

**State Farm Fire & Cas. Co. v 5th Ave. Wellness
Medicine, P.C.**

2026 NY Slip Op 32015(U)

May 11, 2026

Supreme Court, New York County

Docket Number: Index No. 152319/2025

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

INDEX NO. 152319/2025
MOTION DATE 05/06/2026
MOTION SEQ. NO. 002

- v -

5TH AVENUE WELLNESS MEDICINE, P.C.,814
UNDERCLIFF MEDICAL, P.C.,A1 MED SUPPLY
INC.,ACCU REFERENCE MEDICAL LAB LIMITED
LIABILITY COMPANY, ACCURATE MONITORING,
LLC,ALL CITY FAMILY HEALTHCARE CENTER,
INC.,ARGYLE PHARMACY, INC.,ATLANTIC MEDICAL &
DIAGNOSTIC, P.C.,BANAY PHYSICAL THERAPY,
P.C.,BRONX CHIROPRACTIC REHABILITATION,
P.C.,CHAI DIAGNOSTICS, LLC,EAST TREMONT
MEDICAL CENTER, EASY CARE PT, P.C.,EMPIRE STATE
AMBULATORY SURGERY CENTER, ENGLINTON
MEDICAL, P.C.,ETM-ASC AMBULATORY SURGERY
D/B/A THE AMBULATORY SURGERY CENTER OF EAST
TREMONT MEDICAL CENTER, FIRST CLASS MEDICAL,
P.C.,GAETAN JEAN MARIE, FAMILY HEALTH NP,
PLLC,GET WELL RX INC.,H PLAZA PHARMACY INC. DBA
MOUDNA PHARMACY, HEALTH HEAVEN SERVICES
INC.,INNATE WORK CHIROPRACTIC, P.C.,LEVIATHAN
WELLNESS MEDICAL, PLLC,LONGEVITY MEDICAL
SUPPLY, INC.,MEDCOMFORT SUPPLY, INC.,MEDICAL
MRI, P.C.,MONTEFIORE NEW ROCHELLE HOSPITAL,
MONTEFIORE NYACK HOSPITAL, NEUROPHYSIOLOGIC
INTERPRETIVE MEDICINE, PLLC DBA
NEUROPHYSIOLOGIC INTERPRETIVE SPECIALIST,
NEW YORK MEDICAL & DIAGNOSTIC CARE,
P.C.,NEWTON MED SUPPLIES CORP., NEXTSTEP
HEALING, INC.,NYC GREAT SUPPLY INC.,NYEEQASC,
LLC DBA NORTH QUEENS SURGICAL CENTER, ORTHO
RECOVERY CORP., PAINDOCTORS MEDICAL
LLC,PEOPLE'S CHOICE PHARMACY NY CORP., PHARM
CARERX INC. DBA CARE-RX PHARMACY, R&E MEDS,
LLC,REFUAH DIAGNOSTICS LLC,RIDGEWOOD MEDICAL
SERVICES, P.C.,RIGHT CHOICE SUPPLY, INC.,RIO MED
SOLUTIONS CORP., ROXBURY ANESTHESIA,
LLC,SEDATION VACATION PERIOPERATIVE MEDICINE,
PLLC,HEMESH CHIROPRACTIC, P.C.,STAR MEDICAL
IMAGING, P.C.,SURGICORE OF JERSEY CITY,
LLC,TOWN OF PELHAM EMS, U.K. SINHA PHYSICIAN,
P.C.,ULTIMATE RX PHARMACY INC.,UNION RX
PHARMACY INC.,MARIBEL REYNOSO PERALTA, DANIEL
MELARA TOME, HECTOR LUIS SANCHEZ, PRISCILA

**DECISION + ORDER ON
MOTION**

VILLAGRAN ARAUJO

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Plaintiff’s motion to renew a decision issued by the judge previously assigned to this case is denied.

Background

In this no fault case, the prior judge denied the branch of plaintiff’s motion that sought an extension of time to serve defendants Paindoctors Medical LLC (“Paindoctors”) and Hector Sanchez (NYSCEF Doc. No. 107). That decision also granted a default as to other defendants (*id.*).

Plaintiff now seeks leave to renew in order to get an extension of time to serve Paindoctors and Mr. Sanchez. It now submits additional affidavits of non-service for each of these parties that it contends shows the diligent efforts made to find and serve these defendants. Plaintiff submits an affidavit dated March 6, 2025 detailing an effort to serve Mr. Sanchez on March 4, 2025 and another affidavit dated March 8, 2025 indicating a March 6, 2025 service attempt on Paindoctors. Plaintiff explains that the failure to include these additional affidavits of non-service was a simple oversight.

Discussion

“A motion for leave to renew must be based upon new facts not offered on the prior motion which would change the prior determination, and must contain a reasonable justification for the failure to present such facts on the prior motion. While it may be within the court’s

discretion to grant leave to renew upon facts known to the moving party at the time of the prior motion, a motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation” (*Sutton v Syla*, 223 AD3d 764, 766, 203 NYS3d 677 [2d Dept 2024] [internal quotations and citations omitted]).

“Although a court has the discretion to accept law office failure as a reasonable excuse, a conclusory, undetailed and uncorroborated claim of law office failure does not amount to a reasonable excuse” (*id.*).

The Court denies the motion as the proffered excuse—law office failure—is conclusory and fails to withstand scrutiny. Plaintiff insists that “The reason for this mistaken exclusion was simple confusion over which Affidavits of Non-Service were to be included” (NYSCEF Doc. No. 111, ¶ 21). That makes little sense. Why would a party seeking an extension of time to serve fail to include all of its efforts to serve those defendants? No explanation is offered.

Moreover, as stated above, a motion to renew is not an opportunity for a second chance at a motion that was poorly constructed in the first instance. Here, the prior judge detailed the ways in which the initial application was lacking and the instant motion is an obvious effort to seek a second chance—where affidavits from more than a year ago are suddenly included that were in plaintiff’s possession the entire time. And the prior judge’s decision was uploaded in January 2026 and this motion (filed in April 2026) does not show that much has been done to find these defendants since the March 2025 service attempts.

Because these defendants were not timely served, the Court severs and dismisses the claims against them.

Accordingly, it is hereby

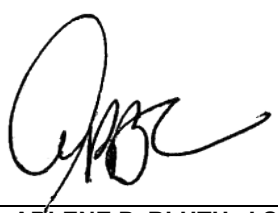
ORDERED that plaintiff’s motion to renew is denied; and it is further

ORDERED that the claims against defendants Paindoctors Medical LLC and Hector Sanchez are severed and dismissed.

Next deadline: The remaining parties must upload a joint discovery stipulation (or individual letters if there is a dispute) to NYSCEF on or before September 3, 2026.

Conference: If the Court decides it is necessary based upon the discovery update, a conference will be held on September 10, 2026 at 10 a.m. in person. Because this case has been reassigned, now would be a good time to familiarize yourselves with the rules and procedures of this part with regard to motions and conferences.

5/11/2026
DATE


ARLENE P. BLUTH, J.S.C.

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