THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000182

Donald Stanley and Sean Reiter,
Individually and as Class Representatives, ... Respondents,

v.

Southern States Police Benevolent Association, Inc., ...Appellant.

APPELLANT SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.'S REPLY BRIEF IN SUPPORT OF PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant, Southern States Police Benevolent Association ("PBA"), respectfully submits this reply brief in support of its petition for rehearing of the Court's February 14, 2019 Order dismissing PBA's appeal on the basis that "class certification orders are not immediately appealable." (Order at 1.) Notwithstanding that general principle there are certain circumstances, as this Court and the South Carolina Supreme Court have held, where immediate review of a class certification order is appropriate. Indeed, Plaintiffs-Respondents ("Plaintiffs") concede that the Supreme Court has "reviewed interlocutory orders involving class certification when they contain other appealable issues." *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 449, 661 S.E.2d 81, 85 (2008). Likewise, it is undisputed that one such "other . . . issue[]"

exists when the practical impact of class certification is to grant injunctive relief. *See Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992) (order prohibiting a plaintiff from contacting potential members of class was deemed an injunction and, therefore, immediately appealable). Injunctive relief has been deemed immediately appealable in other contexts as well. *See Doe v. Howe*, 362 S.C. 212, 215, 607 S.E.2d 354, 355 (Ct. App. 2004) (denial of motion to proceed anonymously was appropriate for immediate review); *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 4-5, 630 S.E.2d 464, 466 (2006) (order permitting review of private divorce records deemed immediately appealable); *see generally Poynter Invs. Inc. v. Century Builders of Piedmont Inc.*, 387 S.C. 583, 588, 694 S.E.2d 15, 18 (2010).

Plaintiffs' opposition to the petition for rehearing does little to address these legal grounds that PBA detailed in its petition that support rehearing. Nor has PBA "request[ed] that a class certification order becomes appealable when the underlying complaint includes a request for injunctive relief." This case is different – Plaintiffs do not deny that they are seeking an injunction that, if granted, would essentially force PBA to close its doors. *See* Certification Order at 3 (reciting that Plaintiffs seek "injunctive relief" such as "a rescission of the Plan and a refund of member dues or premiums paid"). And now the trial court has granted them that opportunity by certifying an injunction class: if Plaintiffs prevail at trial and obtain the request injunction, how will PBA, effectively put out of business, be able to appeal that decision? The irreparable harm of an injunction will have effectively bankrupted PBA and left its appellate "rights" enforceable in name only. That is why issues and cases involving injunctions are immediately appealable. The fact that Plaintiffs pursue this case as a class action does

not, and cannot, alter PBA's substantive rights in this regard. *Cf. Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 82, 567 S.E.2d 251, 259 (2002) (Stilwell, J., dissenting) (observing that federal procedural rules "shall not abridge, enlarge, or modify any substantive rights") (quoting 28 U.S.C. § 2072(b)).

Plaintiffs make no effort to dispute that, as they testified in their depositions, they seek a mandatory injunction order that PBA be dismantled. They make no effort to refute the exceptional nature of such relief. "A mandatory injunction is an especially drastic remedy and is rarely granted." *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (1993), *aff'd in part, rev'd in part on other grounds by Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). Furthermore, "if the damage suffered by the party seeking a mandatory injunction is very small, a mandatory injunction is unduly oppressive and not in accordance with the principles upon which equitable relief is usually granted." *Johnson*, 315 S.C. at 417, 433 S.E.2d at 901. As PBA noted in its petition, and as Plaintiffs failed to dispute, most courts reject requests for a rescissionary remedy on a classwide basis, and this Court should grant rehearing so that it can do so here. *See, e.g., Whitmire v. Adams*, 273 S.C. 453, 456, 257 S.E.2d 160, 163 (1979) (refusing relief in class action that sought rescission of deeds); *see generally Morris v. Wachovia Securities, Inc.*, 223 F.R.D. 284, 287 (E.D. Va. 2004) ("[A] majority of courts ... have refused to certify a class action where a rescissionary remedy is sought.") (citing several cases).

PBA is a 501(c)(3) non-profit organization. It serves the needs of thousands of police officers across South Carolina who, in turn, serve the general public. Accordingly, the safety and welfare of South Carolina citizens are at stake in this litigation. Failure to review the trial court's erroneous order jeopardizes not only PBA's non-profit, public-

service mission but unnecessarily puts thousands of its officer-members at risk of losing the benefits they have paid for, many for several years. This grave public interest is at issue in this case, particularly now that an injunction class has been granted.

There is no meaningful difference between an "injunction class" and an "injunction" for purposes of appealability – Plaintiffs have not cited a case making such a distinction and PBA is unaware of one. At bottom, the trial court's order has certified a class to award crippling injunctive relief against PBA. That order should be reviewed now.

Respectfully submitted,

April 8, 2019

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PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Taylor Law Firm, P.A., certify that I have served the Appellant Southern States Police Benevolent Association, Inc.'s Reply Brief in Support of Petition for Rehearing on the Respondents by depositing copies of same in the United State Mail, postage prepaid, on April 8, 2019, addressed to their attorneys of record as follows:

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April 8, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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VIA HAND DELIVERY

Re: Donald Stanley and Sean Reiter, Individually and as Class Representatives vs. Southern States Police Benevolent Association, Inc.
C/A No. 2016-CP-10-04062
Appellate Case No. 2019-000182

Dear Ms. Kitchings:

Enclosed for filing is the original and five copies of Appellant's Reply Brief in Support of Petition for Rehearing. We respectfully request that these be clocked in and the extra copies returned via our courier.

By copy of this letter, we are advising opposing counsel of this filing and serving copies of the Reply Brief.

Thank you for your consideration.

Sincerely,

Lynn G. Ivey
Assistant to James Edward Bradley

Enclosures

cc: Ronald L. Richter, Jr., Esquire (via first class mail)
Scott M. Mongillo, Esquire (via first class mail)
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