SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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MIGUEL ORTIZ,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA BUS, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, LAMONT WATSON, UBER TECHNOLOGIES, INC.,UBER USA, LLC,RAISER-NY, LLC,CARLOS TAPIA VASQUEZ, OSCAR MACALL, "JOHN DOE NO. 1," true name unknown but intended to be the owner of the vehicle involved in a motor vehicle accident with plaintiff on July 21, 2020 and "JOHN DOE NO. 2," true name unknown but intended to be the owner of the vehicle involved in a motor vehicle accident with plaintiff on July 21, 2020,

Defendants.

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INDEX NO. 160684/2020

MOTION DATE 11/29/2024, 11/29/2024

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 005) 133-141, 181, 183, 192-201, 203, 204, 208

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document numbers (Motion 006) 29, 165-177, 182, 184-189, 202, 205, 206, 209-214

were read on this motion to/for JUDGMENT - SUMMARY.

In this action arising out of three, separate motor vehicle collisions, defendant Carlos Tapia Vasquez moves for summary judgment dismissing the complaint and all cross-claims as against him, on the ground that plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102 (d) (Seq. No. 005). Plaintiff opposes the motion.

Defendant Oscar Macall separately moves for summary judgment dismissing the complaint and all cross-claims as against him, on the grounds that his vehicle was rear-ended and propelled into plaintiff's vehicle, and that plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102 (Seq. No. 006). Plaintiff opposes the motion.

Defendants New York City Transit Authority, Metropolitan Transportation Authority, M.T.A. Bus, Manhattan and Bronx Surface Transit Operating Authority, and

Lamont Watson (collectively, the Transit Defendants) cross-move for summary judgment dismissing the complaint and all cross-claims as against them, on the ground that plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102 (d). Plaintiff opposes the cross-motion.

This decision addresses both motions and the cross-motion.

BACKGROUND

I. Accident 1

At his deposition, plaintiff testified that, on November 8, 2019, between the morning and midday, plaintiff was driving a 2019 Honda Civic on Ninth Avenue, right by the Lincoln Tunnel (*see* Exhibit H in support of Macall's mot, plaintiff's EBT at 13, line 18 through 15, line 3 [NYSCEF Doc. No. 174]). According to plaintiff, his vehicle and an MTA Bus to his right side in the middle lane were both stopped at a red light at an intersection (*id.* at 18, lines 19-22; at 19, lines 6-15; at 21, lines 4-9). Plaintiff testified that, within seconds of moving, the bus smashed into the right side, the passenger's side of his vehicle (*id*. at 22, lines 6-17; at 23, lines 6-10).

According to plaintiff, as a result of the impact, his body "smashed into the left side of my vehicle. So my shoulder, left shoulder, left knee, elbow, smashed into . . the driver's side door of my vehicle (plaintiff's EBT at 26, lines 2-7).

It is undisputed that the bus was owned by defendant New York City Transit Authority and operated by defendant Lamont Watson in the scope of their employment (*see* NYSCEF Doc. No. 29, Transit Defendants' answer ¶ 5)

II. Accident 2

Plaintiff testified that, approximately about an hour and thirty minutes after that motor vehicle collision, he was involved in another accident in Long Island City in Queens (*id.* at 34, line 25 through 35, line 15). Plaintiff stated that he was stopped at a red light for "maybe a minute," when a Honda CRV rear-ended his vehicle (*id.* at 36, line 14 through 37, line 6). It is undisputed that defendant Carlos Tapia Vasquez was the operator of the other vehicle (*see* exhibit A in support of Vasquez's mot, complaint ¶ 90 [NYSCEF Doc. No. 136]; *see* exhibit B in support of Vasquez's mot, answer [NYSCEF Doc. No. 137]).

Plaintiff stated that he told EMS workers at the scene that he had complaints of his neck, back, shoulders, and left knee (plaintiff's EBT at 38, lines 13-21). Plaintiff also testified that his body made contact with the steering wheel; he went forward hitting his knee, and his right arm hit the dashboard (*id.* at 38, line 22 through 39, line 7).

After going to an auto body shop in Queens, plaintiff went to New York Presbyterian Hospital in Queens (*id.* at 43, line 11 through 44, line 15). At the hospital, he complained of neck pain, shoulder pain on both sides, his head, lower back pain, left elbow pain and left knee pain (*id.* at 45, lines 6-9).

According to the bill of particulars, as a result of the accidents on November 8, 2019, plaintiff suffered, among other things, a cervical disc herniation at C3/4 and cervical disc bulges at C4/5 and C5/6; lumbar disc bulges at L3/4, L4/5 and L5/S1; tears in the rotator cuff and labral tear of the right shoulder; a partial thickness tear in the left shoulder; tendinitis in the left elbow; and post-traumatic left knee pain (*see* Exhibit C in support of Vasquez's mot, bill of particulars ¶ 10A [NYSCEF Doc. No. 138]). Furthermore, according to plaintiff, he had surgery on his right shoulder for a "rip in my rotator cuff" in February 2020 (plaintiff's EBT, at 62, lines 5-12; at 65, line 25 through 66, line 10).

When asked if he had missed any time from work as a result of the accident that occurred in November 2019, plaintiff replied, "Post surgery was the only time" (*id.* at 33, lines 10-13). When asked how many days he missed after his surgery in February 2020, he stated, "Anywhere between four to five days" (*id.* at 33, lines 19-23).

III. Accident 3

Plaintiff testified that he was involved in another motor vehicle collision on July 21, 2020 in Baldwin, Long Island (*id.* at 53, line 20 through 54, line 14; at 54, line 24 through 55, line 5). Plaintiff was driving a 2019 Honda Civic, the same vehicle that was involved in the other accidents (*id.* at 56, lines 14-20). According to plaintiff, he was on Merrick Road, turning left to get into the parking of the doctor's office, when he was hit from the rear by a Ford Focus (*id*. at 57, lines 10-12; at 59, lines 4-8, 20-22; at 120, lines 11-13).

Plaintiff testified that the impact threw him forward, and his knees hit under the dashboard (*id.* at 60, lines 18-25). According to plaintiff in the third accident, he reinjured his shoulders, neck, and lower back (*id.* at 84, line 23 through 85, line 2).

At his deposition, defendant Oscar Macall testified that he was driving a 2005 Ford Focus on Merrick Road, behind a white sedan waiting to make a left turn into a pediatric clinic (Exhibit E in support of defendant Macall's mot, Macall EBT, at 26, lines 3-6; at 27, lines 14-15; at 28, lines 4-5 [NYSCEF Doc. No. 171]). According to Macall, "I saw him when he was going to stop to go into the clinic, so I decreased my speed. When I tried to go into the other lane, but there were trucks and other cars coming by so I could not and that's when the other green car hit me" (*id.* at 30, lines 13-18; at 33, lines 2-5). Macall stated, "I stopped to let him cross because I couldn't stop on the right and that's when the green car hit me" (*id.* at 37, lines 7-9).

According to Macall, his vehicle had come to a stop one car length behind the white sedan (*id.* at 45, lines 2-12). Macall stated, "the green car hit me and I guess I

was scared when I saw the hood of my car twisted and I guess I let go of the brake and that's when I hit the car I front" (*id.* at 47, lines 11-14). However, when Macall was later asked if he ever took his foot off the brake between the time he was hit by the green car and the contact with the white sedan, he answered, "No" (*id.* at 50, lines 10-13).

Macall testified that the driver of the green car parked on the side, "came to ask if we were okay, and then left" (*id.* at 15, lines 10-11; at 16, lines 3-8; at 18, lines 17-18). Macall stated that he did not take any photographs of that vehicle (*id.* at 14, lines 23 through 15, line 2), but he later stated that he did take photographs at the scene after the accident (*id.* at 90, lines 23-25).

Plaintiff testified at his deposition that he believed there were only two vehicles involved in the collision "[b]ecause there was no third vehicle present after the accident occurred" (plaintiff's EBT at 115, line 24 through 116, line 8; at 117, lines 13-15).

Plaintiff testified that he did not miss any time from work in connection with the July 21, 2020 accident (plaintiff's EBT at 134, lines 15-17).

According to the bill of particulars, as a result of the accident on July 21, 2020, plaintiff suffered, among other things, exacerbation/aggravation of a cervical disc herniation at C3/4 and cervical disc bulges at C4/5 and C5/6; lumbar disc bulges at L3/4, L4/5 and L5/S1; tears in the rotator cuff and labral tear of the right shoulder; a partial thickness tear in the left shoulder; tendinitis in the left elbow; and post-traumatic left knee pain (*see* bill of particulars ¶ 10B).

DISCUSSION

> "To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party" (*Nellenback v Madison County*, —NY3d—2025 NY Slip Op 02263 [2025] [internal citations omitted]).

I. Defendant Carlos Tapia Vasquez's motion for summary judgment and the Transit Defendants' cross motion for summary judgment

Of the nine categories of "serious injury" listed in the statutory definition (*see* Insurance Law § 5102 [d]), only three are relevant here:

(1) permanent consequential limitation of use of a body organ or member;
(2) significant limitation of use of a body function or system; and
(3) 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 category).

A. "Permanent consequential" or "Significant" limitations in use

On summary judgment, the defendant meets the prima facie burden by demonstrating that, as a matter of law, the plaintiff cannot establish at least one of these three elements which plaintiff must ultimately prove to prevail at trial. That is, the defendant meets the prima facie burden by establishing that: (1) there is no objective evidence of injury (*Aquino v Alvarez*, 162 AD3d 451, 451 [1st Dept 2018]); (2) the plaintiff has normal ranges of motion in the allegedly injured body parts, with no objective evidence of disability or permanency (*Peart v Carreras*, 227 AD3d 479, 479 [1st Dept 2024]; *Rosado v Haidara*, 224 AD3d 577, 577 [1st Dept 2024]); or (3) the alleged injuries were not causally related to the accident (*Ledesma v Rodriguez*, 217 AD3d 453 [1st Dept 2023]).

Defendant Vasquez asserts that plaintiff did not suffer a serious injury, based on the affirmations of his experts, Dr. Pierce J. Ferriter, an orthopedic surgeon, and Dr. Scott A. Springer, a radiologist. The Transit Defendants join in Vasquez's motion.

Dr. Ferriter examined plaintiff on October 27, 2023 (defendants' Exhibit D in support of motion, IME report [NYSCEF Doc. No. 139]). Examination of the *cervical spine* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	50	50
Extension	60	60
Right Lateral Flexion	45	45
Left Lateral Flexion	45	45
Right Rotation	80	80
Left Rotation	80	80

(*id.* at 2). Dr. Ferriter noted no muscle spasm upon palpation of the paracervical muscles (*id.*). Orthopedic tests were negative (*id.* at 3).

Examination of the *lumbar spine* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	60	60
Extension	25	25
Right Lateral Flexion	25	25
Left Lateral Flexion	25	25

(*id.* at 3). Dr. Ferrier noted no muscle spasm upon palpation of the paralumbar muscles (*id.*). Sitting and supine straight leg raising signs were negative bilaterally (*id.* at 3).

Examination of the *right shoulder* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	180	180
Extension	40	40
Abduction	180	180
Adduction	30	30
Internal rotation	80	80
External rotation	90	90

(*id.* at 4). Orthopedic tests were negative (*id.*).

Examination of the *left shoulder* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	180	180
Extension	40	40
Abduction	180	180
Adduction	30	30
Internal rotation	80	80
External rotation	90	90

(*id.* at 4). Orthopedic tests were negative (*id.*).

Examination of the *left elbow* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	150	150
Extension	0	0
Supination	80	80
Pronation	80	80

(*id.* at 4-5). Orthopedic tests were negative (*id.*).

Examination of the *left knee* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	150	150
Extension	0	0

(*id.* at 5).

Dr. Spinger reviewed the MRIs taken of plaintiff's cervical spine and lumbar spine.

He found no disc bulge or disc herniation at C2-C3, or at C5-C6, C6-C7, and C7-T1 (*see* Exhibit E in support of defendant Vasquez's mot, MRI review [NYSCEF Doc. No. 140]). He noted a mild disc bulge at C3-C4, but stated, "Disc bulging is most often degenerative in origin" (*id.*).

He found no disc bulge or disc herniation at T12-L1, L1-L2, L2-L3 and L3-L4 (*id.*). He noted a mild disc bulge at L4-L5 and a disc bulge at L5-S1. Again, he stated that "Disc bulging is most often degenerative in origin" (*id.*).

As plaintiff points out, to the extent that Dr. Springer implied that the cervical and lumbar disc bulges were degenerative in origin, his opinion was too equivocal to disprove causation (*see Glynn v Hopkins*, 55 AD3d 498 [1st Dept 2008] [radiologist's opinion that degenerative changes suggest that cervical herniation may be chronic in nature was too equivocal to show that such herniation was not caused by a traumatic event]; *Prince v Lovelac*e, 115 AD3d 424 [1st Dept 2014] [expert orthopedist "suspected" degenerative changes]).

However, defendant Vasquez and the Transit Defendants did meet their prima facie burden that plaintiff did not sustain "permanent consequential" or "significant" limitations in use of plaintiff's cervical and lumbar spine, left and right shoulders, left elbow, and left knee within the meaning of Insurance Law § 5102 (d). Dr. Ferriter opined that plaintiff had full, normal ranges of motion in his cervical and lumbar spine, both shoulders, left elbow, and left knee (*Feliz v Fragosa*, 85 AD3d 417, 418 [1st Dept 2011]).

Plaintiff's arguments that defendant Vasquez and the Transit Defendants did not meet the prima facie burden are unavailing. These arguments were made by plaintiff's counsel, who is not an expert, and therefore not qualified to render an opinion as to which planes of motion must be measured. To the extent that the court must disregard the finding of the straight leg raising test because no normal value was given, Dr. Ferriter's examination of the lumbar spine had nevertheless revealed normal ranges of motion.

Plaintiff points out that Dr. Ferriter claimed to have relied upon the 5th edition of the AMA Guidelines in determining normal range of motion, but used a different normal value than what plaintiff's counsel claims was contained in those guidelines. Assuming, that the normal range of motion of forward flexion of the shoulder is 150 degrees, per the AMA guidelines, Dr. Ferriter found that plaintiff's range of motion was 180 degrees, which would therefore be better than normal range of motion.

Therefore, the burden has shifted to plaintiff to raise a triable issue of fact as to whether plaintiff sustained "permanent consequential" or "significant" limitations in use of plaintiff's cervical and lumbar spine, left and right shoulders, left elbow, and left knee.

In opposition, plaintiff also submits affirmations from Dr. Ashley Simela, who examined plaintiff on July 19, 2024; from Dr. Ronald Wagner, a radiologist who reviewed MRIs taken of plaintiff's cervical and lumbar spine; from Dr. David Capiola who performed surgery on plaintiff's right shoulder; and from Dr. Steven Mendelsohn, who reviewed X-ray films taken of plaintiff's cervical and lumbar spine.

According to Dr. Simela, examination of the *cervical spine* revealed the following ranges of motion (in degrees [less than normal range indicated in **bold**]):

	Normal	Plaintiff
Flexion	50	**40**
Extension	60	**50**
Right cervical rotation	80	**65**
Left cervical rotation	80	**70**

(*see* plaintiff's exhibit B in opposition to mot, Simela affirm [NYSCEF Doc. No. 194]).

Examination of the *right shoulder* revealed the following ranges of motion (in degrees [less than normal range indicated in **bold**]):

	Normal	Plaintiff
Forward elevation	180	**160**
Internal rotation	45	**40**
External rotation	90	**70**
Abduction	170	**120**

(*id.*).

Examination of the *lumbar spine* revealed the following ranges of motion (in degrees [less than normal range indicated in **bold**]):

	Normal	Plaintiff
Flexion	90	**40**
Extension	30	**15**

(*id.*).

Dr. Simela opined that these findings are causally related to the accidents of November 8, 2019 (*id.*).

Dr. Wagner, who reviewed MRIs taken of plaintiff's cervical and lumbar spine, found a disc herniation in plaintiff's cervical spine at C3/4, and disc bulges at C4/5 and

C5/6 (*see* plaintiff's exhibit C in opposition to mot [NYSCEF Doc. No. 195]). He found disc bulges in plaintiff's lumbar spine at L3/4 and L/5, and L5/S1 (*id.*).

Plaintiff's submissions were sufficient to raise triable issues of fact as to whether plaintiff sustained "permanent consequential" or "significant" limitations in use of plaintiff's cervical and lumbar spine and right shoulder. Dr. Simela's recent findings of limited range of motion contradict Dr. Ferriter's findings of normal range of motion.

However, plaintiff's submissions were not sufficient to raise triable issues of fact to whether plaintiff sustained "permanent consequential" or "significant" limitations in use of plaintiff's other affected body parties, i.e., the left elbow and left shoulder. Therefore, defendant Vasquez and the Transit Defendants are granted summary judgment dismissing plaintiff's claims of serious injury under the categories of "permanent consequential" or "significant" limitations in use of plaintiff's left elbow and left shoulder.

As plaintiff points out, "[i]t is well settled that if a jury determines that the plaintiff has met the threshold for serious injury for any of his injuries, then it may award him damages for all injuries causally related to the accident, including those that do not meet the serious injury threshold" (*Celestine v Bonte*, 231 AD3d 665, 665 [1st Dept 2024]).

B. 90/180-day category

"Under Insurance Law § 5102 (d), an injury must be 'medically determined' to qualify under the 90/180–day category, meaning that the condition must be substantiated by a physician. Additionally, the condition must be causally related to the accident" (*Damas v Valdes*, 84 AD3d 87, 93 [2d Dept 2011] [internal citations omitted]).

> "In order to establish prima facie entitlement to summary judgment under this category of the statute, defendant must provide medical evidence of the absence of injury precluding 90 days of normal activity during the first 180 days following the accident. However, we have previously held that a defendant can establish prima facie entitlement to summary judgment on this category without medical evidence by citing other evidence, such as the plaintiff's own deposition testimony or records demonstrating that he or she was not prevented from performing all of the substantial activities constituting customary daily activities for the prescribed period" (*Elias v Mahlah*, 58 AD3d 434, 435 [1st Dept 2009] [citations omitted]).

Contrary to plaintiff's argument, Vasquez and the Transit Defendants met their prima facie burden of summary judgment by submitting portions of plaintiff's deposition testimony showing that plaintiff missed only four to five days of work after the two accidents (*see* plaintiff's EBT at 33, lines 10-13, 19-23). "[T]he ability to return to work may be said to support a legitimate inference that the plaintiff must have been able to

perform at least most of his usual and customary daily activities" (*Correa v Saifuddin*, 95 AD3d 407 [1st Dept 2012]; *Lewis v Revello*, 172 AD3d 505, 506 [1st Dept 2019]).

Plaintiff failed to raise a triable issue of fact as to whether he suffered a serious injury under the 90/180-day category.

Therefore, defendant Vasquez and the Transit Defendants are granted summary judgment dismissing plaintiff's claims of serious injury under the 90/180-day category.

II. Defendant Oscar Macall's motion for summary judgment

A. Liability in a chain collision

It has been well established in New York that a rear-end collision "with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle" (*Cabrera v Rodriguez,* 72 AD3d 553, 553 [1st Dept 2010), while the driver of the lead vehicle, which was stopped, is presumed not negligent (*Giap v Pham*, 159 AD3d 484, 485 [1st Dept 2018]; *see also Soto-Maroquin v Mellet*, 63 AD3d 449, 450 [1st Dept 2009]). "In a chain collision accident, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle" (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]).

Here, defendant Macall met his prima facie burden of summary judgment based on his deposition testimony, which established that his vehicle was properly stopped behind plaintiff's vehicle on Merrick Road, when defendant Macall's vehicle was rear-ended by a green vehicle that propelled Macall's vehicle into plaintiff's vehicle.

Contrary to plaintiff's argument, defendant Macall's deposition transcript is admissible, regardless of whether there is proof that he had been presented with the transcript for his signature. "A party to an action, or a witness on behalf of a party to an action, does not need to comply with the formalities of CPLR 3116(a) in order to use its own deposition transcript in support of his own summary judgment motion, since, by submitting the transcript in support of his own motion, it accepts the accuracy of the transcript" (*Nyambuu v Whole Foods Mkt. Group, Inc.*, 191 AD3d 580 [1st Dept 2021]). Although plaintiff's transcript was not signed, "it was certified by the reporter, and may be considered since the excerpts thereof included in the record are not challenged by plaintiff as inaccurate" (*Bennett v Berger*, 283 AD2d 374, 375 [1st Dept 2001]). "Moreover, an unsigned but certified transcript may be used as an admission" (*Luna v CEC Entertainment, Inc.*, 159 AD3d 445, 446 [1st Dept 2018]).

In opposition, plaintiff contends that summary judgment should be denied because defendant Macall did not submit any evidence corroborating his testimony that he was rear-ended, such as photographs showing damage to his vehicle (affirmation of plaintiff's counsel in opposition at 4 [NYSCEF Doc. No. 192]). Plaintiff's counsel points

out that plaintiff testified at his deposition that only two vehicles were involved in the collision (*id.*).

Viewing the evidence in the light most favorable to plaintiff, the non-movant, summary judgment is denied due to triable issues of fact as to whether defendant Macall's vehicle was rear-ended and propelled into plaintiff's vehicle. While defendant Macall testified that the individual from the green car that rear-ended defendant Macall's vehicle came to speak to defendant Macall and plaintiff, plaintiff's testimony only implicated two vehicles involved in the collision, plaintiff's own vehicle and defendant Macall's vehicle.

Therefore, summary judgment dismissing the complaint as against defendant Macall on the ground that Macall's vehicle was propelled into plaintiff's vehicle is denied.

B. Serious Injury Threshold

1. "Permanent consequential" or "Significant" limitations in use

Defendant Macall asserts that plaintiff did not suffer a serious injury, based on the affirmations of his experts, Dr. Sean L. Lager, an orthopedist, and Dr. Scott A. Springer, a radiologist. He also relies upon the submissions of defendant Vasquez.

Dr. Lager examined plaintiff on September 13, 2023 (Exhibit F in support of Macall's mot [NYSCEF Doc. No. 172]). Examination of the *cervical spine* revealed the following ranges of motion (in degrees [less than normal range indicated in **bold**]):

	Normal	Plaintiff
Extension	60	**54**
Flexion	50	**27**
Right Rotation	80	**59**
Left Rotation	80	**47**

(*id.* at 4).

Examination of *both shoulders* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	180	**130**
Abduction	180	**150** (L)/ **140** (R)

(*id.* at 5).

Examination of the *left elbow* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	150	**131**
Extension	0	0

(*id.* at 5).

Examination of the *lumbar spine* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	60	80
Extension	25	25

(*id.* at 5).

Examination of the *left knee* revealed the following ranges of motion (in degrees):

	Normal	Plaintiff
Flexion	150	**115**
Extension	0	0

(*id.* at 5).

Dr. Lager's report was not sufficient to meet defendant McCall's prima facie burden, because he found multiple limitations in the range of motion (*Susino v Panzer*, 127 AD3d 523, 524 [1st Dept 2015]).

As discussed above, plaintiff outs that Dr. Springer's opinion was too equivocal to disprove causation (*see Glynn*, 55 AD3d 498; *Prince*, 115 AD3d 424).

To the extent that defendant Macall relies upon the submissions of Vasquez, those submissions were not sufficient to meet the prima facie burden, because they conflict with findings of Dr. Lager. Defendant Macall's own conflicting submissions raised issues of fact as to whether plaintiff had suffered limitations of use.

In any event, for the reasons discussed above, plaintiff's submissions raised triable issues of fact as to whether plaintiff sustained "permanent consequential" or "significant" limitations in use of plaintiff's cervical and lumbar spine and right shoulder. Dr. Simela's recent findings of limited range of motion contradict Dr. Ferriter's findings of normal range of motion.

Therefore, the branch of defendant Macall's motion for summary judgment dismissing the complaint on the ground that plaintiff did not suffer "permanent consequential" or "significant" limitations in use of plaintiff's cervical and lumbar spine, left and right shoulders, left elbow, and left knee is denied.

2. 90/180-day category

Defendant Macall met the prima facie burden of summary judgment dismissing plaintiff's claims of serious injury under the 90/180-day category, by submitting portions of plaintiff's deposition testimony showing that plaintiff did not miss any time from work in connection with the July 21, 2020 accident (*Correa*, 95 AD3d 407).

CONCLUSION AND ORDER

It is hereby **ORDERED** that the motion for summary judgment by defendant Carlos Tapia Vasquez and the cross-motion for summary judgment by defendants New York City Transit Authority, Metropolitan Transportation Authority, M.T.A. Bus Manhattan and Bronx Surface Transit Operating Authority, and Lamont Watson are both **GRANTED IN PART TO THE EXTENT THAT** these defendants are granted summary judgment dismissing plaintiff's claims of serious injury under the categories of "permanent consequential" or "significant" limitations in use of plaintiff's left elbow and left shoulder, and any claims of serious injury based on the 90/180-day category; and it is further

ORDERED that defendant Vazquez's motion and the cross-motion are otherwise denied; and it is further

ORDERED that the motion for summary judgment by defendant Oscar Macall is **GRANTED IN PART TO THE EXTENT THAT** defendant Macall is granted summary judgment dismissing plaintiff's claims of serious injury based on the 90/180-day category; and it is further

ORDERED that defendant Macall's motion is otherwise denied; and it is further

ORDERED that the remainder of the action shall continue.

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9/3/2025
DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**		
SEQ NO. 005		**GRANTED**		**DENIED**	X	**GRANTED IN PART**		**OTHER**
SEQ NO. 006		**GRANTED**		**DENIED**	X	**GRANTED IN PART**		**OTHER**
SEQ NO. 006 CROSS-MOTION		**GRANTED**		**DENIED**	X	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**