At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, On the 16th day of October, 2020.

PRESENT:
CARL J. LANDICINO, J.S.C.

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JONATHAN JONES,
Plaintiff,

Index No.: 505473/2018

-against-

DECISION AND ORDER

REACHOUT HEALTHCARE AMERICA LTD.
and CARLANA BILLY,
Defendants.

Motion Sequence #2

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Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion:

	Papers Numbered (NYSCEF)
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	18-20
Opposing Affidavits (Affirmations)	22-23
Reply Affidavits (Affirmations)	26

Upon the foregoing papers, and after oral argument, the Court finds as follows:

This lawsuit arises out of a motor vehicle accident that allegedly occurred on January 9, 2018. Plaintiff Jonathan Jones (hereinafter "the Plaintiff") alleges in his Complaint that on that date he suffered personal injuries after his vehicle was struck in the rear by a vehicle operated by Defendant Carlana Billy and owned by Defendant Reachout Healthcare America Ltd. (hereinafter "the Defendants"). The Plaintiffs further allege that the collision occurred on Shepherd Avenue at or near its intersection with Dumont Avenue, in Brooklyn, New York.

The Plaintiff now moves (motions sequence #2) for an order pursuant to CPLR 3212 granting summary judgment on the issue of liability and dismissing the counterclaim and any cross claims against him. The Plaintiff contends that summary judgment should be granted in his favor on the issue

of liability given that his motor vehicle was rear ended. In opposition, the Defendants argue that the motion should be denied as there are triable issues of fact that should prevent this Court from granting summary judgment at this time.

It has long been established that "[s]ummary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff,* 14 AD3d 493 [2d Dept 2005], *citing Andre v. Pomeroy,* 35 NY2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], *citing Alvarez v. Prospect Hospital*, 68 NY2d320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.,* 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept, 1994].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented to establish, *prima facie*, that the Defendants were negligent and the sole proximate cause of the accident. In support of his application, the Movant relies on an affidavit from the Plaintiff. The Plaintiff states in his affidavit that "I was operating my vehicle on Shepherd Avenue when my vehicle was struck in the rear while I was stopped at the stop sign at the intersection of Dumont Ave. to allow pedestrians to cross the street." The Plaintiff also states that immediately prior to the collision "[a]fter

I had stopped for about 20-25 seconds, when the children and the crossing-guard had just finished crossing the street to my left in front of me, I observed from my peripheral vision the crossing-guard suddenly waived her hands frantically and immediately darted to the side." (See Plaintiff's Motion, Exhibit "B" Paragraphs 3 and 5). The Court finds that the affidavit of the Plaintiff is sufficient for the Plaintiff to establish a *prima facie* showing. *See Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d Dept 2018]. This is because "[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Klopchin v. Masri*, 45 AD3d 737, 737, 846 N.Y.S.2d 311, 311 [2d Dept 2007].

In opposition to the motion, the Defendants have not adequately raised a material issue of fact that would prevent this Court from granting partial summary judgment on the issue of liability. *Rodriguez v. City of New York,* 31 NY3d 312, 101 N.E.3d 366 [2018], *Gerse v. Neyjovich*, 9 AD3d 318, 780 N.Y.S.2d 615 [2d Dept 2004]. The Defendants rely primarily on the Police Accident Report taken after the alleged incident which states that the Defendants' vehicle purportedly tried to brake "but street was slippery from slushy snow and her veh was unable to stop and kept sliding and rear ended MV1." (See Defendants' Opposition, Exhibit 1). Even assuming, *arguendo*, that the Police Accident Report attached to the Defendants' opposition is admissible, (*see Adobea v. Junel*, 114 A.D.3d 818, 980 N.Y.S.2d 564 [2nd Dept, 2014]), it is not sufficient to raise an issue of fact regarding the Defendants' liability. The Defendants' explanation "that she applied her brakes but that her vehicle was unable to stop because of icy road conditions was insufficient to rebut the inference of negligence caused by the rear-end collision." *Grimm v. Bailey*, 105 AD3d 703, 704, 963 N.Y.S.2d 277, 278 [2d Dept 2013]. In any event, the purported inability to stop is not an admission and is conclusory. Further, "a driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Plummer v. Nourddine*, 82 AD3d 1069, 1069, 919 N.Y.S.2d 187, 188 [2d Dept 2011].

Based upon the foregoing, it is hereby ORDERED as follows:

Plaintiff's Motion (motion sequence #2) is granted. The Plaintiff is awarded summary judgment on the issue of liability, in that the Defendants were negligent and the sole proximate cause of the collision. The matter shall proceed to a trial on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

Carl J. Landicino, J.S.C.