

Infinity Auto Ins. Co. v Chalen-Hernandez
2026 NY Slip Op 30990(U)
March 16, 2026
Supreme Court, New York County
Docket Number: Index No. 156383/2024
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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INFINITY AUTO INSURANCE COMPANY,

Plaintiff,

INDEX NO. 156383/2024

MOTION DATE 07/17/2025

MOTION SEQ. NO. 001

- v -

VICTOR CHALEN-HERNANDEZ, XIOMARA GARCIA, ACTIVE MOTION CHIROPRACTIC, PC, ACE MED SUPPLIES, INC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION P, AEON DIAGNOSTICS, INC, ANDREW HALL, MD, PLLC, ANGELA ABRAMOV-PLISCHTEJEW NP-PSYCH/ MENTAL HEALTH, AXION MED, INC, BAKHRA SUPPLY INC, BEST CARE PHARMACY OF NEW YORK, INC, BIG APPLE DELIVERY SUPPLY CORP, BURKE PHYSICAL THERAPY, PC, CENTURION MIDTOWN ANESTHESIA PLLC, CR MEDICAL CARE, PLLC, FLEXMED SUPPLY INC, FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC, FULTON STREET ACUPUNCTURE, PC, HEALTH WELLNESS MEDICAL SERVICES, PLLC, JULES F PARISIEN, MED SUPPLY DELIVERY SERVICE, INC, MEDEX DIAGNOSTIC AND TREATMENT CENTER, LLC, ORTHO CHOICE INC, NIKOROS SUPPLY, INC, PRANEVICIUS MEDICAL PC, RAFAEL YAAKOBV FAMILY HEALTH NP PC, RIDGEWOOD DRUG INC, ROOSEVELT FAMILY CHIROPRACTIC, PC, SOUTH BRONX MEDICAL REHABILITATION, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED CARE INC, VDR SERVICES, INC, VIOTEK MED SUPPLIES INC

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for

JUDGMENT - DEFAULT

APPEARANCES :

Goldberg Miller & Rubin, PC, New York, NY (Victoria Tarasova, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action seeking a declaratory judgment, plaintiff INFINITY AUTO INSURANCE COMPANY moves, by notice of motion (sequence number 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendants VICTOR CHALEN-HERNANDEZ A/K/A VICTOR CHALEN, XIOMARA GARCIA, ACTIVE MOTION CHIROPRACTIC, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, ANDREW HALL, MD, PLLC, BAKHRA SUPPLY INC, BEST CARE PHARMACY OF NEW YORK, INC, BIG APPLE DELIVERY SUPPLY CORP, CENTURION MIDTOWN ANESTHESIA PLLC, FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC, FULTON STREET ACUPUNCTURE, PC, MED SUPPLY DELIVERY SERVICE, INC, ORTHO CHOICE INC, NIKOROS SUPPLY INC, PRANEVICIUS MEDICAL PC, RAFAEL YAAKOBOV FAMILY HEALTH NP INC, ROOSEVELT FAMILY CHIROPRACTIC, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED CARE INC and VDR SERVICES INC.

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (see CPLR § 3215 [f]; see also

Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003]

[providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

Here, plaintiff demonstrates its entitlement to entry of a default judgment against defendants ACTIVE MOTION CHIROPRACTIC, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, ANDREW HALL, MD, PLLC, BAKHRA SUPPLY INC, BEST CARE PHARMACY OF NEW YORK, INC, BIG APPLE DELIVERY SUPPLY CORP, CENTURION MIDTOWN ANESTHESIA PLLC, FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC, FULTON STREET ACUPUNCTURE, PC, MED SUPPLY DELIVERY SERVICE, INC, ORTHO CHOICE INC, NIKOROS SUPPLY INC, PRANEVICIUS MEDICAL PC, RAFAEL YAKOBOV FAMILY HEALTH NP INC, ROOSEVELT FAMILY CHIROPRACTIC, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED CARE INC and VDR SERVICES INC. Plaintiff submits, among other things, the affirmations of service; the affirmation of additional mailing; the affidavit of Denise Winant, no-fault claim representative; the examination under oath appointment letters with corresponding affidavits of service; and an attorney affirmation (see CPLR § 3215 [f]; see also Licurgo-Villar v Samouha, 227 AD3d 619, 620 [1st Dept 2024]; Guzetti v City of New York, 32 AD3d 234 [1st Dept 2006]).

However, plaintiff has not demonstrated its entitlement to entry of a default judgment against defendants VICTOR CHALEN-HERNANDEZ A/K/A VICTOR CHALEN and XIOMARA GARCIA. The affidavits of service pursuant to CPLR § 308 (4) are defective.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001) for a default judgment against defendants ACTIVE MOTION CHIROPRACTIC, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, ANDREW HALL, MD, PLLC, BAKHRA SUPPLY INC, BEST CARE PHARMACY OF NEW YORK, INC, BIG APPLE DELIVERY SUPPLY CORP, CENTURION MIDTOWN ANESTHESIA PLLC, FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC, FULTON STREET ACUPUNCTURE, PC, MED SUPPLY DELIVERY SERVICE, INC, ORTHO CHOICE INC, NIKOROS SUPPLY INC, PRANEVICIUS MEDICAL PC, RAFAEL YAAKOBV FAMILY HEALTH NP INC, ROOSEVELT FAMILY CHIROPRACTIC, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED CARE INC and VDR SERVICES INC. is granted; it is further

ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff INFINITY AUTO INSURANCE COMPANY and against defendants ACTIVE MOTION CHIROPRACTIC, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, ANDREW HALL, MD, PLLC, BAKHRA SUPPLY INC., BEST CARE PHARMACY OF NEW YORK, INC, BIG APPLE DELIVERY SUPPLY CORP, CENTURION MIDTOWN ANESTHESIA PLLC, FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC,

FULTON STREET ACUPUNCTURE, PC, MED SUPPLY DELIVERY SERVICE, INC,
ORTHO CHOICE INC, NIKOROS SUPPLY INC, PRANEVICIUS MEDICAL PC,
RAFAEL YAAKOBV FAMILY HEALTH NP INC, ROOSEVELT FAMILY
CHIROPRACTIC, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED
CARE INC and VDR SERVICES INC.; it is further

ORDERED and ADJUDGED that plaintiff INFINITY AUTO INSURANCE
COMPANY is not obligated to honor or pay any current or future
claims from defendants ACTIVE MOTION CHIROPRACTIC, PC, ADVANCED
ORTHOPEDICS AND JOINT PRESERVATION PC, ANDREW HALL, MD, PLLC,
BAKHRA SUPPLY INC, BEST CARE PHARMACY OF NEW YORK, INC, BIG
APPLE DELIVERY SUPPLY CORP, CENTURION MIDTOWN ANESTHESIA PLLC,
FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC,
FULTON STREET ACUPUNCTURE, PC, MED SUPPLY DELIVERY SERVICE, INC,
ORTHO CHOICE INC, NIKOROS SUPPLY INC, PRANEVICIUS MEDICAL PC,
RAFAEL YAAKOBV FAMILY HEALTH NP INC, ROOSEVELT FAMILY
CHIROPRACTIC, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED
CARE INC and VDR SERVICES INC. pursuant to claim number
23123895252; it is further

ORDERED that, within twenty days from the date of this
decision and order, plaintiff shall serve a copy of this order,
with notice of entry, on defendants ACTIVE MOTION CHIROPRACTIC,
PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, ANDREW HALL,
MD, PLLC, BAKHRA SUPPLY INC, BEST CARE PHARMACY OF NEW YORK,
INC, BIG APPLE DELIVERY SUPPLY CORP, CENTURION MIDTOWN

ANESTHESIA PLLC, FOUR SQUARE PHYSICAL THERAPY, PC, FRESH POND PHARMACY, INC, FULTON STREET ACUPUNCTURE, PC, MED SUPPLY DELIVERY SERVICE, INC, ORTHO CHOICE INC, NIKOROS SUPPLY INC, PRANEVICIUS MEDICAL PC, RAFAEL YAAKOBV FAMILY HEALTH NP INC, ROOSEVELT FAMILY CHIROPRACTIC, PC, STAND-UP MRI OF EAST ELMHURST, PC, SURGIMED CARE INC and VDR SERVICES INC., as well as on the Clerk of the Court, who shall enter judgment accordingly; it is further

ORDERED that plaintiff's motion (seq. no. 001) for a default judgment against defendants VICTOR CHALEN-HERNANDEZ A/K/A VICTOR CHALEN and XIOMARA GARCIA is denied, without prejudice; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

3/16/2026
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE