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VIA CERTIFIED MAIL: 7009 1680 0001 8273 5179

August 13, 2014

Neil W. Schoen
First Deputy Commissioner for Legal Affairs
New York Department of Motor Vehicles
6 Empire State Plaza
Albany, NY 12228

Re: Unlawful practice of NYS DMV with respect to cyclist moving violations

Dear Mr. Schoen:

This concerns the Department's unlawful practice of penalizing New York City cyclists with license points and motorist-only surcharges for their moving violations.

As you are no doubt aware, the \$88 in "mandatory surcharges" to be paid in connection with traffic violations pursuant to Sections 1809 and 1809-e of the Vehicle and Traffic Law apply only to motorists, and do not apply to "violations by pedestrians or bicyclists."

Similarly, the DMV point system for operator licenses specifically provides that there shall be no point value assigned to "any pedestrian or bicycle violation." 15 CRR-NY 131.3(b)(7)(v).

The Department has nonetheless charges New York City cyclists the \$88 surcharge, and applies points to their licenses. Indeed, these unlawful practices appear to be built into the DMV online payment facility, which does not give a customer paying the option to identify themselves as a bicycle operator. The online payment system therefore automatically applies the surcharge and the points to cyclists, assuming, incorrectly, that they are motorists.

The DMV's unlawful system has resulted in numerous cyclists paying \$88 more than the required penalty, and suffering consequential damages in the form of higher insurance premiums due to the improper application of license points. For example:

- By letter dated July 30, 2014 to this firm’s client, Andreas Cohrsen, the Department demanded payment of the \$88 surcharge in connection with ticket AAX4761470 (attached), which on its face clearly indicates that it was issued for a bicycling violation. A review of Mr. Cohrsen’s license indicates that three points were applied in connection with ticket AAX4761470.
- This firm’s client Robert Rakowitz received traffic ticket AAX5164456 (attached) for failure to yield to a pedestrian on July 11, 2014. The ticket clearly indicates Mr. Rakowitz was operating a bicycle at the time. He timely paid the fine of \$138 dollars, unaware that he was not required to pay the \$88 surcharge included in this amount. He has not received a refund of his \$88 overpayment, and three points have been applied to his operator’s license as a result of the violation.

These are but two of many instances that have been brought to our attention in which bicyclists have been overcharged, and subject to operators’ license points, in violation of the express statutes and regulations that govern such matters.

Please take all steps immediately to rectify the Department’s handling of the two tickets listed above so that all points are expunged and no surcharge is applied. Please also contact me at your earliest convenience to discuss steps to promptly ending the Department’s systemic violations of 15 CRR-NY 131.3(b)(7)(v) and VTL 1809 and 1809-e with respect to of cyclists’ violations, and refunding to cyclists the improperly-collected and retained \$88 surcharge.

If we do not hear from the Department by August 22, 2014, this firm will pursue legal action to end and redress the Department’s unlawful policy.

Very truly yours,



Steve Vaccaro

attachments

cc: Ida Traschen, Director Legal Affairs, Article No.: 7009 1680 0001 8273 5186

NUMBER & STREET ADDRESS 330 Wythe Ave 40			APT. NO.	PHOTO LIC SHOWN
CITY Brooklyn NY 11211	STATE	ZIP CODE	OWNER IS OPER. <input type="radio"/>	LIC CLASS/ID TYPE
I. D. NUMBER 365149877	SEX	DATE OF BIRTH (MMDDYY) 07/19/95		
STATE	LICENSE EXPIRES (MMDDYY) 07/05/20	VEH. TYPE	VEH. YR. 2006	VEH. MAKE Ford
PLATE # 1304/11	REG. STATE	REGISTRATION EXPIRES (MMDDYY)		

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

TIME (24hour HHMM) 0745	DATE OF OFFENSE (MMDDYY) 0713/04	VTL	TRAFF RULES	ADMIN CODE	PRHPL	ECL
IN VIOLATION OF: (SECTION AND SUBDIVISION) 11/101		NAV LAW	TAX LAW	TRANS LAW	NYCRR TITLE	
DESCRIPTION / NARRATIVE Disobey steady red light.		TRIN	MISD	OTHER LAW		
PLACE OF OCCURRENCE 410 Delany St		MPH	IN MPH ZONE		CDL VEH	BUG
		US DOT#		HAZ MAT		
		HWY #	LOCATION CODE			
		HWY TYPE	NCIC			

IN THE City Town Village

OF: Queens COUNTY OF: NY PRECINCT: 02

COMPLAINANT SIGN AND PRINT NAME/RANK Affirmed under penalty of perjury.
Ed Kubanyan

RADAR OPERATOR NAME (Print)
Ed Kubanyan

DATE AFFIRMED 0713/04	ARREST TYPE	OFFICER ID # 145820202	OFFICER'S COMMAND
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- TRAFFIC VIOLATIONS BUREAU HEARING OFFICES (718) 488-5710
- TRAFF. VIOL. BUREAU IN:
- Bronx - 696 East Fordham Road *
 - Brooklyn, S. - 2875 W. 8th Street *
 - Brooklyn, N. - Atlantic Ctr Mall (2nd Floor), 625 Atlantic Ave. *
 - Buffalo - 295 Main Street
 - Manhattan, S. - 2-26 Washington St. (5th Floor) *
 - Manhattan, N. - 159 East 125th Street (3rd Floor) *
 - Queens, N. - 30-56 Whitestone Expwy *
 - Queens, S. - 168-35 Rockaway Blvd. *
 - Rochester - 16 E. Main Street (5th Floor)
 - Staten Island - 1775 South Avenue *
- Business Hours: Monday - Friday 8:30AM - 4:00PM * Also Thursday 4:00PM - 6:00PM

YOU MUST ANSWER THIS TICKET WITHIN 15 DAYS OF THE DATE OF OFFENSE. **TO ANSWER ON-LINE AT WWW.DMV.NY.GOV/EPLEAD.HTM** OR BY MAIL, FOLLOW THE INSTRUCTIONS ON THE OTHER SIDE.

FAILURE TO ANSWER WILL RESULT IN THE SUSPENSION OF YOUR LICENSE AND A DEFAULT JUDGMENT AGAINST YOU.

MOTORIST COPY-TRAFFIC VIOLATIONS BUREAU



AAX4761470

AAX5164456

New York State - Department of Motor Vehicles
TRAFFIC TICKET

POLICE AGENCY

LAST NAME: RAKOLITZ FIRST NAME: ROBERT M.I.:

LOCAL POLICE CODE

NUMBER & STREET ADDRESS: 255 W 98th St - 4F

APT. NO. PHOTO LIC SHOWN

CITY: REGINA STATE: NY ZIP CODE: 10015

OWNER IS OPER: LIC CLASS/TYPE: D

I. D. NUMBER: 150384837 SEX: M DATE OF BIRTH (MMDDYY): 090477

STATE: NY LICENSE EXPIRES (MMDDYY): 090415 VEH. TYPE: B VEH. YR.: 1 VEH. MAKE: BMW VEH. COLOR: Black

PLATE #: B1C7C19 REG. STATE: NY REGISTRATION EXPIRES (MMDDYY):

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

TIME (24hour HHMM): 0900 DATE OF OFFENSE (MMDDYY): 07/1/14

IN VIOLATION OF: (SECTION AND SUBDIVISION) 403-1 TRAFFIC RULES: NAV. LAW: TAX. LAW: TRANS. LAW: NYCRR TITLE: OTHER LAW:

DESCRIPTION / NARRATIVE: FAIL TO YIELD TO Pedestrian

PLACE OF OCCURRENCE: S/B W 100th St + 72nd St

CITY: Town: Village: COUNTY OF: AS PRECINCT: 97

COMPLAINANT SIGN AND PRINT NAME/RANK: [Signature] Affirmed under penalty of perjury.

RADAR OPERATOR NAME (Print): [Signature]

DATE AFFIRMED: 07/1/14 ARREST TYPE: 905041 OFFICER ID #: 0487

TRAFFIC VIOLATIONS BUREAU HEARING OFFICES (718) 488-5710
TRAFF. VIOL. BUREAU IN:
Bronx - 696 East Fordham Road *
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AAX5164456

UT-60 (8/13)