Motion is Respectfully Referred to Justice: _____
Dated: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

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ELIZABETH GORE,, Index №. 32429/2019E

Plaintiff,

-against- **Hon. BEN R. BARBATO**

_____
Justice Supreme Court

K.D.HERCULES GROUP, INC and PETROS PETROU,

Defendants.

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The following papers in the NYSCEF system numbered 7 to 12 were read on this motion (Seq. No.1) for **SUMMARY JUDGMENT LIABILITY** noticed on **August 13, 2020**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 7-12
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s) .

Plaintiff moves for an order pursuant CPLR §3212, granting Plaintiff summary judgment on the issue of liability as against Defendants, and dismissal of Defendants' culpable conduct affirmative defenses.

Plaintiff commenced this action to recover for personal injuries sustained in a rear end collision motor vehicle accident. In support of the motion, counsel for Plaintiff submitted an Affirmation in Support, Affidavit of Plaintiff and the Police Accident Report. Plaintiff stated in her Affidavit that while she was stopped at the red light at the intersection of Peartree Avenue and Givan Avenue in the Bronx, New York, she was struck from behind by Defendants' vehicle. According to the Police Accident Report, Defendant Petros Petrou (hereinafter "Defendant Petrou") stated that while driving on Peartree Avenue he stopped behind Plaintiff's vehicle at the red light, and when the light changed, in anticipation of Plaintiff's vehicle moving forward, he took his foot off the brake and collided with the rear end of Plaintiff's vehicle.

Plaintiff argues that Defendant Petrou was the sole proximate cause of this rear end accident, and that Defendants have failed to raise a single triable issue of fact.

Defendants did not oppose the motion.

Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (See Rotuba Extruders v Ceppos, 46 N.Y.2d 223 [1978]). A rear end collision with a vehicle establishes a prima facie case of negligence against the rear most driver (see Santos v Booth, 1125 A.D.3d 506, 506 [1st Dept 2015]; see also Woodley v Ramirez, 25 A.D.3d 451 [1st Dept 2006]). In a chain-reaction collision, responsibility presumptively rests with the rearmost driver. (See Chang v Rodriguez, 57 A.D.3d 295 [1st Dept 2008]). The rule is that a driver must maintain a safe distance between his vehicle and the one in front of him. (See Vehicle and Traffic Law Section 1129[a] "a driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon the condition of the highway"). A violation of Vehicle and Traffic Law section 1129(a) is prima facie evidence of negligence (see Rodriguez v Budget RentA-Car Sys., Inc., 44 A.D.3d 216, 223-224, [1st Dept 2007]).

In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. (See Soto-Maroquin v Mellet, 63 A,D,3d 449 [1st Dept 2009]). "[U]nless the driver of the following vehicle presents a non-negligent explanation for the accident, or a non-negligent reason for his failure to maintain a safe distance between his car and the lead car [a] claim that the lead vehicle 'stopped suddenly' is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (Woodley v Ramirez, 25 A.D.3d at 452). First Department case law is clear that "a claim by the rear driver that 'the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence.' " Bajrami v. Twinkle Cab Corp., 147 A.D.3d 649, 46 N.Y.S.3d 879 (1st Dept. 2017) citing Cabrera v. Rodriguez, 72 A.D.3d 553, 553, 900 N.Y.S.2d 29 (1st Dept.2010). See Ly Giap v. Hathi Son Pham, 159 A.D.3d 484, 485, 71 N.Y.S.3d 504, 506 (2018) ("A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost

driver was negligent and the stopped vehicle was not negligent"). "[T]he emergency doctrine is typically not available to the rear driver in a rear-end collision, who is responsible for maintaining a safe distance." Vanderhall v. MTA Bus Co., 160 A.D.3d 542, 542–43, 74 N.Y.S.3d 548, 549 (1st Dept. 2018).

Vehicle stops which are foreseeable under the 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 (Diller v. City of New York Police Dept, 269 A.D.2d 143, [1st Dept 2000]). It is well established that a rear end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, unless the rear-most driver can proffer a non-negligent explanation for the accident (Urena v. GVC LTD 160 A.D.3d 467[1st Dept 2018]; Matos v. Sanchez, 147 A.D.3d 585[1st Dept 2017]).

In this case, upon a review of the Affirmation in Support, the Police Accident Report and the Affidavit of Plaintiff, the Court finds that there was no negligence on the part of Plaintiff when Defendants' vehicle rear ended Plaintiff's vehicle. Plaintiff has met her burden of establishing a prima facie showing of entitlement to summary judgment on the issue of liability.(See Williams v Hamilton, 116 A.D.3d 421, 422, [1st Dept 2014]).

In light of this prima facie showing, the burden shifted to Defendants who failed to produce evidence of a "non-negligent explanation for the accident, or a non-negligent reason for their failure to maintain a safe distance between their car and Plaintiff's vehicle. See Mullen v. Rigor, 8 A.D. 3d. 104 (1st Dept. 2004) citing Jean v Xu, 288 A.D.2d 62, (1st Dept. 2001).

Accordingly, it is hereby

ORDERED, that Plaintiff's motion for an order granting summary judgment on the issue of liability is granted and Defendants' culpable conduct affirmative defenses are dismissed..

This constitutes the Decision and Order of the Court.

Dated: 12/29/2020

Hon: HON. BEN. R. BARBATO, J.S.C.

JSC