

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEPHANIE WILSON, on behalf of
herself and others similarly situated,

Plaintiff,

v.

LINDA A. KING AND ASSOCIATES
CLAIMS MANAGEMENT, INC.,

Defendant.

CASE NO. C14-5101 BHS

ORDER DENYING PLAINTIFF'S
MOTION

This matter comes before the Court on Plaintiff Stephanie Wilson's ("Plaintiff") motion to strike, or in the alternative, declare ineffective, Defendant's offer of judgment (Dkt. 13). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

PROCEDURAL AND FACTUAL HISTORY

On February 4, 2014, Plaintiff filed a class action complaint against Defendant Linda A. King and Associates Claims Management, Inc. ("Defendant"), alleging

1 | violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*
2 | (“FDCPA”). Dkt. 1.

3 | On March 7, 2014, Defendant served an offer of judgment on Plaintiff pursuant to
4 | Fed. R. Civ. P. 68. Dkt. 13, Exh. 1. On March 21, 2014, Plaintiff filed the instant motion
5 | requesting that the Court either strike the offer or, in the alternative, allow Plaintiff an
6 | additional fourteen days to consider the offer. Dkt. 13. On April 5, 2014, Defendant
7 | responded. Dkt. 19. On April 11, 2014, Plaintiff replied. Dkt. 20.

8 | **DISCUSSION**

9 | Plaintiff’s motion is based on a false premise that has already been addressed by
10 | the Ninth Circuit. Plaintiff contends that:

11 | The Offer seeks to have Plaintiff abandon those absent putative class
12 | members, while threatening to hold Plaintiff responsible for Defendant’s
13 | costs in the event she rejects the offer and a class is not certified. Because
14 | Plaintiff should not face such a heads-I-win-tails-you-lose choice, the Offer
15 | should be stricken or otherwise declared ineffective.

16 | Dkt. 13 at 2. In this Circuit, named plaintiffs are not faced with Plaintiff’s hypothetical
17 | choice.

18 | In *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081 (9th Cir. 2011), the Ninth Circuit
19 | held “that an unaccepted Rule 68 offer of judgment—for the full amount of the named
20 | plaintiff’s individual claim and made before the named plaintiff files a motion for class
21 | certification—does not moot a class action” *Id.* at 1091–92. In reaching that
22 | conclusion, the court addressed the issue of any rule that would allow a defendant to
“pick off” or “buy off” the named plaintiff in a class action. *Id.* at 1091. The court stated
that the named plaintiff’s claim and the class claim are legally distinct claims. Thus,

1 Plaintiff is in no way “forced to abandon those putative class members” Moreover,
2 there is no authority for the proposition that Plaintiff is responsible for Defendant’s costs
3 if a class is not certified. Plaintiff may be responsible for costs only if she receives a
4 judgment less favorable than the unaccepted offer. Therefore, the Court denies Plaintiff’s
5 motion because it is based on an illogical proposition.

6 With regard to allowing Plaintiff additional time to accept Defendant’s offer of
7 judgment, Plaintiff has failed to provide any authority for such a ruling. Rejecting the
8 offer, however, does not preclude an additional offer. Fed. R. Civ. P. 68(b). Therefore,
9 the Court denies Plaintiff’s request.

10 **ORDER**

11 Therefore, it is hereby **ORDERED** that Plaintiff’s motion to strike, or in the
12 alternative, declare ineffective, defendant’s offer of judgment (Dkt. 13) is **DENIED**.

13 Dated this 29th day of April, 2014.

14 

15

BENJAMIN H. SETTLE
16 United States District Judge