

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BARRY LEVINE)	
)	
Plaintiff,)	
)	Case No.4:20-CV-01128-O
v.)	
)	
AMERICAN MENSA, LTD. and)	
JOHN DOES 1-5)	
)	
Defendants.)	

**PLAINTIFF BARRY LEVINE’S MOTION FOR ACCEPTANCE AND
ENTRY OF JUDGMENT AND NOTICE OF ACCEPTANCE OF OFFER
OF JUDGMENT**

In accordance with Rule 68 of the Federal Rules of Civil Procedure, Plaintiff Barry Levine, through counsel, moves for entry of judgment in his favor against Defendant American Mensa in the amount of **Three Hundred Thousand Dollars and 00/100** (\$300,000.00) based upon the Offer of Judgment made by Defendant American Mensa on May 12, 2022 and the Notice of Acceptance of this Offer of Judgment dated May 16, 2022. As grounds for this Motion, Plaintiff shows as follows:

1. On May 12, 2022, counsel for Defendant American Mensa, Ltd. served upon Counsel for Plaintiff an Offer of Judgment to allow judgment to be taken against American Mensa in the amount of **Three Hundred Thousand Dollars and**

00/100 (\$300,000.00). A copy of that Offer of Judgment is attached to this Motion as Exhibit A.¹

2. On Monday May 16, 2022 Plaintiff gave written notice to American Mensa of acceptance of this Offer of Judgment through a letter of May 16, 2022 from Alan E. Lubel, attorney for Plaintiff Barry Levine, to Alexander Blue, Attorney for Defendant American Mensa, Ltd. sent by hand-delivery and email conveying acceptance of the Offer of Judgment and a copy of Plaintiff Barry Levine's Notice of Acceptance Of Offer Of Judgment By Defendant American Mensa, Ltd. A copy of this letter conveying the written Notice of Acceptance of Offer of Judgment is attached to this Motion as Exhibit B.

3. On May 16, 2022, Counsel for Plaintiff filed Plaintiff Barry Levine's Notice of Acceptance Of Offer Of Judgment By Defendant American Mensa, Ltd , which was Docket Number 75 in this case. Attached to that Notice of Acceptance was Defendant's Offer of Judgment. A complete copy of that prior filing is attached to this Motion as Exhibit C.

¹ The attached version of the May 12, 2022 Offer of Judgment provided by counsel for Defendant corrects a single scrivener's error in the original and is not substantively different.

4. On May 19, 2022, the Court unfiled ECF 75, Plaintiff's Notice of Acceptance of Offer of Judgment, indicating that "Plaintiff must file a motion for the Court to accept the judgment." [ECF 76].

5. Plaintiff now files this Motion in order to comply with the Court's instruction. [ECF 76]. Because the Court unfiled ECF 75, Plaintiff also asks that this present filing be treated as, in addition to his Motion for Acceptance and Entry of Judgment, the filed copy of his Notice of Acceptance of Offer of Judgment.

6. It is respectfully suggested that the parties have complied with the requirements of Rule 68 of the Federal Rules of Civil Procedure for entry of a judgment which provides in relevant part:

a) MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

Fed. R. Civ. P. 68.

7. Rule 68 is considered to be "self-executing" after an offer of judgment has been accepted. *Ramming v. Nat. Gas Pipeline Co. of Am.*, 390 F.3d 366, 370 (5th Cir. 2004). After an agreement is reached, and a notice of acceptance is filed, "a court must enter a judgment accepted by the parties." *Id.* at 371.

8. For these reasons, Plaintiff urges the Court to enter judgment as agreed by the parties in his favor against Defendant American Mensa in the amount of **Three Hundred Thousand Dollars and 00/100** (\$300,000.00), after which this case will be closed.

9. A proposed Judgment in favor of Plaintiff Barry Levine against Defendant American Mensa, Ltd., in the amount of **Three Hundred Thousand Dollars and 00/100** (\$300,000.00) is attached to this Motion as Exhibit D, and pursuant to the Court's practice this proposed Judgment is submitted contemporaneously with this Motion to the Court's email address for proposed orders.

Respectfully submitted this 20th day of May 2022.

/s/ John P. Atkins

John P. Atkins
Texas Bar No. 24097326
Thompson Coburn LLP
2100 Ross Avenue, Suite 600
Dallas, Texas 75201
jatkins@thompsoncoburn.com
P: 972.629.7119-Office
F: 972.629.7171– Facsimile
M: 503.523.8247.

/s/ Alan E. Lubel

Alan E. Lubel (Admitted Pro Hac Vice)
Georgia State Bar No. 460625
Law Office of Alan E. Lubel
3475 Piedmont Road, Suite 1100
Atlanta, Georgia 30305
(404) 917-1080 – Office

(404) 233-1943 – Facsimile
alubel@lubellaw.com

Attorneys For Plaintiff Mr. Barry Levine

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff has conferred with Counsel for Defendant American Mensa, Ltd. regarding the relief requested by this Motion, and the Motion is UNOPPOSED by Defendant.

s/Alan E. Lubel

Alan E. Lubel

CERTIFICATE AND PROOF OF SERVICE

I certify that I have this day served a copy of the within **PLAINTIFF BARRY LEVINE'S MOTION FOR ACCEPTANCE AND ENTRY OF JUDGMENT AND NOTICE OF ACCEPTANCE OF OFFER OF JUDGMENT** upon counsel for Defendant American Mensa, Ltd in this case electronically through email to:

Alexander G. Blue
Thompson Coe
700 N. Pearl Street
25th Floor
Dallas, Texas 75201-2832
ABlue@thompsoncoe.com

James N. Isbell
Attorney-in-Charge
Texas Bar No.10431900
jisbell@thompsoncoe.com
Alexis K. Caughey
Texas Bar No. 24065540
acaughey@thompsoncoe.com
One Riverway, Suite 1400
Houston, Texas 77056

As well as by filing this Notice with the Clerk of Court using the CM/ECF system which will be electronically served on all counsel of record, this 20th day of May 2022.

/s/ Alan E. Lubel
Alan E. Lubel