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DATE: June 24, 2007 **TIME:** 12:15 p.m. **NO. OF PAGES:** 14
(INCLUDING COVER SHEET)

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MESSAGE/INSTRUCTIONS

RE: *California Highway Patrol v. Superior Court of the State of California, County of Santa Cruz*
California Court of Appeal, Sixth Appellate District Case No.: H029406

Per your telephone request, attached please find the CHP's Answer to Richard Quigley's Petition for Rehearing in regards to the above-referenced case.

PLEASE DELIVER AS SOON AS POSSIBLE!
FOR ASSISTANCE WITH THIS FAX, PLEASE CALL THE SENDER
JUS 133 (1/99)



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CALIFORNIA HIGHWAY PATROL,

Petitioner,

H029406

v.

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

Respondent.

RICHARD J. QUIGLEY,

Real Party in Interest and Defendant.

Santa Cruz County Superior Court Nos. 4SM21812;4WM023363
4SM023894; 4SM028271 and 4SM044470
The Honorable Michael Barton, Judge

**CHP'S ANSWER TO RICHARD QUIGLEY'S
PETITION FOR REHEARING**

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PETITIONER CHP HEREBY ANSWERS REAL PARTY IN INTEREST
RICHARD QUIGLEY'S PETITION FOR REHEARING:

INTRODUCTION

Real Party in Interest Richard Quigley Petitioned the Court for Rehearing regarding the Court's May 17, 2007 order in this case. Such a petition is authorized by California Rule of Court rule 8.268, but this petition for rehearing should be denied because it fails to identify any errors of law, or new law or facts, raising serious doubt as to the correctness of the decision that warrant a rehearing.

STANDARD OF REVIEW

To succeed on a petition for rehearing, the Petitioner must do more than simply reargue the case. Instead, he should make a strong showing of a

substantial error of law or fact, or establish serious doubt as to the correctness of the statement of the law. Case law establishes that “The losing party avails himself of the opportunity afforded by the rule for a rehearing. If we are satisfied, from the petition, that, owing to any mistake of law or misunderstanding of facts, our decision has done an injustice in the particular case, or of the principle involved is important, and the decision involved will make a precedent establishing a rule of property or of right, and it is seriously doubted whether we have correctly decided, we grant a rehearing. (*In re Jessup* (1889) 81 Cal. 408, 471.) “Petitions for rehearing are permitted by the rules of court for the purpose of correcting any error which the court may have made in its opinion, or enabling counsel to direct the attention of the court to matters presented in the argument which may have been overlooked in the decision.” (*San Francisco v. Pacific Bank* (1891) 89 Cal. 23, 25.)

ARGUMENT

I. The CHP Continues To Contend That A Helmet Law Violation Is Not Correctable, But Quigley’s Petition Fails To Raise Any Grounds Which Warrant A Rehearing.

A. Quigley Misapprehends The Basis Of The Court’s Decision.

Quigley argues that the Court based it’s decision on a faulty application of the evidentiary presumption of official duty having been regularly performed. (*See*, Cal. Evid. Code § 664.) Specifically Quigley argues that

the Court erroneously converted section 664 from a rebuttable to an irrebuttable presumption. But this argument is flawed because the centerpiece of the Court's analysis is Vehicle Code section 40303.5, not Evidence Code section 664. As explicitly stated at page 11 of the opinion, the Court's ruling was based on its finding that California Vehicle Code section 40303.5, "unambiguously places sole authority and responsibility for making such determinations on the arresting officer ..." The ruling was not based on section 664.

B. Quigley's Due Process Argument Is Untimely And Without Merit.

Quigley argues that if the citing officer is vested with the authority to determine whether one of the three exceptions to correctability exist, as described in section 40610, then Due Process is denied.

Quigley's Due Process Argument regarding whether section 40610 exceptions apply is improperly raised for the first time in the petition for rehearing, and even if the court were to consider it at this juncture, the argument is without merit because review is available, as it always has been, in the form of contesting a citation in court.

In the return, Quigley argued that there was no factual finding in the trial court that an exception existed, but he did not raise the specific Constitutional argument that vesting discretion in the officer as to whether the exceptions of section 40610 exist violates the motorcycle operator's right

to Due Process. "Arguments cannot be raised for the first time in a petition for rehearing." (*Pacific Bell Wireless, LLC v. Public Utilities Com'n of the State of Cal.* 140 Cal.App.4th 718, 44 Cal.Rptr.3d 733 (Cal.App.4th Dist. 2006).

Additionally, this argument is substantively without merit because review is available in the form of contesting the citation in court, and that process is all that is due. Petitioner fails to show that due process requires, in the context of a criminal proceeding, that the court embark on a determination of the original intent of the officer in issuing the citation.

II. Quigley Attempts To Introduce Constitutional Issues Which This Court Declined To Review In The Matter Of *Quigley et al. v. CHP, et al., County of Santa Cruz*, Case No. 155682, And Which Are Necessary To The Court's Published Decision In The Instant Matter.

In the petition for rehearing, Quigley recycles arguments regarding the vagueness of the helmet law and CHP's implementation of the law. In case No. 155682, above, Quigley also argued that the Helmet Law is unconstitutionally vague as applied by the CHP. Demurrer was overruled there, and CHP took the ruling up on a Writ Petition to this court.

This issue was neither tendered nor briefed by the CHP in the instant matter, and this court declined to review the issue in denying CHP's February 15, 2007 Notice of Impending Writ Petition and Request for Consolidation and Deferral of Ruling, filed in this case.

The CHP therefore submits that these arguments are not well brought in the subject petition for rehearing, but if the Court is inclined to consider this Constitutionality issue here, the CHP requests leave to file briefing on this issue.

For the above-described reasons, the CHP respectfully requests that Quigley's Petition for Rehearing be denied.

Dated: June 13, 2007

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

California Court of Appeal, Sixth Appellate District

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify that all text, including footnotes, in the attached **CHP'S ANSWER TO RICHARD QUIGLEY'S PETITION FOR REHEARING** spaced, uses 13 point Times New Roman font, and contains 1,110 words

Dated: June 13, 2007

Respectfully submitted,


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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***CHP v. Superior Court of Santa Cruz, Richard J. Quigley, Real Party in Interest***

Court of Appeal, Sixth Appellate District Case No.: H029406
(Santa Cruz County Superior Court Nos.: 4SM21812; 4WM023363
4SM023894; 4SM028271 and 4SM044470)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is P.O. Box 70550, Oakland, CA 94612-0550.

On June 13, 2007, I served the attached **CHP'S ANSWER TO RICHARD QUIGLEY'S PETITION FOR REHEARING** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

SEE ATTACHMENT OF PARTIES BEING SERVED

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2007, at Oakland, California.

Elvia Granados
Declarant


Signature

ATTACHMENT - DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **CHP v. Superior Court of Santa Cruz, Richard J. Quigley, Real Party in Interest**

Case No.: Court of Appeal, Sixth Appellate District Case No.: H029406
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