

Date original filed in the
office of the Monroe
County Clerk:

May 31, 2013

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

LAWRENCE KRIEGER

Plaintiff,

vs.

Index No. 13/6121

CITY OF ROCHESTER

and

THE STATE OF NEW YORK

Defendants.

ORDER TO SHOW CAUSE

Upon the Petition of Michael Steinberg, Attorney, the annexed Summons and Complaint and the exhibits attached thereto,

It Is Hereby:

- 1.) **ORDERED**, that the Defendants show cause at a session of this Court held at 3:30 a.m. / p.m. on the 12th day of JUNE, 2013, at the Hall of Justice, 99 Exchange Boulevard, Rochester NY, why an Order should not be granted pursuant to CPLR 7805, and related authority, to stay all proceedings in the matter of the Notice Of Liability issued to the Plaintiff on or about December 27, 2012, until further Order of the Court; *and it is further*

- 2.) **ORDERED**, that personal service of the within Petition and Summons & Complaint on or before the 5th day of JUNE, 2013, on the Department of Law, City of Rochester, and the Rochester office of the Attorney General, State of New York, be deemed good and sufficient service; *and it is further*
- 3.) **ORDERED**, that papers responsive to the stay application only must be served no later than the 11th day of JUNE, 2013; *and it is lastly*
- 4.) **ORDERED**, that in all other respects the ordinary provisions of the CPLR apply to the responsive pleadings and other proceedings in this action.

x 1/5/
Hon. J. Scott Odoris

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

LAWRENCE KRIEGER

Plaintiff,

vs.

Index No. 13/6121

CITY OF ROCHESTER

and

THE STATE OF NEW YORK

Defendants.

PETITION

STATE OF NEW YORK)
) ss:
COUNTY OF MONROE)

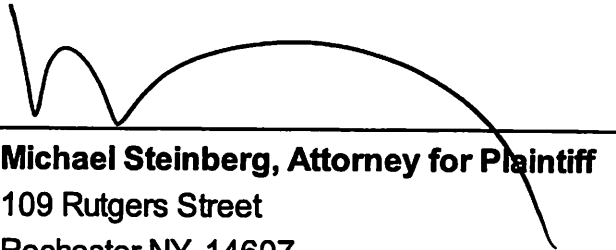
MICHAEL STEINBERG, Attorney, being duly sworn, hereby deposes and states:

1. I am an attorney duly licensed to practice in the State of New York and represent Lawrence Krieger, the Plaintiff in this action.
2. This is a hybrid action seeking an Order of prohibition pursuant to CPLR Article 78 and a declaratory judgment pursuant to CPLR 3001 determining that Vehicle and Traffic Law § 1111-b and the enabling local legislation in the City of Rochester Charter § 6-6 (F) violate both the Constitutions of the United States and New York State.

3. I make this Petition in support of an Order To Show Cause staying the proceedings against the Plaintiff on a Notice Of Violation mailed to the Plaintiff on or about December 27, 2012.
4. This proceeding raises serious issues about the constitutionality of the red light camera demonstration program.
5. For the details of the program and the facts giving rise to the present action the Court is respectfully referred to the Verified Complaint submitted herewith.
6. As that pleading shows, and as the Plaintiff will substantiate as this action progresses, the demonstration program imposes quasi-criminal liability and improperly creates both vicarious liability and a mandatory and all-but-irrefutable presumption.
7. In these and other ways it violates due process of law.
8. Challenges to the constitutionality of such statutes must be made by way of a plenary action.
9. However, the Plaintiff is still facing proceedings before the City of Rochester, Parking Violations Bureau in connection with the Notice Of Violation referenced above.
10. As this is a hybrid action the Plaintiff should be entitled to an interim stay of proceedings in the Parking Violations Bureau, pursuant to CPLR 7805.
11. I have therefore chosen to commence this action with an Order To Show Cause to impose that stay from the outset and during the pendency of this action.
12. In no other way will the procedure for this proceeding be different from that of any ordinary plenary action.
13. Thus, I propose that the Order require prompt service of papers responding to the stay application only, and that otherwise the Defendant(s) be given the ordinary twenty (20) days to serve an Answer.

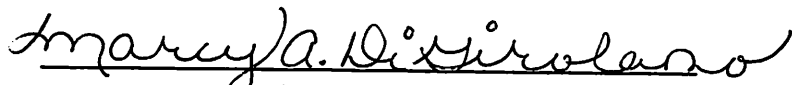
WHEREFORE, I respectfully request that the Court grant the Order To Show Cause and Order a stay of the proceedings against Plaintiff, Lawrence Krieger, in the Parking Violations Bureau of the City of Rochester until further Order of the Court.

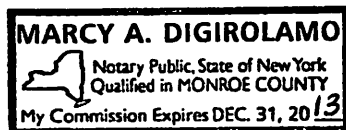
Dated: May 29, 2013
Rochester NY

X 
Michael Steinberg, Attorney for Plaintiff
109 Rutgers Street
Rochester NY 14607

(585) 295-8544

Sworn to before me this 29th day of May, 2013


Notary Public



Date original filed in the
office of the Monroe
County Clerk:

May 31, 2013

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

LAWRENCE KRIEGER

Plaintiff,

**Plaintiff designates
Monroe County as
the place of trial**

vs.

Index No. 13/6121

CITY OF ROCHESTER

and

THE STATE OF NEW YORK

Defendants.

SUMMONS

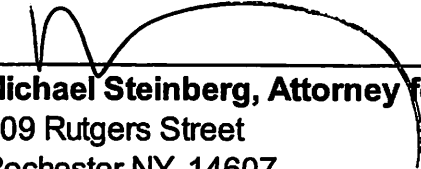
2013 MAY 31 PM 2:44
MONROE COUNTY CLERK

RECEIVED

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on the Plaintiff's attorney within twenty (20) days after the service of this Summons and Complaint, exclusive of the day of service (or within thirty [30] days after the service is complete if this Summons and Complaint is not personally delivered on you within the State of New York), and in case of your failure to answer judgment will be taken against you for the relief demanded in the Complaint.

Dated: May 29, 2013
Rochester NY

X 
Michael Steinberg, Attorney for Plaintiff
109 Rutgers Street
Rochester NY 14607

(585) 295-8544

TO:

**City of Rochester Department of Law
400A City Hall
30 Church Street
Rochester NY 14614**

**Attorney General of the State of New York
Rochester Regional Office
144 Exchange Boulevard
Rochester NY 14614**

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

LAWRENCE KRIEGER

Plaintiff,

Plaintiff designates
Monroe County as
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Defendants.

2013 MAY 31 PM 2:44
MONROE COUNTY CLERK

RECEIVED

VERIFIED COMPLAINT

LAWRENCE KRIEGER, as and for his Verified Complaint in this case, hereby states:

1. This is a hybrid action seeking an Order Of Prohibition pursuant to CPLR Article 78 and a declaratory judgment pursuant to CPLR 3001 determining that NYS Vehicle and Traffic Law § 1111-b and the enabling local legislation in City of Rochester Charter § 6-6 (F) violate both the Constitutions of the United States and New York State.
2. Plaintiff is a resident of the County of Monroe, State of New York and maintains a place of business in the City of Rochester.
3. Defendant City of Rochester is a municipal corporation chartered under the laws of the State of New York.

4. Defendant New York State is made a party to this action in lieu of notice pursuant to CPLR 1012 because the constitutionality of a State statute is being challenged.
5. Vehicle and Traffic Law § 1111-b, as enacted by L 2009 Ch 22, authorizes the City of Rochester to conduct a demonstration program utilizing "traffic-control signal photo violation-monitoring devices" (hereinafter, "red light cameras") at no more than 50 intersections.
6. The City of Rochester established such a program through Local Laws No. 5-2009 and 13-2009, provisions codified in the City of Rochester Charter § 6-6 (F).
7. Upon information and belief, red light cameras were placed at numerous intersections in the City of Rochester in accordance with the terms of these statutes.
8. Upon information and belief, these cameras are programmed to record images of vehicles which appear to be driven through the intersection in violation of a red light signal.
9. Upon information and belief, the cameras record the license plate of the vehicle and this information is reviewed by a technician, who directs the issuance of a "Notice Of Liability" that is sent to the registered owner of the vehicle.
10. Copies of the photographs are made available on a special web site and the notice contains still images from the cameras and a reference to the site where more images are archived for viewing.
11. The violation incurs a fine of \$50.00 and liability is "imposed upon motor vehicle owners" (Rochester Charter § 6-6 [F] [2]).
12. Adjudications of liability under these statutes is determined by the City of Rochester, Parking Violations Bureau, with an option for administrative review.
13. The State statute provides that liability falls on the owner, whether or not the owner was the operator at the time, and the operator, if different from the owner, is presumed to have been operating the vehicle with the owner's consent (Vehicle and Traffic Law § 1111-b [K] [2]).
14. The burden is on the owner to rebut this presumption and establish that the operator was not a permissive user (*loc. cit.*). The owner is also authorized to bring an indemnification action against the operator (Vehicle and Traffic Law § 1111-b [K] [1]).

15. Liability under the statutes is not deemed a conviction as an operator, is not part of the operating record, and cannot be considered for insurance purposes (Vehicle and Traffic Law § 1111-b (F)). No surcharges are imposed.
16. On or about December 27, 2012, a Notice Of Liability was mailed to Plaintiff Lawrence Krieger, charging him with a failure to stop at a red light-right turn on December 22, 2012. A copy of this notice is attached hereto as **Exhibit A**.
17. The Plaintiff pleaded Not Guilty.
18. On January 23, 2013, the Plaintiff was adjudged guilty and fined Fifty Dollars (\$50). A copy of the finding is attached hereto as **Exhibit B**.
19. An appeal from this finding was duly filed and the appeal is currently pending, scheduled for June 13, 2013 at 9:00 a.m.. A copy of the Appeal - Notice of Hearing is attached hereto as **Exhibit C**.

As and for a first cause of action, for a declaratory judgment that the statute and local law creating this demonstration program are unconstitutional.

20. The red light camera demonstration program established by the State statute and local law is unconstitutional as a violation of the Fifth Amendment right to due process.
21. The liability it imposes is quasi-criminal, not civil, and it thus demands enhanced due process standards.
22. By imposing liability on an owner for a moving violation that was committed by a permissive user it also creates vicarious liability in a quasi-criminal context.
23. By creating a mandatory and all-but-irrefutable presumption of permissive use the demonstration program further violates due process by shifting the burden of proof onto the owner.
24. Finally, as a practical matter, both the opportunity to challenge the presumption and the right to an indemnification action are rights in name only.
25. As applied in practice, the demonstration program is unconstitutional under both the Federal and New York State constitutions.
26. As this is a challenge to the legislation on constitutional grounds, it is not necessary for the Plaintiff to exhaust his administrative remedies before bringing this action.

27. The Plaintiff is therefore entitled to a declaratory judgment determining that this demonstration program is unconstitutional.

As and for a second cause of action, for an Order vacating the determination of liability and prohibiting further proceedings.

28. By proceeding against the Plaintiff under unconstitutional provisions the Defendant City of Rochester is proceeding in violation of law.
29. The Plaintiff is therefore entitled to an Order pursuant to CPLR 7805 vacating the determination of liability and prohibiting the Defendant City of Rochester from further proceedings on the Notice Of Liability mailed to the Plaintiff in December 2012.

WHEREFORE, the Plaintiff respectfully requests that the Court declare that NYS Vehicle and Traffic Law § 1111-b and City of Rochester Charter § 6-6 (F) are unconstitutional and unenforceable both on their face and as applied, that it issue an Order vacating the determination of liability against the Plaintiff and prohibiting the City of Rochester from further proceedings against the Plaintiff on the Notice Of Liability issued on or about December 27, 2012, and that it grant such other and further relief as it in its discretion deems just and proper.

Dated: May 30, 2013
Rochester NY

x 
Lawrence Krieger

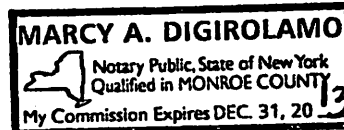
VERIFICATION

Lawrence Krieger, being duly sworn, deposes and says that he is the Plaintiff herein, that he has read the foregoing Verified Complaint and knows the contents thereof, that the same is true to the best of his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

x Lawrence Krieger
Lawrence Krieger

Sworn to before me this 30th day of May, 2013

Marcy A. DiGirolamo
Notary Public



CERTIFICATION

I certify that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the above paper(s), or the contentions therein, are not frivolous as defined in subsection (c) of Section 130.1.1.

x

Michael Steinberg
Michael Steinberg, Attorney
109 Rutgers Street
Rochester NY 14607

(585) 295-8544

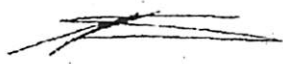
Exhibit A

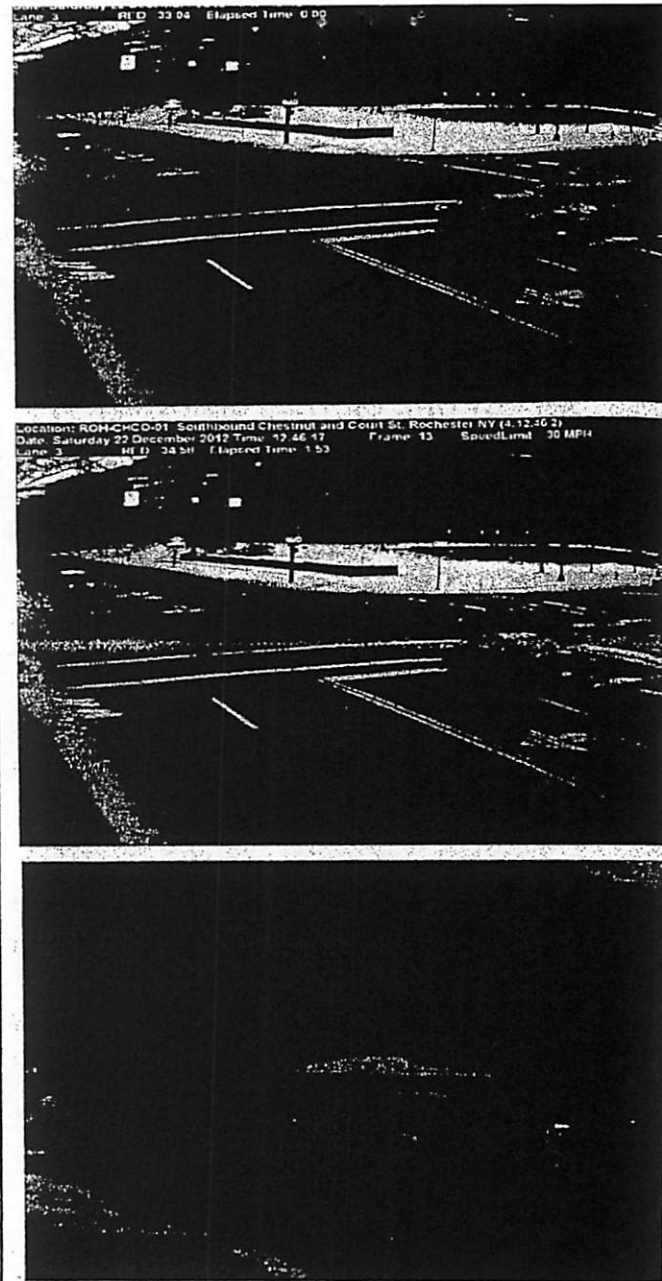


**NOTICE OF LIABILITY
RED LIGHT VIOLATION**

NOTICE NUMBER: R2012119515

As the registered owner of the vehicle appearing in the photos, you are liable to pay a fine of \$50.00 pursuant to Section 1111-b of the NYS Vehicle and Traffic Law and Section 6-6F of the City Charter.

DATE OF VIOLATION December 22, 2012		TIME OF VIOLATION 12:46PM
NAME (FIRST, MIDDLE, LAST) LAWRENCE KRIEGER		
ADDRESS PO BOX 20189		
CITY ROCHESTER	STATE NY	ZIP CODE 14602
VEH. LIC.N AKU5991	STATE NY	VEH. YEAR 2004
VEH. MAKE BUICK	BODY STYLE Utility	
REGISTERED OWNER LAWRENCE KRIEGER		
ADDRESS PO BOX 20189		
CITY ROCHESTER	STATE NY	ZIP CODE 14602
PLEASE NOTE THAT RECORDED IMAGES CONSTITUTE EVIDENCE OF A VIOLATION OF SECTION 1111(D)(2)(A) FAILURE TO STOP AT A RED LIGHT-RIGHT TURN.		
LOCATION OF VIOLATION : Chestnut St. and Court St. (SB)		
False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.		
Dec 27, 2012		12
DATE VIOLATION ISSUED	OFFICIAL SIGNATURE	ID NO.
See Reverse for Instructions. FINE AMOUNT DUE \$50.00		



Tear Here

Tear Here

Tear Here

DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT

Notice Number:	R2012119515
Issue Date:	12/27/2012
Due Date:	01/26/2013
Amount Due:	\$50.00

Please make check or money order payable to City of Rochester and return with your payment in the envelope provided

**LAWRENCE KRIEGER
PO BOX 20189
ROCHESTER NY 14602**

Amount Enclosed: _____

To ensure proper credit, please include your NOTICE NUMBER on the check provided

**RED LIGHT PHOTO ENFORCEMENT
PARKING VIOLATIONS BUREAU
42 SOUTH AVE
ROCHESTER, NY 14604-1794**

026400000000R20121195150050003

1. QUESTIONS CONCERNING VIOLATIONS

- Please read the Notice of Violation completely. If you still have questions concerning this violation please contact the Customer Call Center at 1-800-752-4874

2. VIEW VIOLATION ON THE INTERNET

- The violation has been captured on video and is available for 120 days from the date of violation. The video can be viewed on the Internet at: www.photonotice.com. Enter City Code: **ROCHNY**
If you do not have access to a computer, computers are available to the public at Rochester Public Library. Please refer to your phone book for the library most convenient to you.

3. SELECT ONE OF THE FOLLOWING OPTIONS

A. Pay the \$50.00 Fine

As the registered owner of the vehicle described in this Notice, you are responsible for paying the fine within 30 calendar days

- ◆ Do not send cash.
- ◆ Mail your payment in the enclosed envelope along with the payment coupon found at the bottom of this notice.
- ◆ Cash, Check, Money Order, Debit or Credit Card payments can be made in person at the Parking Bureau, 42 South Ave., Rochester NY 14604. Or pay online at www.cityofrochester.gov/payments
- ◆ Make Check or Money Order payable to **City of Rochester**.
- ◆ A \$20.00 administrative fee will be assessed for rejected or declined payments.

B. Contest the Violation & Request a Hearing

- ◆ To contest the violation, contact the Parking Bureau at 585-428-7482 or 585-428-7484 to request a hearing.

4. DEFAULT

- You **MUST** respond to the Notice of Liability within 30 calendar days. You may pay the Fine or Request a Hearing within that time frame. If you do not respond by the due date, an additional penalty of \$25.00 will be assessed.

- | |
|--|
| <ul style="list-style-type: none">• For questions regarding this Notice, contact the Customer Call Center at 1-800-752-4874 between 8:00am and 7:00pm (EST). |
|--|

Exhibit B

12-22-12 1246 pm
Chestnut + Court

CITY OF ROCHESTER, NEW YORK

(R)T

ADMINISTRATIVE ADJUDICATION FINDINGS

CASE # _____ LIC# AK4 5991 REG _____ CLERK ID 501

HEARING: DATE 1 / 23 / 13 TIME: 2:22 AM/PM (P) PART (I) / II

TOTALS: PENALTIES _____ ADJUSTMENTS _____

TICKET NUMBER	CURRENT BALANCE	PLEA	EXAMINER DETERMINATION				NEW BALANCE	AN PA
			FINDING	PENALTY AMT	REASON	ADJUST AMT		
R2012119515	50	NG	Guilty	50			50	
TOTAL:							50	

NAME: Krieger, Lawrence
ADDRESS: PO Box 20189
Rochester, NY 14602

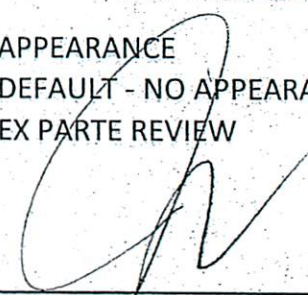
APPEARANCE
 DEFAULT - NO APPEARANCE _____
 EX PARTE REVIEW _____

 HEARING EXAMINER ID 2

Exhibit C



City of Rochester, NY Notice of Hearing

42 South Avenue
Rochester, NY 14604-1794

Bureau of Parking Violations
Municipal Code Violations
Phone : (585) 428-7484
Fax: (585) 428-6073

APPEAL

THE RECORDS OF THIS OFFICE SHOW YOU HAVE REQUESTED A HEARING BEFORE A HEARING EXAMINER PANEL. A HEARING DATE HAS BEEN SCHEDULED FOR YOU AS INDICATED BELOW

Lawrence Krieger
P O Box 20189
Rochester, NY 14602

SCHEDULED HEARING DATE: 06/13/13 @ 9:00 AM

LICENSE NUMBER	STATE	VEHICLE TYPE	VEHICLE MAKE	DATE OF VIOLATION	PLACE OF VIOLATION	TICKET NUMBER	FINE AMOUNT	BALANCE DUE
AKU5991	NY	Pass		12/22/12	Chestnut St & Court St	R2012119515		50
							TOTAL	

* PLEASE NOTE: Attendance is optional

The morning hearing session starts at 9:00 a.m., but you will be called in first-come, first served order. Sign-up is between 8:30 a.m. and 10:00 a.m. You will not be heard if you arrive after 10:00 a.m.

The afternoon hearing session starts at 1:00 p.m., but you will be called in first-come, first served order. Sign-up is between 12:30 p.m. and 2:00 p.m. You will not be heard if you arrive after 2:00 p.m.

You must bring a valid picture ID.

Be prepared to wait.