

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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 CLAUDIA GAYLE, Individually, On Behalf :
 of All Others Similarly Situated and as Class :
 Representative, :
 :
 Plaintiff, :
 :
 - against - :
 :
 HARRY'S NURSES REGISTRY, INC., and :
 HARRY DORVILIER a/k/a HARRY :
 DORVILIEN, :
 :
 Defendants. :
 ----- x

07 Civ. 4672 (CPS) (KAM)

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF)

CLAUDIA GAYLE, being duly sworn, deposes and says:

1. I am the plaintiff in this action. I make and submit this affidavit in opposition to defendant's motion for summary judgment and in support of my cross-motion to authorize notice of the action. I have personal knowledge of all facts stated in this affidavit.
2. I was employed by defendants as a licensed practical nurse from February 2007 until November 2007.
3. When I was employed by Harry's as a field nurse, I did not receive time and a half for overtime hours worked. This is because Harry's treated me as an independent contractor. Harry's required me to execute an memorandum of agreement stating that I was an independent contractor.
4. I am not, and never have been, in business for myself. I have no business cards, have never advertised, and have never solicited a patient directly. I am entirely dependent upon

referrals from Harry's and similar placement agencies.

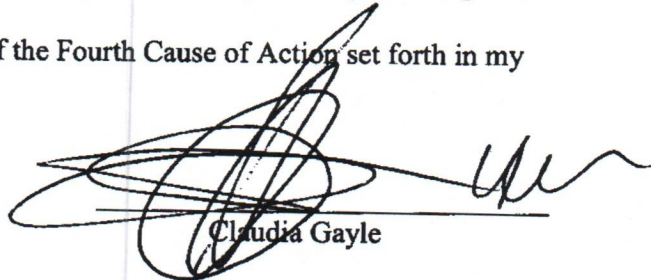
5. Harry's paid me in my own name. That is, I received my compensation from Harry's directly. I did not form a corporation or other business entity for the provision of nursing services, either during the time I worked for Harry's or before or after that time.

6. Harry's required me to obtain malpractice insurance, but none of the nursing jobs I have ever had has required professional liability insurance.

7. I believe that all of the field nurses employed by defendants are paid as described in above, and I am informed that Harry Dorvilier has so testified. I have been informed that this pay practice is unlawful.

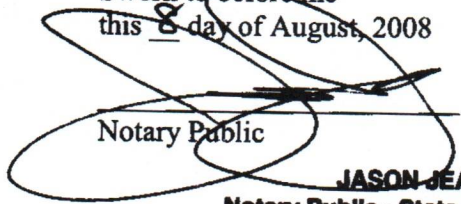
8. I believe that most of the field nurses employed by defendants are unaware that the pay practice is unlawful, that many, if not most, of them, lack the resources to hire private counsel to prosecute a lawsuit on their behalf and that, if given the opportunity, they would opt in to the above-captioned lawsuit.

9. Having been informed by counsel that a different legal standard applies to determinations of employee status under the Fair Labor Standards Act and New York Labor Law determinations of whether workers' compensation premiums may lawfully be charged to employees, I now consent to the dismissal of the Fourth Cause of Action set forth in my Complaint.



Claudia Gayle

Sworn to before me
this 8 day of August, 2008



Notary Public

JASON JEAN
Notary Public - State of New York
No. 01JE6163868
Qualified in Kings County
My Commission Expires April 9, 2011

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CLAUDIA GAYLE, Individually, On Behalf	:	
of All Others Similarly Situated and as Class	:	
Representative,	:	07 Civ. 4672 (NGG) (PK)
	:	
Plaintiff,	:	REPLY DECLARATION
	:	IN FURTHER SUPPORT
- against -	:	OF PLAINTIFFS' MOTION
	:	FOR POST-JUDGMENT
HARRY'S NURSES REGISTRY, INC., and	:	<u>ATTORNEY'S FEES AND COSTS</u>
HARRY DORVILIER,	:	
	:	
Defendants.	:	
----- X	:	

JONATHAN A. BERNSTEIN, an attorney duly licensed to practice in the courts of this State, declares the truth of the following under the penalties of perjury:

1. I am a partner in Isaacs Bernstein, P.C., attorneys for the plaintiffs, and am fully familiar with the facts hereinafter set forth. I make and submit this reply declaration in further support of Plaintiffs' motion for attorney's fees and costs following dismissal by the Second Circuit Court of Appeals of Defendants' appeal of this Court's Order denying Defendants' motion to reopen the case.

2. A copy of the Affidavit of Claudia Gayle, sworn to August 8, 2008 (ECF No. 33) is annexed hereto as **Exhibit 4**.

3. A copy of the Reply in Further Support of Cross-Motion to Dismiss Appeal or Alternatively, Strike Oversize Brief or, Alternatively, Grant Leave to File Oversize Brief filed with the Second Circuit Court of Appeals in this Matter (CA2 ECF No. 123) is annexed hereto as **Exhibit 5**. Only the Reply itself is relevant to the issues raised by this motion. Accordingly, the motion information sheet and the exhibits to that document have not been reproduced.

4. A copy of the Opposition to Appellants' Motion to File Late Brief and Appendix

