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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JAMIE HOPKINS,

Plaintiff,

-against-

DECISION & ORDER
Index No. 57952/2017
Sequence No. 1

THOMAS NORTHEY,

Defendant.

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WOOD, J.

The following papers were read and considered in connection with plaintiff's motion for partial summary judgment on liability only:

Plaintiff's Notice of Motion, Counsel's Affirmation, Exhibits.
Defendants' Counsel's Affirmation in Opposition, Exhibits.
Plaintiff's Counsel's Reply Affirmation.

This is an action for alleged serious personal injuries arising out of an automobile accident on September 13, 2016, at approximately 8:00 pm on Route 35 at or near its intersection with Mahopac Avenue in Somers. According to the complaint, while plaintiff's vehicle was stopped at a red light on Route 35, defendant's vehicle struck plaintiff's vehicle in the rear. Upon the foregoing papers, the motion is decided as follows:

A 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 Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d

Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact in admissible form "sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is "required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]).

Generally, Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions (Ortega v City of New York, 721 NYS2d 790 [2d Dept 2000]). "When a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle" (Young v City of New York, 113 AD2d 833, 834 [2d Dept 1985]). "A

rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (Fernandez v Babylon Mun. Solid Waste, 117 AD3d 678 [2d Dept 2014]). In other words, proof of a rear-end collision establishes a prima facie case of negligence on the part of the driver of the vehicle that strikes the forward vehicle and imposes a duty upon said offending vehicle to come forward with admissible proof to establish an adequate, non negligent explanation for a rear-end collision (Parise v Meltzer, 204 AD2d 295 [2d Dept 1994]; Moran v Singh, 10 AD3d 707, 708 [2d Dept 2004]); Cerda v Parsley, 273 AD2d 339 [2d Dept 2000]). In addition, where a vehicle is lawfully stopped, there is a duty imposed on the operators of vehicles traveling behind it in the same direction to come to a timely halt (Carter v Castle Elec. Contr. Co., 26 AD2d 83 [2d Dept 1966]). The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision because he or she is in the best position to explain whether the collision was due to a reasonable, non-negligent cause (Carter v Castle Elec. Contr. Co., at 85).

The sudden stop of a lead car is one of the non-negligent explanations of a rear-end collision, because the operator of that car has a duty to avoid stopping suddenly without properly signaling to avoid a collision "when there is opportunity to give such signal" (Vehicle and Traffic Law §1163; *see id.;* Colonna v Suarez, 278 AD2d 355, [2d Dept 2000]) ; Taveras v Amir, 24 AD3d 655, 656 [2d Dept 2005]) "A conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle caused the accident is insufficient, in and of itself, to provide a nonnegligent explanation" (Gutierrez v Trillium USA, LLC, 111 AD3d 669, 670 [2d Dept 2013]). But, "stops which are foreseeable under the prevailing traffic

conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead" (Gutierrez v Trillium USA, LLC, 111 AD3d at 671).

Here, plaintiff's motion for summary judgment is supported by evidence that establishes prima facie entitlement to judgment as a matter of law. Plaintiff tendered the summons and complaint and plaintiff's affidavit that she was stopped at a red light for about five seconds when defendant's vehicle struck her vehicle in the rear. Based upon the record, plaintiff has met her prima facie burden of establishing defendant's negligence, and plaintiff is entitled to summary judgment unless defendant presents a nonnegligent explanation for the car accident.

Defendant argues that the motion is premature as discovery is needed, but fails to submit from defendant an affidavit that presents a non-negligence explanation for the accident. "A party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant" (Reynolds v Avon Grove Properties, 129 AD3d 932, 933 [2d Dept 2015]).

Therefore, while depositions have not been completed, defendants' position that additional discovery might reveal something helpful to the determination of liability in this matter does not provide a basis pursuant to CPLR 3212(f) for postponing judgment (Morrisaint v Raemar Corp., 271 AD2d 586 [2d Dept 2000]). The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion (106 AD3d 850). However, "where knowledge is the key fact at issue, and [is] peculiarly within the possession of the movant himself, summary

judgment will ordinarily be denied", which is not the case here (Di Miceli v Olcott, 119 AD2d 539 [2d Dept 1986]).

Under these circumstances, and based upon the applicable case law, defendant fails to offer a non-negligent explanation for their vehicle rear ending plaintiff's vehicle sufficient to raise a triable question of fact (Williams v Spencer Hall, 113 A.D3d 759, 760 [2d Dept 2014]).

Further, the law in New York no longer mandates that plaintiff must disprove comparative negligence. The Court of Appeals has recently clarified that Article 14-A of the CPLR contains New York's codified comparative negligence principles, and that the legislative history of Article 14-A makes clear that "a plaintiff's comparative negligence is no longer a complete defense to be pleaded and proven by the plaintiff, but rather is only relevant to the mitigation of plaintiff's damages and should be pleaded and proven by the defendant" (Rodriguez v City of New York, 31 NY3d 312,321 [2018]). "To be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault" (Rodriguez v City of New York, *supra*). Thus, to be entitled to summary judgment on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault in establishing his or her prima facie case to the extent that the opposing party is negligent and a proximate cause of the incident (Edgerton v City of New York, 160 A.D.3d 809 [2d Dept 2018]).

For the reasons as discussed above, and of those advanced by plaintiff, plaintiff has demonstrated that defendant was negligent and a proximate cause of the accident.

Therefore in light of the foregoing, it is hereby

ORDERED, that the plaintiff's motion for partial summary judgment on the issue of

liability is **granted**, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the issue of serious injury will be tried during the damages phase of the trial, and that the granting of this summary judgment motion does not preclude further determination that plaintiff may or may not have sustained serious injury as defined by Insurance Law §5102[d]; and it is further

ORDERED, that the parties are directed to appear in the Compliance Conference Part on 11/14/2018 at 9:30 AM in Room 800 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not herein decided are denied.

This constitutes the Decision and Order of the court.

Dated: October 29, 2018
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF