

1 LASCHER & LASCHER, A Professional Corporation
2 WENDY COLE LASCHER, Cal. Bar No. 58648
3 605 Poli St., P.O. Box 25540
4 Ventura, California 93002-2285
5 805-648-3228 (phone); 805-643-7692 (fax)
6 wendy@lascher.com

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8 Attorneys for Plaintiffs RICHARD QUIGLEY,
9 PATRICK HOLMES, STEVE BIANCO,
10 DON BLANSCET, STEVE BARRON

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

RICHARD QUIGLEY, STEVE BIANCO,]
DON BLANSCET, STEVE BARRON]
PATRICK HOLMES,]

Plaintiffs,]

v.]

CALIFORNIA HIGHWAY PATROL; MIKE]
BROWN, Commissioner; CHRISTINA]
MANRIQUEZ, Commander; DOES 1 through]
10,]

Defendants.]

Case no. CIV 155682

**PLAINTIFFS' OPPOSITION TO
DEMURRER**

Hearing date: February 13, 2007

Time: 8:30 a.m.

Dept.: 9

Judge: Hon. Robert Atack

Action filed: November 9, 2006

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I.

INTRODUCTION AND SUMMARY OF ARGUMENT

The California Highway Patrol and other law enforcement officers¹ contend that so long as a motorcycle helmet has a "DOT label," it "complies with the helmet law" [Demurrer 4:11-13]. If that is correct, why have CHP officers cited plaintiff Quigley five times for violating the helmet law while he was "wearing some form of headgear bearing evidence of a certification of compliance with Federal regulations, the letters 'DOT'" [Complaint, Ex. 2, 1:17-23]?

¹This memorandum refers to the Highway Patrol and defendants Mike Brown and Christina Manriquez collectively as "CHP."

1 The fact is that CHP officers have never used a DOT symbol as the test for compliance
2 with Vehicle Code section 27803, and do not train law enforcement officers to that effect. If
3 necessary, plaintiffs can amend their complaint to make this explicit. Amendment should not be
4 necessary, however, because the demurrer ignores plaintiffs’ actual allegations and responds to
5 allegations plaintiffs did not make and which cannot be inferred from the exhibits to the
6 complaint. For example, the demurrer insists plaintiffs are challenging the Motorcycle Helmet
7 Law on its face [Demurrer 3:8, 3:14-15, 4:3, 5:9] while simultaneously acknowledging that
8 plaintiffs allege the law is void as applied [Demurrer 3:13, 3:27-28, citing Complaint, ¶19]. The
9 demurrer says that plaintiffs are alleging the order in *People v. Quigley* has estoppel effect
10 [Demurrer 5:11-12], though there is no such claim in the complaint.

11 Plaintiffs’ complaint does not challenge the facial validity of the Motorcycle Helmet
12 Law. The problem lies not in how Vehicle Code sections 27802 and 27803 are written, but in
13 the way the CHP has chosen to implement the law: the regulation it adopted; the manuals,
14 materials, and philosophies by which it trains officers; the policies and attitudes it applies in
15 enforcing those statutes; and the attitudes it displays toward motorcyclists who question the
16 CHP’s approach to the law.

17 The demurrer does not address the reasons the helmet law is unconstitutional and that
18 injunctive and declaratory relief is in order; the issues it does address are irrelevant..

19 II.

20 LEGAL STANDARD

21 A general demurrer admits the truth of all material factual allegations in the complaint, in
22 the exhibits to the complaint, and to matters which are judicially noticeable, though it does not
23 admit the truth of contentions, deductions, or conclusions of law (*Martinez v. Socoma Cos.*
24 (1974) 11 Cal.3d 394, 399). “The allegations are to be liberally construed with a view to
25 obtaining substantial justice among the parties” (Code Civ. Proc., §452).

26 It is error to sustain a demurrer where allegations adequately state a cause of action under
27 any legal theory (*Angie M. v. Superior Court (Hiemstra)* (1995) 37 Cal.App4th 1217, 1224).

1 Whether a plaintiff may eventually be able to prove the allegations in the complaint is not of
2 concern on demurrer for “plaintiff need only prove or plead facts showing that he may be
3 entitled to some relief” (*Gonzales v. City of San Diego* (1982) 130 Cal.App.3d 882, 884). If it
4 appears that the plaintiff is entitled to any relief the complaint must be allowed to stand even
5 though “the facts may not be clearly stated or may be intermingled with irrelevant facts (*Scott v.*
6 *City of Indian Wells* (1972) 6 Cal.3d 541, 549). The Court must grant leave to amend if there is
7 a reasonable possibility the plaintiffs could cure defects in their complaint by amending it (Code
8 Civ. Proc., §472a, subd. (c); *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081).

9 **III.**

10 **THE MOTORCYCLE HELMET LAW**
11 **IS UNCONSTITUTIONALLY VOID AS APPLIED BY THE CHP**
12 **AND OTHER LAW ENFORCEMENT AGENCIES.**

13 When the Legislature authorized the CHP to enact specifications and standards for safety
14 helmets, the only regulation the CHP adopted was one that incorporated the labeling and testing
15 requirements and specifications of Federal Motor Vehicle Safety Standard 218 (“FMVSS 218”,
16 49 C.F.R. §571.218) [Complaint, ¶¶8-11]. The demurrer argues that because there is a labelling
17 requirement, the law is sufficiently clear to pass constitutional muster. That theory ignores the
18 way the CHP and other police agencies have chosen to enforce the helmet law – which includes
19 continuing to ticket motorcyclists wearing helmets that the manufacturer has certified as
20 complying with FMVSS 218.

21 **A. THE CHP AND OTHER LAW ENFORCEMENT AGENCIES ROUTINELY**
22 **APPLY THE MOTORCYCLE HELMET LAW WITHOUT ANY BASIS FOR**
23 **KNOWING WHAT CONDUCT IS PROHIBITED.**

24 “[A] statute which either forbids or requires the doing of an act in terms so vague
25 that men of common intelligence must necessarily guess at its meaning and differ
as to its application, violates the first essential of due process.” [Citations.]

26 A vague law is offensive for several reasons. “First, the person of ordinary
27 intelligence should have a reasonable opportunity to know what is prohibited. A
vague law may trap the innocent by not providing fair warning. Second, a vague
28

1 law impermissibly delegates the legislative job of defining what is prohibited to
2 [the police], judges, and juries, creating a danger of arbitrary and discriminatory
3 application. Third, a vague law may have a chilling effect, causing people to
4 steer a wider course than necessary in order to avoid the strictures of the law.”

5 *City of Los Altos v. Barnes* (1992) 3 Cal.App.4th 1193, 1202, quoting
6 *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391, 70 L.Ed. 322, 328, 46 S.Ct. 126 and
7 *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, 1594;
8 *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109, 33 L.Ed.2d 222, 227-228,
9 92 S.Ct. 2294.

10 The Motorcycle Helmet Law offends for all three reasons: Consumers do not know
11 which helmets they may wear, and which will lead to citation. Law enforcement officers and
12 judges apply the helmet law arbitrarily. Motorcyclists avoid wearing certain helmets for fear
13 that they will be cited even though the helmets have DOT labels attached.

14 Under the only motorcycle helmet regulation adopted by the CHP – 13 Cal. Code of
15 Regulations 982, which incorporates the standards of FMVSS 218 – motorcycle helmets must
16 meet impact attenuation, penetration, and retention standards when tested under specified
17 conditions. It is not possible to determine visually whether a given helmet has passed these tests
18 [Complaint, ¶¶ 9, 10, Ex. 1].

- 19 • Neither the federal government nor the state certifies or approves helmets. Neither the
20 CHP nor the federal government, nor anyone else, maintains a list of “approved”
21 motorcycle helmets that comply with FMVSS 218.
- 22 • The CHP nevertheless takes the position, and trains officers to believe, that they can tell
23 by looking at a given helmet whether it is approved for use in California [Complaint,
24 ¶15].

25 Even though officers cannot check motorcycle helmets against an approved list because
26 there is no such list, and cannot determine visually whether a helmet meets the standard
27 established pursuant to Vehicle Code section 27802 (i.e., the FMVSS 218 standards), the CHP
28 continues to stop motorcycle riders based on the appearance of their helmets [Complaint, ¶¶ 18,

1 24 and 25].

2 **B. PREVIOUS DECISIONS ABOUT THE HELMET LAW**
3 **DO NOT REACH THIS AS-APPLIED CHALLENGE.**

4 Before the Motorcycle Helmet Law took effect, several individuals challenged its
5 constitutionality. In response to their claim that the law is so vague that neither motorcyclists
6 nor police officers can tell whether a particular helmet complies with the law, the Court of
7 Appeal held that it was “absurd” to think the law requires the consumer or enforcement officer to
8 decide if a helmet is properly fabricated (*Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1622).
9 Instead, the *Buhl* court said, “it is clear the law requires only that the consumer wear a helmet
10 bearing a certification of compliance” (*Id.*). That is more or less the position the CHP is taking
11 in this lawsuit – but it is not the basis on which law enforcement officers act when they stop and
12 cite motorcyclists.

13 A later decision (involving one of the plaintiffs in this case) explained how the helmet
14 law is supposed to work:

15 The federal statutory scheme contemplates an honor system in which
16 manufacturers comply with detailed federal performance standards for motor
17 vehicle equipment through self-certification. If a manufacturer determines that its
18 helmet conforms to the federal standards and certifies that conformity by labeling
19 the helmet with a DOT self-certification sticker, it is legal to sell that helmet
20 under the federal law ***and it is legal under California law to drive a motorcycle
while wearing that helmet*** until such time as that helmet has been shown not to
conform to the federal standards. Once a helmet is shown not to conform to the
federal standards . . . the presumption of compliance created by the self-
certification label is rebutted.

21 *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1123, emphasis added.

22 The Ninth Circuit issued a third decision interpreting the Motorcycle Helmet Law. In
23 *Easyriders Freedom F.I.G.H.T. v. Hannigan* (1996) 92 F.3d 1486, that court held that “[t]he
24 helmet law, as interpreted by the California courts . . . requires specific intent as one of its
25 elements. A motorcyclist who is wearing a helmet that was certified by the manufacturer at the
26 time of sale must have actual knowledge of the helmet’s non-conformity to be guilty of violating
27 the helmet law” (*Id.* at 1499). Therefore, before citing a motorcyclist for violating the helmet
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1 law, an officer must have probable cause to believe that the motorcyclist had specific intent to
2 violate the law based on the motorcyclist's actual knowledge of non-conformity with the
3 requirements of FMVSS 218, unless the helmet was not certified by the manufacturer at the time
4 of sale (*Id.* at 1499, and fn. 8).

5 Despite the holdings of these cases, plaintiff Quigley has repeatedly been stopped and
6 cited for violating the Motorcycle Helmet Law when he was wearing a helmet that complied
7 with the only "objective" standard the CHP has identified – a DOT symbol. The other plaintiffs
8 have each had citations dismissed on the ground that the arresting officers could not demonstrate
9 noncompliance with the law [Complaint, ¶¶ 22, 23].

10 Further, this case reaches an issue that was not presented in *Easyriders*. That decision
11 held that an officer could stop (but not cite) a motorcyclist for investigatory purposes based on
12 the appearance of the helmet (92 F.3d at 1497). However, there were no allegations in
13 *Easyriders* that the CHP had repeatedly stopped motorcyclists wearing helmets that actually
14 comply with Standard 218 or that did not have a physical appearance that merited further
15 investigation (*Id.*). Here, on the other hand, there are such allegations. The record – i.e.
16 plaintiffs' complaint – demonstrates that *Easyriders*' premise is false. A law enforcement officer
17 cannot rely on the appearance of a helmet to justify a stop, let alone a citation, because there is
18 no way to tell by appearance whether a given helmet complies with Vehicle Code section 27803,
19 nor is there a list of approved helmets for motorcyclists and police officers to consult
20 [Complaint, ¶ 16].

21 IV.

22 DECLARATORY AND INJUNCTIVE RELIEF 23 ARE APPROPRIATE AND NECESSARY.

24 The CHP incorrectly assumes that plaintiffs are relying on Judge Barton's order in
25 *People v. Quigley* to establish their right to declaratory and injunctive relief [Demurrer 5:11-
26 6:21]. Plaintiffs' objective in attaching a copy of Judge Barton's retrospective ruling was to
27 provide the Court a model for the prospective as-applied challenge that plaintiffs now raise.

1 Although plaintiffs certainly think that Judge Barton is correct in finding the Motorcycle Helmet
2 Law is too vague to enforce, they come to that conclusion on the basis of their own analysis of
3 the law, not Judge Barton's.

4 The CHP says: "Any challenge that Plaintiffs may have regarding the helmet law is with
5 respect to its application to a particular criminal case that involves a particular set of facts and
6 evidence" [Demurrer 7:23-25]. In fact, one of the evils of a vague law is that it forces people to
7 have to return to court over and over to defend against charges that prove unwarranted.
8 Litigating and relitigating the same issues strains prosecutorial and judicial resources, as well as
9 the resources of defendants. Therefore, the Court should issue a declaration debunking the
10 notion that law enforcement officers can tell at a glance whether a given helmet satisfies the
11 impact attenuation, penetration, and retention standards of FMVSS 218.

12 CONCLUSION

13 The CHP demurs on the theory that the Motorcycle Helmet Law is not unconstitutionally
14 vague because it includes one objective criterion for determining if a given helmet is legal: The
15 helmet must bear a DOT symbol affixed by the manufacturer. But plaintiffs allege, and hence
16 the CHP admits, that officers are infringing plaintiffs' constitutionally protected liberty interests
17 by making stop determinations on the basis of something other than the presence or absence of
18 that symbol [Complaint, ¶¶ 13, 15-16, 18]. This is the essence of an as-applied challenge

19 The presence of a DOT symbol on a helmet is not the test the CHP applies, nor does it
20 train other law enforcement agencies to use the DOT symbol as prima facie evidence of
21 compliance with the helmet law. Instead, the CHP allows individual officers to make
22 inconsistent, idiosyncratic determinations about how helmet law should be applied. That
23 approach violates the right to due process.

24 Therefore, the Court should overrule the demurrer or at the very least, it should give
25 plaintiffs leave to amend to make their as-applied allegations more explicit.

26 Dated: January 31, 2007

Respectfully submitted,

27 LASCHER & LASCHER,
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A Professional Corporation
WENDY COLE LASCHER

By: _____
Attorneys for Plaintiffs