

LEVY DAVIS & MAHER, LLP

ATTORNEYS AT LAW

39 Broadway, Suite 1620  
New York, New York 10006

SHELDON I. LEVY (1927-1999)  
MALCOLM H. DAVIS  
DAMON R. MAHER  
JONATHAN A. BERNSTEIN

TELEPHONE: (212) 371-0033  
FACSIMILE: (212) 371-0463  
www.levydavis.com  
Sender's Email Address:  
jbernstein@levydavis.com

August 26, 2018

**By ECF**

The Honorable Marilyn Dolan Go  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Gayle v. Harry's Nurses Registry, Inc. et  
ano., 07 Civ. 4672 (NGG) (MDG)

Dear Magistrate Judge Go:

I write in reply to defense counsel's letter of August 24, 2018 (Dkt. No. 258) as authorized by Your Honor's Order of August 17, 2018.

Yolanda Robinson, Paulette Miller and Lindon Morrison have now had four weeks to respond to my letters of July 27, 2018 and Your Honor's Order of July 25, 2018 (Dkt. No. 257-1), but have not done so. It is respectfully submitted that they are unlikely to respond and that the documentary evidence shows that they have received the full judgment amounts allocable to them.<sup>1</sup> Similarly, it appears unlikely that Martha Ogunjana intends to respond to my letter of November 13, 2017 (Dkt. No. 257-3). Defense counsel offers no authority in support of his suggestion that this matter should be held open indefinitely pending responses from those persons.

Satisfactions of this Court's judgments listed in Mr. Liotti's letter were filed over six months ago. Dkt. No. 240.

This Court has patiently endured Mr. Dorvilier's allegation of "double-dipping" for

---

<sup>1</sup> Mr. Dorvilier's investigator has approached at least one of my clients and represented to her that "if [she] was willing to come to his office and swear out an affidavit saying that [she] did not receive all of the money that [she] had been awarded in the *Gayle* case, that [she] was eligible for more money." Affidavit of Bernice Sankar (Dkt. No. 234-2) ¶ 3.

LEVY DAVIS & MAHER, LLP  
ATTORNEYS AT LAW

The Honorable Marilyn Dolan Go  
August 26, 2018  
Page 2

nearly a year. In view of the gravity of the allegation, the Court has overlooked his lack of standing to raise the issue. Dkt. No. 248 at 1. I have provided an accounting with explanatory notes, copies of the fronts and backs of checks to clients drawn on my firm's trust account, and otherwise complied with the Court's directives. As Your Honor determined only last week, "the dates and amounts of checks issued to the plaintiffs set forth in the spreadsheets and other documents filed by plaintiffs' counsel are consistent with the bank records examined." Minute Entry August 17, 2018. Those records show conclusively that I distributed only the court-awarded fees to Levy Davis & Maher. As Your Honor determined last month, "the Court is satisfied that the disbursements reflected in the accounting ... were in accordance with the judgments entered." Dkt. No. 248 at 1. Notwithstanding Your Honor's determination, and notwithstanding the documentary evidence that I did not take both a contingency fee and court-awarded fees, Mr. Liotti repeats the allegation of double dipping.

Mr. Dorvilier now contends that the monies that were allegedly "double-dipped" should be disgorged, not to the nurses who were allegedly defrauded, but to him. Dkt. No. 258 at 2. This contention, for which Mr. Liotti cites no authority, is contrary to law. More to the point, the Court presumably tolerated Mr. Dorvilier's lack of standing because he posed as the champion of his employees. However, that pose can now be seen for what it is: another of Mr. Dorvilier's attempts to enrich himself unjustly at his employees' expense. It should be noted that, during the pendency of this action, Mr. Dorvilier was convicted of grand larceny and served a day in jail for stealing from his employees. Dkt. No. 197-6 (Post-conviction press release from Office of the Queens District Attorney) ("Nursing Agency Owner and Corporation Convicted of Stealing More than \$25,000 from Employees").

Mr. Liotti complains that I continue to hold some \$13,000 in escrow. However, holding funds in trust for my clients pending attempts to locate them and/or obtain their social security numbers in order to report the remittance as required by the Internal Revenue Code is consistent with my legal and ethical obligations.<sup>2</sup> Yet Mr. Dorvilier demands that these monies be returned to him as well. As noted (Dkt. No. 232 at 2), to the extent that attempts to remit those funds to the persons entitled to them are ultimately unsuccessful, I will seek the Court's permission to make a *cy pres* donation or, if that application is denied, dispose of the funds in accordance with the Abandoned Property Law of the State of New York. In no event will Mr. Dorvilier be entitled to the funds. He is a civil defendant duly adjudicated liable whose assets have been levied as provided by law, not a party to a reversionary settlement.

---

<sup>2</sup> This is more fully explained in my cover letter to the accounting dated November 13, 2017 (Dkt. No. 237). Mr. Liotti's letter betrays no indication that he has read that explanation.

LEVY DAVIS & MAHER, LLP  
ATTORNEYS AT LAW

The Honorable Marilyn Dolan Go  
August 26, 2018  
Page 3

Not only has Mr. Dorvilier taxed this Court's patience and wasted its resources in the service of his quest to punish me for securing a measure of justice for his employees, he has filed two baseless complaints against me with the Departmental Disciplinary Committee.<sup>3</sup> (Notably, his contention that the allegedly "double-dipped" money should be disgorged to him rather than to my allegedly defrauded clients is omitted from his complaints to the ethics authorities.) Accordingly, I respectfully request that Your Honor conclude this inquiry with a report to Judge Garaufis that I am guilty of no wrongdoing and recommendation that Mr. Dorvilier be admonished against further abuses of this Court's procedures.

Respectfully submitted,

/s/

Jonathan A. Bernstein

---

<sup>3</sup> The first complaint was dismissed (Dkt. No. 234-1); the second complaint, which is substantially identical but also alleges that I caused Mr. Dorvilier emotional distress by suing him, remains pending.