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| State Farm Fire & Cas. Co. v Akai Acupuncture, P.C. |
| 2020 NY Slip Op 34058(U) |
| December 11, 2020 |
| Supreme Court, New York County |
| Docket Number: 152841/2019 |
| Judge: Paul A. Goetz |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,
Plaintiff,

INDEX NO. 152841/2019
MOTION DATE 10/23/2020
MOTION SEQ. NO. 001

- v -

AKAI ACUPUNCTURE, P.C., COMFORT PHYSICAL THERAPY, P.L.L.C., EXCELL CLINICAL LABORATORY, INC., FIVE BOROUGH SUPPLY, INC., NEMAAN GHUMAN, DPM, LYONS MEDICAL, P.C., MALA RX INC., MCDONALD AVE CHIROPRACTIC, P.C., MUSCULOSKELETAL PAIN MANAGEMENT, P.C., PHYSICAL THERAPY REHAB, P.C., QUALITY ORTHOPEDICS AND COMPLETE JOINT CARE, P.C., QUEENS DIAGNOSTIC RADIOLOGY, P.C., REHAB CARE PHYSICAL THERAPY, P.C., THERAPY ZONE P.T., P.C., TRIBORO CHIROPRACTIC, P.C., VALLABH MEDICAL, P.C., ADVANTAGE MED INNOVATIONS, INC., ORTHOCARETECH, INC., ENGLINTON MEDICAL, P.C., HEALTHY RX, INC., LENCO DIAGNOSTIC LABORATORIES, INC., PROTECHMED, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, P.L.L.C., SUNNYSIDE PHARMACY, INC., UNICAST, INC., TERRY BEAUVOIR, JEAN HERCULE, KERBISSON DECIMUS, ALAN RHEM, DENASHIA GABRIEL

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for JUDGMENT - DEFAULT

In this action, plaintiff STATE FARM FIRE AND CASUALTY COMPANY, seeks a declaration that it has no obligation to pay no-fault claims arising out of a July 14, 2018 accident.

Plaintiff now moves for a default judgment against defendants COMFORT PHYSICAL THERAPY PLLC, EXCELL CLINICAL LABORATORY INC., FIVE BOROUGH SUPPLY INC., NEEMAN GHUMAN DPN, LYONS MEDICAL PC, MCDONALD AVE CHIROPRACTIC PC, MUSCULOSKELETAL PAIN MANAGEMENT PC, PHYSICAL

THERAPY REHAB PC, QUEENS DIAGNOSTIC RADIOLOGY PC, REHAB CARE PHYSICAL THERAPY PC, THERAPY ZONE PT, PC, TRIBORO CHIROPRACTIC PC, VALLABH MEDICAL PC, ADVANTAGE MED INNOVATIONS INC., ORTHOCARETECH INC., ENGLINTON MEDICAL PC, HEALTHY RX INC., Lenco DIAGNOSTIC LABORATORIES INC., PROTECHMED INC., SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SUNNYSIDE PHARMACY INC., UNICAST INC., JEAN HERCULE, KERBISSUM DECIMUS, ALAN RHEM, and DENASHIA GABRIEL. Plaintiff also moves for leave to amend its complaint to add defendants ALL CITY FAMILY HEALTH CARE and QUALITY ORTHOPEDIC & COMPLETE JOINT CARE PC to this action. Since filing the motion, plaintiff filed a stipulation of discontinuance with respect to defendants ADVANTAGE MED INNOVATIONS and QUALITY ORTHOPEDIC & COMPLETE JOINT CARE PC. The motion is unopposed. Plaintiff has demonstrated its entitlement to a default judgment by submitting proof of service, proof of the facts constituting its claims through its affidavits and exhibits, and proof of defendants' default. CPLR 3215; *Nouveau Elevator Ind. v. Tracey Towers Hous.*, 95 A.D.3d 616 (1st Dep't 2012). Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is GRANTED with respect to defendants COMFORT PHYSICAL THERAPY PLLC, EXCELL CLINICAL LABORATORY INC., FIVE BOROUGH SUPPLY INC., NEEMAN GHUMAN DPN, LYONS MEDICAL PC, MCDONALD AVE CHIROPRACTIC PC, MUSCULOSKELETAL PAIN MANAGEMENT PC, PHYSICAL THERAPY REHAB PC, QUEENS DIAGNOSTIC RADIOLOGY PC, REHAB CARE PHYSICAL THERAPY PC, THERAPY ZONE PT, PC, TRIBORO CHIROPRACTIC PC, VALLABH MEDICAL PC, ORTHOCARETECH INC., ENGLINTON MEDICAL PC, HEALTHY RX INC., Lenco DIAGNOSTIC LABORATORIES INC., PROTECHMED INC.,

SEDATION VACATION PERIOPERATIVE MEDECINE PLLC, SUNNYSIDE PHARMACY INC., UNICAST INC., JEAN HERCULE, KERBISSUM DECIMUS, ALAN RHEM, and DENASHIA GABRIEL.

ORDERED, ADJUDGED and DELCARED that plaintiff STATE FARM FIRE AND CASUALTY COMPANY owes no duty to pay any no-fault claims of defendants COMFORT PHYSICAL THERAPY PLLC, EXCELL CLINICAL LABORATORY INC., FIVE BOROUGH SUPPLY INC., NEEMAN GHUMAN DPN, LYONS MEDICAL PC, MCDONALD AVE CHIROPRACTIC PC, MUSCULOSKELETAL PAIN MANAGEMENT PC, PHYSICAL THERAPY REHAB PC, QUEENS DIAGNOSTIC RADIOLOGY PC, REHAB CARE PHYSICAL THERAPY PC, THERAPY ZONE PT, PC, TRIBORO CHIROPRACTIC PC, VALLABH MEDICAL PC, ORTHOCARETECH INC., ENGLINTON MEDICAL PC, HEALTHY RX INC., LENCO DIAGNOSTIC LABORATORIES INC., PROTECHMED INC., SEDATION VACATION PERIOPERATIVE MEDECINE PLLC, SUNNYSIDE PHARMACY INC., UNICAST INC., JEAN HERCULE, KERBISSUM DECIMUS, ALAN RHEM and DENASHIA GABRIEL arising out of the July 14, 2018 collision and all arbitrations and lawsuits brought by said defendants related to this collision are permanently stayed; and it is further

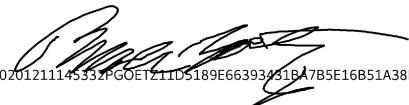
ORDERED that plaintiff, shall, within 20 days from the entry of this order, serve a copy of this order with notice of entry upon defaulting defendants by certified mail; and it is further

ORDERED that the remaining causes of action against the remaining defendants are hereby severed and continued; and it is further

ORDERED that the plaintiff's motion for leave to amend the complaint is granted with respect to defendant ADVANTAGE MED INNOVATIONS; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry.


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12/11/2020
DATE

PAUL A. GOETZ, J.S.C.

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