

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOCKET

----- X
ERNEST STEVE BARRY and MICHAEL
BURKHART,

Plaintiffs,

-versus-

THE CITY OF NEW YORK, THE NEW YORK
CITY TRANSIT AUTHORITY, and STEVEN
DUTES, a member of the New York City Police
Department,

Defendants.
----- X

**JUDGMENT PURSUANT
TO RULE 68**

11 Civ. 5533 (BMC)
ECF Case

WHEREAS, on November 14, 2011, plaintiffs Ernest Steve Barry and Michael Burkhart filed this action alleging violations of their civil rights; and

WHEREAS, on March 19, 2012, pursuant to Fed. R. Civ. P. 68, defendants City of New York and Steven Dutes served on the plaintiffs an Offer of Judgment in favor of plaintiff Michael Burkhart (Exhibit A attached hereto); and

WHEREAS, on April 2, 2012, plaintiff Michael Burkhart accepted defendants' offer (Exhibit B attached hereto);

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Defendants City of New York and Police Officer Steven Dutes shall pay plaintiff Michael Burkhart the total sum of Two Thousand Five Hundred and One Dollars (\$2,501), pursuant to the Rule 68 Offer of Judgment.

2. Defendants City of New York and Police Officer Dutes shall also pay plaintiff Michael Burkhart's reasonable attorneys' fees, expenses and costs to the date of the offer.

3. This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff Michael Burkhart may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants City of New York and Police Officer Dutes, or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

4. The offer of judgment was made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by any defendant, or an official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff Michael Burkhart has suffered any damages.

5. Acceptance of the offer of judgment has acted to release and discharge defendants City of New York and Police Officer Dutes; their successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by Michael Burkhart in the above-referenced action. Acceptance of the offer of judgment has waived plaintiff Michael Burkhart's rights to any claim for interest on the amount of the judgment. Plaintiff Michael Burkhart has agreed that payment of \$2,501 within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment.

Dated: 5/15, 2012

SO ORDERED:

s/CLP

~~BRIAN M. COGAN, U.S.D.J.~~

CHERYL L. POLLAK USMJ

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ERNEST STEVE BARRY and MICHAEL BURKHART,

Plaintiffs,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
TRANSIT AUTHORITY, and STEVEN DUTES, a
member of the New York City Police Department,

Defendants.

RULE 68
OFFER OF JUDGMENT

11 CV 5533 (BMC)

----- x

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendant City of New York hereby offers to allow plaintiff Michael Burkhardt to take a judgment against it in this action for the total sum of Two Thousand Five Hundred and One Dollars (\$2,501.00), plus reasonable attorneys' fees, expenses and costs to the date of this offer for plaintiff's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants City of New York and Police Officer Dutes, or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted up to and including April 2, 2012.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by any

defendant, or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants City of New York and Police Officer Dutes; their successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by Michael Burkhart in the above-referenced action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff agrees that payment of \$2,501.00 within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide payment in full or in part. If plaintiff is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to Counsel for Defendants a final demand letter from Medicare.

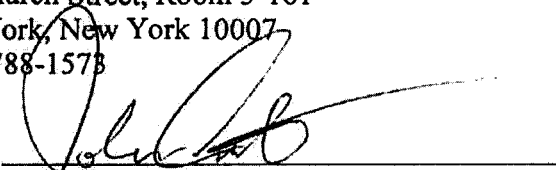
By acceptance of this Rule 68 Offer of Judgment, plaintiff agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26. Plaintiff further agrees to hold harmless defendants, regarding any past and/or future Medicare payments, presently known or unknown made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
March 19, 2012

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
*Attorney for Defendants City of New York and
Police Officer Steven Dutes*
100 Church Street, Room 3-161
New York, New York 10007
(212) 788-1578

By:



Johana V. Castro
Senior Counsel
Special Federal Litigation

TO: BY HAND
Claudia Angelos, Esq.
Ella Spottswood
Timothy Hurley
Andrew Avorn
New York University School of Law
Furman Hall
245 Sullivan Street
New York, NY 10012
Attorneys for Plaintiffs

Exhibit B

CIVIL RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.
245 Sullivan Street, 5th Floor
New York, New York 10012
—
(212) 998-6430
Fax (212) 995-4031

Claudia Angelos
Supervising Attorney
Direct line: (212) 998-6462
Email: claudia.angelos@nyu.edu

ANDREW AVORN
TIMOTHY-TAYLOR HURLEY
ELEANOR SPOTTSWOOD
Clinic Law Students

BY HAND

April 2, 2012

Johana V. Castro
Senior Counsel
New York City Law Department
Office of the Corporation Counsel
100 Church Street
New York, NY 10007

Re: *Barry v. City of New York* 11 Civ. 5533 (BMC)

Dear Ms. Castro:

We enclose our acceptance of your Rule 68 Offers of Judgment. As we have mentioned before, because our case against the NYCTA remains, we expect to depose the witness police officers and Officer Dutes next week as planned.

Sincerely,


Andrew Tucker Avorn

CC by email: Richard Schoolman, Esq.

2012 APR -2 PM 3:56
received by Dmitry Avorn
CITY OF N.Y. LAW DEPT.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS UNIT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ERNEST STEVE BARRY and MICHAEL
BURKHART,

Plaintiffs,

-versus-

THE CITY OF NEW YORK, THE NEW YORK CITY TRANSIT AUTHORITY, and STEVEN DUTES, a member of the New York City Police Department,

Defendants.

Acceptance of Rule 68 Offer

11 Civ. 5533 (BMC)

ECF Case

Plaintiff Michael Burkhart hereby accepts in full the terms of the attached Defendant City of New York's Rule 68 Offers of Judgment, dated March 19, 2012 and served on March 20, 2012, in the above-named action.

Respectfully submitted,

WASHINGTON SQUARE
LEGAL SERVICES, by

Andrew Avorn
 Andrew Avorn, law student
 Timothy-Taylor Hurley, law student
 Eleanor Spottswood, law student
 245 Sullivan Street, 5th Floor
 New York, NY 10012
 (212) 998-6430
 Co-Counsel for Plaintiffs

Dated: April 2, 2012
New York, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ERNEST STEVE BARRY and MICHAEL BURKHART,

Plaintiffs,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
TRANSIT AUTHORITY, and STEVEN DUTES, a
member of the New York City Police Department,

Defendants.

RULE 68
OFFER OF JUDGMENT

11 CV 5533 (BMC)

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Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendant City of New York hereby offers to allow plaintiff Michael Burkhardt to take a judgment against it in this action for the total sum of Two Thousand Five Hundred and One Dollars (\$2,501.00), plus reasonable attorneys' fees, expenses and costs to the date of this offer for plaintiff's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants City of New York and Police Officer Dutes, or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted up to and including April 2, 2012.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by any

defendant, or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants City of New York and Police Officer Dutes; their successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by Michael Burkhardt in the above-referenced action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff agrees that payment of \$2,501.00 within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide payment in full or in part. If plaintiff is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to Counsel for Defendants a final demand letter from Medicare.

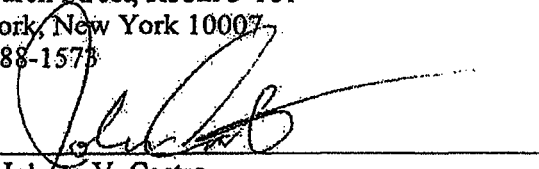
By acceptance of this Rule 68 Offer of Judgment, plaintiff agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26. Plaintiff further agrees to hold harmless defendants, regarding any past and/or future Medicare payments, presently known or unknown made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
March 19, 2012

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
*Attorney for Defendants City of New York and
Police Officer Steven Dutes*
100 Church Street, Room 3-161
New York, New York 10007
(212) 788-1573

By:



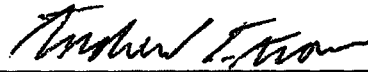
Johana V. Castro
Senior Counsel
Special Federal Litigation

TO: BY HAND
Claudia Angelos, Esq.
Ella Spottswood
Timothy Hurley
Andrew Avorn
New York University School of Law
Furman Hall
245 Sullivan Street
New York, NY 10012
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2012, I served the attached acceptances of the Defendant City of New York's Rule 68 Offers of Judgment for Plaintiffs Ernest Steve Barry and Michael Burkhart on the following counsel of record:

Johana V. Castro
Senior Counsel
New York City Law Department
Office of the Corporation Counsel
100 Church Street
New York, NY 10007



Andrew Tucker Avorn

DOCKET

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EASTERN DISTRICT OF NEW YORK

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WHEREAS, on November 14, 2011, plaintiffs Ernest Steve Barry and Michael Burkhart filed this action alleging violations of their civil rights; and

WHEREAS, on March 19, 2012, pursuant to Fed. R. Civ. P. 68, defendants City of New York and Steven Dutes served on the plaintiffs an Offer of Judgment in favor of plaintiff Ernest Steve Barry (Exhibit A attached hereto); and

WHEREAS, on April 2, 2012, plaintiff Ernest Steve Barry accepted defendants' offer (Exhibit B attached hereto);

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Defendants City of New York and Police Officer Steven Dutes shall pay plaintiff Ernest Steve Barry the total sum of Five Thousand and One Dollars (\$5,001), pursuant to the Rule 68 Offer of Judgment.

2. Defendants City of New York and Police Officer Dutes shall also pay plaintiff Ernest Steve Barry's reasonable attorneys' fees, expenses and costs to the date of the offer.

3. This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff Ernest Steve Barry may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants City of New York and Police Officer Dutes, or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

4. The offer of judgment was made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by any defendant, or an official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff Ernest Steve Barry has suffered any damages.

5. Acceptance of the offer of judgment has acted to release and discharge defendants City of New York and Police Officer Dutes; their successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by Ernest Steve Barry in the above-referenced action. Acceptance of the offer of judgment has waived plaintiff Ernest Steve Barry's rights to any claim for interest on the amount of the judgment. Plaintiff Ernest Steve Barry has agreed that payment of \$5,001 within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment.

Dated: 5/15, 2012

SO ORDERED:

s/CLP

BRIAN M. COGAN, U.S.D.J.

CHERYL POLLAK U.S.M.J.

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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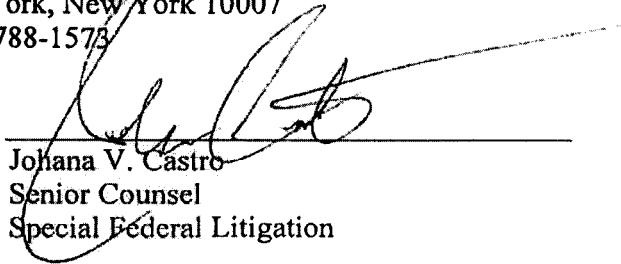
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The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
March 19, 2012

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
*Attorney for Defendants City of New York and
Police Officer Steven Dutes*
100 Church Street, Room 3-161
New York, New York 10007
(212) 788-1573

By:



Johana V. Castro
Senior Counsel
Special Federal Litigation

TO: BY HAND
Claudia Angelos, Esq.
Ella Spottswood
Timothy Hurley
Andrew Avorn
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Attorneys for Plaintiffs

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Claudia Angelos
Supervising Attorney
Direct line: (212) 998-6462
Email: claudia.angelos@nyu.edu

ANDREW AVORN
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ELEANOR SPOTTSWOOD
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Sincerely,



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CC by email: Richard Schoolman, Esq.

2012 APR -2 PM 3:56
CITY OF N.Y. LAW DEPT.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS UNIT
Received by Dmitry Avorn

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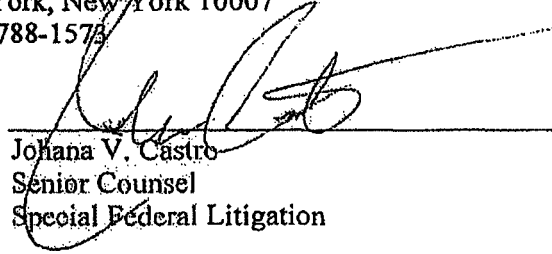
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March 19, 2012

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Corporation Counsel of the City of New York
*Attorney for Defendants City of New York and
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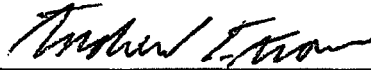

Johana V. Castro
Senior Counsel
Special Federal Litigation

TO: BY HAND
Claudia Angelos, Esq.
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New York University School of Law
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245 Sullivan Street
New York, NY 10012
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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Johana V. Castro
Senior Counsel
New York City Law Department
Office of the Corporation Counsel
100 Church Street
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Andrew Tucker Avorn