

MEMORANDUM ENDORSED**JOSEPH & KIRSCHENBAUM LLP**

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January 18, 2023

VIA ECF

Honorable Gregory H. Woods
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Zivkovic v. Laura Christy LLC, et al,*
No.: 17 CV 553 (GHW)(GWG)

Dear Judge Woods,

We represent Plaintiffs and the Fed. R. Civ. P. Rule 23 Subclasses (“Plaintiffs”) in the above-referenced matter. We write to follow-up on our December 14, 2022 letter to the Court in which we sought a Court Order on a subpoena we served on certain judgment-debtors’ accountant. Based on information provided by the judgment-debtors’ accountant, it is our understanding that, under Internal Revenue Code 26 U.S.C. § 7216, an accountant is prohibited from providing the information we seek absent a So-Ordered Subpoena or Court Order. We apologize for not including this information in our original letter and respectfully request that the Court So-Order the subpoena without the need for motion practice.

Briefly, as part of Plaintiffs’ judgment collections efforts under Fed. R. Civ. P. 69 and N.Y.C.P.L.R. Article 52, on December 5, 2022, Plaintiffs served a subpoena on an accountant, Milton J. Pirsos, who provided accounting and tax preparing services for at least three of the four Judgment-Debtors. (Attached as Exhibit A is a copy of that subpoena.) On December 13, 2022, we received a letter from Mr. Pirsos’s attorney, John Lentinello, who informed us that his client could not produce any documents in response to that subpoena absent either a court order or consent of the Judgment-Debtors as the documents sought were all tax return documents subject to Internal Revenue Code Section 7216, and could not be produced absent consent of the judgment debtor, a So-Ordered Subpoena, or Court Order. (Attached as Exhibit B is a copy of the letter.) Specifically, Mr. Pirsos’s attorney pointed us to Internal Revenue Code 26 U.S.C. § 7216 which provides that:

(a) GENERAL RULE

Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 [...] or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) EXCEPTIONS

(1) DISCLOSURE

Subsection (a) shall not apply to a disclosure of information if such disclosure is made—

- (A) pursuant to any other provision of this title, or
- (B) pursuant to an order of a court.

Internal Revenue Code 26 U.S.C. § 7216.

On December 22, 2022, the undersigned met and conferred with Mr. Lentinello and he informed us that his client otherwise maintains no objections of its own to the subpoena, including that, if the Court So-Orders it, there would then be no need for a motion to enforce the subpoena, absent an application to quash from the judgment debtor's counsel. Accordingly, in light of § 7216, we respectfully request that the Court So-Order the subpoena. We provided Mr. Lentinello with a copy of this letter, and he confirmed that he will accept service of any So-Ordered subpoena on behalf of Pirsos.

We thank the Court for its attention to this matter.

Respectfully submitted,

JOSEPH & KIRSCHENBAUM LLP

/s/ Josef Nussbaum

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cc: All Counsel of Record (via ECF)
John Lentinello, Esq. (via email at jlentinello@milbermakris.com)

Application denied without prejudice. The Court declines to “so-order” the subpoena submitted by Plaintiffs. Dkt. No. 347. Plaintiffs may seek to enforce the subpoena on Mr. Milton J. Pirso by applying for an order to show cause.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 347.

SO ORDERED.

Dated: January 19, 2023
New York, New York



GREGORY H. WOODS
United States District Judge