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4 COUNTY OF SANTA CRUZ
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8 ATTORNEYS FOR THE PEOPLE

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SANTA CRUZ

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|----|--|---|---------------|
| 11 | THE PEOPLE OF THE STATE OF CALIFORNIA, |) | NO. 3WM018538 |
| 12 | |) | 4SM011246 |
| 13 | Plaintiff, |) | 4SM021812 |
| 14 | |) | 4SM023894 |
| 15 | |) | 4SM028271 |
| 16 | |) | 4WM034801 |
| 17 | -vs- |) | 4SM044470 |
| 18 | |) | 4WM021512 |
| 19 | RICHARD QUIGLEY, |) | 4WM023363 |
| 20 | |) | |
| 21 | Defendant(s). |) | |

22 **STATEMENT OF THE CASE**

23 The People presented reliable evidence that on nine separate occasions the
24 Defendant, Richard Quigley was observed riding his motorcycle within the county of Santa
25 Cruz without a legal "safety helmet" as required by California Vehicle Code Section
26 27803(b). On all of those occasions, the Defendant was either not wearing anything on his
27 head (May 31, 2004 in Boulder Creek; June 11, 2004 Freedom Blvd) or wearing a baseball
28 cap (April 4, 2004 on Soquel; April 8, 2004 on Freedom Blvd; April 27, 2004 on Soquel;
March 19, 2004 Freedom Blvd; August 27, 2004 on Soquel; July 2003 on Freedom Blvd)
or wearing a knit watch cap (February 6, 2004 on Soquel). The baseball cap has been
described as being a "typical baseball cap", constructed of a soft fabric with a fixed front
bill which extends approximately 4 inches, having no inner padding, having no chin straps
or other type of ties which would fasten under the chin, and having a label or embroidered
letters DOT on the back of the hat, but not having the other required labeling information.

1 At the conclusion of the court trial, Judge Barton ruled that the baseball cap worn by
2 the Defendant did not comply with 27802 and 27803(b) and put Defendant on notice of his
3 hat's "non compliance". Specifically, the Judge ruled "your helmet does not comply and that
4 you are now on notice that that helmet, nor any other soft item as a covering, complies ..." and
5 "you are on notice, and you now have to comply with 27802 and 27803 in a manner other than
6 wearing a soft covering." [RT P5 L1-10]. However, the Court also ruled "in relation to these
7 tickets, I'm finding them correctable to the extent that Mr. Quigley is now on notice that that
8 helmet -- or that headgear does not qualify, and he will not ride without a hard shell qualifying
9 helmet." [RT P15 L1-7]

10 The People respectfully request the Court reconsider its decision making these
11 violations correctable.

12 **THE HELMET LAW IS NOT A CORRECTABLE OFFENSE**

13 The Court and Defendant rely on the location within the vehicle code within Division
14 12 (commencing with Section 24000), a violation of Section 27803(b) constitutes an infraction
15 involving equipment which is a correctable violation within the meaning of section 40303.5(d).

16 Vehicle Code Section 40303.5 provides that a fix it ticket shall be issued "unless the
17 arresting officer finds that any of the disqualifying conditions specified in subdivision (b) of
18 Section 40610 exist."

19 Section 40610(b) provides "pursuant to subdivision (a), a notice to correct violation
20 shall be issued as provided in this section or a notice to appear shall be issued as provided
21 in Section 40522, unless the officer finds any of the following:

- 22 (1) Evidence of fraud or persistent neglect
23 (2) The violation presents an immediate safety hazard
24 (3) The violator does not agree to, or cannot, promptly correct the violation

25 First, The language of the statute makes it clear that it is up to the arresting officer to
26 make the determination as to whether a particular infraction is correctable or not within the
27 parameters of the statute. It is not a determination to be made by the Court.

28 Second, it is clear that under VC 40610(b), this Defendant's repeated violations of VC

1 27803(b) are excluded by statute and cannot be corrected. Defendant is excluded from
2 correctability based on all three exceptions to correction.

3 First, there is obvious evidence of "persistent neglect" given the fact that Defendant
4 continues to drive without a certified safety helmet and has made it his mission in life to
5 challenge the constitutionality of this section. Defendant submitted an exhibit listing over 30
6 instances wherein he was cited for driving a motorcycle without an approved safety helmet.
7 He has been convicted repeatedly, most recently by Judge Danner for violating this section
8 (wearing the same type of head covering as we have in this case) and yet he continues to
9 challenge the law. This is not a situation wherein Defendant is ignorant of the law rather it is
10 a situation wherein he chooses to challenge the law and does so by wearing a baseball cap
11 which is obviously not in compliance. Defendant clearly has shown "persistent neglect"
12 pursuant to VC 40610(b)(1) and therefore is excluded from being "correctable".

13 Second, Defendant is excluded from correction by VC 40610(b)(2) in that his wearing
14 of his baseball cap presents "an immediate safety hazard". The language of VC 27803(g)
15 reflects an "intent of the Legislature to ensure that all persons are provided with an additional
16 safety benefit while operating or riding a motorcycle." Defendant's intentional wearing of a
17 soft baseball cap presents an immediate safety hazard and it cannot be corrected.

18 Third, Defendant is excluded from correction pursuant to VC 40610(b)(3) in that he
19 does not agree to promptly correct the violation. It is the People's contention that one cannot
20 go back and "correct" the failure to wear a safety helmet but even if one could, Defendant
21 does not agree to correct the violation. He has made it abundantly clear that he has no
22 intention of wearing a hard shell, DOT approved, safety helmet which would comply with the
23 statute. If Defendant intended to comply with the statute, he would have done so long before
24 racking up over 30 citations for the same offense. Defendant has failed to show any effort to
25 comply with the statute and thus, it is the People and law enforcement's belief that Defendant
26 does not "agree to promptly correct the violation."

27 Furthermore, it is important to note that VC 40610(d) requires that the equipment
28 violation be "corrected" within a "reasonable time" **not to exceed 30 days**. Specifically, the

1 code notes "Except as otherwise provided in subdivision (a), the notice to correct violation
2 shall be on a form approved by the Judicial Council and, in addition to the owner's or
3 operator's address and identifying information, shall contain an estimate of the reasonable
4 time required for correction and proof of correction of the particular defect **not to exceed 30**
5 **days.**" Not only have all the officers in these cases determined that Defendant's violations
6 of VC 27803(b) are not correctable, but even if they were, it is too late in that more than 30
7 days have passed since the issuance of the tickets.

8 As a practical note, as noted by Defendant on his website, the California Judicial
9 Council has determined that the helmet law is not correctable and it is not likely that any CHP
10 or other law enforcement officer is ever going to sign off on a helmet because they would then
11 in effect be approving the helmet as meeting the requirements of FMVSS 218 and they are
12 not going to accept this liability. And, without a doubt, if Defendant tries to get an officer to
13 sign off his tickets based on his baseball cap which is proclaims he intends to do (rather than
14 a legitimate, DOT approved safety helmet) no officer will ever sign off on the ticket(s).

15 Finally, in addition to the California Judicial Council's determination that the helmet law
16 is not correctable, our own Courts have agreed. Judge Danner ruled in 2001 that Defendant's
17 six violations of VC 27803(b) were not correctable under VC 40303.5 and 40610. Defendant
18 appealed Judge Danner's ruling and our Appellate Division affirmed Judge Danner's ruling
19 thereby setting local precedence that the helmet laws are not correctable.

20 Based on the foregoing, the People respectfully request this court reconsider its
21 determination that these violations are correctable.

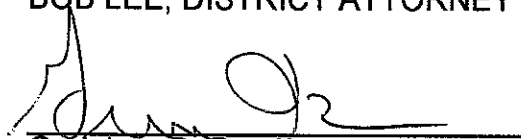
22 **DEFENDANT'S MOTION FOR RECONSIDERATION**

23 Defendant has requested this Court reconsider it's determination of non-compliance
24 based on his assertion that this Court lacks jurisdiction to make that determination. This is
25 not accurate. VC 27803 requires the wearing of a safety helmet as defined in VC 27802.
26 Vehicle Code Section 27802 states "the department may adopt reasonable regulations
27 establishing specifications and standards for safety helmets offered for sale, or sold, for
28 use by drivers and passengers of motorcycles and motorized bicycles as it determines are

1 necessary for the safety of those drivers and passengers. The regulations shall include,
2 but are not limited to, the requirements imposed by Federal Motor Vehicle Safety Standard
3 No. 218 (49 C.R.F. Section 571.218) and may include compliance with that federal
4 standard by incorporation of its requirements by reference..." This section allows the
5 department to adopt or mirror the "requirements" of FMVSS 218 but does not cause the
6 California Vehicle Code section to become a federal statute as argued by Defendant.
7 Defendant essentially argues that no one except NHTSA can make the determination that
8 a helmet is in compliance or out of compliance with the requirements of FMVSS 218. This
9 is simply not true. It does not become a federal issue just because the language of the
10 California Vehicle Code adopts the requirements of FMVSS 218 and "may include
11 compliance with that federal standard by incorporation of its requirements by reference".
12 This has been shown repeatedly in the cases cited by both Defendant and the People.
13 Specifically Bianco v. California Highway Patrol (1994) 24 Cal.App.4th 1113 addressed
14 this issue. "In a mandamus proceeding adjudicating a motorcyclist's challenge to the
15 decision of the California Highway Patrol to cite motorcyclists for wearing a helmet found
16 not to meet federal safety standards, the trial court did not err in finding that the state had
17 enacted a regulation identical to federal standards and that the state was entitled to
18 enforce that standard. Federal law preempts state safety standards for motor vehicle
19 equipment, but federal law does not prevent any state from enforcing any standard that is
20 identical to a federal safety standard." Furthermore, the statute does not require the
21 head gear be tested in order to determine that Defendant's hat is not in compliance.
22 Common sense establishes that a baseball cap is not a safety helmet and would never
23 pass the stringent testing requirements. The Court can make that determination based on
24 the opinion of trained, experienced officers as well as its own common sense.

25 Dated: January 13, 2005

BOB LEE, DISTRICT ATTORNEY

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Gretchen D. Brock
Assistant District Attorney