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May 11, 2021

Hon. Nicholas G. Garaufis
U.S. District Court Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Filed by ECF Per EDNY Local Rules
5.2(b) and 7.1(d)

Hon. Pamela K. Chen
U.S. District Court Judge
U.S. District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Gayle v. Harry's Nurses Registry, Inc.*
and *H. Dorvilier*, Case No. 1:07-cv-04672 and
McFarlane v. Harry's Nurses Registry, Inc., *Harry's*
Home Care, Inc. and *H. Dorvilier*, Case No.
1:17-cv-6350: Letter Request/Motion to Remove
Administrative Case Closure Status And Reinstate
Cases to EDNY Active Docket Until The Filing Of
Satisfactions Of Judgment And/Or Judgments
Adjudicating All claims And Liabilities

Dear Judge Garaufis and Judge Chen,

I am writing as attorney for Defendants in the above matter. You will find attached a copy of the Notice of Appearance and Substitution of Counsel Forms in both proceedings that was also filed in the ECF system.

Please accept this letter as a request to reinstate both cases to the E.D.N.Y. Court's Active Case Docket. Based on my review of the court dockets, it is my understanding that both of these cases were administratively closed. I was not able to find a reference to the case closure order or the specific order closing the *Gayle v. Harry's Nurses Registry, Inc* and *H. Dorvilier* case (hereinafter referred to as the "*Gayle Case*") in the *Gayle Case Docket*; the order closing the *McFarlane v. Harry's Nurses Registry, Inc.*, *Harry's Home Care, inc.* and *H. Dorvilier* case (hereinafter referred to as the "*McFarlane Case*") issued by Judge Chen on January 7, 2021 is referenced in the *McFarlane Case Docket* in the January 7, 2021 docket entry, though a copy of the case closure order also could not be located. The order entered on January 8, 2021 and identified in the *McFarlane Case Docket* (Document 72) makes no mention of case closure.

Based on my review of the relevant court dockets it is my understanding that both cases were administratively closed. My client has asked me to reinstate both cases to the EDNY Active Docket until the filing in each case, of Satisfactions of Judgment and/or judgments adjudicating all claims and

liabilities. Based on my review of the case *Penn West Associates, Inc. v. Cohen*, 371 F. 3d 118 (3d Cir. 2004), it is not necessary to file a motion under Rule 60 of the Federal Rules of Civil Procedure (FRCP) for the relief requested and a party to the litigation has the legal right to said relief. Please accept this letter as a request on behalf of Defendants to reinstate both cases to the EDNY Active Case Docket.

I. Supporting Case Law

The Court in *Penn West Associates Inc. v. Cohen* 371 F. 3d 118 (3d Cir. 2004) addressed the issue of administrative closure of case files as follows:

...We conclude that the sole legal consequence of [a district court case closure order] is to remove PennWest's case from the District Court's active docket . Several courts refer to such an order as an "administrative closing... Upon receiving the order, the clerk of court closed the file... Properly understood, an administrative closing has no effect other than to remove a case from the court's active docket and permit the transfer of records associated with the case to an appropriate storage repository. "In no event does such an order bar a party from restoring the action to the Court's active calendar upon an appropriate application." *In re Arbitration*, 845 F. Supp at 1028 (S.D.N.Y. 1994)... See e.g. *Florida Ass'n for Retarded Citizens v. Bush*, 246 F.3d 1296, 1298 (11th Cir. 2001) ("Designating a case 'closed' does not prevent the court from reactivating a case either of its own accord or at the request of the parties.") ...see also *American Heritage Life Ins. Co. v. Orr* 294 F.3d 702,715 (5th Cir. 2002) (Dennis, J., concurring) ("[T]he administrative closure reflects nothing more than the federal courts' overarching concern with tidy dockets; it has no jurisdictional significance." *Supra*, at pages 126, 127 and 128 (emphasis supplied by *Penn West* court).

Other cases are cited therein including *Lehman v. Revolution Portfolio L.L.C* .166 F 3d 389 and *Mercer v. Allegheny Ludlum Corp.*, (W.D. Pa. 1990, aff'd 931 F.2d 50 (3d Cir. 1991) which discuss the district court practice regarding the administrative closings of files. In *Mercer*, the court references the following specific language to be included in closed file orders:

...Nothing contained in this Order shall be considered a dismissal or disposition of this matter... and should further proceedings in a it become necessary or desirable, either party may initiate it in the same manner as if this Order had not been entered. See *Penn West, supra*, page 127, foot note 8.

A final point noted by the *Penn West* court is that an administrative closing order is "not sanctioned by the Federal Rules and does not dispense with the technical requirements of finality" *supra*, page 128.


II. Request For Relief

Based on the foregoing legal precedent, I hereby request on behalf of Defendants that both cases be restored to the E.D.N.Y Active Case docket until the filing in each case, of Satisfactions of Judgment and/or judgments adjudicating all claims and liabilities. Considering that several documents

have been recently added to the docket, the requested reinstatement of these cases to the EDNY Active Case Docket is reasonable and appropriate.

Your cooperation in this matter is appreciated.

Very truly yours,



George A. Rusk
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Harry's Home Care Inc., and Harry Dorvilier
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Gayle, et al

-against-

Affirmation of Service
Case No. 1: 07-cv-04672


Harry's Nurses Registry, Inc., et al

I, George A. Rusk, declare under penalty of perjury that I have served a copy of the attached Letter Request/Motion to Remove Administrative Case Closure Status and Reinstate the above referenced matter to the E.D.N.Y. Active Docket upon the following Plaintiff Attorneys listed in the case docket, through the ECF. The mailing address listed in said case docket together with other listed contact information is hereby provided:

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Dated: April 21, 2021
Buffalo, New York
Address


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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

McFarlane, et al

-against-

Affirmation of Service
Case No. 1:17-cv-06350

Harry's Nurses Registry, Inc., et al

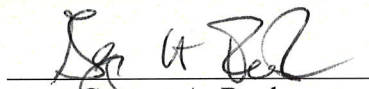
I, George A. Rusk, declare under penalty of perjury that I have served a copy of the attached Letter Request/Motion to Remove Administrative Case Closure Status and Reinstate the above referenced matter to the E.D.N.Y. Active Docket upon the following Plaintiff Attorneys listed in the case docket, through the ECF. The mailing address listed in said case docket together with other listed contact information is hereby provided:

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Dated: April 21, 2021
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