that kind." *Id.* at 706. But "*Zeidman* squarely holds . . . that this does not matter." *Id.* "What matters" is whether "the named plaintiff act[ed] diligently to pursue the class claims." *Id.* at 707. If he did, *Zeidman* applies, even if the named plaintiff has not moved for class certification. *Id.* "[T]o act diligently, . . . it is enough that the named plaintiff diligently takes any necessary discovery, complies with any applicable local rules and scheduling orders, and acts without undue delay." *Id.*

b.

In view of this legal backdrop, we conclude that, even if judgment or satisfaction of the named plaintiff Sos's merits claims mooted his individual claims, the circumstances of this case place it comfortably within *Zeidman*'s exception to the general class action mootness rule. Thus, the district court's class certification decision relates back to the filing of the class complaint, giving Sos standing to continue pursuing the class claims.

To escape the general rule that pre-certification mootness of the named plaintiff's claims moots the entire putative class suit, *Zeidman* and *Stein* require the presence of two circumstances: First, that the defendant be capable of "picking off" the named plaintiff's claims, and second, that the named plaintiff be "diligent" in pursuing the class claims. Both circumstances exist here.

First, the facts here establish that State Farm has tried to "pick off" Sos's case and evade class certification from the very outset of this litigation. State Farm tried to buy off Sos's individual claims just hours after he moved for class certification. When Sos sought instead to negotiate a class-wide settlement, State Farm didn't respond. Instead, State Farm made Sos a second settlement offer "to resolve this case on a non-class basis." When Sos declined, State Farm offered to pay Sos double its earlier offer if Sos would agree to voluntarily dismiss this case. When Sos didn't reply, State Farm began surreptitiously sending checks to the unnamed putative class members, seeking to pay off the class claims outside the supervision of Sos or the court. Once Sos's renewed class certification motion alerted State Farm that it had omitted some putative class members from its remediations, State Farm quickly tried to pay off those insureds before urging the court that class certification was improper because its remediations had fully compensated the putative class. Indeed, State Farm's summary judgment motion practically admits that it was attempting to pick off Sos, arguing that the claims of Sos and the other putative class members became moot when State Farm sent them "unconditional payment" for the

damages they asked for in the case. "With payment in hand," State Farm argued, "there is no basis for this case to continue."

Finally, after the district court entered summary judgment in favor of Sos, State Farm quickly seized on its long-awaited opportunity to "pick off" Sos by sending him a check paying the district court's judgment the day before the status conference on class certification. Then, during the status conference, State Farm insisted that its satisfaction of Sos's claims the day prior mooted this case. State Farm has since used every opportunity—in supplemental briefing, during the class certification hearing, in its decertification motion, and in its briefing on Sos's class-wide summary judgment motion—to make that argument.

State Farm's gamesmanship was obvious to Sos and the district judge, both of whom repeatedly criticized State Farm's "pick off" attempts throughout this litigation. The district court in particular—tracking our predecessor court's analysis in *Zeidman*—expressed concerns during the status conference about State Farm's ability to "continuously . . . knock[] off" named plaintiffs by satisfying their individual claims before class certification. *See Zeidman*, 651 F.2d at 1050. And the judge similarly mirrored the Supreme Court's reasoning in *Roper* and *Geraghty* during the hearing on Sos's renewed class certification motion, expressing that State Farm's pick-off strategy "doesn't seem to be consistent with the principles behind class action[s]." *See Roper*, 445 U.S. at 338–40; *Geraghty*, 445 U.S. at 402–03.

Second, Sos has diligently pursued the class claims for nearly six years. State Farm does not suggest otherwise. Sos personally participated in discovery and mediations in support of the class claims, and he complied with all the district court's filing deadlines. *See Stein*, 772 F.3d at 707. Accordingly, if State Farm's payment to Sos mooted Sos's individual claims, this case is on all fours with *Zeidman*. Courts may not, *Zeidman* holds, dismiss a putative class action as moot "upon tender to the named plaintiff of their personal claims . . . when, as here, there is pending before the district court a timely filed and diligently pursued motion for class certification." *Zeidman*, 651 F.2d at 1051. That's precisely what State Farm asks us to do here.

We also cannot ignore that the district court decided—contrary to the expectations of the parties—to rule on summary judgment before class certification. *Zeidman* instructs "that the court's unreasonable delay [may] not be used to justify dismissal for mootness" if the case (1) "was initially filed as a class action," (2) "has been treated as a class action by all concerned," and (3) "has been diligently litigated" for many years. *See id.* at 1047 n.13 (quoting *Cruz*, 627 F.2d at 716–17). That standard is also satisfied here. Sos's initial and amended complaints were on behalf of a putative class. And Sos and State Farm prepared a joint case management report with the specific purpose of scheduling briefing and discovery on class certification. That joint report's proposed briefing deadline for class certification was six months before its proposed dispositive motions deadline. The district court approved that requested sequence, setting the deadline for dispositive motions four months

after the deadline for briefing on class certification. And the court's scheduling order explained that it would not consider motions for summary judgment for at least thirty days after receiving them.

Moreover, both parties treated their summary judgment motions as being against, or on behalf of, a certified class. By the time the parties filed their cross-motions for summary judgment, Sos's renewed motion for class certification had been pending for over six months, and it had been over a year since he'd filed his initial motion for class certification. To accept State Farm's mootness arguments under these particular circumstances would effectively fault the district court's discretionary docket-management decisions and grant State Farm an unwarranted timing windfall.

This is also not a case like *Murray v. Fid. Nat'l Fin., Inc.*, where the named plaintiff "had a readily available means of preventing the defendants from mooting their suit." 594 F.3d 419, 422 (5th Cir. 2010). Article III did not require Sos to ask the district court either to delay ruling on summary judgment until after class certification or to extend the parties' deadlines for briefing dispositive motions—actions Sos had no reason to believe were necessary and no reason to believe the district court would accept. Quite the contrary. The district court's scheduling order demanded that the parties "shall comply" with its filing deadlines, warned that parties who failed to do so risked sanctions, stated that "[m]otions to extend the dispositive motions deadline . . . are generally denied," and explained that the district court needed at least four months

before trial—which was set for January 2, 2019—to resolve summary judgment motions. Given these instructions, asking the district court to extend the parties' September 4, 2018 filing deadline for dispositive motions—which already gave the district court fewer than four months before trial to rule on summary judgment—or to delay ruling on those motions, were not "readily available means of preventing the defendants from mooting their suit." *Id.*

Contrary to the assertion of our dissenting colleague, Sos never moved for summary judgment on his individual claims alone. *See* Dissenting Opn. at 11, 15. As we've already explained, Sos's motion for summary judgment—like all his dispositive motions in this case—explicitly sought relief on behalf of a putative *class*. See Doc. 111 at 3 ("Plaintiff respectfully submits . . . that the Court grant summary judgment in his and the class members' favor."); at 20 ("State Farm Owes Sales Tax Payment to Over 1400 Claimants") at 21 ("Sos and the Class Are Owed the Benefit of Their Bargain"); at 22 (asking the court to enter judgment in favor of Sos and "[e]nter summary judgment in favor of the putative class, and award the class damages in the amount of 6% of the agreed value of their total loss vehicle (plus applicable local surtax) and $79.25 in title transfer fee (offset by any amounts already paid), prejudgment interest, attorney's fees, injunctive relief and all other relief this court deems just and proper"). So Sos indeed "resisted filing an individual motion for summary judgment," just as the dissent would require. *See id.* at 15. Sos consistently sought class relief

and followed the procedures that the district court established. He did nothing to moot his claim.

Finally, holding that a pre-certification judgment for a named plaintiff moots a putative class action would spur the very problems the class action mootness exceptions exist to prevent. Under such a rule, district courts could avoid ever certifying class actions when the putative class members' claims are meritorious simply by entering judgment for successive named plaintiffs before addressing class certification. Although district courts might prefer this choice—as it would allow them to avoid confronting Rule 23's numerous and complicated procedures—it would go against the Supreme Court's instruction that "a would-be class representative . . . must be accorded a fair opportunity to show that certification is warranted." *Gomez*, 577 U.S. at 165. We are also no more inclined to permit the district court to undermine the purposes of the class action device than we are to permit the defendant to do so. *See Roper*, 445 U.S. at 338–40; *Geraghty*, 445 U.S. at 402–03.

For these reasons, we believe this case falls within the mootness exception set out in *Zeidman* and expanded in *Stein*. Although the facts of those cases might not be perfectly analogous to those here, the "flexible character of Article III mootness doctrine" in this area dissuades us from attaching constitutional significance to the minor factual differences. *Geraghty*, 445 U.S. at 400. The Supreme Court has repeatedly informed that mootness in this context "is 'not a legal concept with a fixed content or susceptible of scientific verification'" but rather "one of uncertain and shifting contours."

Id. at 401 (alterations accepted) (first quoting *Poe v. Ullman*, 367 U.S. 497, 508 (1961) (plurality opinion); and then quoting *Flast v. Cohen*, 392 U.S. 83, 97 (1969)). So it is here. The sum of unique circumstances here convinces us that, even if Sos's individual claims were moot before class certification, the class claims remained live, and Sos retained standing to pursue them.

IV.

Before turning to the merits of this dispute, we must decide another threshold question: Did the district court abuse its discretion in certifying this class action under Federal Rule of Civil Procedure 23? We hold that it did not.

Rule 23 imposes a multitude of requirements for certifying a federal class action. State Farm challenges the satisfaction of several of them here. First is Rule 23(c)(1)(A)'s requirement that the district court decide whether to certify a putative class action "[a]t an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A). Second are the four class certification "prerequisites" laid out in Rule 23(a). *Calderone v. Scott*, 838 F.3d 1101, 1104 (11th Cir. 2016). These requirements are (1) numerosity—which exists if "the class is so numerous that joinder of all members is impracticable"; (2) commonality—which exists if "there are questions of law or fact common to the class"; (3) typicality—which exists if "the claims or defenses of the representative parties are typical of the claims or defenses of the class"; and (4) adequacy of representation—which exists if "the representative parties will fairly and adequately protect the interests of

the class." *See* Fed. R. Civ. P. 23(a); *Calderone*, 838 F.3d at 1104. We address these requirements in turn, reviewing each under a deferential abuse-of-discretion standard. *See Rensel v. Centra Tech, Inc.*, 2 F.4th 1359, 1364 (11th Cir. 2021) ("By now, it is abundantly clear that the district courts enjoy wide latitude in deciding whether or not to certify a class, and our abuse-of-discretion review of class certification orders is accordingly deferential.").

A.

First, State Farm argues that the district court's certification order should be reversed because the court violated the rule against "one-way intervention" by granting summary judgment to Sos before granting his motion to certify the class. We disagree.

We have never adopted a prohibition against one-way intervention, though we've described it once in dictum: "'One-way intervention' occurs when the potential members of a class action are allowed to 'await . . . final judgment on the merits in order to determine whether participation [in the class] would be favorable to their interests.'" *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1252–53 (11th Cir. 2003) (quoting *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 547 (1974)) (declining to "address th[e] issue" of one-way intervention "[b]ecause we reverse[d] the district court's grant of class certification on other grounds"). The prohibition might derive some support from Rule 23(c)'s requirement that the district court rule on class certification "[a]t an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A); *see In re Citizens Bank, N.A.*, 15 F.4th 607, 617 (3d Cir.

2021) (explaining that Rule 23(c)(1) was enacted "[t]o end the unfairness of what came to be known as 'one-way intervention'").

The Advisory Committee on Civil Rules, however, amended the language of this timing rule in 2003 from "as soon as practicable" to the current language, "[a]t an early practicable time." Explaining this change, the Advisory Committee noted: "The party opposing the class may prefer to win dismissal *or summary judgment as to the individual plaintiffs without certification* and without binding the class that might have been certified." Fed. R. Civ. P. 23(c) advisory committee's note to 2003 amendment (emphasis added); *see, e.g.*, *Horenkamp v. Van Winkle & Co.*, 402 F.3d 1129, 1132 (11th Cir. 2005) ("[T]he interpretations in the Advisory Committee Notes are . . . accorded great weight in interpreting federal rules." (quotations omitted)). A rule preventing the district court from granting summary judgment to the named plaintiff before addressing class certification would contradict the Advisory Committee's guidance.

More importantly, such a rule would conflict with our holding in *Telfair v. First Union Mortg. Corp.* that "[i]t [i]s within the court's discretion to consider the merits of the claims before their amenability to class certification." 216 F.3d 1333, 1343 (11th Cir. 2000); *see also Thornton v. Mercantile Stores Co.*, 13 F. Supp. 2d 1282, 1289 (M.D. Ala. 1998) ("[T]he vast majority of courts have held that dispositive motions may be considered prior to ruling on a motion for class certification."); 3 William Rubenstein et al., Newberg and Rubenstein on Class Actions § 7:10 (6th ed. 2022) (collecting cases).

Our holding in *Telfair* aligns with the district court's vast discretion over its own docket management. *In re Wild*, 994 F.3d 1244, 1262 (11th Cir. 2021) (en banc) ("[A] district court . . . has near-plenary control over its own docket . . . ."), *cert. denied*, *Wild v. U.S. Dist. Ct.*, 142 S. Ct. 1188 (2022); *United States v. Ware*, 69 F.4th 830, 846 (11th Cir. 2023) (referring to the "general policy" of "allowing district courts, which are much more intimately familiar with the individual facts and needs of a particular case, to manage their dockets and counsels' time to provide the most efficient and just resolution of issues"); *see also Smith v. Psychiatric Sols., Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014) (describing district courts' "broad discretion in deciding how best to manage the cases before them" by "set[ting] a filing deadline" (quotations omitted)).

To be sure, the district court should rule on certification before summary judgment whenever it's "practicable" to do so. *See* Fed. R. Civ. P. 23(c)(1)(A). But the district court's decision that this sequence was impracticable here was not outside its vast authority to control its docket. The timing of the court's summary judgment order—occurring less than 6 months after receiving briefing on summary judgment but over 10 months after receiving briefing on class certification—suggests that the court considered liability a simpler question than the propriety of class certification here. And, as the district court pointed out during its status conference, had it dismissed Sos's merits claims on summary judgment, it could have avoided expending resources on the class certification question altogether.

Finally, even if we were inclined to adopt a rule against one-way intervention, State Farm waived its application by moving for summary judgment before the court addressed class certification. The courts that have adopted the one-way intervention rule generally hold that a defendant waives the right to invoke it when he himself moves for summary judgment before the district court's class certification ruling. *See, e.g.*, *Postow v. OBA Fed. Sav. & Loan Ass'n*, 627 F.2d 1370, 1382 (D.C. Cir. 1980) (rationale for one-way intervention disappears if "the defendant himself moves for summary judgment before a decision on class certification").

B.

Turning now to the four Rule 23(a) class certification prerequisites, we hold that the district court did not abuse its discretion in concluding that Sos satisfied each of those requirements here. We address them in turn.

1.

Starting with numerosity, we conclude that the putative class was more than numerous enough to satisfy Rule 23(a)(1). Although the number of class members needed to satisfy this rule "is no[t] fixed[,] . . . generally . . . more than forty [is] adequate." *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (quotations omitted). Through its remediation process, State Farm issued payments for omitted sales tax and title fees—but *not* for prejudgment interest or attorney's fees—to 3,259 insureds. In addition, there are four underpaid insureds for whom State Farm has

yet to pay any omitted costs. There are thus 3,263 insureds who fall within the class definition—unquestionably "numerous" enough to render "joinder of all members . . . impracticable." Fed. R. Civ. P. 23(a)(1).

2.

Nor did the district court abuse its discretion in finding commonality satisfied. *See* Fed. R. Civ. P. 23(a)(2). We have described the plaintiff's burden to satisfy this requirement as a "low hurdle." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009). Absolute commonality is not necessary—"even a single common question will do." *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (cleaned up). But the plaintiff nonetheless must demonstrate that the class members suffered "the same injury," not merely "a violation of the same provision of law." *Id.* at 350. Sos made this showing here.

State Farm argues that including in the class the four insureds who were paid between $0.00 and six percent sales tax destroys commonality because those insureds did not suffer "the same injury from the same source" as those who were paid $0.00 in sales tax. But the district court correctly held that there remains a central common question of law applicable to all class members—"whether State Farm breached its contractual obligations to insureds by not paying *full* sales tax and fees." (Emphasis added). And "individualized damages calculations are insufficient to foreclose the possibility of class certification, especially when, as here, the central liability question is so clearly common to each class

member." *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 988 (11th Cir. 2016). Here, not only did all class members suffer a violation of the same law (breach of contract), but they also suffered the same injury (underpayment of sales tax and title fees). Commonality is thus satisfied.

3.

The district court also acted within its discretion in holding that Sos satisfied the typicality requirement. *See* Fed. R. Civ. P. 23(a)(3). Typicality is satisfied where the named plaintiff "possess[es] the same interest and suffer[ed] the same injury as the [unnamed] class members." *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1322 (11th Cir. 2008) (quoting *Cooper v. S. Co.*, 390 F.3d 695, 713 (11th Cir. 2004)). This alignment of interests and injuries exists "if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). "Typicality, however, does not require identical claims or defenses." *Id.* And "[d]ifferences in the amount of damages" will not defeat typicality, nor will "[a] factual variation[,] . . . unless the factual position of the representative markedly differs from that of other members of the class." *Id.*

State Farm argues that the pre-certification mootness of Sos's individual claim makes him "unlike any other putative class member" and thus destroys typicality. We disagree. First, as we've explained, we do not believe that Sos's individual claims were mooted by the district court's judgment or State Farm's satisfaction

of that judgment. Second, even if Sos's claims *were* mooted before class certification, State Farm's position is impossible to square with binding precedent permitting class certification after mootness of the named plaintiff's individual claims in certain circumstances. *See, e.g.*, *Gerstein*, 420 U.S. at 111 n.11. Third, there is no dispute that, at the time of class certification, Sos had an unresolved claim for attorney's fees in his complaint and summary judgment motion—a claim that he shares with all class members.

State Farm also argues that Sos's factual position is atypical of the four unnamed class members who received more than $0.00 but less than the full amount of tax payments as part of their total loss claims. According to State Farm, those four underpayments were likely the result of an entry error, while the others were caused by State Farm's Florida "business rule."

The district court did not abuse its discretion in holding that this underlying factual variation did not destroy typicality. This asserted factual difference is irrelevant to the resolution of the class members' shared substantive claim that State Farm breached its insurance policy by failing to pay them the *full amount* of sales tax and title fees as part of their total loss claims. Whether the cause of the underpayment was a State Farm employee putting in place an unlawful "business rule" that omitted these costs or a State Farm employee entering an insufficient settlement amount into the claims processing software, State Farm's omission of the full amount of these costs was a breach of contract—and this injury is shared by every class member.

4.

Finally, the district court did not abuse its discretion in concluding that the adequacy of representation requirement was met here. *See* Fed. R. Civ. P. 23(a)(4). That requirement "applies to both the named plaintiff and counsel," *London*, 340 F.3d at 1253, and it is satisfied if the district court finds that both "will fairly and adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4). Adequacy turns "on the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the class and whether plaintiffs have interests antagonistic to those of the rest of the class." *London*, 340 F.3d at 1254 (cleaned up).

The district court did not abuse its discretion in concluding that Sos was an adequate class representative. State Farm asserts that the pre-certification mootness of Sos's individual claims rendered him inadequate because, after receiving "all the relief he could receive," he "had no remaining incentive to advocate for the class." We disagree. First, as we've explained, Sos's claims were not moot before the district court certified the class, in part *because* Sos had not received "all the relief" to which he was entitled because he had an unresolved claim for attorney's fees.

Second, our precedent holds that whether a named plaintiff whose individual claims are moot is an adequate class representative "depends upon the facts of the case." *See Harris v. Peabody*, 611 F.2d 543, 545 (5th Cir. 1980). And the facts here show that Sos vigorously defended the rights of the class from the start. In fact, none

of Sos's actions in this litigation carry the appearance of self-interest at the expense of the unnamed class members. Sos's initial complaint, amended complaints, dispositive motions, and motions for attorney's fees, costs, and prejudgment interest were all on behalf of a putative class. Sos also filed supplemental briefs and supplemental authorities to support class-wide relief. Notably, Sos moved for class certification on the same day he filed his second amended complaint, and he did so "to ensure that [the] proposed class action is not mooted from the outset" by State Farm having Sos's claims "picked off." Even more, Sos rejected several generous settlement offers so that he could pursue "justice [for] the . . . State Farm insureds in the putative class." And after State Farm offered to pay the substantive claims of both Sos and the putative class members, Sos requested "confirmatory discovery" to ensure State Farm's offer included all putative class members. Sos also continuously criticized State Farm's attempts to pick off his claims, pay the putative class insufficient remediation payments, and evade class certification. These facts reflect Sos's interest—years after his own substantive claims had been paid—in obtaining relief for the class. So even if his individual claims were moot before class certification, he remained an adequate class representative.

The district court also acted within its discretion in concluding that Sos's attorneys were adequate class representatives. State Farm argues that counsel created a conflict of interest with the class members by filing a charging lien on any attorney's fees obtained by Sos or the class. But this argument is based on State Farm's misunderstanding that "[b]y filing the charging lien, Plaintiff's Counsel

were seeking fees *from* the class, not *for* the class." As Sos's counsel and the district court repeatedly explained to State Farm, however, because State Farm unilaterally paid the putative class members their taxes and title fees outside the formal litigation process, any award of fees will not deduct from these already-distributed remediation payments. Rather, the charging lien requires State Farm to pay attorney's fees to counsel directly, *in addition to* the payments it made to its insureds outside the court's supervision. The conflict regarding fees thus exists exclusively between class counsel and State Farm, not between counsel and the class.

We affirm the district court's class certification decision.

V.

We now reach the primary merits issue on appeal: whether State Farm breached its insurance policy with the class members by failing to include payments for sales tax and title transfer fees as part of its settlement of their leased vehicle total loss claims. The answer turns on whether the phrase "actual cash value" in the policy includes these costs. We agree with the district court that it does.

Because Florida law governs our interpretation of State Farm's policy, we must decide this question "the way it appears the state's highest court would." *Ernie Haire Ford, Inc. v. Ford Motor Co.*, 260 F.3d 1285, 1290 (11th Cir. 2001). Under Florida law, "insurance contracts must be construed in accordance with the plain language of the policy." *Swire Pac. Holdings, Inc. v. Zurich Ins. Co.*, 845 So. 2d

161, 165 (Fla. 2003). Sos argues, and the district court held, that actual cash value means "replacement cost, less depreciation," which Sos and the district court say includes taxes and fees because these expenses are necessarily included in the costs of replacing a leased vehicle. State Farm counters that actual cash value means "fair market value," which it maintains "is fundamentally different from the replacement cost of the vehicle" and excludes taxes and title fees. Sos has the better of the argument.

First, Florida caselaw makes clear that "fair market value" is synonymous with "replacement cost minus depreciation" and includes ancillary costs necessary to replace insured property. *See, e.g.*, *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 438–39 (Fla. 2013) (defining "actual cash value" in a homeowner's insurance policy as "'fair market value' or 'replacement cost minus normal depreciation'" and holding that it includes "overhead and profit"). An actual cash value or fair market value policy is distinct from a "replacement cost policy," which covers only replacement costs, *without* deducting depreciation. *See id.* at 438. Thus, State Farm is correct that "a replacement cost policy . . . provides greater coverage than an actual cash value policy." *Id.* But the instant policy is not a replacement cost policy, nor did the district court hold as much, as State Farm seems to believe.

Second, several factors lead us to conclude that replacement cost minus depreciation includes costs for taxes and title transfer fees. First, we've previously held that a Florida actual cash value policy included any charges the policyholder would be reasonably

likely to incur in replacing the damaged property. *See Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1305–06 (11th Cir. 2008). And under Florida law, sales tax and title transfer fees are mandatory costs necessarily incurred in the replacement of a total loss vehicle. *See* Fla. Stat. § 212.05 (sales tax); Fla. Stat. § 319.34 (title transfer fee). Finally, Fla. Stat. § 626.9743 provides that the "actual cost" to replace a total loss vehicle "include[s] sales tax." *Id.* § 626.9743(5); *see also id.* § 626.9743(9). And "[i]t is fundamental that the laws of Florida are a part of every Florida contract." *Dep't of Ins. v. Teachers Ins. Co.*, 404 So. 2d 735, 741 (Fla. 1981).

Accordingly, the district court correctly held that the meaning of "actual cash value" under State Farm's form insurance policy is "replacement cost minus depreciation," which includes sales tax and title transfer fees. By failing to include the full value of these costs as part of the class members' total loss settlements, State Farm breached its policy with the class members. Because this conclusion resolves Sos's breach of contract claim in his favor, we need not address his alternative argument that State Farm "confessed judgment" by paying the class members after Sos sued.

VI.

The next issue we must address is whether the district court abused its discretion in awarding the class prejudgment interest. We hold that it did not.

Florida adheres to the "loss theory" of prejudgment interest. *Bosem v. Musa Holdings, Inc.*, 46 So. 3d 42, 45 (Fla. 2010) (per curiam). Under this theory, prejudgment interest is a mandatory

component of a plaintiff's compensatory damages in any case in which the plaintiff's loss is pecuniary in nature, including those grounded in contract. *See Argonaut*, 474 So. 2d at 214–15; *Summerton v. Mamele*, 711 So. 2d 131, 133 (Fla. Dist. Ct. App. 1998) ("The trial court has no discretion with regard to awarding prejudgment interest and must do so applying the statutory rate of interest in effect at the time the interest accrues." (citing *Argonaut*, 474 So. 2d at 215)).

In a breach of contract action, prejudgment interest is awarded "from the date of the loss or the accrual of the cause of action." *Bosem*, 46 So. 3d at 46 (quoting *Amerace Corp. v. Stallings*, 823 So. 2d 110, 116 (Fla. 2002) (Pariente, J., dissenting)). Generally, this is the date on which payment was due under the contract. *Columbia Cas. Co. v. S. Flapjacks, Inc.*, 868 F.2d 1217, 1219 (11th Cir. 1989). The policy here, however, set no payment deadline. Accordingly, it is appropriate to calculate prejudgment interest from the earlier of the date of any pre-suit demand or the date the complaint was filed. *See Berloni S.p.A. v. Della Casa, LLC*, 972 So. 2d 1007, 1012 (Fla. Dist. Ct. App. 2008). Because the parties agree that Sos made no pre-suit demand here, prejudgment interest for Sos and the class runs from May 17, 2017—the date Sos filed his first class complaint—at the applicable Florida statutory interest rates.

State Farm's argues that, under this framework, prejudgment interest does not begin to run on the unnamed class members' claims until the time the class was certified because the unnamed class members were not formally parties to the litigation

and thus had not "filed suit." And by that time, State Farm argues, it had fully remediated the class members' claims, meaning they aren't entitled to any prejudgment interest. Not so. "[T]he filing of a timely class action complaint commences the action for all members of the class as subsequently determined." *Am. Pipe*, 414 U.S. at 550. Thus, the complaint was "filed" for all class members on May 17, 2017, entitling each of them to prejudgment interest from that date.

VII.

Lastly, we must decide whether the district court abused its discretion in calculating attorney's fees. We hold that it did. Although the district court correctly held that the class is entitled to *some* attorney's fees under Florida law, the court applied the wrong legal standard to determine the appropriate hourly rate.

A.

The district court correctly held that Sos and the class had a right to attorney's fees. Under Florida law, an insured or beneficiary who prevails in a lawsuit against his insurer is entitled to "reasonable" attorney's fees. Fla. Stat. § 627.428(1). Attorney's fees are "mandatory" for parties who fall within section 627.428(1). *Citizens Prop. Ins. Corp. v. Bascuas*, 178 So. 3d 902, 904 (Fla. Dist. Ct. App. 2015) (quoting *Ramirez v. United Auto. Ins. Co.*, 67 So. 3d 1174, 1175 (Fla. Dist. Ct. App. 2011)). Yet, because the purpose of this fee-shifting provision "is to discourage insurance companies from contesting valid claims, and to reimburse insureds for their attorney's fees

incurred when they must enforce in court their contract with the insurance company," *Petty v. Fla. Ins. Guar. Ass'n.*, 80 So. 3d 313, 316 (Fla. 2012) (quotations omitted), if the plaintiff sues "without any necessity to do so, attorney's fees under section 627.428 will be denied," *Travelers of Fla. v. Stormont*, 43 So. 3d 941, 944 (Fla. Dist. Ct. App. 2010). Thus, an insured cannot recover attorney's fees under this statute if his "insurer . . . has [already] offered [the insured] the full amount for which it has liability on the date it offers to make the payment," provided the offer of judgment includes "all damages, attorney fees, taxable costs, and prejudgment interest which would be included in a final judgment if the final judgment was entered on the date of the offer of settlement." *Danis Indus. Corp. v. Ground Improvement Techs., Inc.*, 645 So. 2d 420, 421–22 (Fla. 1994).

State Farm does not dispute that class members are prevailing parties. Still, State Farm makes two arguments why the class has no right to fees under section 627.428(1). First, State Farm argues that its remediation payments fully compensated the class, making this lawsuit unnecessary. But, once more, State Farm's purported remediations did not fully compensate *any* of the class members. State Farm excluded four class members from this process, and those it included received no prejudgment interest or attorney's fees. Here, then, this litigation went on for so long *because* State Farm continues to contest the insureds' "valid claims," leaving them no choice but to "enforce in court their contract" with State Farm. *Petty*, 80 So. 3d at 316.

Second, State Farm argues that when it made its remediation payments to the putative class members, no class had been certified, so Sos's counsel did not represent those insureds. As explained, however, "the filing of a timely class action complaint commences the action *for all members of the class as subsequently determined*." *Am. Pipe*, 414 U.S. at 550 (emphasis added). Thus, once the district court certified the class, the law considered Sos's attorneys representatives of the class members from the moment Sos filed the class complaint—which was *before* any of State Farm's remediations.

B.

We agree with State Farm, however, that the district court abused its discretion in calculating the proper fee amount. Florida follows the federal lodestar approach to calculate attorney's fees. *Resol. Tr. Corp. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1148 (11th Cir. 1993) (first citing *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990); and then citing *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985)). Courts applying the lodestar approach calculate fees by "multiply[ing] the number of hours reasonably expended by a reasonable hourly rate." *Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994). In a contingency fee case like this one, once the court determines the lodestar amount, it must consider whether to apply a multiplier. *Quanstrom*, 555 So. 2d at 831.

Thus, to calculate fees here, the district court had to determine (1) the number of hours counsel reasonably expended on this

litigation, (2) a reasonable hourly rate, and (3) the appropriate multiplier, if any. State Farm argues that the district court abused its discretion making each of these determinations. We address them in turn.

1.

The district court did not abuse its discretion in determining the number of hours counsel reasonably expended in this case. State Farm argues that, even if it owes *some* attorney's fees, the district court should have employed its discretion to cut off fees incurred after State Farm made its remediation payments because "[i]t was not reasonable for Counsel to continue incurring nearly 75% of the fees now sought to recover prejudgment interest . . . and their own attorney's fees."

We disagree. Once again, State Farm's unsupervised remediations did not fully compensate any of the class members, in part because they excluded prejudgment interest. The thousands of class members received a judgment entitling them to an average of $228 each in prejudgment interest precisely *because* Sos continued to litigate the class's entitlement to those costs and succeeded in this effort. We cannot say the district court abused its discretion in choosing "to compensate attorneys for work reasonably done actually to secure for clients the benefits to which they are entitled" under Florida law. *Norman v. Hous. Auth.*, 836 F.2d 1292, 1305 (11th Cir. 1988) (holding district court abused its discretion by deducting hours spent on "post-consent decree administration" in class action because, "[i]n many class actions, . . . the order of the court does

not always secure the actual benefit and additional legal work may be required"). "In the final analysis, exclusions for excessive or unnecessary work on given tasks must be left to the discretion of the district court." *Id.* at 1301.

2.

We conclude that the district court did, however, abuse its discretion in setting the hourly rate. Florida courts consider various factors to determine a reasonable hourly rate. *See Rowe*, 472 So. 2d at 1150. But "the most critical factor" is "the 'going rate' in the community." *Martin v. Univ. of S. Ala.*, 911 F.2d 604, 610 (11th Cir. 1990). Put differently, the reasonable hourly rate is "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman*, 836 F.2d at 1299. And the "relevant market" the court must reference in deriving this value is "the place where the case is filed." *Am. C.L. Union of Ga. v. Barnes*, 168 F.3d 423, 437 (11th Cir. 1999) (quoting *Cullens v. Ga. Dep't of Transp.*, 29 F.3d 1489, 1494 (11th Cir. 1994)). Because Sos filed this action in the middle district of Florida, the relevant market here is central Florida.

Despite acknowledging that "the going rate in the community is the most critical factor in setting the fee rate," that "the relevant market is the place where the case is filed," and that "the relevant market" here is accordingly "the Central Florida area," the district court rejected the magistrate judge's recommended hourly rate reduction based in part on the conclusion that "[c]ommercial

class action law is sufficiently specialized that it should be considered a *national market*." (Cleaned up) (emphasis added). The district court drew support for its "national market" approach from the Seventh Circuit's statement that the relevant community for setting the hourly rate may not always be the "local market area," but may instead be "a community of practitioners; particularly when . . . the subject matter of the litigation is one where the attorneys practicing it are highly specialized and the market for legal services in that area is a national market." *Jeffboat, LLC, v. Dir., Off. of Workers' Comp. Programs*, 553 F.3d 487, 490 (7th Cir. 2009). But the relevant community in this circuit, and in Florida, is not a community of practitioners; it's the community in "the place where the case is filed." *Barnes*, 168 F.3d at 437; *accord Philip Morris USA Inc. v. Jordan*, 333 So. 3d 300, 303 (Fla. Dist. Ct. App. 2022). Therefore, the district court ignored controlling law by expanding the reference market beyond Central Florida.

It's unclear to what extent the district court relied on its national market approach to set the hourly rate, however, because the court also considered "rates previously approved as reasonable for these same attorneys doing the same type of litigation in the State of Florida generally, and the Middle District specifically." *See, e.g.*, *Roth v. Geico Gen. Ins. Co.*, No. 16-62942-CIV, 2019 U.S. Dist. LEXIS 197778, at *33–34 (S.D. Fla. Nov. 13, 2019). But even if the district court's hourly rate determination was based entirely on these prior awards, that determination still warrants reversal. Courts applying the lodestar approach are prohibited from giving

"controlling weight to prior awards." *E.g.*, *Dillard v. City of Greensboro*, 213 F.3d 1347, 1355 (11th Cir. 2000). Were the rule otherwise, "the hourly rates of attorneys could be predetermined by erroneous prior awards, or lose the capacity to respond to changing market conditions." *E. Associated Coal Corp. v. Dir., Off. of Workers' Comp. Programs*, 724 F.3d 561, 573 (4th Cir. 2013); *accord Farbotko v. Clinton County*, 433 F.3d 204, 209 (2d Cir. 2005).

Accordingly, we hold that the district court abused its discretion in setting the appropriate hourly rate and remand to the district court to recalculate the attorney's fees award in light of the relevant market comparator, Central Florida.

3.

We also believe the district court's application of the maximum multiplier was an abuse of its discretion. Florida courts consider three factors to decide whether to apply a contingency fee multiplier in an insurance contract dispute: (1) whether it is necessary to obtain competent counsel; (2) whether the attorney could mitigate the risk of nonpayment; and (3) whether any of the *Rowe* factors apply, "especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client." *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122, 1124 (Fla. 2017). The decision to award a contingency fee multiplier is within the trial court's sound discretion, and a case need not involve "rare" or "exceptional" circumstances to merit one. *Id.* at 1132–33. If the court concludes a multiplier is warranted, Florida law proscribes a formula for determining what that multiplier should be. "If the trial

court determines that success was more likely than not at the outset," a multiplier of 1 to 1.5 is appropriate; "if the trial court determines that the likelihood of success was approximately even at the outset," 1.5 to 2.0 is appropriate; "and if the trial court determines that success was unlikely at the outset of the case, it may apply a multiplier of 2.0 to 2.5." *Quanstrom*, 555 So. 2d at 834.

The district court did not abuse its discretion in concluding that a multiplier was necessary to obtain competent counsel in this case. The court reasonably believed a multiplier was warranted by "the novelty and complexity of the case," the significant costs attorneys would likely incur during the litigation, the reality "that in federal court attorneys are unlikely to recover costs expended on expert testimony," the high likelihood "of no recovery," and "the fact 'that State Farm is known to be a voracious litigator with virtually unlimited resources.'"

But we believe the district court abused its discretion in concluding that the maximum allowable multiplier—2.5—was appropriate because the record does not support a finding that "success was unlikely at the outset of the case." *Quanstrom*, 555 So. 2d at 834. This is a one-count breach of contract claim under a Florida insurance policy. At the time this suit was filed, Sos's position on the meaning of actual cash value fully aligned with the Florida Supreme Court's interpretation of that same phrase in another insurance policy. *See Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 438 (Fla. 2013) ("[A]ctual cash value is generally defined as . . . replace-

ment cost minus normal depreciation." (quotation marks omitted)). Similarly, both Black's Law Dictionary and Merriam-Webster supported Sos's position on the meaning of actual cash value. *See Actual Cash Value*, Black's Law Dictionary (11th ed. 2019) (defining actual cash value as "[r]eplacement cost minus normal depreciation"); *Actual Cash Value*, Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/actual%20cash%20value (last visited July 17, 2023) (defining actual cash value as "money equal to the cost of replacing lost, stolen, or damaged property after depreciation"). Although Florida caselaw did not so plainly support Sos's argument that replacement cost minus depreciation must include taxes and title transfer fees, the caselaw was not contrary to that position either.

The district court believed that success was unlikely at the outset of this litigation because of (1) State Farm's "vigorous defense and intent to appeal"; (2) the fact that Sos's theory of liability "had never been tested in the courts"; and (3) the "enormous outlay of capital," time, and skill that "advancing this theory—particularly through a class action—would require." To be sure, these considerations support the proposition that success was not *likely* at the outset, which confirms the district court's decision to reject the smallest multiplier of 1 or 1.5. But we cannot say that these considerations establish that success was *unlikely*. These considerations are present in the mine run of cases—defendants usually intend to defend, there are rarely identical cases that have been successfully litigated, and a plaintiff's attorneys will always need to marshal resources to bring a class action to a successful conclusion. Nothing

singles out this case as one that a plaintiff pursued even though it was "unlikely" to succeed at the outset. For these reasons, the district court should not have applied the highest multiplier to the attorney's fees award.

VIII.

To summarize, we affirm the district court's conclusions that (1) this case is not moot, (2) Sos satisfied the Rule 23 class certification requirements, (3) State Farm breached its contract with the class members, entitling them to damages for omitted taxes and title transfer fees, and (4) the class members are entitled to prejudgment interest. But we reverse and remand the district court's attorney's fee award with instructions to recalculate the award in a manner consistent with this opinion.

The district court is **AFFIRMED IN PART** and **REVERSED AND REMANDED IN PART**.

LUCK, Circuit Judge, dissenting:

Anthony Sos, the named plaintiff, filed a putative class action. Soon after that, he moved for class certification. And a few months after that, before the district court ruled on his class certification motion, Sos moved for summary judgment on behalf of himself and the putative class. Sos *never* asked the district court to push back the summary judgment deadline, *never* asked the district court to defer ruling on his summary judgment motion until it certified a class, and *never* asked the district court to stay any judgment pending class certification.

While Sos's class certification motion was still pending, the district court granted his motion for summary judgment on his individual claims (leaving the class claims for later). The district court entered judgment for Sos, awarding him sales tax, title fees, and prejudgment interest. The award was in the exact amount Sos had requested. But the district court did not address Sos's entitlement to attorneys' fees. State Farm paid the judgment in full. At that point, Sos had received everything he'd asked for (other than attorneys' fees).

The majority opinion concludes that, even though judgment for Sos was entered and satisfied before the district court considered the class certification motion, his claims were not moot. And, the majority opinion concludes, even if Sos's claims were moot, he retained standing to pursue his class claims under a narrow exception to the mootness doctrine.

I respectfully dissent as to both conclusions. First, Sos's individual claims were moot. State Farm paid Sos the entire judgment: taxes, title fees, and prejudgment interest. At that point, Sos got everything he asked for and so his case was moot. Second, because Sos's individual claims were moot, he could no longer represent a class. In general, a class action can't go on when the named plaintiff's claims become moot. While there are some exceptions to this general rule, the exceptions apply only when a defendant can purposely evade class certification by settling with named plaintiffs. But here, State Farm was powerless to pick Sos off and evade class certification. Sos picked off himself by failing to ask the district court to either push back the summary judgment deadline, defer ruling on his summary judgment motion until it certified a class, or stay any judgment pending certification. As other circuits have recognized, the narrow mootness exceptions do not apply here.

Sos's Individual Claims Were Moot

Sos's claims were moot. We have held that a claim becomes moot when a defendant satisfies the judgment. *See Donald D. Forsht Assocs., Inc. v. Transamerica ICS, Inc.*, 821 F.2d 1556, 1559 (11th Cir. 1987) (holding that the plaintiff's "claim [was] extinguished and the appeal [was] therefore moot" because "[t]he judgment for the entire amount of pleaded damages [was] fully satisfied"); *see also Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 164 n.5 (2016) (case was moot because the "plaintiffs had in fact received all the relief they could claim"). Here, the district court entered judgment in Sos's

favor—which included the full amount of sales tax, title fees, and prejudgment interest. State Farm then satisfied that judgment. At that point, Sos's claims were moot.

Sos and the majority opinion raise two main arguments to the contrary. First, they suggest that the parties did not "objectively manifest an intent" to end the case through satisfying the judgment and so the case is not moot. It's true that there's a line of cases holding that we look to "the parties' objective manifestations of intent" in assessing whether the payment of a judgment "render[s] [an] appeal moot." *Alvarez Perez v. Sanford-Orlando Kennel Club, Inc.*, 518 F.3d 1302, 1307 (11th Cir. 2008); *see also United States v. Hougham*, 364 U.S. 310, 314 (1960); *Alliant Tax Credit 31, Inc v. Murphy*, 924 F.3d 1134, 1140 (11th Cir. 2019).

But those cases were different. For one thing, they involved cross-appeals, where the plaintiffs were appealing the district court's judgments as inadequate. As the Supreme Court has explained: "[i]t is a generally accepted rule of law that where a judgment is appealed on the ground that the damages awarded are inadequate, acceptance of payment of the amount of the unsatisfactory judgment does not, standing alone, amount to an accord and satisfaction of the entire claim." *Hougham*, 364 U.S. at 312 (plaintiff cross-appealing the damages award as inadequate); *Alliant*, 924 F.3d at 1140 (plaintiff cross-appealing the denial of prejudgment interest); *Alvarez*, 518 F.3d at 1305 (plaintiff cross-appealing the denial of liquidated damages).

This rule makes sense. When a plaintiff accepts satisfaction of a judgment—but that plaintiff was seeking *more* than the judgment—we must look to see if the parties' actions showed "objective manifestations" of intent to end the case. This is the only way we can tell if the plaintiff meant to settle and end the case *or* if the plaintiff was simply holding onto a partial payment (like a supersedeas bond) but still looking to recover the full amount it was owed. *See Alliant*, 924 F.3d at 1141. In our case, though, Sos received *everything* he asked for: the tax, the title fees, and the prejudgment interest. At that point, we have no need to look at Sos's objective manifestations of intent to settle—and end—the case. He was paid everything he was due, so there was no settlement. The case was done.

Our case differs in another way. In most of the cases where we've found that a defendant's payment did not moot the appeal, there were signs of gamesmanship on the part of the defendant who urged mootness. *See Hougham*, 364 U.S. at 313 (explaining that the defendant's position that the case was moot "was totally inconsistent with their position in the [c]ourt of [a]ppeals where they sought to avoid all liability"); *Alvarez*, 518 F.3d at 1304 ("Only after learning that he had lost the appeal, and lost it big, did he tell us about what he characterizes as jurisdiction-stripping events that had occurred three-and-a-half months before we issued our decision."). In this case, however, State Farm didn't wait to lose in front of us before raising a mootness defense. State Farm put mootness front and center. There's no evidence of gamesmanship that should preclude a finding of mootness.

The last thing is that *Hougham*, *Alliant*, and *Alvarez* were all about mootness *on appeal*. In other words, the district courts entered judgment for the plaintiffs (ending their whole case) and then the parties cross-appealed. *Hougham*, 364 U.S. at 312 (defendant satisfied judgment after the trial court entered judgment and before the court of appeals affirmed); *Alliant*, 924 F.3d at 1140 (same); *Alvarez*, 518 F.3d at 1304 (same). It's one thing to say that a plaintiff can *appeal* an insufficient judgment that was satisfied. It's another to say that a plaintiff can accept a judgment for exactly what he asked for—and then continue to litigate summary judgment, class certification, and attorneys' fees before the district court.

Second, Sos and the majority opinion suggest that Sos's interest in attorneys' fees may keep his case alive. I don't think that's right. It's true, as the majority opinion points out, that "a claim for attorneys' fees remains viable even after the underlying action becomes moot." *Schell v. OXY USA Inc.*, 814 F.3d 1107, 1124 (10th Cir. 2016); *see also, e.g.*, *Doe v. Marshall*, 622 F.2d 118, 120 (5th Cir. 1980) (explaining that "a determination of mootness" will not "preclude[] . . . an award of attorneys' fees"). This makes sense: if a plaintiff settles his case, for example, he can still adjudicate the separate and collateral question of attorneys' fees before the district court (even though the merits of the case are mooted by the settlement). The plaintiff's separate and collateral claim for attorneys' fees is not moot, and the district court would have jurisdiction to award fees. This happens all the time.

But the mere fact that a plaintiff may seek fees when a case ends does not mean that the plaintiff may continue to litigate the merits of a case. In *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990), for example, the litigation "had been in progress for almost seven years" when the plaintiff's case became moot. *Id.* at 480. The Supreme Court explained that the plaintiff's "interest in attorney's fees [was], of course, insufficient to create an Article III case or controversy where none exist[ed] on the merits of the underlying claim." *Id.* "Where on the face of the record it appears that the only concrete interest in the controversy has terminated, reasonable caution is needed to be sure that mooted litigation is not pressed forward, and unnecessary judicial pronouncements on even constitutional issues obtained, solely in order to obtain reimbursement of sunk costs." *Id.*

Applied here, Sos's interest *in attorneys' fees* was not moot. Sos could've filed a motion for attorneys' fees before the district court, and the district court would've had jurisdiction to adjudicate that separate and collateral issue. This is a standard feature of litigation. *See generally Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) ("It is well established that a federal court may consider collateral issues after an action is no longer pending. . . . This Court has indicated that motions for costs or attorney's fees are independent proceedings supplemental to the original proceeding and not a request for a modification of the original decree. Thus, even years after the entry of a judgment on the merits a federal court could consider an award of counsel fees." (cleaned up)).

But that's not what happened in our case. Sos didn't seek to litigate only the separate and collateral question of attorneys' fees. Instead, he sought to act as a class representative, litigate the class certification motion, argue for summary judgment on behalf of a class, and seek fees and costs (not just for his claim but) for others too. That's what the Supreme Court said a plaintiff *cannot* do in *Lewis*. There, the Supreme Court explained that, when the underlying controversy is over, "reasonable caution is needed to be sure that mooted litigation is not pressed forward, and unnecessary judicial pronouncements on even constitutional issues obtained, solely in order to obtain reimbursement of sunk costs." *Lewis*, 494 U.S. at 480. But that's exactly what Sos did here. He pressed forward—looking to obtain substantive pronouncements on the merits—to collect sunk costs. That's not allowed.

The Supreme Court has repeatedly held that an interest in attorneys' fees is not enough (standing alone) to sustain a case and obtain rulings on substantive issues. *See, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998) (explaining that "a plaintiff cannot achieve standing to litigate a substantive issue" by seeking "reimbursement of costs that are a byproduct of the litigation itself"); *Thole v. U. S. Bank N.A.*, 140 S. Ct. 1615, 1619 (2020) ("To be sure, their attorneys have a stake in the lawsuit, but an 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." (cleaned up)); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 178 n.1 (2016) (Roberts, C.J., dissenting) (noting that an "interest in

sharing attorney's fees among class members . . . does not create Article III standing").

The cases cited by the majority opinion appear to contemplate only that a plaintiff whose claim is mooted may still litigate (and collect) fees. But, as best as I can tell, no court has allowed a plaintiff whose claim is mooted to continue litigating substantive issues in federal court. Consider the Seventh Circuit's decision in *Premium Plus Partners, L.P. v. Goldman, Sachs & Co.*, 648 F.3d 533, 538 (7th Cir. 2011). There, the named plaintiff's claim was mooted after it agreed to settle. *Id.* at 535. Still, the named plaintiff (just like Sos) wanted to move for class certification and serve as the class representative, arguing that "its claim [hadn't] been fully resolved because if the class litigates, and wins, some of the expenses that [it] ha[d] incurred along the way could be allocated to the class, and its net recovery therefore would be larger." *Id.* at 538. The Seventh Circuit noted that this position "flopped" in *Lewis* and that "it fare[d] no better when advanced by a would-be class representative." *Id.* The Seventh Circuit explained that an interest in attorneys' fees can't keep a case going, and "that's equally true of costs and the other expenses that [a named plaintiff] hopes to offload to the class." *Id.* The same holds true here.

In sum, State Farm satisfied the judgment in full. Sos received everything he wanted at that point. His case was moot. And, at least in my view, neither of Sos's counterarguments are persuasive. First, his objective manifestations of intent to settle

don't enter the equation because Sos was not challenging the judgment as inadequate. So we have no need to see whether the payment of an inadequate award served as a settlement that ended the case. Second, an interest in attorneys' fees isn't enough to keep a case alive. It's true that a plaintiff in a mooted case can still seek fees. But a plaintiff can't push forward and seek substantive determinations on merits issues (like summary judgment or class certification).

Sos Could No Longer Represent a Class

The next question is whether Sos can represent a class even though his individual claims are moot. He can't. There are three circumstances in which a class action can go on as usual even though the named plaintiff's claim was mooted. First, once a district court has certified a class, mooting the named plaintiff's claims will not moot the entire class action. *See Sosna v. Iowa*, 419 U.S. 393, 399 (1975). That's because, once the class is certified, the class members "acquire[] a legal status separate from the interest asserted by" the class representative. *Id.*; *see also* 3C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3533.9.1 (3d ed. updated Apr. 2022) ("Mooting the representative's claim after a class is certified does not moot the action if the class claim persists.").

Second, there are some *narrow* exceptions that allow a case to continue even if the class representative's claim becomes moot *before* certification. For example, the Supreme Court has found a "limited exception to *Sosna*'s requirement that a named plaintiff

with a live claim exist at the time of class certification" in cases where the "pace of litigation and the inherently transitory nature of the claims at issue conspire to make that requirement difficult to fulfill." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1539 (2018); *see also, e.g.*, *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) ("[S]ome claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires. In such cases, the relation back doctrine is properly invoked to preserve the merits of the case for judicial resolution." (cleaned up)).

Our circuit has extended this inherently transitory exception to cases in which "the defendants have the ability by tender to each named plaintiff effectively to prevent any plaintiff in the class from procuring a decision on class certification." *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1050 (5th Cir. 1981). The "defendant's purposive acts" in picking off plaintiffs will not render a case moot if the "named plaintiff acts diligently to pursue the class claims." *Stein v. Buccaneers Ltd. P'ship*, 772 F.3d 698, 707 (11th Cir. 2014); *see also, e.g.*, *Richardson v. Bledsoe*, 829 F.3d 273, 279 (3d Cir. 2016) ("[W]hen a plaintiff's individual claim for relief is acutely susceptible to mootness by the actions of a defendant, that plaintiff may continue to represent the class he is seeking to certify even if his individual claim has been mooted by actions of the defendant.").

Third, in some cases, a named plaintiff whose claim becomes moot *after* class certification was *denied* can continue with its *appeal*. In *Geraghty*, for example, the Supreme Court held that, "when a [d]istrict [c]ourt erroneously denies a [class certification] motion, which, if correctly decided, would have prevented the action from becoming moot, an appeal lies from the denial and the corrected ruling 'relates back' to the date of the original denial." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 n.11 (1980); *see also Deposit Guar. Nat'l Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 340–41 (1980) (similar). Both *Geraghty* and *Roper* were premised on the notion that "[c]ourts have a certain latitude in formulating the standards that govern the appealability of procedural rulings." *Roper*, 445 U.S. at 340

None of these exceptions apply here. First, Sos's individual claims were moot *before* the class was certified, so the *Sosna* exception doesn't apply. *Zeidman*, 651 F.2d at 1046 ("[C]ertification saves the suit from dismissal only if it occurs prior to the satisfaction or expiration of the named plaintiffs' claims."). Second, this isn't a case where the "defendant's purposive acts" in picking off plaintiffs rendered the case moot. *Stein*, 772 F.3d at 707. Instead, Sos picked off himself—by moving for summary judgment on his individual claim, in failing to request that the district court rule on class certification before summary judgment, and in never asking the district court to stay its entry of judgment.[1] Third, this case isn't like

[1] To be clear, Sos moved for summary judgment on his individual claims, separate and apart from the class. His motion was entitled, "Plaintiff Anthony

Geraghty and *Roper* because Sos didn't seek to appeal a class certification denial.

The majority opinion homes in on the second mootness exception, saying our case is "closely analogous" to *Zeidman*. In my view, it would be improper to extend *Zeidman*—and thus our subject matter jurisdiction—to this kind of case. As an initial matter, in general, I think we should hesitate before straying too far from the mootness doctrine. Mootness is grounded in Article III's case or controversy requirement. *See Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) ("[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." (quotation omitted)). We shouldn't so easily carve out new mootness exceptions and expand our jurisdiction. And the *Zeidman* exception is, in my view, inapplicable here.

The picking off exception from *Zeidman* applies when—because of a defendant's actions—the case "becomes moot . . . before

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Sos Motion for Summary Judgment." The first sentence of the motion reads, "Plaintiff Anthony Sos ('Plaintiff' or 'Mr. Sos') files this Motion for Summary Judgment." His motion requested that the district court "grant summary judgment *in his* and the class members' favor." And the motion concluded by requesting the district court to enter "summary judgment in favor of Mr. Sos and awarding him $2,239.12 in sales tax (plus applicable local surtax), $79.25 in title transfer fee (offset by $58.75 already paid), prejudgment interest, attorney's fees, injunctive relief and all other relief this court deems just and proper." It's no wonder the district court granted his summary judgment motion, and entered judgment on his individual claims, because that's what he asked the district court to do.

the district court can reasonably be expected to rule on a certification motion." *Sosna*, 419 U.S. at 402 n.11; *Zeidman*, 651 F.2d at 1045 ("[T]his general rule [requiring the plaintiff to have a live claim at time of class certification] must yield when the district court is unable reasonably to rule on a motion for class certification before the individual claims of the named plaintiffs become moot."). But that wasn't the case here. The certification motion was ready and pending when the district court granted Sos summary judgment and entered judgment in his favor. So this isn't a situation in which the defendant's actions mooted the plaintiff's claims before the district court had a chance to rule on a certification motion.

The picking off exception is also grounded in the notion that, without carving out the exception, the class certification "issue would [otherwise] evade review" and a class could never be certified. *Sosna*, 419 U.S. at 402 n.11; *Zeidman*, 651 F.2d at 1045 (noting that the "defendants should not be allowed to prevent consideration of [a certification] motion by tendering to the named plaintiffs their personal claims" and thereby "evade review" (quotation omitted)). But that wasn't the case here. State Farm had no ability to evade review of the class certification motion. Sos picked himself off by *never* asking the district court to push back the summary judgment deadline, *never* asking the district court to defer ruling on his summary judgment motion until it certified a class, and *never* asking the district court to stay any judgment pending certification. It's also worth noting that a different class member could still re-file this case and avoid these mistakes. And if it did, State Farm wouldn't be able to evade review. This isn't a case, in other

words, in which "the defendants have the ability by tender to each named plaintiff effectively to prevent any plaintiff in the class from procuring a decision on class certification." *Zeidman*, 651 F.2d at 1050.

Other circuits have refused to carve out a new exception to the mootness doctrine under similar circumstances—where the plaintiff has (in effect) picked off himself. Take *Murray v. Fidelity National Financial, Inc.*, 594 F.3d 419 (5th Cir. 2010), for example. In that case, the original plaintiffs to a lawsuit filed a putative class action against defendants who allegedly overcharged them. *Id.* at 420. At some point, it became obvious that the original plaintiffs never actually bought anything from the defendants. *Id.* So the original plaintiffs moved to amend their complaint to add two new plaintiffs as class representatives. *Id.* While that motion was pending, the defendants "tendered a check to the [new plaintiffs'] counsel as full payment of their claim." *Id.* The district court granted the motion to amend. *Id.* And then the defendants moved to dismiss, arguing that the new plaintiffs' "claims had been mooted by the tender of payment before they became parties to the suit." *Id.* at 420–21.

The Fifth Circuit agreed that the case was moot even though the defendants paid off the named plaintiffs to make the case go away. It started by noting that, "[a]s a general principle, a purported class action becomes moot when the personal claims of all named plaintiffs are satisfied and no class has been certified." *Id.* at 421. The court recognized that in *Zeidman* the Fifth Circuit had

held that picking the plaintiffs off would not moot the case because, if we allowed that, "the defendants would have the option to preclude a viable class action from ever reaching the certification stage." *Id.* (quotation omitted). The new plaintiffs argued their case was the same because the defendant paid them off while their motion to amend (and join the case) was pending. *Id.* at 422.

But the Fifth Circuit rejected that argument. It reasoned that, "[u]nlike the plaintiffs in *Zeidman* . . . , the [new plaintiffs] had a readily available means of preventing the defendants from mooting their suit." *Id.* "Had the [new plaintiffs] chosen to file a separate complaint rather than seeking to be added to the original complaint, the defendants would have been unable to moot their claims." *Id.* "Further, had the [new plaintiffs], rather than individuals who had no valid claims against [the defendants], been the original parties to the suit, [the defendants] would have been unable to moot their claims." *Id.* "In light of these available remedies, we see no need to extend *Zeidman* . . . to the circumstances of this case." *Id.*

Our case is just the same. As in *Murray*, the named plaintiff in our case (Sos) had "readily available means of preventing [State Farm] from mooting [his] suit." He could've resisted filing an individual motion for summary judgment. He could've asked the district court to delay ruling on his motion for summary judgment (or delay entering judgment) until after a class was certified. But Sos did none of those things. In light of all the remedies he had available, there's no need to extend *Zeidman* here. *See Fontenot v. McCraw*,

777 F.3d 741, 751 (5th Cir. 2015) ("This case, like *Murray*, is simply not one in which an exception is required lest otherwise the issue would evade review. Where plaintiffs may avoid being 'picked off' by using the tools within the Federal Rules of Civil Procedure, the rationale for creating further exceptions to mootness cannot be sustained." (quotation omitted)).

Conclusion

Because Sos's claims were moot, and none of the narrow mootness exceptions apply, I would vacate the judgment and remand for the district court to dismiss without prejudice.