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November 13, 2017

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:

We represented the plaintiffs in this matter. I make this submission pursuant to Your Honor's request for an accounting setting forth all the amounts collected to satisfy the judgments entered herein and all disbursements made. Exhibit 1 and 2 hereto are spreadsheets setting forth the requested information.

Explanatory Notes Regarding Accounting Spreadsheets

Exhibit 1 shows the dates and amounts of the three payments received (the proceeds of the U.S. marshal's levies on Defendants' bank accounts) and the two payments made to Levy Davis & Maher, LLP representing attorney's fees and costs (as authorized by Dkt. No. 214 and 226). Exhibit 1 also shows the full amount of distributions made to clients. Those distributions are itemized on Exhibit 2.

Exhibit 2 Explanatory Notes

Columns A and B are the Plaintiffs' first and last names.

Column C is the "raw" amount each Plaintiff was awarded on September 19, 2012 (Dkt. No. 180-1).

Column D is the full amount of the judgment awarded each Plaintiff on that date, which includes

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FLSA liquidated damages (Dkt. No. 180).

Column E is the amount awarded to several Plaintiffs by judgment dated October 22, 2013 (Dkt. No. 224).

Column F is the number of the first check issued to each Plaintiff on the Levy Davis & Maher, LLP Trust Account.

Column G is the amount of the check identified in Column F.

Column H is the date of the check identified in Column F.

Column I is the date that the check identified in Column F was negotiated.

Column J is the date of the second check, if any, issued to the Plaintiff.

Column K is the amount of the check identified in Column J.

Column L is the date of the check identified in Column J.

Column M is the date on which the check identified in Column J was negotiated.

Column N is the total amount of the check(s) issued by Levy Davis & Maher, LLP to or on behalf of each Plaintiff, *i.e.*, the sum of Columns G and K.

Column O is the balance due, if any, to each Plaintiff.

Totals are shown at the bottoms of Columns N and O.

Row 3, Sulaiman Ali-El: see page 5, below.

Row 14, Claudia Gayle: Ms Gayle directed me to write a \$1,000.00 check to a creditor. Accordingly, one check to Ms. Gayle and another to her creditor were issued on January 28-29, 2013.

It will be seen that we continue to hold \$13,544.04 in trust for several Plaintiffs: Sussan Ajiboye, Niseekah Evans, Brenda Lewis, Catherine Modeste, Christa Pierre and Bendy Pierre-Joseph. This is because we have been unable to contact those five of those Plaintiffs; the sixth

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refuses to provide us her social security number so that we may issue a 1099 as required.¹

What follows is my response to Mr. Dorvilier's particularized allegations of failure to remit the judgment amounts (Dkt No.228 at 4-5).

1. Lindon Morrison.

Mr. Morrison received and negotiated two checks totaling \$45,921.00, the full judgment amount. On January 29, 2013, we issued a check for \$34,440.75. That check was subsequently voided (if memory serves, Mr. Morrison spilled something on it and was unable to negotiate it). On June 17, 2013, I reissued him a check in the same amount. It was negotiated on June 19, 2013. On January 27, 2014, we issued a check for \$11,480.25. It was negotiated on January 30, 2014. Mr. Morrison's statement (Dkt. No. 228 at 44) is apparently the result of a faulty memory.

2. Paulette Miller.

Ms. Miller received and negotiated two checks totaling \$2,380.00, the full judgment amount. On January 29, 2013, we issued a check for \$1,785.00, which was negotiated on February 5, 2013. On January 27, 2014, we issued a check for \$595.00, which was negotiated on January 29, 2014.

3. Yolanda Robinson.

Ms. Robinson received and negotiated two checks totaling \$210,864.00, the full judgment amount. On January 29, 2013, we issued a check for \$69,264.00, which was negotiated on February 4, 2013. On January 27, 2014, we issued a check for \$141,600.00, which was negotiated on February 3, 2014.

It should be noted that Ms. Robinson states in her affidavit (Dkt. No. 228 at 42) that she received the two checks.

4. Annabel Llewellyn.

Ms. Robinson received and negotiated two checks totaling \$420.00, the full judgment

¹ I noticed in the course of preparing this accounting that we apparently underpaid Jacqueline Ward by \$1.50. I have written to her and, once I have updated her address in my files, I will send her the remaining balance.

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amount. On January 29, 2013, we issued a check for \$315.00, which was negotiated on February 4, 2013. On January 27, 2014, we issued a check for \$105.00, which was negotiated on February 10, 2014.

It should be noted that the affidavit (Dkt. No. 228 at 38) offered by Mr. Dorvilier in support of his representation that Ms. Llewellyn “stated” that she had received no money from my firm is unsigned.

5. Brenda Lewis.

Ms. Lewis did not respond to my letter of December 13, 2012 stating, in relevant part

Please sign below to indicate your understanding that you might have to return the money following appeal. In addition, if the address shown above is incorrect, please write in your correct address. Finally, please provide your social security number. If you do not provide this information, we cannot send you your check. Enclosed is a postage-paid return envelope.

Nor has she responded to my firm’s subsequent attempts to contact her. My firm continues to hold \$120.00, the judgment amount allocable to Ms. Lewis, in trust. If Mr. Dorvilier is willing to facilitate contact between my firm and Ms. Lewis so that she can provide her social security number and current address so that we may remit payment, we will gladly accept his assistance. However, it appears from the unsigned affidavit included in his papers (Dkt. No. 228 at 36) that he is not in contact with Ms. Lewis.

6. Martha Ogunjana

My letter of December 13, 2012 to Ms. Ogunjana was returned by the Post Office. My firm was able to locate her thereafter. On January 27, 2014, we remitted a check to her in the amount of \$653.00, the full judgment amount. A review of our bank statements for January-December 2014 indicates that the check was apparently never negotiated. I learned of this only several days ago in the course of preparing this accounting. A review of our files indicates that the check has not been returned by the Post Office.

If in fact the check was not negotiated, it is surprising that Ms. Ogunjana has not contacted us. I was in contact with her shortly before January 27, 2014; she would have expected

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to receive a check from me. Accordingly, I have written to Ms. Ogunjana to ask whether she received the check.

It appears that Mr. Dorvilier is not in contact with Ms. Ogunjana; he has included no affidavit from her in Dkt. No. 228.

7. Sulaiman Ali-El.

On March 5, 2013, we remitted a check to Mr. Ali-El in the amount of \$8,408.92. That check was negotiated on March 7, 2013. On January 27, 2014, we remitted a second check to Mr. Ali-El in the amount of \$5,802.98. The second check was returned by the Post Office.

We subsequently received notices of tax levy from the New York State Department of Taxation and Finance and the Internal Revenue Service. Accordingly, we remitted a check for \$5,802.98, the remainder of the judgment amount allocable to Mr. Ali-El, to the NYSDTF on May 8, 2017. Redacted copies of the Tax Compliance Levy and my correspondence to the NYSDTF are annexed hereto as Exhibit 3; a copy of a notice of IRS levy is included in Mr. Dorvilier's papers (Dkt. No. 228 at 45)

8. Jane Burke Hylton.

Ms. Burke Hylton received and negotiated two checks totaling \$143,832.00, the full judgment amount. On January 29, 2013, we issued a check for \$102,990.00, which was negotiated on February 4, 2013. On January 27, 2014, we issued a check for \$40,842.00, which was negotiated on January 31, 2014.

Respectfully submitted,

/s/

Jonathan A. Bernstein

JAB:jb