At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 4th day of September 2025.

P R E S E N T: **HON. ANNE J. SWERN, J.S.C.**

STANLEY FISHER,

Plaintiff,

-against-

JAMAR J. MCLEOD, GBENYO KWAMI, and DOOSE SERVICES, INC.,

Defendants.

DECISION & ORDER
Index No.: 529397/2024

Calendar No.: 15

Motion Seq.: 1

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Defendant McLeod's Notice of Motion and Supporting Documents (NYSCEF Doc Nos. 45-55)	1, 2
Affirmation in Opposition (NYSCEF Doc No. 59)	3
Reply Affirmation and Exhibit (NYSCEF Doc Nos. 60-62)	4

This is Defendant Jamar J. McLeod's ("McLeod") motion for an order pursuant to CPLR § 3212 (b), granting summary judgment in his favor on liability, and dismissing the complaint and all crossclaims with prejudice.

The accident at issue here occurred on November 5, 2020, around 9:20 p.m. on East Gun Hill Road, Bronx, New York. East Gun Hill Road is comprised of three lanes, *i.e.,* a left-turn only lane, a middle "no turning" lane, and a right-turn only lane. McLeod was in the middle lane proceeding straight. It is McLeod's position that Defendant Gbenyo Kwami ("Kwami"), driving a car owned by Doose Services, Inc., was in the right right-turn only lane when suddenly and without warning, Defendant Kwami moved into the middle lane and struck McLeod's vehicle.

Plaintiff Fisher was a passenger in Defendant Kwami's vehicle. He testified that Defendant Kwami was trying to switch from the right to the middle lane when the crash occurred. McLeod testified that the first time he observed Defendant Kwami's vehicle was when it impacted the passenger side of McLeod's vehicle. Defendant Kwami testified that he did not see McLeod's vehicle at any time before impact and admitted that he did not know that the right

lane was a turn only lane. Nikita Camacho, a plaintiff in a related action, was a passenger in McLeod's vehicle, testified that McLeod was traveling in the middle lane, Defendant Kwami's car was in the right lane a second before the collision, and he heard tires screeching.

Based on the foregoing deposition testimony, McLeod argues that he has satisfied his prima facie entitlement to summary judgment because he was lawfully in his lane of travel; Defendant Kwami violated VTL §§ 1128(a), 1180(a), and 1212; and that negligence rests solely with Defendant Kwami. Further, it is argued that under VTL §§ 1128(a), 1180(a), and 1212, unsafe lane changes, unreasonable speed, and reckless driving constitute negligence per se. Therefore, consistent with extensive appellate precedent, this Court should grant summary judgment to McLeod who was lawfully in his lane and struck by Defendant Kwami's vehicle that made an improper lane change. Moreover, precedent holds that a driver with the right-of-way who has only seconds to react cannot be held comparatively negligent. Therefore, in the absence of contributory negligence on behalf of McLeod, there are no triable material issues of fact and summary judgment dismissing all claims and crossclaims against McLeod is warranted.

In opposition, Defendant Kwami and Doose Services argue that summary judgment must be denied because material issues of fact exist. According to the police report, McLeod claimed that Defendant Kwami merged into his lane; Defendant Kwami claimed that McLeod swerved into him. Defendant Kwami testified that he was driving straight in the right lane and looking ahead when McLeod's vehicle hit him. McLeod admitted in his deposition that he had changed lanes prior to the crash and only described contact between cars. Additionally, it is argued that summary judgment should seldom be granted in automobile negligence cases because material issues of fault and credibility are generally questions for a jury (*Andre v Pomeroy*, 35 NY2d 131 [1974]). Plaintiff's opposition adopts and incorporates Defendant Kwami's opposition arguments and argues that since McLeod and Defendant Kwami present conflicting accounts of the accident, there are clear factual disputes that preclude summary judgment.

In reply, McLeod argues that summary judgment should be granted because the oppositions are procedurally and substantively deficient. The parties opposing the motion did not submit affidavits based on personal knowledge, only attorney affirmations which are legally insufficient to raise a triable issue of fact. McLeod also stresses that the police report relied upon is uncertified and therefore inadmissible, and even if considered, it supports his position by listing distraction and inattention by Defendant Kwami as the contributing factor. He further points out that discovery is complete, evidenced by the filing of the Note of Issue, so the motion is not premature. Finally, he reiterates that Defendant Kwami's improper lane change, distraction, and violation of multiple VTL provisions constitute negligence per se, leaving no basis for liability against McLeod.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to a summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], *citing Alvarez v Prospect Hospital,* 68 NY2d 324). "Once this showing has been made,

the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.,* 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (*see Xiang Fu He v Troon Management, Inc.,* 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc*., 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept 2002]).

To consider party admissions in a police report, the report must be in evidence in admissible form (*Pena v KST Trucking., Inc.,* 206 AD3d 1007, 1008 [2d Dept 2022]). In *Pena,* the Court held that in opposition to the plaintiff's motion for summary judgment on liability, defendants failed to raise an issue of fact by submitting the uncertified police report. Further, since the police report lacked the appropriate certification, "the fact that the report arguably contained a party admission from plaintiff, standing alone, did not make it admissible" (*id.*). Thus, this Court declines to consider the police report in opposition to McLeod's motion (*id.*).

However, McLeod's testimony that he admittedly changed lanes before the impact raises material issues of fact as to whether McLeod contributed to the happening of this accident by failing to observe Defendant Kwami who was also changing lanes immediately before the impact. Under New York law, especially in automobile negligence cases, summary judgment is a "drastic remedy" rarely granted when credibility and fault remain disputed (*Andre v Pomeroy,* 35 NY2d 131). Because the record presents conflicting testimony that requires credibility determinations by a jury, summary judgment must be denied (*Xiang Fu He v Troon Management, Inc.,* 34 NY3d 175; *Cameron v City of Long Beach*, 297 AD2d 774).

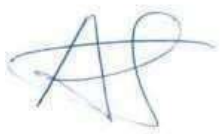
Accordingly, it is hereby

ORDERED that defendant JAMAR J. MCLEOD'S motion for an order pursuant to CPLR § 3212 (b), granting summary judgment dismissing the complaint and all crossclaims with prejudice, is DENIED.

This constitutes the decision and order of the Court.

E N T E R:

For Clerks use only:
MG _____
MD _____
Motion seq. # _____



Hon. Anne J. Swern, J.S.C.
Dated: 9/4/2025