

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 MIGUEL A. NERI
FIEL D. TIGNO
3 Supervising Deputy Attorneys General
LILLIAN Y. TABE, State Bar No. 207338
4 Deputy Attorney General
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2246
Fax: (510) 622-2270
7 E-mail: Lillian.Tabe@doj.ca.gov
Attorneys for Defendants California Highway Patrol;
8 Mike Brown, Commissioner; and Christina
Manriquez, Commander
9

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SANTA CRUZ
12

14 **RICHARD QUIGLEY, STEVE BLANCO, DON**
BLANSCET, STEVE BARRON, PATRICK
HOLMES,
15
16 Plaintiffs,
17
18 v.
19 **CALIFORNIA HIGHWAY PATROL; MIKE**
BROWN, Commissioner; CHRISTINA
MANRIQUEZ, Commander; DOES 1 through 10,
20 Defendants.
21
22

CASE NO: CV 155682

DEFENDANTS'
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEMURRER
TO COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Date: February 13, 2007
Time: 8:30 a.m.
Dept: 9
Judge: Hon. Robert B. Atack
Action Filed: November 9, 2006

23 **INTRODUCTION**

24 Plaintiff Richard J. Quigley was a defendant in a criminal matter before this Court,
25 *People v. Quigley*^{1/}, in or about 2006 for violating California's Mandatory Motorcycle Helmet
26

27 1. Case numbers 3WM018538, 4WM034081, 4WM021512, 4WM023363, 4SM028271,
28 4SM021812, 4SM021512, 4SM023894, and 4SM044470. Currently, aspects of the Court's order
in *People v. Quigley* are pending before the Court of Appeal on the California Highway Patrol's

1 Law, Vehicle Code, §§ 27802 et seq. ("helmet law") on nine, separate occasions. (Complaint,
2 Exh. 2, at p. 1.) Defendants California Highway Patrol ("CHP"); Mike Brown, Commissioner;
3 and Christina Manriquez, Commander (hereinafter collectively "Defendants") were not a party to
4 the *Quigley* criminal matter. The Court, noting repeatedly the lack of evidence provided by the
5 prosecution in the case, dismissed the charges against Plaintiff Quigley, and found that the
6 helmet law statutes were unconstitutional as applied by the citing officers. (Complaint, Exh. 2,
7 5:19-23, 6:9-15, 7:3-5, 7:10-17.) The Court noted that the only evidence offered against Plaintiff
8 Quigley were complaints by the prosecution regarding the *fabrication* of Plaintiff Quigley's
9 helmet. (Complaint, Exh. 2, 6:19-7:2 (emphasis added).) In addition, the Court noted that the
10 prosecution did not provide any evidence that the CHP had adopted *any* regulations regarding the
11 helmet law, other than the requirements imposed by FMVSS 218 regarding *performance*
12 standards. (Complaint, Exh. 2, 5:19-23 (emphasis added).) Thus, the Court stated, "this court
13 had no choice" but to dismiss the citations "once it was established to the satisfaction of this
14 court that no list of compliant helmets, or other objective criteria, exists that would give a person
15 of ordinary intelligence a reasonable opportunity to know what is required or prohibited by the
16 helmet law statutes . . ." (Complaint, Exh. 2, 7:10-17.)

17 Plaintiffs come now to request the Court for declaratory and injunctive relief, based on
18 the Court's ruling in the aforementioned *Quigley* criminal matter.

19 LEGAL STANDARD

20 A demurrer is proper when the pleadings do not state facts sufficient to constitute a cause
21 of action. (Code Civ. Proc., § 430.10, subd. (e).) A demurrer admits the truth of all material
22 facts properly pleaded, but no contentions, deductions or conclusions of law or fact. (*Adelman v.*
23 *Associated Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) Allegations in the complaint remain
24 subject to facts appearing in exhibits to the complaint as well as facts of which the court may
25 take judicial notice. (Code Civ. Proc., § 430.70; *Adelman*, at p. 359; *Dodd v. Citizens Bank of*
26 *Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.) Thus, if facts appearing in exhibits attached to

27 _____
28 petition for writ review. (Complaint, Exh. 1; see Court of Appeal, Sixth Appellate District, case
number H029406.)

1 the complaint are contrary to the allegations in the complaint, they will be given precedence.
2 (*Dodd*, at p. 1627.) A court should grant a demurrer without leave to amend when the defects in
3 the complaint cannot be cured or when to permit time to attempt to do so would be futile. (See
4 *Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465 [the court should not grant
5 leave to amend if there is no liability as a matter of law].)

6 **ARGUMENT**

7 **I. PLAINTIFFS' ALLEGATION THAT HELMET LAW IS VOID FOR**
8 **VAGUENESS ON ITS FACE IS MERITLESS**

9 Plaintiffs allege that they are entitled to a declaration that Vehicle Code sections 27802
10 and 27803, and the CHP's regulations in furtherance of those statutes, are "void for vagueness."
11 (Complaint, ¶ 20.) Although Plaintiffs attempt to state their allegation in the framework that the
12 helmet laws and the CHP's regulations regarding the enforcement of those laws are void for
13 vagueness "as applied by the CHP," when the Complaint is read in light of the attached exhibits
14 to the Complaint, it is clear that Plaintiffs are actually alleging that the helmet law is void for
15 vagueness "on its face." This allegation not only fails to state an actual controversy, it is
16 meritless since California courts have already ruled that the helmet law is not impermissibly
17 vague. (*Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1622-1623 [helmet law, requiring
18 consumers to wear helmets bearing a certification of compliance, is not impermissibly vague].)

19 To be legally sufficient, a complaint for declaratory relief must set forth facts showing the
20 existence of an actual controversy relating to the legal rights and duties of the respective parties,
21 and request that these rights and duties be adjudged by the court. (Code Civ. Proc., § 1060.) A
22 general demurrer will lie where the complaint has included allegations that clearly disclose some
23 defense or bar to recovery. (*Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145, 1152.)

24 Plaintiffs attach, and incorporate by reference, to the Complaint a copy of the Federal
25 Motor Vehicle Safety Standard No. 218, 49 C.F.R. § 571.218 ("FMVSS 218"), which the
26 Complaint acknowledges as part of CHP's adopted regulation regarding the helmet law.
27 (Complaint, ¶ 9, and Exh. 1.) Specifically, the Complaint alleges that the helmet law is "void for
28 vagueness as applied . . . because there are no *objective* criteria by which either law enforcement

1 officers, motorcycle drivers, or motorcycle passengers can tell that a helmet does not comply
2 with the law." (Complaint, ¶ 19 (emphasis added).)

3 Plaintiff's claim that the helmet law is void for vagueness on its face is meritless because
4 the CHP has adopted regulations that include an objective standard, set forth in FMVSS 218
5 (Exhibit 1.). By attaching FMVSS 218 to the Complaint, the facts appearing in FMVSS 218 are
6 accepted as true for purposes of a demurrer, and are given precedence over any contrary
7 allegations in the Complaint. FMVSS 218 states that each helmet shall be labeled permanently
8 and legibly with the symbol DOT, constituting the manufacturer's certification that the helmet
9 conforms to the applicable Federal motor vehicle safety standards. (Complaint, Exh. 1, S5.6
10 Labeling.)

11 Requiring the aforementioned DOT label is an *objective* criteria by which law
12 enforcement officers, motorcycle drivers, and motorcycle passengers can tell that a helmet
13 complies with the helmet law, as the Ninth Circuit and California courts have recognized. In
14 *Easyriders Freedom F.I.G.H.T. v. Hannigan* (9th Cir. 1996) 92 F.3d 1486, the Ninth Circuit
15 noted that while the helmet law does have some ambiguity on its face regarding the exact
16 specifications for a helmet that complies with the law, the helmet law does define generally what
17 conduct is prohibited, and does establish guidelines. (*Easyriders*, at p. 1494 [consumers comply
18 with the helmet law as long as they are wearing a helmet that bore the DOT self-certification
19 sticker at the time of purchase unless the helmet has been shown not to conform with federal
20 standards and the consumer has actual knowledge of this fact].) Furthermore, the Ninth Circuit
21 noted that the record before them in fact reveals that the vast majority of motorcyclists have
22 successfully complied with the helmet law with little difficulty. (*Id.* at fn. 3 [over ninety percent
23 of motorcyclists have been able to comply with the helmet law].) In fact, California courts have
24 found that the helmet law is neither too technical nor specific that it cannot be understood by
25 persons of ordinary intelligence. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th
26 1113, 1123 [it is legal under California law to drive a motorcycle while wearing a helmet with a
27 manufacturer's DOT self-certification sticker until such time as that helmet has been shown not
28 to conform to federal standards]; *Buhl v. Hannigan*, *supra* 16 Cal.App.4th at p. 1622 [helmet law

1 requires only that the consumer wear a helmet bearing a certification of compliance].)

2 Because the objective DOT label requirement is a fact appearing in an exhibit attached to
3 the Complaint, it is given precedence over Plaintiffs' allegations elsewhere in the Complaint that:
4 (1) the CHP has not provided an objective criteria that would give a person of ordinary
5 intelligence any reasonable way to know what is required under Vehicle Code section 27803, and
6 (2) there is no way to tell by appearance whether a given helmet complies with Vehicle Code
7 section 27803. (Complaint, ¶¶ 14, 16.) Accordingly, the Complaint, read in light of the facts
8 stated in FMVSS 218, fails to state an actual controversy between Plaintiffs and Defendants
9 regarding the helmet law. Plaintiffs' claim that the helmet law is void for vagueness on its face is
10 meritless. Thus, the demurrer should be sustained.

11 **II. PLAINTIFFS' ALLEGATION THAT COURT'S ORDER IN *PEOPLE V. QUIGLEY* HAS ESTOPPEL EFFECT IN THIS CASE IS MERITLESS**

12 **A. Court's Criminal Order Is Not Conclusive In This Case Because Public Interest Exception To Collateral Estoppel Applies**

13 Plaintiffs allege that they are entitled to a declaration that the helmet laws and the CHP's
14 regulations regarding those statutes are void for vagueness based on the Court's order in *People*
15 *v. Quigley* ("criminal order"). (Complaint, ¶20, and Exh. 2.) Plaintiffs attach and incorporate by
16 reference to the Complaint a copy of the Court's criminal order. (Complaint, ¶ 22, and Exh. 2.)

17 Because Plaintiffs are requesting the Court to determine the validity of the helmet law,
18 the issue is a question of law rather than of fact. The California Supreme Court has held that in
19 such cases, the prior determination (i.e., the Court's criminal order) is not conclusive if injustice
20 would result or if the public interest requires that relitigation not be foreclosed. (*Arcadia Unified*
21 *School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 257 [detrimental to the public
22 interest to apply collateral estoppel where school district who was not a party to previous action
23 did not have opportunity to litigate the constitutionality of the statute].)

24 Here, Defendants were not a party to the *Quigley* criminal matter. Furthermore, because
25 the Court's criminal order was based on an erroneous assumption that the CHP did not have an
26 objective standard for determining compliance with the helmet law when it actually did, it would
27 be detrimental to the public interest to allow the Court's criminal order to have any conclusive or
28

1 preclusive effect. Thus, without the Court's criminal order as a basis for the cause of action for
2 declaratory relief, Plaintiffs fail to state an actual controversy. Accordingly, the demurrer should
3 be sustained.

4 **B. Court's Criminal Order Is Erroneous and Inapplicable On Its Face**

5 By attaching the Court's criminal order to the Complaint, the facts in the Court's criminal
6 order take precedence over any inconsistent allegations in the Complaint. The Court's criminal
7 order is erroneous, and thus, should not be applied to the instant case because it was based on an
8 incorrect assumption in the *Quigley* criminal matter that the CHP did not have an objective
9 criteria for enforcing the helmet law, when it actually did, i.e., the DOT label.

10 The Court's criminal order clearly states that its ruling is limited to finding that the
11 helmet law statutes are void for vagueness as applied by the citing officers in that case. The
12 Court further conditioned its order by stating:

13 *Unless and until* the CHP adopts compliance standards other than a citing
14 officer's subjective opinion of whether or not a given helmet is properly
15 *fabricated* (e.g., complies with the actual, technical requirements of FMVSS
16 218), and abandons the contention that in order to comply with the statutes a
motorcyclist must wear an 'approved helmet,' the helmet law statutes are void
for vagueness, or otherwise unworkable, as applied . . .

17 (Complaint, Exh. 2, 8:10-15 (emphasis added).) According to the Court's criminal order, if the
18 CHP adopts any compliance standard other than the one noted regarding fabrication, and
19 abandons the contention regarding "approved helmet," the helmet law statutes will no longer be
20 considered "void for vagueness" as applied.

21 Reviewing the Court's criminal order in its entirety, in conjunction with FMVSS 218
22 (Exhibit 1), it is clear that the Court based its ruling in the *Quigley* criminal matter on an isolated,
23 erroneous assumption that the CHP did not have *any* regulations regarding the helmet law, other
24 than the requirements imposed by FMVSS 218 regarding *performance* standards. (Complaint,
25 Exh. 2, 5:19-23.) Based on the Court's repeated references to the lack of evidence presented by
26 the prosecution, it appears the prosecution failed to present to the Court that, in addition to
27 performance standards, FMVSS 218 requires that each helmet that conforms to the applicable
28 Federal motor vehicle safety standards must be labeled permanently and legibly with the symbol

1 DOT. It appears that this evidence was never taken under consideration by the Court since the
2 Court only noted the performance standards stated in FMVSS 218.

3 Thus, the following facts from Exhibits 1 and 2 take precedence over any conflicting
4 allegations in the Complaint: (1) by adopting FMVSS 218 as part of its regulations regarding the
5 helmet law, the CHP has had, at all times relevant to this Complaint and the *Quigley* criminal
6 matter, the DOT label as an objective standard for determining compliance with the helmet law;
7 and (2) by recognizing that the CHP has the DOT label as an objective standard, the Court's
8 criminal order is inapplicable beyond *People v. Quigley*, as stated by its own terms. Accordingly,
9 the Complaint fails to state a present controversy.

10 If the possibility of a future dispute is speculative, it does not present an actual
11 controversy that can be resolved by means of a declaratory judgment. (*Cardellini v. Casey* (1986)
12 181 Cal.App.3d 389, 396-397.) To recap, the Complaint fails to state an actual controversy for
13 two reasons: (1) the public interest exception to collateral estoppel applies to prevent Plaintiff's
14 claim that the Court's criminal order should have any preclusive effect on issues in the present
15 case; and (2) when the Complaint is reviewed in its entirety, with the Court's criminal order as an
16 attachment, it is clear that the Court's criminal order is inapplicable since it was based on the
17 erroneous assumption that the CHP did not have an objective criteria for enforcing the helmet
18 law when in fact it did, as set forth in the attachment to the Complaint, FMVSS 218. On the
19 aforementioned bases, the Court should sustain the demurrer. In addition, the Court should
20 sustain the demurrer without leave to amend since the defects in the complaint cannot be cured,
21 and to permit time to attempt to do so would be futile for the reasons discussed above.

22 Furthermore, because Plaintiffs cannot show that the helmet law is void for vagueness,
23 this entire lawsuit is improper. Any challenge that Plaintiffs may have regarding the helmet law
24 is with respect to its application to a particular criminal case that involves a particular set of facts
25 and evidence. Because Plaintiffs have an adequate remedy at law through criminal proceedings
26 to challenge the application of the helmet law to a particular set of facts, there is no basis for
27 injunctive relief. Therefore, the Court should sustain the demurrer, in its entirety, without leave
28 to amend.

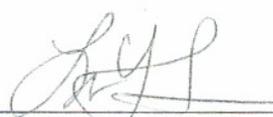
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CONCLUSION

For the reasons set forth above, Defendants respectfully request that the demurrer be sustained without leave to amend and that this case be dismissed in its entirety.

Dated: January 12, 2007

Respectfully submitted,
EDMUND G. BROWN JR.
Attorney General of the State of California
MIGUEL A. NERI
FIEL D. TIGNO
Supervising Deputy Attorneys General



LILLIAN Y. TABE
Deputy Attorney General
Attorneys for Defendants California Highway
Patrol; Mike Brown, Commissioner; and
Christina Manriquez, Commander