

Case No. H031511

Santa Cruz County Superior Court  
Case No. CV155682

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, STEVE BIANCO, DON BLANSCET, STEVE  
BARRON, PATRICK HOLMES,

Real Parties in Interest.

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SUPERIOR COURT OF SANTA CRUZ COUNTY  
HON. ROBERT B. ATACK, JUDGE

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

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

Plaintiffs-real parties in interest Richard J. Quigley, Steve Bianco,<sup>1</sup>  
Don Blanscet, Steve Barron, and Patrick Holmes respectfully request that  
the Court deny the California Highway Patrol's ("CHP") petition for  
mandate. The respondent Santa Cruz Superior Court correctly recognized  
that real parties' complaint alleged sufficient facts to state a cause of action

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<sup>1</sup>The caption of the petition misspells Mr. Bianco's name as "Blanco."

for declaratory and injunctive relief:

The Complaint alleges that the CHP frequently arrests people whose helmets meet the standards as set forth in Vehicle Code Section 27802 and 27803. It states a cause of action for injunctive relief to prohibit the California Highway Patrol from citing someone for a violation of these sections, specifically 27803, where a person is wearing a helmet and the helmet bears a certificate of compliance, which is the DOT designation. So I think that for purposes [sic], and since the Complaint alleges that people are wearing helmets, not baseball caps but helmets, that the demurrer should be overruled.

Ex. 6, pp. 160:10-161:5.

## I.

### **THE PETITION MISCHARACTERIZES**

#### **REAL PARTIES' LAWSUIT.**

The CHP incorrectly argues that plaintiffs' action is a facial challenge to the motorcycle helmet law [Pet., p. 1, second paragraph; ???]. As the petition elsewhere states [e.g., first paragraph on p. 1], in fact real parties are only challenging the helmet law as applied by the CHP. The complaint alleges:

“19. The allegations of Paragraphs 1-18 above give rise to a genuine, present controversy between plaintiffs and the CHP concerning the constitutionality of the Motorcycle Helmet Law *as applied by the CHP*.

“27. In view of the absence of specific, articulable safety helmet standards, plaintiffs will be stopped repeatedly in violation of their Fourth Amendment rights, and will face multiple citations for which they will have to go to court repeatedly to establish the unconstitutionality of the Motorcycle Helmet Law *as applied by the CHP*. “

Ex. 2, p. 10, ¶27, emphasis added.

The complaint's prayer for relief requests:

“1. A declaration that the Motorcycle Helmet Law is unconstitutionally void for vagueness *as applied by the CHP.*

2. An injunction prohibiting enforcement of the Motorcycle Helmet Law *as applied by the CHP.*”

Ex. 2, p. 11, emphasis added.

When they go to trial, real parties will show that the CHP periodically and frequently arrests plaintiffs and others for violation of Vehicle Code section 27803 without having specific, articulable, objective facts that show that plaintiffs have knowingly violated that statute as interpreted by state and federal appellate decisions. Real parties will show that neither the CHP, nor the National Transportation Safety Board, nor any other California or federal government agency has established any list of approved motorcycle helmets. Further, real parties will show that it is not possible to determine by visual inspection whether a given helmet would have met the test established by the only regulation the CHP has ever adopted for motorcycle helmets, the highly technical standards of FMVSS 218.<sup>2</sup>

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<sup>2</sup> The relevant regulation is 13 California Code of Regulations 982. The FMVSS 218 standards appear in petitioner's Exhibit 2, pp. 13-22.

**II.**  
**THE PETITION IGNORES THE RELEVANT  
HOLDINGS OF THE CONTROLLING CASES.**

The petition claims that “[c]ourts have recognized that the California Helmet Law meets constitutional standards even though it inherently requires motorcycle riders to apply the law in light of ‘day-to-day’ experience’ *without* fixed standards” [Pet., pp. 1, 19, citing *Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1623]. *Buhl* was a challenge to the helmet law before it took effect and before the CHP enacted regulations to implement Vehicle Code sections 27802 and 27803. The statement that the CHP relies upon appears in a discussion of whether motorcyclists must guess whether their helmets fit properly,<sup>3</sup> as the petition notes [Pet., p. 11]. It has nothing to do with the issue addressed in real parties’ as-applied challenge, which addresses the standard the CHP has adopted to implement the helmet law.

As to the issues presented in real parties’ complaint, the holding of *Buhl* is that “it is clear [Vehicle Code section 27803] ***requires only that the consumer wear a helmet bearing a certification of compliance***” with FMVSS 218 (16 Cal.App.4th at 1623, emphasis added). Indeed, with respect to knowing which helmets satisfy the CHP’s standards, *Buhl* takes a

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<sup>3</sup>“Appellants next claim the law is too general, i.e., it requires a motorcyclist to wear a helmet which fits the head ‘without excessive lateral or vertical movement.’ According to appellants, they must guess whether the helmet fits, and then a police officer, also guessing, may disagree and issue a citation” (*Buhl, supra*, 16 Cal.App.4th at 1622).

position directly opposite to what the petition suggests, stating that it would be “*absurd*” to read section 27803 as requiring either a consumer or a law enforcement officer decide if the helmet is properly fabricated (16 Cal.App.4th at 1623).

The petition also misperceives the import of *Easyriders Freedom F.I.G.H.T. v. Hannigan* (9th Cir. 1996) 92 F.3d 1486. It is true that decision said that “an officer making an investigatory stop need not have reasonable suspicion that a motorcyclist has actual knowledge of a helmet's non-compliance if other factors, including the appearance of the helmet, are sufficient to establish reasonable suspicion that the helmet law is being violated” (92 F.3d at 1498). However, *Easyriders* also held:

The helmet law, as interpreted by the California courts and correctly articulated by the district court, requires specific intent as one of its elements. A motorcyclist who is wearing a helmet that was certified by the manufacturer at the time of sale must have actual knowledge of the helmet’s non-conformity to be guilty of violating the helmet law. Thus, in addition to intending to wear the helmet in question, the motorcyclist must intend to wear a helmet that he knows does not comply with the helmet law. Thus, because a violation of the helmet law requires specific intent on the part of a motorcyclist wearing a helmet that was certified at the time of purchase, the ticketing officer must have probable cause to believe that the specific intent, caused by the motorcyclist's actual knowledge of non-conformity, exists.

92 F.3d at 1499, emphasis added, fn. omitted.

This requirement of specific intent by the rider (and probable cause by police officers concerning specific intent) presents the essential issue that the petition fails to confront: Because there is no approved list of

motorcycle helmets, and because an ordinary person cannot discern from FMVSS 218 which helmets meet its standards, the helmet law as applied by the CHP – *i.e., as applied under the only standard the CHP has chosen to adopt* – does not give motorcycle riders adequate notice of what constitutes a violation of the law. Therefore, it is unconstitutionally vague *as applied*.

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

*City of Los Altos v. Barnes* (1992) 3 Cal.App.4th 1193, 1202, quoting *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391, 70 L.Ed. 322, 46 S.Ct. 126.

### III.

#### **THE PETITION DOES NOT ESTABLISH A BASIS FOR EXTRAORDINARY RELIEF.**

The CHP waited almost three months after the trial court overruled its demurrer to file a writ petition on the eve of oral argument in another case involving a different issue presented by the motorcycle helmet law. If this case actually posed the “serious threat” to safety that the petition claims [Pet. 2, 13], presumably the CHP would have acted more quickly. The CHP has not established that irreparable harm will occur unless a writ is granted.

Nor has the CHP shown that it lacks an adequate legal remedy. Once the case is tried, if the CHP is dissatisfied with the outcome it may appeal.

There is no danger of multiple inconsistent rulings [*see*, Pet. 20-21].

The complaint does not allege that the order in the criminal matter involving real party Quigley has preclusive effect on the CHP. It attaches that order merely to explain the status of Mr. Quigley's arrests, and to illustrate the need for injunctive relief [Ex. 2, pp. 9-10].

Further, the CHP has not established an abuse of discretion by the trial court. It argues that the complaint lacked adequate specificity, and that in one incident involving real party Quigley he was not wearing a helmet [Pet. 2, 14, 15, 17]. But real parties' complaint alleges many incidents involving all of the real parties, as well as other motorcyclists [Ex. 2, pp. 9-24]. Whether a plaintiff may eventually be able to prove the allegations in the complaint is not of concern on demurrer for "plaintiff need only prove or plead facts showing that he may be entitled to some relief" (*Gonzales v. City of San Diego* (1982) 130 Cal.App.3d 882, 884). If it appears that the plaintiff is entitled to any relief the complaint must be allowed to stand even though "the facts may not be clearly stated or may be intermingled with irrelevant facts" (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549). The Court must grant leave to amend if there is a reasonable possibility the plaintiffs could cure defects in their complaint by amending it (Code Civ. Proc., §472a, subd. (c); *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081).

## **CONCLUSION**

The writ petition is based on a straw man theory that previous cases control, and on the assumption that real parties cannot prove the facts they have alleged.

Respondent superior court has postponed setting this matter for trial, despite real party Quigley's ill health [Ex. 2, p. 10], awaiting a ruling on the CHP's stay application. Real parties therefore request that the Court act quickly to deny the writ petition and award real parties their costs.

Respectfully submitted,

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**CERTIFICATE OF WORD COUNT**

Rules 8.490 and 8.204, California Rules of Court

The text of this opposition consists of ???? words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

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

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