

<b>Levy v Mens Health Manhattan</b>
2026 NY Slip Op 31852(U)
April 24, 2026
Supreme Court, New York County
Docket Number: Index No. 805341/2024
Judge: Kathy J. King
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

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DAVID LEVY,

Plaintiff,

- v -

MENS HEALTH MANHATTAN, NORTHWELL HEALTH PHYSICIAN PARTNERS SMITH INSTITUTE FOR UROLOGY, DEPARTMENT OF UROLOGY, UROLOGY AT LENOX HILL, NORTHWELL HEALTH, LENOX HILL HOSPITAL, MANHATTAN EYE EAR AND THROAT HOSPITAL, DAMIAN MIGHTY, KIROLOS MEILIKA MD, ALAN PANIOGUA CRUZ MD, BOBACK M BEROOKHIM MD,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 50, 51, 52

were read on this motion to/for VACATE/LIFT - STAY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 40, 41, 53, 54, 55, 56, 57

were read on this motion to/for DISCOVERY

Upon the foregoing documents, and oral arguments having been heard, Plaintiff moves for an Order:

- 1. lifting or modifying the stay imposed by this Court's Decision and Order dated December 15, 2025, to permit the consultation of a forensic expert and the securing of substitute counsel (Motion Sequence 003); and
2. Compelling the production of the Picture Archiving and Communication System (PACS) audit trail for an ultrasound performed on May 27, 2022, alleging metadata inconsistencies and citing federal regulations (45 C.F.R. § 170.210) regarding audit logs (Motion Sequence 004).

Defendants oppose and Defendants cross-move pursuant to CPLR 8501(a) and 8503 for an order directing Plaintiff to post security for costs in the amount of \$10,000.00, on the grounds that Plaintiff is a non-resident of the State of New York.

Both motions have been consolidated for purposes of disposition.

As a preliminary matter, Plaintiff's motion for an Order lifting or modifying the stay imposed by this Court's Decision and Order dated December 15, 2025, to permit the consultation of a forensic expert and the securing of substitute counsel (Motion Sequence 003) is denied as moot. Pursuant to the Order and Decision dated December 15, 2025 (NYSCEF Doc. No. 38), the referenced stay was limited to a period of sixty (60) days to allow Plaintiff to retain new counsel. That stay has expired on its own terms, thus, no basis for modification exists. Furthermore, the Court notes that Plaintiff has since confirmed to the Court that he is proceeding *pro se* and has conferred with an expert.

With regard to Plaintiff's motion for an order compelling the production of the PACS audit trail for an ultrasound study performed on May 27, 2022. The motion is denied without prejudice to renew. As a procedural matter, the moving papers do not include a sufficient good-faith affirmation as required by 22 NYCRR 202.7, nor does the record reflect that a specific demand for these system-level audit trails was served and met with a refusal to disclose prior to the filing of this motion. Under New York law, a party is not entitled to the production of audit trails absent a preliminary evidentiary showing that the medical records or imaging provided are inauthentic or have been improperly altered (*see Vargas v Lee*, 170 AD3d 1073 [2d Dept 2019]; *see also Forman v Henkin*, 30 NY3d 656 [2018]). At this early stage of litigation, and absent an affidavit from a qualified technology or medical imaging expert substantiating the alleged anomalies, the request is premature pursuant to CPLR 3101(a) requires more than mere speculation (*see Allen v Crowell-*

*Collier Publ. Co.*, 21 NY2d 403 [1968]). Discovery shall proceed with depositions, which may provide the necessary foundation for Plaintiff to renew this request at a later date.

Defendants cross-motion for an order directing Plaintiff to post security for costs in the amount of \$10,000.00, on the ground that Plaintiff is a non-resident of the State of New York is granted to the extent that Plaintiff is directed to post security of \$1,000.00. CPLR 8501(a) provides that “the court... shall order security for costs to be given by the plaintiff” when the plaintiff is not a resident of the state. It is undisputed that Plaintiff resides in Chicago, Illinois. In light of the early procedural posture of this case and the nature of the claims, the Court finds that an undertaking of \$1,000.00 is sufficient to protect the Defendants’ interests regarding potentially recoverable costs.

Accordingly, it is hereby

**ORDERED** that Plaintiff’s motion for an Order lifting or modifying the stay imposed by this Court’s Decision and Order dated December 15, 2025 (motion sequence 003), is denied as moot; and it is further

**ORDERED** that Plaintiff’s motion to compel (Motion Sequence 004) is denied without prejudice to renew following the completion of relevant depositions or upon a proper evidentiary showing; and it is further

**ORDERED** that Defendants’ cross-motion for security for costs is granted to the extent that Plaintiff, within thirty (30) days of service of this Order with Notice of Entry, shall pay into Court the sum of \$1,000.00, or in lieu thereof, file with the Clerk of the Court an undertaking in said amount; and it is further

**ORDERED** that all proceedings in this action are stayed until the payment or filing of the security as directed above, except that Plaintiff may serve a formal Notice for Discovery and

Inspection for the PACS audit trails and the parties may conduct a good faith conferral regarding same; and it is further

**ORDERED** that, within seven (7) days of the filing of the security or undertaking directed herein, Plaintiff shall e-file a letter via NYSCEF notifying the Court of such compliance.

This constitutes the Decision and Order of the Court.

4/24/2026  
DATE

*Kathy J. King*  
KATHY J. KING, 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"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE