

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK


David N. Hurd
United States District Judge

Dated: April 3, 2017

Utica, NY

VALICIA RAWLINS,

Plaintiff,

v.

CARTER BUSINESS SERVICES, INC.,

Defendant.

Case No.: 1:15-CV-727 DNH/RFT

NOTICE OF ACCEPTANCE OF
DEFENDANT'S RULE 68 OFFER OF
JUDGMENT TO PLAINTIFF

**NOTICE OF ACCEPTANCE OF OFFER OF JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 68**

Now comes Plaintiff, Valicia Rawlins, by and through her attorneys, Kimmel & Silverman, P.C., and files Plaintiff's Acceptance of Defendant's Offer of Judgment Pursuant to Rule 68.

1. On June 12, 2015, Plaintiff filed this action against Defendant.
2. On March 31, 2017, Defendant served an Offer of Judgment in this action in the amount of \$6,000.00. See Exhibit "A".
3. Pursuant to Fed. R. Civ. P. 68, Plaintiff timely served written notice of her acceptance of the offer via the electronic filing system to Defendant's attorney of record.

Date: March 31, 2017

Respectfully submitted,

/s/ Craig Thor Kimmel

Craig Thor Kimmel

Attorney for the Plaintiff

Kimmel & Silverman, P.C.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

VALICIA RAWLINS,
Plaintiff

Case No.: 1:15-CV-727(DNH/RFT)

v.

CARTER BUSINESS SERVICES, INC.,
Defendant

**DEFENDANT CARTER BUSINESS SERVICES, INC..'S OFFER OF
JUDGMENT PURSUANT TO FRCP RULE 68**

TO PLAINTIFF VALICIA RAWLINS AND TO HER ATTORNEYS OF
RECORD:

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, Defendants CARTER BUSINESS SERVICES, INC. ("Defendant"), by and through their counsel, hereby offer to allow judgment to be taken against Defendant and in favor of Plaintiff VALICIA RAWLINS ("Plaintiff"), as follows:

1. Judgment shall be entered in the amount of SIX THOUSAND AND 00/100 dollars (\$6,000.00) for damages to Plaintiff;
2. Taxable costs accrued in connection with the above-referenced action are to be added to the Judgment as against the Defendant. Said costs are to be in an amount as agreed by counsel for the parties, or if they are unable to agree, as determined by the Court, upon Motion; and

3. The judgment entered in accordance with this Offer of Judgment is to be in total settlement of any and all claims and allegations by Plaintiff against, implicating or involving Defendant, and said judgment shall have no effect whatsoever except in settlement of those claims.

In accordance with Rule 68, if this Offer of Judgment is not accepted by Plaintiff within fourteen (14) days after service of the Offer, the Offer shall be deemed withdrawn, and any evidence of this Offer will be inadmissible except in any proceeding to recover costs.

In accordance with Rule 68, if this Offer of Judgment is not accepted by Plaintiff, and the Judgment finally obtained by Plaintiff, exclusive of costs is not more favorable than this Offer, Plaintiff may be required to pay her costs and attorneys' fees incurred after the date of this Offer.

s/ David G. Peltan
David G. Peltan, Esq.
Bar Roll No: 515856
Attorney for Defendant
Peltan Law, PLLC
128 Church Street
East Aurora, NY 14052
(716) 655-3887
davidpeltan@peltanlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I electronically served the foregoing with the Plaintiff via her counsel by electronic mail and USPS first class mail. And, I hereby certify that, to the best of my knowledge and information, there are no other participants on this case requiring service by any means.

s/ David G. Peltan
David G. Peltan, Esq.
Bar Roll No: 515856
Attorney for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VALICIA RAWLINS,)	
)	
Plaintiff,)	Case No.: 1:15-CV-727 DNH/RFT
)	
v.)	
)	
CARTER BUSINESS SERVICES, INC.,)	
)	
Defendant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Acceptance of Defendant's Rule 68 Offer of Judgment to Plaintiff was served via ECF this 31st day of March, 2017, upon the following counsel for Defendant:

David G. Peltan, Esq.
Peltan Law, PLLC
128 Church Street
East Aurora, NY 14052
davidpeltan@peltanlaw.com

/s/ Craig Thor Kimmel
Craig Thor Kimmel

Federal Rules of Appellate Procedure

Rule 4. Appeal as of Right

(a) Appeal in a Civil Case.

1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
- (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
- (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
- (iv) to alter or amend the judgment under Rule 59;
- (v) for a new trial under Rule 59; or
- (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice

of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

- (A) A judgment or order is entered for purposes of this Rule 4(a):
 - (i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or
 - (ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.