

Case No. H029406

Santa Cruz County Superior Court  
Cases Nos. 4SM21812,  
4SM028271, 4SM044470,  
4WM023363, 4WM034801

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

CALIFORNIA HIGHWAY PATROL,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF SANTA CRUZ,

Respondent

RICHARD J. QUIGLEY,

Real Party in Interest.

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SUPERIOR COURT OF SANTA CRUZ COUNTY  
HON. MICHAEL BARTON, JUDGE

**RETURN IN OPPOSITION TO PETITION FOR WRIT OF MANDATE,  
PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM  
OF POINTS AND AUTHORITIES**

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---

**RETURN IN OPPOSITION TO PETITION FOR WRIT OF  
MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF**

Real party in interest Richard Quigley submits this return to the order to show cause issued January 11, 2007. The Court should deny the petition.

**RETURN**

**Response to Petitioner's Allegations**

1. Real party admits the allegations of paragraph 1 of the petition.

2. Real party denies the allegations of paragraph 2 of the petition in these respects:

- Real party denies that he has ever been cited for violation of Vehicle Code section “72803(b),” an apparent typographical error. Real party admits that he has been cited for violating section 27803, subdivision (b) (“the Motorcycle Helmet Law”).
- Real party denies that he has violated section 27803 and denies that he has submitted evidence of Motorcycle Helmet Law “violations;” the evidence real party submitted showed citations for claimed violations as the Motorcycle Helmet Law is enforced by petitioner.

Real party admits the remaining allegations of paragraph 2.

3. Real party admits the allegations of paragraph 3 of the petition.

4. Real party admits that on May 20, 2005, respondent ordered petitioner to “sign off” on certain Motorcycle Helmet Law citations at such time as real party appeared at petitioner’s Aptos office during normal business hours “with a helmet bearing a certification of compliance (the symbol ‘DOT’).” Except as specifically admitted, real party denies the allegations of paragraph 4 of the petition.

5. Real party admits the allegations of paragraph 5 of the petition.

6. Real party admits the allegations of paragraph 6 of the petition.

7. Real party denies the allegations of paragraph 7 of the petition.
8. Real party denies the allegations of paragraph 8 of the petition.
9. Real party denies the allegations of paragraph 9 of the petition.
10. Real party denies the allegations of paragraph 10 of the petition.
11. Real party admits that this petition raises an issue of widespread public importance, specifically, whether citations issued for violation of Vehicle Code section 27803, subdivision (b), are correctable under Vehicle Code sections 40303.5 and 40610. Except as specifically admitted, real party denies, general and specifically, each and every allegation of paragraph 11 of the petition.

#### **Additional Relevant Facts**

12. After respondent issued the order challenged in the petition, it dismissed the citations against petitioner on the ground that, as applied by petitioner, Vehicle Code section 27803 does not provide reasonable notice to motorcycle riders of what conduct is prohibited and does not give law enforcement officers a reasonable basis for determining whether a rider has violated the law. Petitioner has not appealed that order, so the issue of the constitutionality of section 27803, as applied by petitioner and other law enforcement agencies, has not yet been decided by an appellate court.

13. Notwithstanding respondent's order in this case, petitioner continues to stop and cite motorcyclists for violation of Vehicle Code section 27803.

14. Real party and others have filed a civil action, Santa Cruz Superior Court case number CV 155682, seeking a declaration that Vehicle Code section 27803, subdivision (b), is unconstitutional as applied by petitioner, and an injunction against enforcement of that statute. Petitioner has demurred to the complaint; the demurrer is set for hearing on February 13, 2007.

15. Notwithstanding real party's civil action, petitioner and other law enforcement agencies threaten to continue citing real party and others for violation of the Motorcycle Helmet Law and threaten to continue refusing to sign off on helmet citations. Accordingly, this petition presents a situation that is capable of repetition but which may evade review if the Court declines to decide whether citations for violation of Vehicle Code section 27803 are correctable under sections 40303.5 and 40610 because the trial court eventually dismissed the underlying citations.

16. Because real party Quigley is ill with Stage 4 lymphoma, and there is a reasonable medical probability that he will not survive for six months, real party respectfully requests that the Court grant priority in hearing and deciding this matter.



### **Prayer for Relief**

Based upon these admissions, denials, and further allegations, real party respectfully prays that the Court:

1. Deny a writ of mandate.
2. Issue an opinion declaring that citations for violations of Vehicle Code section 27803 are correctable under Vehicle Code sections 40303.5 and 40610.
3. Award real party his costs and attorney fees incurred in resisting the petition.

Dated: February 12, 2007

Respectfully submitted,

LASCHER & LASCHER,  
A Professional Corporation  
WENDY COLE LASCHER

By \_\_\_\_\_  
Attorneys for Real Party in Interest  
Richard J. Quigley

## VERIFICATION

**WENDY COLE LASCHER** says:

I am the attorney for real party in interest Richard Quigley. I make this verification because Mr. Quigley's home is in a county different than where I maintain my office.

I have read the foregoing return and know the contents thereof to be true.

I declare under penalty of perjury, under the law of California, that the foregoing is true and correct and was executed at Ventura, California, on February 12, 2007.

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WENDY COLE LASCHER  
Attorney for Real Party in Interest  
Richard Quigley

**MEMORANDUM OF POINTS AND AUTHORITIES**

Real party does not believe that he or other motorcyclists should be cited for violation of Vehicle Code section 27803 at all, because there are no objective standards for motorcyclists or law enforcement officers to determine whether a given helmet meets the standards and specifications adopted by the Highway Patrol. Petitioner has made clear its intent to continue issuing Motorcycle Helmet Law citations nevertheless. So long as petitioner follows that course of conduct, it should be required to honor Vehicle Code section 40303.5, which allows Helmet Law “violations” to be corrected by showing proof of compliance to law enforcement. In that regard, real party agrees with petitioner that this case is about “enforceability of the helmet law across the state” [Petition, p. 8].

**I.**

**HELMET LAW VIOLATIONS ARE EQUIPMENT VIOLATIONS**

**SUBJECT TO VEHICLE CODE SECTION 40303.5.**

Vehicle Code section 40303.5 provides:

Whenever any person is arrested for any of the following offenses, the arresting officer shall permit the arrested person to execute a notice containing a promise to correct the violation in accordance with the provisions of Section 40610 unless the arresting officer finds that any of the disqualifying conditions specified in subdivision (b) of Section 40610 exist:

\* \* \*

(d) *Any infraction involving equipment set forth in Division 12* (commencing with Section 24000) . . .

Emphasis added.<sup>1</sup>

Vehicle Code section 27803, the statute requiring motorcycle safety helmets, is part of Division 12. “Equipment” means “the set of articles or physical resources serving to equip a person or thing” (The Merriam-Webster Collegiate Dictionary (10th ed.), p. 392). There is no Vehicle Code provision creating a more specialized definition that could apply to motorcycle helmets. Therefore, when section 40303.5 speaks of an “infraction involving equipment,” it necessarily includes infractions involving helmets.

When the language of a statute is clear, as is true of section 40303.5, there is no room to apply a different interpretation based on supposed legislative intent. In construing statutes, a court’s duty is “simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . .” (Code Civ. Proc., §1858). The actual language of the statute must control.

[I]t is the language of the statute itself that has successfully braved the legislative gauntlet. It is that language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed “into law” by the Governor.

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<sup>1</sup>Subdivisions (a)-(c) deal with vehicle registration, driver’s license, and bicycle equipment violations. The rest of subdivision (d) deals with equipment for: tow trucks (§29000); trucks, buses, semitrailers, and manufactured homes (§34500), agricultural vehicles (§36000), off-highway vehicles (§38000), and bicycles (§39000).

*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233,  
1238.

There is no basis for excluding helmet law violations from the operation of Vehicle Code section 40303.5.

## II.

### **VEHICLE CODE SECTION 40610 DOES NOT LIMIT THE CITATIONS THAT MUST BE SIGNED OFF.**

Petitioner argues that because Vehicle Code section 40610 refers to violations of registration, license, or mechanical requirements of the Vehicle Code, its procedure for correction of certain Vehicle Code violations does not apply [Petition, p. 10]. Section 40610 provides:

(a) (1) Except as provided in paragraph (2) [addressing registration], if, after an arrest, accident investigation, or other law enforcement action, it appears that a violation has occurred involving a registration, license, all-terrain vehicle safety certificate, or mechanical requirement of this code, and none of the disqualifying conditions set forth in subdivision (b) exist and the investigating officer decides to take enforcement action, the officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency. . . .

However, petitioner glosses over the fact that Vehicle Code section 40303.5 explicitly makes section 40610 applicable. Indeed, when the Legislature enacted section 40610, its author offered as one argument in favor of the correctability procedure that "[t]he circumstances under which a warning can be issued in lieu of a citation will be clearly defined (Section

40303.5)” (Report of Senate Judiciary Committed on SB 1475 (1978)).<sup>2</sup> In other words, the author’s explicit reference to section 40303.5 confirms that the Legislature intended infractions encompassed within that statute to be correctable.

Petitioner’s contrary argument violates the rule of interpretation that requires a court, “if possible, to give effect and significance to every word and phrase of a statute” (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476). There would be no reason for section 40303.5 to define the equipment violations that are correctable to include “[a]ny infraction involving equipment set forth in Division 12 (commencing with Section 24000) . . .” if some equipment set forth in that Division of the Vehicle Code were in fact not correctable.

When two statutes touch on the same subject, the Court “must construe them in reference to each other, so as to harmonize the two in such a way that no part of either becomes surplusage” (*Garcia v. McCutchen, supra*, 16 Cal.4th at 476, internal quotation marks omitted). Petitioner’s reading of section 40610 would ignore section 40303.5 instead of harmonizing it.

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<sup>2</sup>Real party will request judicial notice of the committee report, and offer a more complete citation of the report, within 14 days of filing this return.

### III.

#### NO “DISQUALIFYING CONDITIONS” PRECLUDE CORRECTING REAL PARTY’S HELMET LAW VIOLATIONS.

The petition argues that even if Vehicle Code sections 40303.5 and 40610 would otherwise require it to sign off on real party’s helmet tickets, the statute does not apply because real party falls within its disqualifying conditions [Pet., pp. 4, 10-11]. The petition does not establish any such finding by any officer at the time real party was cited. Nor was evidence of disqualifying conditions presented at the hearing at which the trial court found the violations were correctable [Pet., Ex. 3]. Therefore, there is no factual basis on which this Court could find that real party is disqualified from relying on section 40610.

Attempting to overcome this hole in its position, petitioner asserts that real party has admitted disqualification in a website that lists citations previously issued to real party, and real party’s reaction to them [CHP’s Reply to Preliminary Opposition, pp. 2-3, and see Petition, p. 11]. The most that hearsay contention shows is that real party has consistently attempted to demonstrate that the Motorcycle Helmet Law, as interpreted by petitioner, is unenforceable. Being cited for a helmet law violation does not establish neglect, because there is no objective standard by which any motorcyclist or law enforcement officer can ascertain which helmets comply with the standards and specifications for motorcycle helmets that petitioner has adopted. One cannot be guilty of persistent neglect of a violation no one can identify.

Vehicle Code section 27802 allows the Highway Patrol to adopt specifications and standards for safety helmets and requires that helmets be conspicuously labeled in accordance with Federal Motor Vehicle Safety Standard No. 218. The Highway Patrol has adopted that federal standard as the California standard for motorcycle helmets (13 Cal. Code Regs., §982). Standard No. 218 consists of ten single-spaced pages of engineering specifications (*see, Easyriders Freedom F.I.G.H.T. v. Hannigan* (9th Cir. 1996) 92 F.3d 1486, 1490).<sup>3</sup>

Because Standard No. 218 is so difficult for a lay person to apply, *Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1622 held that the law requires “only that the consumer wear a helmet bearing a certification of compliance.” A subsequent decision held that a motorcyclist violates the helmet law if he or she has actual knowledge of noncompliance (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1123). However, some of real party’s helmet law citations were for wearing helmets that had

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<sup>3</sup>The regulation is judicially noticeable (Evid. Code, §§ 452, subd. (b), 459). A sample of its language:

Each helmet shall have a protective surface of continuous contour at all points on or above the test line described in S6.2.3. The helmet shall provide peripheral vision clearance of at least 105 [degrees] to each side of the mid-sagittal plane, when the helmet is adjusted as specified in S6.3. The vertex of these angles, shown in Figure 3, shall be at the point on the anterior surface of the reference headform at the intersection of the mid-sagittal and basic planes. The brow opening of the helmet shall be at least 1 inch (2.5 cm) above all points in the basic plane that are within the angles of peripheral vision.x



certificates of compliance and that real party did not know were noncompliant.<sup>4</sup> A party cannot be guilty of persistent neglect of the law when he does not know he is violating it.

The second disqualifying factor is that an equipment violation presents an immediate safety hazard. But motorcycle helmets do not cause accidents. If they pose a safety hazard at all, it is not immediate; the danger is only if an accident occurs. And if a helmet complies with Standard No. 218 (whether or not it has a DOT symbol indicating that the manufacturer determined it was in compliance at the time it was made), there is presumably no safety hazard.

The final disqualifying condition is that the motorcyclist “does not agree to, or cannot, promptly correct the violation.” Real party cannot correct a violation unless someone can tell him whether he has in fact violated Standard No. 218. It has already been judicially determined, in this case as well as in *Buhl, supra*, that police officers cannot do that.

Therefore, there is no legal or factual basis on which one could conclude that real party was disqualified from correcting his helmet citations under Vehicle Code section 40610.

#### **IV.**

#### **THE COURT SHOULD AWARD ATTORNEYS’ FEES**

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<sup>4</sup>The Court requested only preliminary opposition, not a return to the writ. Should the Court require return, real party will supply evidence of inconsistent treatment of various helmets by various law enforcement agencies.

## TO REAL PARTY.

Code of Civil Procedure section 1021.5 allows a court to award attorneys' fees to a successful party against an opposing party, including a government entity, "in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery."

Defendants as well as plaintiffs may recover private attorney general awards (*County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 869). A decision establishing that motorcycle helmet tickets are correctable under Vehicle Code section 40303.5 would confer a substantial benefit on everyone who rides a motorcycle and is cited for wearing a supposedly improper helmet. The financial burden of establishing this principle should not fall on one motorcyclist alone.

## CONCLUSION

The Court should deny the writ petition, and award real party Quigley his costs and attorney fees.

Respectfully submitted,

LASCHER & LASCHER,  
A Professional Corporation  
WENDY COLE LASCHER

By \_\_\_\_\_  
Attorneys for Real Party in Interest  
Richard J. Quigley

**CERTIFICATE OF WORD COUNT**

Rules 8.204 and 8.490, California Rules of Court

The text of this return consists of 2,726 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Appellate Counsel

**PROOF OF SERVICE**

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AG

DA

Trial court

copies for Osborne

Quigley

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