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

PRESENT: HON. PAUL WOOTEN Justice PART 22

DELORES MYERS,

Plaintiff,

- against -

RUTHIE RICHARDSON, CLARA J. MARSHALL, and GEORGE J. TROCHE,

Defendants.

INDEX NO. 108102/2006

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO. 80

The following papers, numbered 1 to 3 were read on this motion by defendant Ruthie Richardson for summary judgment on the threshold "serious injury" issue.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits (Memo)	2
Replying Affidavits (Reply Memo)	

Cross-Motion: ☐ Yes ■ No

On September 18, 2004, plaintiff Delores Myers ("plaintiff"), while riding as a passenger in a vehicle owned and operated by defendant Ruthie Richardson ("defendant Richardson"), was involved in a collision with a vehicle owned by defendant Clara J. Marshall and operated by defendant George J. Troche. The accident occurred at the intersection of Third Avenue and East 95th Street in New York County, New York. Plaintiff commenced this action to recover damages for alleged personal injuries suffered as a result of the subject motor vehicle accident. The parties completed discovery and a Note of Issue was filed on August 5, 2008. Defendant Richardson now moves for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint on the threshold issue of "serious injury," pursuant to Insurance Law § 5102 (d).

SERIOUS INJURY THRESHOLD

Pursuant to the Comprehensive Motor Vehicle Insurance Reparation Act of 1974 (now Insurance Law § 5101 *et seq.* - the "No-Fault Law"), a party seeking damages for pain and suffering arising out of a motor vehicle accident must establish that he or she has sustained at least one of the nine categories of "serious injury" as set forth in Insurance Law § 5102 (d) (*see Licari v Elliott*, 57 NY2d 230 [1982]). Insurance Law § 5102 (d) defines "serious injury" as:

> a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system ["permanent loss"]; permanent consequential limitation of use of a body organ or member ["permanent consequential limitation"]; significant limitation of use of a body function or system ["significant limitation"]; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment ["90/180-day"].

"Serious injury" is a threshold issue, and thus, a necessary element of a plaintiff's prima facie case (*Licari*, 57 NY2d at 235; Insurance Law § 5104 [a]). The serious injury requirement is in accord with the legislative intent underlying the No-Fault Law, which was enacted to "'weed out frivolous claims and limit recovery to significant injuries'" (*Toure v Avis Rent A Car Sys., Inc.*, 98 NY2d 345, 350 [2002], quoting *Dufel v Green*, 84 NY2d 795, 798 [1995]). As such, to satisfy the statutory threshold, a plaintiff is required to submit competent objective medical proof of his or her injuries (*id.* at 350). Subjective complaints alone are insufficient to establish a prima facie case of a serious injury (*id.*).

Plaintiff alleges permanent injuries to her back and neck, which include disc bulges at S1-S2, left L5-S1 radiculopathy and cervical/lumbosacral strain and sprain (*see* Richardson motion, bill of particulars at ¶ 6). She claims a "serious injury" under the following relevant categories: (1) permanent loss; (2) permanent consequential limitation; (3) significant limitation;

and (4) 90/180-day (*see id.* at ¶ 18). The Court must determine whether, as a matter of law, plaintiff has sustained a "serious injury" under at least one of the claimed categories.

SUMMARY JUDGMENT ON SERIOUS INJURY

The issue of whether a claimed injury falls within the statutory definition of "serious injury" is a question of law for the Court, which may be decided on a motion for summary judgment (*see Licari*, 57 NY2d at 237). The moving defendant bears the initial burden of establishing, by the submission of evidentiary proof in admissible form, a prima facie case that the plaintiff has not suffered a "serious injury" as defined in section 5102 (d) *(see Toure*, 98 NY2d at 352; *Gaddy v Eyler,* 79 NY2d 955, 956-57 [1992]). Once the defendant has made such a showing, the burden shifts to the plaintiff to submit prima facie evidence, in admissible form, rebutting the presumption that there is no issue of fact as to the threshold question (*see Franchini v Palmieri*, 1 NY3d 536, 537 [2003]; *Rubensccastro v Alfaro*, 29 AD3d 436, 437 [1st Dept 2006]).

A defendant can satisfy the initial burden by relying on the sworn or affirmed statements of their own examining physician, plaintiff's sworn testimony, or plaintiff's unsworn physician's records (*see Arjona v Calcano*, 7 AD3d 279, 280 [1st Dept 2004]; *Nelson v Distant*, 308 AD2d 338, 339 [1st Dept 2003]; *McGovern v Walls*, 201 AD2d 628, 628 [2d Dept 1994]). Reports by a defendant's own retained physician, however, must be in the form of sworn affidavits or affirmations because a party may not use an unsworn medical report prepared by the party's own physician on a motion for summary judgment (*see Pagano v Kingsbury*, 182 AD2d 268, 270 [2d Dept 1992]). Moreover, CPLR 2106 requires a physician's statement be affirmed (or sworn) to be true under the penalties of perjury.

A defendant can meet the initial burden of establishing a prima facie case of the nonexistence of a serious injury by submitting the affidavits or affirmations of medical experts who examined the plaintiff and opined that plaintiff was not suffering from any disability or

consequential injury resulting from the accident (*see Gaddy,* 79 NY2d at 956-57*; Brown v Achy*, 9 AD3d 30, 31 [1st Dept 2004]; *see also Junco v Ranzi*, 288 AD2d 440, 440 [2d Dept 2001] [defendant's medical expert must set forth the objective tests performed during the examination]). A defendant can also demonstrate that plaintiff's own medical evidence does not indicate that plaintiff suffered a serious injury and that the injuries were not, in any event, causally related to the accident (*see Franchini*, 1 NY3d at 537). A defendant can additionally point to plaintiff's own sworn testimony to establish that, by plaintiff's own account, the injuries were not serious (*see Arjona*, 7 AD3d at 280; *Nelson*, 308 AD2d at 339).

The plaintiff's medical evidence in opposition to summary judgment must be presented by way of sworn affirmations or affidavits (*see Pagano*, 182 AD2d at 270; *Bonsu v Metropolitan Suburban Bus Auth.*, 202 AD2d 538, 539 [2d Dept 1994]). However, a reference to unsworn or unaffirmed medical reports in a defendant's motion is sufficient to permit the plaintiff to rely upon the same reports *(see Ayzen v Melendez,* 299 AD2d 381, 381 [2d Dept 2002]). Submissions from a chiropractor must be by affidavit because a chiropractor is not a medical doctor who can affirm pursuant to CPLR 2106 (*see Shinn v Catanzaro*, 1 AD3d 195, 197 [1st Dept 2003]). Moreover, an expert's medical report may not rely upon inadmissible medical evidence, unless the expert establishes serious injury independent of said report (*see Friedman v U-Haul Truck Rental*, 216 AD2d 266, 267 [2d Dept 1995]; *Rice v Moses*, 300 AD2d 213, 213 [1st Dept 2002]).

In order to rebut the defendant's prima facie case, the plaintiff must submit objective medical evidence establishing that the claimed injuries were caused by the accident, and "provide objective evidence of the extent or degree of the alleged physical limitations resulting from the injuries and their duration" (*Noble v Ackerman*, 252 AD2d 392, 394 [1st Dept 1998]; *see also Toure*, 98 NY2d at 350). Plaintiff's subjective complaints "must be sustained by verified objective medical findings" (*Grossman v Wright*, 268 AD2d 79, 84 [2d Dept 2000]).

Such medical proof should be contemporaneous with the accident, showing what quantitative restrictions, if any, plaintiff was afflicted with (*see Nemchyonok v Ying*, 2 AD3d 421, 421 [2d Dept 2003]). The medical proof must also be based on a recent examination of plaintiff, unless an explanation otherwise is provided (*see Bent v Jackson*, 15 AD3d 46, 48 [1st Dept 2005]; *Nunez v Zhagui*, 60 AD3d 559, 560 [1st Dept 2009]).

A medical affirmation or affidavit that is based on a physician's personal examination and observation of a plaintiff is an acceptable method to provide a physician's opinion regarding the existence and extent of a serious injury (*see O'Sullivan v Atrium Bus Co.*, 246 AD2d 418, 419 [1st Dept 1998]). "However, an affidavit or affirmation simply setting forth the observations of the affiant are not sufficient unless supported by objective proof such as X-rays, MRIs, straight-leg or Laseque tests, and any other similarly-recognized tests or quantitative results based on a neurological examination" (*Grossman*, 268 AD2d at 84; *see also Arjona,* 7 AD3d at 280; *Lesser v Smart Cab Corp.*, 283 AD2d 273, 274 [1st Dept 2001]). A physician's conclusory assertions based solely on subjective complaints cannot establish a serious injury (*see Lopez v Senatore*, 65 NY2d 1017, 1019 [1985]).

A plaintiff's medical proof of the extent or degree of a physical limitation may take the form of either an expert's "designation of a numeric percentage of a plaintiff's loss of range of motion"; or qualitative assessment of a plaintiff's condition, "provided that the evaluation has an objective basis and compares the plaintiff's limitations to the normal function, purpose and use of the affected body organ, member, function or system" (*Toure*, 98 NY2d at 350). The medical submissions must specify when and by whom the tests were performed, the objective nature of the tests, what the normal range of motion should be and whether plaintiff's limitations were significant (*see Milazzo v Gesner*, 33 AD3d 317, 317 [1st Dept 2006]; *Vasquez v Reluzco*, 28 AD3d 365, 366 [1st Dept 2006]).

Further, a plaintiff who claims a serious injury based on the "permanent loss" category

has to establish that the injury caused a "total loss of use" of the affected body part (*see Oberly v Bangs Ambulance, Inc.*, 96 NY2d 295, 299 [2001]).

The "permanent consequential limitation" category requires a plaintiff to establish that the injury is "permanent," and that the limitation is "significant" rather than slight (*see Altman v Gassman*, 202 AD2d 265, 265 [1st Dept 1994]). Whether an injury is "permanent" is a medical determination, requiring an objective basis for the medical conclusion of permanency (*see Dufel*, 84 NY2d at 798). Mere repetition of the word "permanent" in the physician's affirmation or affidavit is insufficient. (*See Lopez*, 65 NY2d at 1019.)

The "significant limitation" category requires a plaintiff to demonstrate that the injury has limited the use of the afflicted area in a "significant" way rather than a "minor, mild or slight limitation of use" (*Licari*, 57 NY2d at 236). In evaluating both "permanent consequential limitation" and "significant limitation," "[w]hether a limitation of use or function is 'significant' or 'consequential' . . . relates to medical significance and involves a comparative determination of the degree or qualitative nature of an injury based on the normal function, purpose and use of the body part" (*Dufel*, 84 NY2d at 798). Moreover, a "'permanent consequential limitation' requires a greater degree of proof than a 'significant limitation,' as only the former requires proof of permanency" (*Altman*, 202 AD2d at 651).

The 90/180-day category requires a demonstration that plaintiff has been unable to perform substantially all of his or her usual and customary daily activities for not less than 90 days during the 180 days immediately following the injury *(see Licari*, 57 NY2d at 236). The words "substantially all" mean that the person has been "curtailed from performing his usual activities to a great extent rather than some slight curtailment" (*id.).* A physician's statement that is too general and non-specific does not support a 90/180-day claim (*see e.g. Morris v Ilya Cab Corp.*, 61 AD3d 434, 435 [1st Dept 2009]; *Gorden v Tibulcio*, 50 AD3d 460, 463 [1st Dept 2008]).

Finally, "even where there is objective medical proof, when additional contributing factors interrupt the chain of causation between the accident and claimed injury--such as a gap in treatment, an intervening medical problem or a preexisting condition--summary dismissal of the complaint may be appropriate" (*Pommels v Perez*, 4 NY3d 566, 572 [2005]). Accordingly, a plaintiff is required to offer a reasonable explanation for a gap in treatment *(id.* at 574; *Delorbe v Perez*, 59 AD3d 491, 492 [2d Dept 2009]; *DeLeon v Ross,* 44 AD3d 545, 545-46 [1st Dept 2007]; *Wadford v Gruz*, 35 AD3d 258, 258-59 [1st Dept 2006]; *Colon v Kempner*, 20 AD3d 372, 374 [1st Dept 2005]).

DISCUSSION

In support of the summary judgment motion, defendant Richardson submits, *inter alia*, an affirmed report of orthopedic surgeon Dr. Anthony Spataro; plaintiff's March 29, 2007 deposition; and the bill of particulars. (*See* Richardson motion, exhibits B, C, D.)

Dr. Spataro conducted an orthopedic independent medical examination on May 1, 2007. Without specifying the objective tests that were used to measure plaintiff's range of motion, Dr. Spataro stated the range of motion findings as follows:

"Thoraco Lumbar Spine:

0-90	0-90	Forward flexion
0-25	0-25	Forward extension
0-25	0-25	Left lateral flexion
0-25	0-25	Right lateral flexion
0-30	0-30	Left rotation
0-30	0-30	Right rotation" (*id.*, exhibit D).

Dr. Spataro also indicated that there was negative straight leg raising testing in both lower extremities. Dr. Spataro found no palpable spasm or tenderness in the entire spine. No kyphoscoliosis or abnormal curvature was noted. Dr. Spataro diagnosed status post sprain of the lumbar spine, and concluded that plaintiff is not orthopedically disabled.

In the bill of particulars, plaintiff alleged confinement to bed and home intermittently but did not set forth any periods of confinement (bill of particulars at ¶¶ 8-9). She claimed no

incapacity from employment and made no claim for lost wages (*id.* at ¶¶ 10-11).

At her deposition, plaintiff denied being confined to her home or bed after the accident (plaintiff's deposition at 76-77). She indicated that she missed one month of work (*id.* at 11). There were no activities that she could no longer do at all since the accident (*id.* at 71). When asked about activities that she could do with some limitation, plaintiff indicated cleaning, laundry and shopping (*id.* at 71-72). She also had limitations with heavy lifting and standing or walking too long (*id.* at 70-73).

Based on the foregoing, the Court concludes that defendant Richardson has failed to meet the initial burden of establishing a prima facie case that plaintiff did not suffer a "serious injury" under the categories of permanent loss, permanent consequential limitation or significant limitation (*see* Insurance Law § 5102 [d]). Dr. Spataro's affirmation, which is the only medical evidence submitted in support of summary judgment, does not establish the nonexistence of a serious injury because it is conclusory; fails to indicate the objective tests relied upon; and inadequately specifies the range of motion found in plaintiff's lumbar spine (*see Torres v Garcia*, 59 AD3d 705, 706 [2d Dept 2009]; *Nix v. Xiang*, 19 AD3d 227, 227 [1st Dept 2005]; *Webb v Johnson*, 13 AD3d 54, 54 [1st Dept 2004]).

Notably, although Dr. Spataro states a "range" of range of motion degrees, *i.e.* "0-90," his reliance upon a range of degrees without specifying the exact degrees found is insufficient to establish a prima facie case *(see Webb*, 13 AD3d at 54 [defendants did not meet initial burden where their experts opined that range of motion of cervical spine was normal but did not specify the degree of motion they found or what was considered normal]).

Moreover, the First Department has recently clarified that a defendant cannot meet the initial burden of establishing a prima facie case "if it presents the affirmation of a doctor which recites that the plaintiff has normal ranges of motion in the affected body parts but does not specify the objective tests performed to arrive at that conclusion" *Linton v Nawaz*, 62 AD3d 434,

439-39 [1st Dept 2009]; *accord Perez v Fugon*, 52 AD3d 668, 669 [2d Dept 2008]). Dr. Spataro fails to set forth the objective tests that were utilized to determine the range of motion of plaintiff's thoracolumbar spine (*see Linton*, 62 AD3d at 439 [defendants' expert failed to state what, if any, objective tests he utilized when examining plaintiff which led him to conclude that plaintiff had full ranges of motion and that the alleged injuries were fully resolved]; *Caballero v Fev Taxi Corp.*, 49 AD3d 387, 387 [1st Dept 2008] [defendants did not meet initial burden where reports of examining neurologist and orthopedist "failed to set forth the objective tests performed to support their claims that there was no limitation of range of motion, and did not address the objective findings of plaintiff's MRIs showing, inter alia, herniated and bulging discs"]; *Lamb v Rajinder*, 51 AD3d 430, 430 [1st Dept 2008] [defendant's neurologist "failed to set forth objective tests performed supporting his claims that there was no limitation of range of motion"]).

Because defendant Richardson has failed to make a prima facie showing, her summary judgment motion with respect to the categories of permanent loss, permanent consequential limitation and significant limitation must be denied regardless of the claimed insufficiency of the opposing papers (*see Offman v Singh*, 27 AD3d 284, 284 [1st Dept 2006]). It is therefore unnecessary to consider the sufficiency of the evidence submitted in opposition to the motion with respect to these categories (*see Caballero*, 49 AD3d at 387-88).

The Court does, however, conclude that defendant Richardson has sustained the initial burden of proof with regard to the 90/180-day category. "In order to establish prima facie entitlement to summary judgment under this category of the statute, [a] defendant must provide medical evidence of the absence of injury precluding 90 days of normal activity during the first 180 days following the accident" (*Elias*, 58 AD3d at 435). However, a defendant can establish the nonexistence of a 90/180-day claim absent medical proof by citing to evidence, such as the plaintiff's own testimony, demonstrating that the plaintiff was not prevented from performing all

of the substantial activities constituting his or her usual and customary daily activities for the prescribed period (*id.*; *Copeland v Kasallca*, 6 AD3d 253, 254 [1st Dept 2004]).

Defendant Richardson's proffer of plaintiff's own testimony sufficiently demonstrates that the injuries did not prevent plaintiff from performing "substantially all" of her usual and customary daily activities for the requisite time period (*see Licari*, 57 NY2d at 236). Plaintiff's deposition indicates that she was not confined to home or bed at all following the accident, and that she missed only a month or less of work. These time periods are far less than the 90/180 days required by the statute, and are sufficient to meet defendant Richardson's initial burden of establishing a prima facie case. (*See Copeland*, 6 AD3d at 254 [home and bed confinement for less than the prescribed period evinces lack of serious injury under 90/180-day category]; *Sanchez v Williamsburg Volunteer of Hatzolah, Inc.*, 48 AD3d 664, 664-65 [2d Dept 2008] [defendants made prima facie showing that plaintiff did not sustain a serious injury under 90/180-day category through plaintiff's deposition testimony that he missed only five weeks of work]; *Camacho v Dwelle*, 54 AD3d 706, 706 [2d Dept 2008] ["by submitting the plaintiff's deposition testimony that he missed only 15 days of work as a result of the accident, the defendants demonstrated that the plaintiff was able to perform 'substantially all' of the material acts constituting his customary daily activities for more than 90 days of the first 180 days subsequent to the accident"]).

Since defendant Richardson has sustained the initial burden of establishing prima facie entitlement to summary judgment under the 90/180-day category, the burden shifts to plaintiff to produce evidentiary proof in admissible form establishing the existence of a genuine issue of fact necessitating a trial under this category (*see Gaddy*, 79 NY2d at 957).

In opposition to summary judgment, plaintiff submits, *inter alia*, an affirmation and EMG report of treating physician Dr. Ali E. Guy; an affirmation of radiologist Dr. Allen Rothpearl affirming plaintiff's MRI of the lumbar spine; plaintiff's October 28, 2008 affidavit; plaintiff's

deposition testimony; and the bill of particulars. (*See* affirmation in opposition, exhibits B, C, D, E, F, G.)

Plaintiff was initially examined by Dr. Guy on October 11, 2004. Examination of the lumbar spine revealed tenderness, muscle spasm and multiple trigger points. Range of motion testing was obtained through the use of a hand-held goniometer. Lumbar spine range of motion revealed flexion 45 degrees (normal is 90 degrees) and extension 15 degrees (normal is 30 degrees). Straight leg raise test revealed 75 degrees (normal is 90 degrees) with bilateral low back pain.

Dr. Guy prescribed a MRI of the lumbar spine, which was performed on December 1, 2004 and revealed: 1. S1 vertebral body was transitional; and 2. Disc bulge at S1-S2 where the disc material approximated the ventral thecal sac. Dr. Guy also conducted an electrodiagnostic examination on December 8, 2004, which showed electrical evidence of a left L5-S1 radiculopathy. Plaintiff received physical therapy in Dr. Guy's office until December 29, 2004, when it was determined that she achieved maximum medical improvement.

Dr. Guy conducted a recent examination on August 27, 2008. Examination of the lumbar spine again showed tenderness, muscle spasm and multiple trigger points. Lumbar spine range of motion revealed flexion 75 degrees (normal is 90 degrees) and extension 15 degrees (normal is 30 degrees). Straight leg raise test revealed 75 degrees (normal is 90 degrees) with bilateral low back pain.

Based upon the medical findings, Dr. Guy diagnosed: 1. Disc bulge at S1-S2; 2. Left L5-S1 radiculopathy; and 3. Loss of range of motion - lumbar spine. Dr. Guy concluded that the initial injuries progressed to permanency; that the accident was the competent producing cause of the injuries; and that plaintiff sustained a permanent injury, significant limitation and permanent consequential limitation of use of her lumbar spine.

In her affidavit, plaintiff asserts that she discontinued physical therapy on December 29,

2004, when it was determined that she reached maximum medical benefit (plaintiff's affidavit at ¶ 12). She claims that her injuries have impacted her daily life, and that she is much less able to perform various household chores such as laundry, cooking and shopping (*id.* at ¶ 15). Her injuries have also prevented her from heavy lifting and standing for extended periods (*id.*).

Considering the evidence in the light most favorable to plaintiff (*see Kesselman v Lever House Restaurant*, 29 AD3d 302, 304 [1st Dept 2006]), the Court finds plaintiff's submissions insufficient to raise an issue of fact sufficient to defeat summary judgment under the 90/180-day category (*see Elias*, 58 AD3d at 435).

Plaintiff has not established a sufficient limitation of "substantially all" of her customary and daily activities for the required 90/180-day time period (*see Licari*, 57 NY2d at 236). Plaintiff has conceded that she was not confined to home or bed following the accident, and that she missed no more than one month of work. In any event, the limitations of which she complains -- *i.e.*, limitations on activities such as household chores, shopping, heaving lifting and standing long periods -- do not constitute a curtailment of "substantially all" of her usual and customary daily activities sufficient to support a 90/180-day claim. (*See Morris v Cisse*, 58 AD3d 455, 457 [1st Dept 2009] [plaintiff failed to raise a triable issue regarding whether she was curtailed form performing her usual activities to a great extent rather than some slight curtailment]; *Cartha v Quin*, 50 AD3d 530, 530 [1st Dept 2008] [even if claim was medically substantiated, "minor curtailment" of plaintiff's usual activities during 90/180 day time frame does not satisfy the statute]; *Rennell v Horan*, 225 AD2d 939, 940 [3rd Dept 1996] ["even accepting that plaintiff had to curtail some of her activities and sports, the record failed to show that such restrictions were medically indicated or affected a significant portion of her usual activities"]; *Burns v McCabe*, 17 AD3d 1111, 1111 [4th Dept 2005] [although there was evidence that plaintiff could not participate in some activities, such as gym class and dancing, plaintiff raised no triable issue as to 90/180-day claim where plaintiff returned to school after a

week and to work after five weeks]).

Lastly, although the record indicates a gap in plaintiff's treatment (*see Pommells*, 4 NY3d at 574), plaintiff has offered a sufficient explanation for the gap in treatment. The affirmation of Dr. Guy and affidavit of plaintiff both state that plaintiff discontinued treatment on December 29, 2004, when it was determined that she reached maximum medical benefit (*see Paz v Wydrzynski*, 41 AD3d 453, 453-54 [2d Dept 2007] [plaintiff's chiropractor adequately explained gap where plaintiff was discharged because he had reached his maximum recovery and any further treatment would be merely palliative]).

The Court therefore grants summary judgment dismissing plaintiff's claim of a serious injury under the 90/180-day category. Summary judgment with respect to the categories of permanent loss, permanent consequential limitation and significant limitation is denied.

For these reasons and upon the foregoing papers, it is,

ORDERED that defendant Richardson's motion for summary judgment is denied, except as to plaintiff's 90/180-day claim which is dismissed; and it is further,

ORDERED that the Clerk of the Court is directed to enter partial summary judgment in favor of defendant Richardson on the 90/180-day claim, without costs and disbursements to defendant Richardson as taxed by the Clerk; and it is further,

ORDERED that defendant Richardson shall serve a copy of this order, with notice of entry, upon plaintiff.

This constitutes the Decision and Order of the Court.

Dated: December 12, 2009
DEC 12 2009

Paul Wooten
Paul Wooten J.S.C. *J.S.C.*

Check one: ☐ **FINAL DISPOSITION** ■ **NON-FINAL DISPOSITION**

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