Chavez v	Jofaz Trai	nsp. Inc.
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2018 NY Slip Op 30096(U)

January 18, 2018

Supreme Court, New York County

Docket Number: 451303/2014

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

INDEX NO. 451303/201

RECEIVED NYSCEF: 01/19/2018

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

HON. PAUL A. G	OETZ			
PRESENT:	J.S.C.	<del>-</del>	PART 2	<u>2</u>
CHAVEZ, MELS	NE		INDEX NO. 457. MOTION DATE MOTION SEQ. NO	
The following papers, numbered 1 to, were a Notice of Motion/Order to Show Cause — Affidavita Answering Affidavits — ExhibitsReplying Affidavits	s — Exhibits	+ auss	No(s).   †   No(s).   3   No(s).   L/	-2
Upon the foregoing papers, it is ordered that th	is motion is	•		
Defendants Jofaz Transportation, Inc. as pursuant to CPLR 3212 on the grounds that the Maria Vera as a result of the September 6, 2012 thresholds as defined by Insurance Law 5102 (decross motion for summary judgment on the same Plaintiffs' bill of particulars alleges Mefrom posttraumatic stress disorder as a result of alleges Ms. Vera sustained injuries to her cervicand that she suffers from adjustment disorder m	injuries allegedle, motor vehicle and Co-Defende grounds are delanie C. sustained the accident. Plant and lumbar s	y sustained by Plai accident fail to esta lants Howard, Ruth cided as follow: d neck and back te aintiffs' supplementatione, right shoulder	ntiffs Melanie C. and blish serious injury and Mindy Miller's nderness and suffers atal bill of particulars aright hand and wrist;	
accident.		• • • • • • • • • • • • • • • • • • •		
Plaintiffs aver that their injuries meet the permanent loss of use; a permanent consequention day.  Melanie C.				
Regarding Melanie's claim of a psychological consultation and the osychological treatment or counseling aftehr that Plaintiffs rely on the October 15, 2012, psychological treatment or counseling aftehr that Plaintiffs rely on the October 15, 2012, psychological treatment or counseling aftehr that Plaintiffs rely on the October 15, 2012, psychological treatment or counseling aftehr that Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the Plaintiffs rely on the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment or counseling after the October 15, 2012, psychological treatment	ere is no evidenc at initial October	e that Melanie rece 15, 2012, evaluati	ived any follow-up	•
Dated: [A] causally-related emotional injury,	alone or in com	bination with a phy	sical injury, can	, J.\$.C.
JAN <b>18</b> 2018	(197	)	☑ NON-FINAL	
ECK ONE:MOTION IS:		DENIED	GRANTED IN PART	OTHER
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FILED: NEW YORK COUNTY CLERK 01/19/2018 09:53 AM

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MOTIONICASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

INDEX NO. 451303/2014

RECEIVED NYSCEF: 01/19/2018

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

PRESENT:	HON. PAUL A. G	J.S. Gastice	PART Z	2
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The following papers,	numbered 1 to, were read	on this motion to/for		
· ·	r to Show Cause — Affidavits —			
	— Exhibits			
Replying Affidavits			No(s)	
Upon the foregoing	papers, it is ordered that this n	notion is		
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MOTIONICASE IS RESPECTFULLY REFERRED TO JUSTICE

INDEX NO. 451303/2014

RECEIVED NYSCEF: 01/19/2018

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

HON. PAUL A. GOETZ PRESENT: INDEX NO. MOTION DATE MOTION SEQ. NO. The following papers, numbered 1 to \_\_\_\_\_\_, were read on this motion to/for \_ Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).\_\_\_\_ Answering Affidavits — Exhibits \_\_\_\_\_ Replying Affidavits \_\_\_ Upon the foregoing papers, it is ordered that this motion is found normal ranges of motion and negative/normal objective tests for Melanie's cervical and lumbar spine and concluded that Melanie's orthopedic examination was normal and that there is no evidence of injuries those body parts (Fernandez v Hernandez, 151 AD3d 581 [1st Dept 2017] [holding "[d]efendants made a prima facie showing that plaintiff did not suffer significant or permanent limitations to her lumbar spine or knees as a result of the accident" through orthopedic surgeon's report "who found normal ranges of motion, negative objective test results, and resolved sprains, strains and contusions . . ."] Cattouse v Smith, 146 AD3d 670 [1st Dept 2017]). In opposition, Plaintiffs present, inter alia Dr. Sohal's affirmation who states he first saw Melanie on September 27, 2012, when he advised Ms. Vera that he does not treat patients as young as Melanie. Nevertheless, Dr. Sohal states that he "advised Ms. Vera that her daughter should refrain from performing any strenuous activities including gym classes and any heavy lifting during the six months immediately following [the] accident." Dr. Sohal examined Melanie on January 11, 2017, and "found evidence of tenderness and spasm with tenderness in the neck and back . . . [and] paraspinous muscle spasms and tenderness in the cervical and lumbar spine." Plaintiffs also submit uncertified hospital records for Melanie, however, since these records are not in admissible form they are of no probative value (CPLR 2306). In any event, again there being no evidence presented by Plaintiffs that Melanie received treatment for her alleged injuries to her cervical and lumbar spine after her initial emergency room visit, that portion of Defendants' motion and Co-Defendants' cross motion seeking dismissal of Melanie's claims of serious injuries to those body parts must be granted. (Pommells, 4 NY3d at 574-75). Defendants failed to meet their prima facie burden as to Melanie's 90/180-day claim. In support of their argument that Melanie's 90/180-day claim should be dismissed, Defendants submit two pieces of ■ NON-FINAL DISPOSITION CHECK AS APPROPRIATE: ......MOTION IS: GRANTED DENIED ☐ GRANTED IN PART OTHER SUBMIT ORDER ☐ FIDUCIARY APPOINTMENT

MOTIONICASE IS RESPECTFULLY, REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

INDEX NO. 451303/2014

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

PRESENT:	HON. PAUL A. GOETZ J.S.C.	PART 22
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		INDEX NO.
	- <b>V-</b>	MOTION DATE
		MOTION SEQ. NO.
The following pape	ers, numbered 1 to, were read on this motion to/for	
Notice of Motion/C	order to Show Cause — Affidavits — Exhibits	No(s)
Answering Affiday	its — Exhibits	No(s)
Replying Affidavitu	B	No(s)
Upon the foregoi	ng papers, it is ordered that this motion is	
•	rect evidence ( <i>Carrasquillo v City of New York</i> , 22 Mis ibmit a New York City Public School Historical Profile	<u> </u>
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NYSCEF DOC. NO. 105

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MOTIONICASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

INDEX NO. 451303/2014

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

	HON. PAUL A.	GOETZ		22	
PRESENT:		J.S.C. Justice	•	PART	•
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	rder to Show Cause — Affidavi			] No(s)	
Answering Affidavi	its — Exhibits			No(s).	
Replying Affidavits				No(s)	
Upon the foregoir	ng papers, it is ordered that t	his motion is			
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Dated:		(597)	***************************************	· · · · · · · · · · · · · · · · · · ·	, J.S.C.
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### SUPREME COURT OF THE STATE OF NEW YORK **NEW YORK COUNTY**

PRESENT: _		Justice	
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Answering Affidavi	ls — Exhibits		No(s)
Upon the foregoin	g papers, it is ordered th	at this motion is	
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Finally, De her deposition testin with household cho that Dr. Sohal instruction of fact (McCree v S Defendants' motion must be granted.  Plaintiffs o loss of use categoriare deemed abando	f Ms. Vera's claim that salt of the accident must be fendants make a prima from that after the Septeres (Cf Russell v Mitche acted her not to perform fam Trans. Corp., 82 AD and Co-Defendants' crapposition did not argue to se of Insurance Law 510 and and she may procee	she suffers from adjustment disc be granted ( <i>Pommells</i> , 4 NY3d at facie showing on Ms. Vera's 90/ ember 6, 2012, accident she worked, 59 AD3d 355 [1st Dept 2009] any household chores for six mod 601 [1st Dept 2011]). There ross motion seeking dismissal of that Ms. Vera's injuries fall with 22 (d). Therefore, Ms. Vera's clad under the permanent consequence alleged injuries to her right seeking dismissal of	order mixed with anxiety and at 574 - 75).  /180-day claim by relying on uld have her friends help her  ]). Plaintiff's affidavit stating nonths, does not create an issue efore, that portion of f Ms. Vera's 90/180-day claim  hin the fracture and permanent laims under those categories ential limitation and
Finally, De her deposition testin with household cho that Dr. Sohal instruction of fact (McCree v S Defendants' motion must be granted.  Plaintiffs of loss of use categoriare deemed abando significant limitation.	f Ms. Vera's claim that salt of the accident must be fendants make a prima from that after the Septeres (Cf Russell v Mitche acted her not to perform fam Trans. Corp., 82 AD and Co-Defendants' crapposition did not argue to se of Insurance Law 510 and and she may procee	she suffers from adjustment disc be granted ( <i>Pommells</i> , 4 NY3d at facie showing on Ms. Vera's 90/ ember 6, 2012, accident she worked, 59 AD3d 355 [1st Dept 2009] any household chores for six mod 601 [1st Dept 2011]). There ross motion seeking dismissal of that Ms. Vera's injuries fall with 22 (d). Therefore, Ms. Vera's clarated under the permanent consequenter alleged injuries to her right seeking dismissal of the consequenter alleged injuries to her right seeking dismissal seeking dismissal of the consequenter alleged injuries to her right seeking dismissal seeking dismissal seeking dismissal of the consequenter alleged injuries to her right seeking dismissal seeking	order mixed with anxiety and at 574 - 75).  /180-day claim by relying on uld have her friends help her  ]). Plaintiff's affidavit stating nonths, does not create an issue efore, that portion of f Ms. Vera's 90/180-day claim  hin the fracture and permanent laims under those categories ential limitation and shoulder.
Finally, De her deposition testin with household cho that Dr. Sohal instruction of fact (McCree v Structure Defendants' motion must be granted.  Plaintiffs of loss of use categoriare deemed abando significant limitation.  Dated:	f Ms. Vera's claim that salt of the accident must be fendants make a prima from that after the September (Cf Russell v Mitche acted her not to perform fam Trans. Corp., 82 AD and Co-Defendants' crapposition did not argue to es of Insurance Law 510 and she may proceed on of use categories for her salt of the salt of t	she suffers from adjustment disc be granted ( <i>Pommells</i> , 4 NY3d a facie showing on Ms. Vera's 90/ ember 6, 2012, accident she wor ell, 59 AD3d 355 [1st Dept 2009] any household chores for six m D3d 601 [1st Dept 2011]). There ross motion seeking dismissal of that Ms. Vera's injuries fall with D2 (d). Therefore, Ms. Vera's clad and under the permanent consequence alleged injuries to her right seems.	order mixed with anxiety and at 574 - 75).  /180-day claim by relying on uld have her friends help her ]). Plaintiff's affidavit stating nonths, does not create an issue efore, that portion of f Ms. Vera's 90/180-day claim  hin the fracture and permanent laims under those categories ential limitation and shoulder.

MOTIONICASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

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

PRESENT:J.S.C	PART
Justice	
Index Number : 451303/2014	INDEX NO.
CHAVEZ, MELANIE	
VS.	MOTION DATE
JOFAZ TRANSPORTATION, INC. SEQUENCE NUMBER: 002	MOTION SEQ. NO.
SUMMARY JUDGMENT	
The following papers, numbered 1 to, were read on this motion to/for	
Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s)
Answering Affidavits — Exhibits	
Replying Affidavits	No(s)
Upon the foregoing papers, it is ordered that this motion is	
Accordingly, based on the foregoing it is hereby	
OPNEPED that Defendants' motion and Co Defendants' areas	MISSED; and it is further
ORDERED that Defendants' motion and Co-Defendants' cross judgment on and dismissal of Melanie's 90/180-day claim are DENIED;  ORDERED that Defendants' motion and Co-Defendants' cross judgment on and dismissal of Ms. Vera's claims of serious injury to her chand/wrist, and her claims of adjustment disorder and 90/180-day are GR DISMISSED; and it is further	motion seeking summary and it is further motion seeking summary cervical and lumbar spine, right
judgment on and dismissal of Melanie's 90/180-day claim are DENIED;  ORDERED that Defendants' motion and Co-Defendants' cross i judgment on and dismissal of Ms. Vera's claims of serious injury to her chand/wrist, and her claims of adjustment disorder and 90/180-day are GR	motion seeking summary and it is further  motion seeking summary cervical and lumbar spine, right RANTED and those claims are  motion seeking summary ight shoulder are DENIED and der under the permanent
ORDERED that Defendants' motion and Co-Defendants' cross i judgment on and dismissal of Ms. Vera's claims of serious injury to her chand/wrist, and her claims of adjustment disorder and 90/180-day are GR DISMISSED; and it is further  ORDERED that Defendants' motion and Co-Defendants' cross i judgment on and dismissal of Ms. Vera's claim of serious injury to her ri Ms. Vera may proceed with her claim of serious injury to her right should	motion seeking summary and it is further  motion seeking summary cervical and lumbar spine, right RANTED and those claims are  motion seeking summary ight shoulder are DENIED and der under the permanent it is further
ORDERED that Defendants' motion and Co-Defendants' cross i judgment on and dismissal of Ms. Vera's claims of serious injury to her chand/wrist, and her claims of adjustment disorder and 90/180-day are GR DISMISSED; and it is further  ORDERED that Defendants' motion and Co-Defendants' cross i judgment on and dismissal of Ms. Vera's claim of serious injury to her ri Ms. Vera may proceed with her claim of serious injury to her right should consequential limitation and significant limitation of use categories; and  ORDERED that the parties are directed to appear for a settlement	motion seeking summary and it is further  motion seeking summary cervical and lumbar spine, right RANTED and those claims are  motion seeking summary ight shoulder are DENIED and der under the permanent it is further
ORDERED that Defendants' motion and Co-Defendants' cross in judgment on and dismissal of Ms. Vera's claims of serious injury to her chand/wrist, and her claims of adjustment disorder and 90/180-day are GR DISMISSED; and it is further  ORDERED that Defendants' motion and Co-Defendants' cross injudgment on and dismissal of Ms. Vera's claim of serious injury to her rim Ms. Vera may proceed with her claim of serious injury to her right should consequential limitation and significant limitation of use categories; and  ORDERED that the parties are directed to appear for a settlement Centre Street, Room 136 on February 27, at 9:30 AM.	motion seeking summary and it is further  motion seeking summary cervical and lumbar spine, right RANTED and those claims are  motion seeking summary ight shoulder are DENIED and der under the permanent it is further
ORDERED that Defendants' motion and Co-Defendants' cross judgment on and dismissal of Ms. Vera's claims of serious injury to her chand/wrist, and her claims of adjustment disorder and 90/180-day are GR DISMISSED; and it is further  ORDERED that Defendants' motion and Co-Defendants' cross judgment on and dismissal of Ms. Vera's claim of serious injury to her ri Ms. Vera may proceed with her claim of serious injury to her right should consequential limitation and significant limitation of use categories; and  ORDERED that the parties are directed to appear for a settlement Centre Street, Room 136 on February 27, at 9:30 AM.  This constitutes the Decision and Order of the Court.	motion seeking summary and it is further  motion seeking summary cervical and lumbar spine, right RANTED and those claims are  motion seeking summary ight shoulder are DENIED and der under the permanent it is further
ORDERED that Defendants' motion and Co-Defendants' cross in judgment on and dismissal of Ms. Vera's claims of serious injury to her of hand/wrist, and her claims of adjustment disorder and 90/180-day are GR DISMISSED; and it is further  ORDERED that Defendants' motion and Co-Defendants' cross in judgment on and dismissal of Ms. Vera's claim of serious injury to her rights. Vera may proceed with her claim of serious injury to her right should consequential limitation and significant limitation of use categories; and  ORDERED that the parties are directed to appear for a settlement Centre Street, Room 136 on February 27, at 9:30 AM.  This constitutes the Decision and Order of the Court.  Dated:  Dated:	motion seeking summary and it is further  motion seeking summary cervical and lumbar spine, right RANTED and those claims are  motion seeking summary ight shoulder are DENIED and der under the permanent it is further  nt conference in Part 22 at 80