To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of thise order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.

----------x

MARIA PEREZ,

Plaintiff,

Index No.67889/2016
DECISION & ORDER
Seq. 1

-against-

EDUARDO J. ZAMORA,

Defendants.

----------x

The following papers were read on a motion for summary judgment pursuant to CPLR 3212, on the issue of liability:

PAPERS	NUMBERED
Notice of Motion/Affirmation/Exhibits A-E	1-7

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a motor vehicle accident which occurred on August 16, 2015, at or near the intersection of S. Healy Avenue in Greenburgh, Westchester County, New York. Plaintiff, Maria Perez ("Perez") alleges that on that date, her vehicle was struck in the rear by a vehicle owned and operated by the defendant, Eduardo J. Zamora ("Zamora"), as she was operating her vehicle and stopped in the left lane waiting to make

a left turn onto S. Healy Avenue.

Plaintiff commenced this action on November 29, 2016, by filing a summons and complaint. Defendant filed an answer on January 10, 2017 and served such answer upon Perez, joining issue. The parties have not yet engaged in discovery. Plaintiff now files the instant motion seeking summary judgment, pursuant to CPLR 3212 on the issue of liability. Zamora's attorney has filed an affirmation in response to the motion, stating that Zamora does not oppose plaintiff's motion, but requests an opportunity to conduct discovery on the issue of damages.

LIABILITY

Plaintiff seeks partial summary judgment. Specifically, she requests a determination of the liability issue in her favor. In support of her motion, the plaintiff has submitted her affidavit, her attorney's affirmation and a copy of the pleadings.

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law, *Zuckerman v. City of N.Y.*, 49 N.Y.2d 557, 427 N.Y.S.2d 595, 404 N.E.2d 718(1980). To demonstrate its entitlement to relief the moving party must come forward with evidentiary proof that establishes the absence of any material issues of fact, *McDonald v. Mauss*, 38 A.D.3d 727, 728 (2d Dep't 2007). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact," *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324(1986). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985).

It is also well settled that a rear-end collision with a stopped vehicle creates a presumption that the operator of the moving vehicle was negligent, thus entitling the injured occupants of the front vehicle to summary judgment on liability unless the driver of the moving vehicle can proffer a non-negligent explanation for the collision, *Agramonte v City of New York*, 288 A.D.2d 75, 76 (2001); *Johnson v Phillips*, 261 A.D.2d 269, 271 (1999); *Danza v Longieliere*, 256 AD2d 434, 435 (1998), lv dismissed 93 NY2d 957 (1999). Furthermore, a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision, *Finney v. Morton* 127 A.D.3d 1134, 7 N.Y.S.3d 508 (2d Dep't 2015).

In this case, the plaintiff has made out a prima facie showing of her entitlement to summary judgment. The evidence submitted by the plaintiff establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to the defendant to demonstrate the existence of a factual issue requiring a trial. *Macauley v. Elrac, Inc.*, 6 A.D.3d 584, 585 (2d Dep't 2004)[Rear-end collision is sufficient to create a prima facie case of liability.]. If the operator of the striking vehicle fails to rebut this presumption and the inference of negligence, the operator of the stopped vehicle is entitled to summary judgment on the issue of liability. *Leonard v. City of New York*. 273 A.D.2d 205 (2d Dep't 2000); *Longhito v. Klein*. 273 AD2d 281(2d Dep't 2000); *Velasquez v. Quijada*. 269 AD2d 592 (2d Dep't 2000); *Brant v.Senatobia Operating Corp.*, 269A.D.2d 483 (2d Dep't 2000). In *Leal v. Wolf*. 224 A.D.2d 638 N.Y.S2d 110 (2d Dep't 1996), the Second Department held that "since the defendant was under a duty to keep a safe distance between his car and

Leal's car (see Vehicle and Traffic Law Section 1129[a]), his failure to do so in absence of a non negligent explanation construed negligence as a matter of law (See, *Silberman v. Surrey Cadillac Limousine Service,* 109 A.D.2d 883)".

Here, the defendant did not oppose the plaintiff's motion for summary judgment on liability. Therefore, based on all the foregoing, the motion is GRANTED.

The partes are directed to appear before the Preliminary Conference Part on June 12, 2017 at 9:30 a.m. in Courtroom 811. The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
May 11, 2017

HON. SAM D. WALKER, J.S.C.