

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION)	
and STATE OF ILLINOIS,)	
)	
Plaintiffs,)	No. 15 C 11473
)	
v.)	Judge Jorge L. Alonso
)	
ADVOCATE HEALTH CARE,)	
ADVOCATE HEALTH AND)	
HOSPITALS CORPORATION, and)	
NORTHSHORE UNIVERSITY)	
HEALTHSYSTEM,)	
)	
Defendants.)	

ORDER

The Court grants plaintiffs’ motion to strike the offer of judgment from the docket. Rule 68 directs defendants “[to] serve” an offer of judgment on the opposing party, not to file it, and makes “[e]vidence of an unaccepted offer . . . [in]admissible except in a proceeding to determine costs.” Fed. R. Civ. P. 68(a), (b). Courts and commentators generally agree that an unaccepted offer of judgment should not be filed. *See Wilder Chiropractic, Inc. v. Pizza Hut of S. Wis., Inc.*, 754 F. Supp. 2d 1009, 1013 (W.D. Wis. 2010) (“[A] Rule 68 offer is not filed until it is accepted or until it is presented to the court when the defendant seeks to recover costs.”) (quoting 13 *Moore’s Federal Practice* § 68.03[3] (3d ed. 2010) (citations omitted)); *Webb v. James*, 172 F.R.D. 311, 312 n.1 (N.D. Ill. 1997) (“In addition to serving Plaintiff’s counsel with the Offer of Judgment, Defendants’ counsel also filed the offer with the Clerk of the Court. . . . This clearly was improper.”) (citing *Kason v. Amphenol Corp.*, 132 F.R.D. 197, 197 (N.D. Ill. 1990) and 12 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil* § 3002 (2d ed.)), *aff’d*, 147 F.3d 617 (7th Cir. 1998); *Kason*, 132 F.R.D. at 197 (“Rule 68 is really unambiguous—its first

sentence provides only for the *service* of offers of judgment on the adverse party, while its second sentence calls for *filing* of the offer only if the adverse party accepts it within ten days after such service. By strong negative inference, that latter reference to filing if and when the offer is accepted confirms the plain meaning of Rule 68's first sentence that no filing is permitted at the time of tender."); 12 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil* § 3002 (2d ed.) (“[A] valid Rule 68 offer . . . should be in writing and served on the adverse party in the manner provided by Rule 5(b). The defendant should not file the offer with the court, but if that is done by mistake the remedy is to strike the offer from the court’s file.”) (footnotes omitted). Because the offer of judgment should not have been filed, the Court grants plaintiff’s motion to strike it from the docket [418].

SO ORDERED.

ENTERED: April 26, 2016

A handwritten signature in black ink, consisting of a large, loopy initial 'J' followed by a smaller 'L' and a period, all enclosed within a large, horizontal oval stroke.

HON. JORGE L. ALONSO
United States District Judge