

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY  
STATE OF \_\_\_\_\_

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| <b>Petitioner/Plaintiff,</b> | ) |                  |
|                              | ) |                  |
| <b>Vs.</b>                   | ) | <b>NO.</b> _____ |
|                              | ) |                  |
| _____                        | ) |                  |
| <b>Respondent/Defendant</b>  | ) |                  |
|                              | ) |                  |

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**BRIEF IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY**

COMES NOW, Defendant, \_\_\_\_\_, by and through his attorneys of record herein, and files this his Brief in Support of Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability, and would show unto the Court the following:

I.

This litigation arises out of claims for damages due to personal injuries the \_\_\_\_\_ allegedly sustained in an automobile accident which occurred on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. On this date, the Plaintiffs' collided with a truck being driven by \_\_\_\_\_, an employee of \_\_\_\_\_.

The Plaintiffs' claim they had a green light and thus the right of way at the time the collision occurred. \_\_\_\_\_ has denied this allegation and has further denied any negligence on the part of \_\_\_\_\_. The question of who had the right of way and what color the light was at the time of the collision is clearly the subject of a legitimate factual

dispute, which requires resolution by a jury. \_\_\_\_\_ further disputes the extent and nature of the Plaintiffs' injuries and damages as a result of this automobile accident. This, too, requires resolution by a jury.

## II.

THE DOCTRINE OF COLLATERAL ESTOPPEL HAS NO APPLICATION IN THIS CASE.

The Plaintiffs' are requesting this Court to preclude \_\_\_\_\_ from litigating the issue of whether \_\_\_\_\_ caused the subject accident based upon the doctrine of collateral estoppel. \_\_\_\_\_ submits, however, that the doctrine of collateral estoppel has no application whatsoever to the case at bar.

Collateral estoppel has been defined as a doctrine which operates, following a final judgment, to establish conclusively a matter of fact or law for the purposes of a later lawsuit on a different cause of action between the parties to the original action. \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_). In \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_), the \_\_\_\_\_ Supreme Court held that "the first basic requirement essential for the operation of collateral estoppel is that the parties to the original action must be the same parties to the subsequent action." This rule, known as the "mutuality of parties rule" is still strictly applied in the State of \_\_\_\_\_. See \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_).

In \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_), the Court held that the State of \_\_\_\_\_ courts have left no doubt that "strict mutuality is required as a prerequisite to a claim of collateral estoppel." The Court further held that it is necessary that the parties to the subsequent action must be the same as those in the prior action. Id. at \_\_\_\_\_, quoting \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_)

Turning to the case at bar, the Plaintiffs' claim that \_\_\_\_\_'s conviction of a misdemeanor traffic offense should be binding upon \_\_\_\_\_, a non-party to the earlier misdemeanor traffic proceeding. Clearly, however, this argument has no merit since under the State of \_\_\_\_\_'s "mutuality of parties rule," the Municipal Court judgment binds only \_\_\_\_\_, not \_\_\_\_\_.

The Plaintiffs' mention the fact that \_\_\_\_\_ was aware at the time of the Municipal Court proceeding that a claim was being made by the \_\_\_\_\_ for personal injuries sustained in the accident. This fact changes nothing. While \_\_\_\_\_ had received notice of a claim, no civil lawsuit had yet been filed against him as of the date \_\_\_\_\_ was convicted. This argument simply has no merit.

The Plaintiffs' cite \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_), as the controlling authority on the application of collateral estoppel. However, \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_), is clearly distinguishable on its own facts from the case at bar. In \_\_\_\_\_, the defendant had been convicted of rape in a prior state criminal proceeding. Thereafter, the victim filed a civil suit against the same defendant for assault and battery. The Court held that the doctrine of collateral estoppel barred the defendant from relitigating the issue of whether he had raped the plaintiff. *Id.* at \_\_\_\_\_. The Court further held that where a question of fact essential to a judgment is actually litigated and determined by a valid and final judgment, that determination is conclusive ... against the party against whom it was made in a subsequent suit on a different cause of action. *Id.* at \_\_\_\_\_.

In \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_), *supra*, the defendant against whom the doctrine of collateral estoppel was invoked in the pending civil case, was also the same defendant in the prior criminal case. In the case at bar, however, \_\_\_\_\_ was not a defendant in the prior misdemeanor case against

\_\_\_\_\_, nor for that matter, is \_\_\_\_\_ a defendant in the pending civil case against \_\_\_\_\_. The required element of "mutuality of parties" is simply not present in this case. Therefore, the doctrine of collateral estoppel does not apply.

The "mutuality of parties rule" is designed to protect parties which have not been given a full and fair opportunity to litigate an issue. \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_\_.). In the case at bar, \_\_\_\_\_ has not yet had his day in Court on the liability issue. Thus, \_\_\_\_\_ has not yet had a full and fair opportunity to litigate the liability issue. Clearly, \_\_\_\_\_ had no right to intervene in the earlier criminal proceeding against \_\_\_\_\_. Furthermore, the incentives or interests \_\_\_\_\_ may have had in defending the issue of liability in the misdemeanor traffic case are not the same interests or incentives that \_\_\_\_\_ would have in defending the liability issue in the pending civil case. For example, the incentive for \_\_\_\_\_ to contest the traffic citation would be to avoid conviction of a misdemeanor traffic offense which would go on his record. \_\_\_\_\_ did not have this same interest or incentive since he was never charged with a misdemeanor traffic offense in connection with the Plaintiffs' accident. Likewise, \_\_\_\_\_ would have had an interest or incentive in contesting the traffic citation to avoid having to pay a fine. Again, \_\_\_\_\_ had no such incentive since he was not the one who would have to pay the fine. \_\_\_\_\_'s interest or incentive in contesting the issue of liability in the pending civil suit is to avoid civil liability in the form of money damages against him and his company. \_\_\_\_\_, on the other hand, had no such similar interest or incentive during the prior Municipal Court case since \_\_\_\_\_ had never been named as a party defendant in a civil lawsuit. Again, \_\_\_\_\_ has not yet had his "full and fair opportunity" to litigate the liability issue, and this Court should not foreclose him from his right to now do so.

THE PLAINTIFFS' ARE NOT ENTITLED TO PARTIAL SUMMARY JUDGMENT ON THE  
ISSUE OF LIABILITY BASED ON THE DOCTRINE OF NEGLIGENCE PER SE.

The Plaintiffs' argue that \_\_\_\_\_ is guilty of negligence per se and, therefore, the Plaintiffs' are entitled to partial summary judgment on the issue of liability. \_\_\_\_\_ submits that the Plaintiffs' argument has no merit. Assuming, for the purposes of argument only, that \_\_\_\_\_ was guilty of negligence per se in connection with this accident, this alone does not establish that he or \_\_\_\_\_, for that matter, is liable for the Plaintiffs' injuries. In \_\_\_\_\_ v. \_\_\_\_\_, \_\_\_\_\_ (\_\_\_\_\_. \_\_\_\_), the \_\_\_\_\_ Supreme Court held that violation of a statute, when the resulting injury is of the type the statute is intended to prevent, and when the Plaintiff is in the category of persons the statute is designed to protect, establishes negligence. *Id.* at \_\_\_\_\_. However, once negligence has been established, it still remains to be shown that the negligence was the proximate cause of the injury and resulting damages. Thus, negligence alone does not establish liability. *Id.* Negligence which is the proximate cause of an injury and damages must be shown in order to establish liability.

Turning to the case at bar, even assuming \_\_\_\_\_ was guilty of negligence, this alone does not establish \_\_\_\_\_ 's liability. Applying the law set forth above, the Plaintiffs' would still be required to establish or prove negligence which is the proximate cause of their injuries and damages in order to establish liability against \_\_\_\_\_. \_\_\_\_\_ submits that the questions of negligence, proximate cause, the extent of the Plaintiffs' injuries and damages, and \_\_\_\_\_ 's liability, if any, are all disputed questions of fact which must be resolved by a jury. Therefore, the Plaintiffs' are not entitled to partial summary judgment on the issue of liability.

III.

For the reasons stated herein and those to be set forth more fully at the hearing of this matter, Defendant, \_\_\_\_\_ respectfully requests the Court to enter an order denying the Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability.

Respectfully submitted, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
ATTORNEYS FOR DEFENDANT