

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**GARY D. SMITH, on behalf of
himself and all others similarly
situated,**

Plaintiff,

V.

**GURSTEL CHARGO, PA., TODD
GURSTEL, and MITCH CHARGO,**

Defendants.

8:14CV183

ORDER

This case was filed on June 17, 2014. ([Filing 1.](#)) Defendants have yet to be served and have not filed an answer to the Complaint.

On June 18, 2014, Plaintiff filed a motion for class certification and stay of briefing. ([Filing 6.](#)) Plaintiff claims that he filed this motion at this early stage of the case out of an abundance of caution to avoid any attempt by Defendants to “pick off” Plaintiff with an offer of judgment. See [Keim v. ADF Midatlantic, LLC, No. 12-80577-CIV, 2013 WL 3717737, *9 \(S.D. Fla. July 15, 2013\)](#) (“Defendants’ Rule 68 offer of judgment provides Plaintiff full relief in this case. Because Plaintiff had not moved for class certification at the time that offer was made, this case is consequently moot”); [Damasco v. Clearwire Corp., 662 F.3d 891, 896 \(7th Cir. 2011\)](#) (“Class-action plaintiffs can move to certify the class at the same time that they file their complaint. The pendency of that motion protects a putative class from attempts to buy off the named plaintiffs”). Plaintiff recognizes that given the early stage of this case, and absence of discovery, Plaintiff’s request for class certification is premature. Thus, he has requested that briefing on the motion be stayed until the parties have engaged in discovery and developed an adequate record.

Plaintiff’s request that briefing be stayed on his motion for class certification will be granted. Plaintiff’s motion for class certification will be held in abeyance pending further development of the case. Plaintiff’s motion will, however, be terminated for statistical

purposes, and the motion may be renewed by Plaintiff at a later date. At that time, a briefing schedule will be established in accordance with the rules of this Court.

Accordingly,

IT IS ORDERED that Plaintiff's Motion for Class Certification shall be held in abeyance pending further development of the record in this case. The motion shall be terminated by the Clerk of Court for statistical purposes, and Plaintiff may renew the motion at a later date in order to establish a briefing schedule. Plaintiff shall provide a copy of this Order to Defendants.

DATED July 23, 2014.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**