

COPY

**RELATED WRIT PETITION PENDING: Case No. H029406
IMMEDIATE STAY REQUESTED**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

**CALIFORNIA HIGHWAY PATROL: MIKE
BROWN, Commissioner; CHRISTINA
MANRIQUEZ, Commander,**

Petitioners.

v.

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

Respondent.

**RICHARD QUIGLEY, STEVE BLANCO, DON
BLANSCET, STEVE BARRON, PATRICK
HOLMES,**

Real Parties In Interest and Plaintiffs.

Santa Cruz County Superior Court No. CV 155682
The Honorable Robert B. Atack, Judge

**PETITION FOR WRIT OF MANDATE
AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

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**Court of Appeal
State of California
Sixth Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

RELATED WRIT OF PETITION PENDING:

Court of Appeal Case Number: Case No. H029406

Division _____

Case Name: California Highway Patrol, et al. v. Superior Court of the State of California, et al.

Please check the applicable box:

There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 14.5(d)(3).

Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with Entity or Person information if necessary.



Signature of Attorney/Party Submitting Form

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**IF SUBMITTED AS A STAND-ALONE DOCUMENT, SUBMIT A SEPARATE PROOF OF SERVICE
ON ALL PARTIES WITH YOUR CERTIFICATE.**

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INTRODUCTION

Petitioners California Highway Patrol (“CHP”), CHP Commissioner Mike Brown, and CHP Captain Christina Manriques, bring this petition for a writ of mandate to review an order of the Santa Cruz Superior Court denying petitioners’ demurrer to the complaint in this action. The complaint in this equitable action expressly seeks a “declaration that the [California] Motorcycle Helmet Law is unconstitutionally void for vagueness as applied by the CHP” and an “injunction prohibiting enforcement of the Motorcycle Helmet Law as applied by the CHP unless and until the CHP develops articulable, objective standards to determine whether a particular motorcycle helmet complies with Vehicle Code section 27803.”

At its core, this suit is simply another in a long line of facial challenges to the California Helmet Law, found at Vehicle Code sections 27802 and 27803. As in other cases, plaintiffs seek to invalidate the law because it gives CHP officers some discretion in deciding when to stop and cite for violations of the law. (See *Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1623 [rejecting claim that the California Helmet Law was too general because it required motorcyclist to exercise discretion to comply]). Such discretion is necessary due to the diverse and ingenious ways that some motorcycle riders violate the law, and the fact that enforcement of the law must necessarily proceed on a case-by-case basis. Courts have recognized that the California Helmet Law meets constitutional standards even though it inherently requires motorcyclists to apply the law in light of “day-to-day experience” *without* fixed standards. (See *Buhl*, at p. 1623 [noting that “The law is replete with instances in

which a person must, at his [or her] peril, govern his [or her] conduct by such nonmathematical standards as 'reasonable,' 'prudent,' 'necessary and proper,' '*substantial*,' and the like''].)

This action should be resolved as a simple matter of law at the pleading stage, as the merits turn on how much discretion law enforcement officers are allowed to exercise in applying the law in the field. However, by denying the petitioner's demurrer, the trial court has decided that this matter should proceed to trial, where an injunction may issue against enforcement of the law statewide. Such a result poses a serious threat to the safety of California motorcyclists. In this case, the trial court denied the demurrer even though it is undisputed that one plaintiff obtained a citation for wearing *no helmet at all* while operating a motorcycle. Therefore, given the purely legal nature of the issues in this action, and the threat to public safety, petitioners request that this court grant the writ and stay further trial court proceedings pending resolution of this matter.

**PETITION FOR WRIT OF MANDATE AND/OR
PROHIBITION OR OTHER APPROPRIATE RELIEF**

A. Authenticity of Exhibits

1. All exhibits accompanying this petition are true copies of original documents on file with respondent court, except: (1) Exhibit 6, which is a correct copy of the original reporter's transcript of the hearing on the demurrer on February 13, 2007; (2) Exhibit 7, which is a correct copy of a federal court's order granting motion to dismiss against Real Party In Interest Richard Quigley in a related case regarding his

violations of the Helmet Law with City of Watsonville;¹ and (3) Exhibit 8, which is a correct copy of the Code of Federal Regulations, Title 49, section 571.218, including the appendix to section 571.218. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively from page 001 through 199.

B. Beneficial Interest of Petitioner; Capacities of Respondent and Real Parties In Interest

2. Petitioners California Highway Patrol ("CHP"), and CHP Commissioner Mike Brown and Commander Christina Manriquez are defendants in an action for declaratory and injunctive relief regarding the constitutionality of the Helmet Law pending in respondent superior court entitled, *Richard Quigley, et al. v. California Highway Patrol, et al.*, case no. CV 155682. Petitioners enforce the laws regarding motorists, including the Helmet Law, for the public's safety. Real Party In Interest Richard Quigley is a motorist who has been stopped and received citations from the CHP for violations of the Helmet Law. Real Parties In Interest Steve Blanco, Don Blanscet, Steve Barron, and Patrick Holmes allegedly have also received citations from the CHP for violations of the Helmet Law.

C. Chronology of Pertinent Events

3. On August 16, 2006, a Santa Cruz County Superior Court judge, in a

1. The case is entitled, *Quigley v. City of Watsonville, et al.*, United States District Court, Northern District of California, case number C-05-03763. Petitioners request the Court take judicial notice pursuant to Evidence Code section 452 of the federal court's Order Granting Motion To Dismiss, filed on March 21, 2007, which is attached to this petition as Exhibit 7.

separate criminal matter against Real Party In Interest Richard Quigley, dismissed five citations^{2/} the CHP had issued to Quigley for violations of the Helmet Law because he found that “[the Helmet Law] is unconstitutionally void for vagueness as applied by the officers who cited . . . Quigley.” (Exhibit 2, ¶ 22; see generally Exhibit 2, attached-exhibit 2 [“*Quigley* criminal order”].)

4. On November 9, 2006, Real Parties In Interest filed a complaint for declaratory and injunctive relief regarding the constitutionality of the Helmet Law against Petitioners with Santa Cruz County Superior Court based on the *Quigley* criminal order. Real Parties In Interest seek: (1) a declaration that the Helmet Law and the regulations adopted by the CHP in furtherance of the Helmet Law are void for vagueness; and (2) an injunction prohibiting the CHP’s enforcement of the Helmet Law unless and until the CHP develops articulable, objective standards to determine whether a particular motorcycle helmet complies with the Helmet Law. (Exhibit 2, ¶ 20 and Prayer for Relief, ¶ 2.)

5. On January 12, 2007, Petitioners filed a demurrer to the complaint, and later a reply in support of the demurrer, arguing that Real Parties In Interest failed to allege sufficient facts to state an “as applied” challenge to the constitutionality of the Helmet Law. Furthermore, Petitioners argued that although Real Parties In Interest claim that they are challenging the constitutionality of the Helmet Law as applied by

2. Real Parties In Interest reference *nine* citations in their complaint, however, only five of them were issued by Petitioner CHP. The remaining four were issued by the City of Watsonville Police, who is not a party to this case. Thus, this petition only addresses the five citations issued by Petitioner CHP.

the CHP, their allegations are actually challenging the constitutionality of the Helmet Law on its face, i.e., on the text of the statute and the regulations adopted in furtherance thereof. Real Parties In Interest filed an opposition to the demurrer. (Exhibits 3-5.)

6. On February 13, 2007, respondent court ruled that Real Parties In Interest stated a claim for declaratory and injunctive relief regarding the constitutionality of the Helmet Law as applied by the CHP. (Exhibit 6.)

7. On April 16, 2007, respondent court issued an Order Denying Demurrer to Complaint, and on April 20, 2007, Real Parties In Interest served Petitioners with a Notice of Entry of Order. (Exhibits 1.)

D. Basis for Relief

8. There are two issues presented in this petition:

(1) Are Real Parties In Interest asserting a facial challenge to the constitutionality of the Helmet Law that should be rejected based on prior cases, such as *Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612?

(2) If Real Parties In Interest are asserting an “as applied” challenge to the Helmet Law, then did respondent court abuse its discretion by finding that they stated sufficient facts when: (1) there are no specific facts pleaded regarding Quigley’s “helmet”, or CHP’s reasonable suspicion or probable cause to suggest any violation of

his constitutional rights during the citations; and (2) on at least one occasion, Quigley received a citation when he was *not* wearing *any* helmet?

9. Respondent court found that Real Parties In Interest stated an “as applied” challenge to the constitutionality of the Helmet Law, and had stated sufficient facts for both declaratory and injunctive relief. Specifically, respondent court noted that the complaint stated a cause of action for injunctive relief to prohibit the CHP from citing someone for a violation of the Helmet Law where a person is wearing a helmet and the helmet bears a certificate of compliance, which is the “DOT” designation. (Exhibit 6.)

10. This was an abuse of discretion because: (1) respondent court disregarded the fact that Real Parties In Interest are actually alleging a facial challenge to the constitutionality of the Helmet Law that is similar to those rejected by the appellate courts; and (2) respondent court ruled Real Parties In Interest stated a cause of action for injunctive relief against the CHP’s enforcement of the Helmet Law despite the fact that they failed to plead any facts suggesting that CHP violated Quigley’s constitutional rights during the citations.

11. Inconsistent with current California appellate cases, respondent court ruled that Real Parties In Interest had sufficiently stated a claim that the CHP applied the Helmet Law unconstitutionally to Quigley without any specific facts addressing the totality of the circumstances of the investigatory stop and arrest of each of the five

citations, e.g., what type of headgear or helmet Quigley was wearing, if any; whether or not it was a helmet that no longer complies with the Helmet Law even though it bears a certification of compliance; and whether Quigley had actual knowledge of the helmet's nonconformity if it was a helmet that did bear a certification of compliance.

E. Absence of Other Remedies

12. Delaying review of the present order, which undermines the constitutionality of the Helmet Law on its face, until and after final judgment would be an inadequate remedy and would result in irreparable harm to the enforceability of the Helmet Law. The present order undermines the CHP's enforcement of the Helmet Law. In addition, the issues presented in this petition have a direct bearing on the related writ petition that is set for oral argument before this Court on May 8, 2007, case number H029406, because they address the constitutionality of the enforcement of the Helmet Law.

PRAYER

Petitioners CHP, Commissioner Brown, and Commander Manriquez pray that this court:


1. Issue an alternative writ of mandate directing respondent court to set aside and vacate its order of April 16, 2007, overruling the demurrer, and to enter a new and different order granting the demurrer without leave to amend;
2. Award petitioner its costs, including those provided by Government Code section 6103.5; and

3. Grant such other relief as may be just and proper.

Dated: May 4, 2007

Respectfully submitted,

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VERIFICATION

I, Lillian Y. Tabe, declare as follows:

I am an attorney with the California Department of Justice. I have read the foregoing Petition for Writ of Mandate/Prohibition and Request for Stay and know its contents. The facts alleged in the petition are within my knowledge, or within the scope of my research, and I believe the facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on May 4, 2007, at Oakland, California.



LILLIAN Y. TABE

MEMORANDUM OF POINTS AND AUTHORITIES

I. REAL PARTIES IN INTEREST ATTEMPT TO RESURRECT CONSTITUTIONAL CHALLENGE THAT APPELLATE COURT REJECTED IN *BUHL V. HANNIGAN*

The challenge to the constitutionality of the Helmet Law in this case is essentially the same facial challenge to the constitutionality of the Helmet Law rejected in *Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612. In *Buhl*, the appellants challenged the Helmet Law by alleging that the text of the CHP's regulations, i.e., FMVSS 218, is so technical that a motorcyclist or enforcement officer would need to be a scientist to determine with laboratory testing whether a particular helmet complies. (*Buhl*, at p. 1622 ["The incorporated federal safety standards are so technical one must be a physicist or an engineer testing the product in a laboratory to ascertain whether a particular helmet complies."]; *Easyriders Freedom F.I.G.H.T. v. Hannigan* (9th Cir. 1996) 92 F.3d 1486, 1491.) Here, Real Parties In Interest restate the same challenge to the Helmet Law-- "an *officer* cannot make . . . a determination [whether a helmet complies with the Helmet Law] without laboratory testing." (Exhibit 2, ¶¶ 10, 15 [emphasis added].)

In *Buhl*, the Court of Appeal rejected this argument, noting that "underlying this argument is the proposition that the statute requires the *consumer* or *enforcement officer* to decide if the helmet is properly fabricated, and such a reading of section 27803 is absurd." (*Buhl v. Hannigan, supra*, 16 Cal.App.4th at p. 1622 [emphasis added].) The Court held, "when sections 27802 and 27803 are

harmonized,” the Helmet Law clearly requires the *consumer* to wear a *helmet*, not a soft material or fabric cap, that bears the manufacturer’s certification of compliance with the federal standard, i.e., FMVSS 218. (See *Buhl*, at p. 1622; *Easyriders Freedom F.I.G.H.T. v. Hannigan*, *supra*, 92 F.3d at pp. 1490-1491.)

The Court of Appeal discussed that “statutes must be given a reasonable and practical construction in accordance with the probable intent of the Legislature.”

The Helmet Law, specifically Vehicle Code section 27803(g), unambiguously states the intent of the Legislature is “to ensure that all persons are provided with an additional safety benefit while operating or riding a motorcycle . . .” (Veh. Code § 27803(g).) From day-to-day experience, one can discern between a *helmet* and a fabric cap. In *Buhl*, the appellants attacked the text of the Helmet Law that describes the required fit of a helmet on one’s head -- “without excessive lateral or vertical movement,” by arguing that motorcyclists “must guess whether the helmet fits and then a police officer, also guessing, may disagree and issue a citation.” (*Buhl v. Hannigan*, *supra*, 16 Cal.App.4th at p. 1622.)

The Court of Appeal disposed this argument, noting that day-to-day experience teaches a purchaser or wearer of apparel to discern the fit-tight or loose, big or small. (*Buhl v. Hannigan*, *supra*, 16 Cal.App.4th at p. 1623.) The Court even noted that “it matters not that someone may, at some time, guess wrong about the size of the helmet.” (*Ibid.* [pointing out, “The law is replete with instances in which a person must, at his [or her] peril, govern his [or her] conduct by such

nonmathematical standards as ‘reasonable,’ ‘prudent,’ ‘necessary and proper,’ ‘*substantial*,’ and the like.”]) The Court concluded that standards of this kind, or laws with such language, are not impermissively [sic] vague. (*Ibid.*)

Likewise, day-to-day experience teaches a person to discern between a hard shell helmet and a soft material, fabric baseball cap.^{3/} In addition, from common experience, one knows that a hard shell helmet can provide an “additional safety benefit” against motorcycle head-*impact* deaths and injuries, and a fabric baseball cap can not. (See *Buhl v. Hannigan*, *supra*, 16 Cal.App.4th at pp. 1622-1623; 49 C.F.R. § 571.218 [“FMVSS 218”].) Thus, the Court of Appeal found that the Helmet Law was not impermissibly vague since the meaning of the Helmet Law can be “objectively ascertained by reference to common experiences of mankind.” (*Buhl*, at p. 1623.)

Here, the challenge to the Helmet Law is even weaker than the challenge in *Buhl*. In *Buhl*, the appellants argued that *motorcyclists* and *enforcement officers* are unable to determine what complies with the Helmet Law because the text of the regulations is too technical. (See *Buhl v. Hannigan*, *supra*, 16 Cal.App.4th at p. 1622.) Here, Real Parties argue that *enforcement officers*, i.e., the CHP, are unable to determine what complies, even when a motorcyclist is wearing nothing at all on

3. In addition to day-to-day experience, an individual can discern a motorcycle *helmet* from a soft material, fabric baseball cap by referring to the illustration of a test-*helmet* in Figure 4 of the appendix to FMVSS 218. Petitioners request the Court take judicial notice pursuant to Evidence Code section 452, of FMVSS 218, including its appendix, which is attached to this petition as Exhibit 8.

his head.^{4/} In addition, their argument incorrectly assumes, as in *Buhl*, that officers are making determinations regarding the technical specifications for a motorcycle helmet. Their argument disregards the Court of Appeals' finding that the Helmet Law requires: (1) *helmet manufacturers* to comply with the technical specifications of FMVSS 218, and certify a helmet's compliance by permanently and legibly placing a label with the initials "DOT" for Department of Transportation; and (2) *consumers or motorcyclists* to wear a helmet that bears the DOT certification of compliance when operating or riding a motorcycle. (See *Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at p. 1491; FMVSS 218.) Because Real Parties In Interest's argument is encompassed in the challenged rejected in *Buhl*, this Court should similarly reject their challenge as a matter of law at this stage in the case.

II. WRIT RELIEF NECESSARY TO ENSURE CONTINUED STATEWIDE ENFORCEABILITY OF PUBLIC SAFETY STATUTE

A. Constitutionality Of Helmet Law Investigatory Stops Based On Appearance

Writ relief is necessary even if this Court views the complaint as an as-applied challenge to the constitutionality of the Helmet Law. As a matter of law,

4. Facts appearing in exhibits to a complaint supercede allegations in the complaint. (Code Civ. Proc., § 430.70; *Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 359; *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.) Thus, the fact that Quigley was cited for not wearing anything on his head supercedes the allegation that Quigley was stopped and cited five times "despite wearing a helmet which the manufacturer had certified as complying with FMVSS 218." (See Exhibit 2, ¶ 22 and *Quigley* criminal order.)

this Court should vacate the respondent court's order because it contradicts appellate court rulings regarding what constitutes a Helmet Law violation, and holds that it is unconstitutional for the CHP to issue a citation^{5/} when it has probable cause a motorcyclist was violating the Helmet Law by operating a motorcycle while bare-headed, wearing nothing at all on his head.

To state an as-applied challenge to the constitutionality of the Helmet Law, one must state how the CHP misapplied the Helmet Law to him. (See generally *Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at pp. 1497-1498 [courts consider the totality of the circumstances surrounding the investigatory stop or citation, including the experience and expertise of the particular officer, when reviewing the constitutionality of a stop or citation].) Here, Real Parties In Interest claim the five citations the CHP issued to Quigley, including the underlying investigatory stops, were unconstitutional, however they fail to state any specific facts regarding how the CHP conducted any of the five stops or citations. Instead, Real Parties In Interest merely claim, "because . . . there is no way to tell by appearance whether a given helmet complies with [the Helmet Law], there is no basis for a law enforcement officer to stop a motorcyclist on the basis of the appearance of that person's helmet." (Exhibit 2, ¶ 16.) This argument disregards the Ninth Circuit's holding in *Easyriders*.

5. Under California law, a traffic citation is considered an "arrest" (see Cal. Pen. Code § 853.5), for which an officer must have probable cause. (*Easyriders, supra*, at p. 1498.)

In *Easyriders*, the Ninth Circuit held that the CHP may stop motorcyclists for violations of the Helmet Law based on the appearance of their helmets. (*Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at p. 1497.) The Ninth Circuit also held that the Helmet Law is not impermissibly vague because it defines generally what conduct is prohibited, and establishes guidelines to govern law enforcement. (*Easyriders*, at p. 1494.) Refuting Real Parties In Interest's allegations, the Court of Appeal found in *Buhl* that the Helmet Law was not unconstitutionally vague because it could be understood by persons of ordinary intelligence with reference to day-to-day experience. (See *Buhl v. Hannigan, supra*, 16 Cal.App.4th at p. 1622.)

Courts have held that law enforcement may stop motorcyclists if they have a reasonable suspicion that they are violating the Helmet Law. (*Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at p. 1497.) Clearly, a motorcyclist violates the Helmet Law when he drives or rides a motorcycle: (1) bare-headed, without wearing *anything* on his head; (2) wearing a fabric cap, which one knows from day-to-day experience is not a helmet; and (3) wearing a helmet that does not bear a certification of compliance that was applied by the manufacturer at the time of sale. (*Easyriders*, at p. 1494; *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1123; *Buhl v. Hannigan, supra*, 16 Cal.App.4th at p. 1622.) In these scenarios, law enforcement may stop the motorcyclist based solely on the appearance of the helmet or lack thereof. Respondent court's ruling not only

disregarded existing appellate court holdings on this issue, but also failed to recognize that Real Parties In Interest are asserting a facial challenge to the constitutionality of the Helmet Law. Accordingly, respondent court's order should be vacated.

B. Constitutionality Of Helmet Law Citations And The Element Of Knowledge

Real Parties In Interest also argue the Helmet Law is unconstitutional because the CHP cites motorcyclists for violations of the Helmet Law without regard to their actual knowledge of noncompliance. (Exhibit 2, ¶¶ 18-19.) By overruling the demurrer, respondent court failed to recognize that the Ninth Circuit and California appellate court have held that actual knowledge of noncompliance is required only if the helmet bears a manufacturer's certification of compliance. (See *Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at p. 1494.)

Courts have held that law enforcement may cite motorcyclists if they have probable cause that they are violating the Helmet Law by: (1) not wearing a helmet, which includes not wearing anything at all on one's head or wearing a soft fabric cap; (2) wearing a helmet that was not certified by the manufacturer at the time of sale as complying with FMVSS 218; or (3) wearing a helmet that was certified by the manufacturer at the time of sale *and* having actual knowledge that it does not comply, or no longer complies, with federal standards. (*Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at pp. 1492, 1498.) Thus, if a motorcyclist is driving or riding without *any* helmet (or wearing only a fabric cap), or while

wearing a helmet that does not bear the manufacturer's certification of compliance, then he is violating the Helmet Law regardless of his knowledge of noncompliance. Here, one of Quigley's citations was for "not wearing any headgear at all." (Exhibit 2, *Quigley* criminal order at pp. 1:20-23, 7:13-17.) By overruling the demurrer, respondent court ruled that Real Parties In Interest had stated sufficient facts to allege that the CHP's enforcement of the Helmet Law during this citation was unconstitutional.

Furthermore, Real Parties In Interest fail to allege any facts suggesting that CHP officers did not have probable cause to issue Quigley the citations. The complaint lacks sufficient facts describing what Quigley was wearing on his head, if anything at all, at the time of the citations. At least for one of the citations, Quigley was not wearing anything at all on his head. (Exhibit 2, *Quigley* criminal order at pp. 1:20-23, 7:13-17.)

To allege that the citations issued by CHP violated Quigley's constitutional rights because CHP lacked probable cause for them, Real Parties In Interest must state facts regarding the appearance of Quigley's headgear at the time of the citations. If Quigley was wearing a fabric baseball cap or wool cap, even if it had the letters "D-O-T" embroidered on it, the facts would be insufficient to state a claim that CHP lacked probable cause for the citations. Even if Quigley was wearing a helmet with a manufacturer's certification of compliance, according to the Ninth Circuit and California appellate cases, Quigley would be in violation of

the Helmet Law *if* he knows that the helmet does not comply, or no longer complies, with federal standards. Real Parties In Interest failed to state any facts suggesting that CHP did not have probable cause that Quigley knew that his helmet was noncompliant. (Exhibit 6, at p. 5:3-20.) Thus, they failed to state sufficient facts to challenge the Helmet Law as applied by the CHP.

Despite presenting these arguments to the respondent court, respondent court ruled that Real Parties In Interest had stated sufficient facts for the declaratory and injunctive relief sought. (Exhibit 6, at pp. 2:13-3:5, 9:7-9.) By overruling the demurrer, respondent court is allowing Real Parties In Interest to undermine the aforementioned holdings by the Ninth Circuit and California appellate courts.

III. WRIT RELIEF NECESSARY TO PREVENT INCONSISTENT RULINGS STATEWIDE

A. Giving *Quigley* Criminal Order Conclusive Or Preclusive Effect Undermines Enforceability Of Helmet Law

Real Parties In Interest allege that they are entitled to a declaration that the Helmet Law and the CHP's regulations in furtherance of the Helmet Law are void for vagueness based on a separate Santa Cruz County Superior Court's order on August 16, 2006, in *People v. Quigley*. (Exhibit 2, ¶¶ 20, 22, 25.) The trial court's order dismissed the five citations the CHP had issued to Quigley for violations of the Helmet Law because it found that "[the Helmet Law] is unconstitutionally void for vagueness as applied by the officers who cited . . . Quigley." (Exhibit 2, ¶ 22 and *Quigley* criminal order at p. 7:10-17.) Real Parties In Interest attach and

incorporate by reference to the complaint the *Quigley* criminal order. (Exhibit 2, ¶ 22.) By overruling the demurrer to the complaint, respondent court held that Real Parties In Interest sufficiently stated a challenge to the constitutionality of the Helmet Law based on the *Quigley* criminal order. This was an abuse of discretion that requires immediate writ relief because it undermines prior appellate court holdings and chills the enforceability of the Helmet Law statewide.

If this Court views the complaint as a facial challenge to the constitutionality of the Helmet Law as discussed *supra*, then this case presents a pure question of law rather than of fact. (Exhibit 3, at p. 5:14-24.) In such cases, the California Supreme Court has held that the prior determination, e.g., the *Quigley* criminal order, is not conclusive if injustice would result. (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 257.)

As discussed earlier, the *Quigley* criminal order's finding is contrary to existing appellate cases that have held that: (1) the Helmet Law is not impermissibly vague in light of day-to-day experiences; (2) the Helmet Law does define generally what conduct is prohibited and does establish guidelines to govern law enforcement; and (3) the CHP has adopted regulations establishing standards and specifications for motorcycle safety helmets by adopting FMVSS 218. (*Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at pp. 1494, 1497; *Bianco v. California Highway Patrol, supra*, 24 Cal.App.4th at p. 1122.) Thus, to afford the *Quigley* criminal order any preclusive or conclusive effect would not only render

the Helmet Law unenforceable statewide, but also perpetuate rulings inconsistent with appellate cases regarding the Helmet Law. The Court's review is necessary to prevent any confusion regarding the Helmet Law from developing.^{6/}

B. Writ Relief Necessary To Prevent Inconsistent Rulings Among Multiple Lawsuits Based On *Quigley* Criminal Order

Real Party In Interest Quigley has filed a related federal claim lawsuit with the United States District Court, Northern District of California in San Jose against the City of Watsonville where he similarly alleges that the City of Watsonville Police unconstitutionally enforced the Helmet Law against him and bases his allegations on the *Quigley* criminal order. (Exhibit 7, at p. 1:18-27.) The district court recently dismissed Quigley's complaint on similar grounds discussed here, namely: (1) Quigley's claims are inconsistent with California appellate cases, and (2) injustice would result statewide with the enforcement of the Helmet Law, a public safety statute, if a court grants the *Quigley* criminal order any collateral estoppel effect. (*Id.*, at pp. 3:24-4:23.)

Real Party In Interest Quigley's multiple attempts with different courts to argue that the *Quigley* criminal order should have preclusive or conclusive effect on various law enforcement agencies' ability to enforce the Helmet Law stresses the

6. In *Easyriders*, the Ninth Circuit noted that "the vast majority of motorcyclists have successfully complied with the [H]elmet [L]aw with little difficulty." (*Easyriders Freedom F.I.G.H.T. v. Hannigan, supra*, 92 F.3d at p. 1494.) Specifically, the Ninth Circuit noted, according to a study by UCLA's School of Public Health in 1992, before any interpretation of the statute by *Bianco* or *Buhl*, over ninety percent of motorcyclists have been able to comply with the helmet law. (*Id.*, fn. 3.)

urgency and need for this Court to grant immediate writ review to avoid further inconsistent rulings regarding the Helmet Law, an important public safety statute.

CONCLUSION

For the reasons set forth above, petitioners CHP, Commissioner Brown, and Commander Manriquez respectfully request this Court to grant extraordinary writ relief as prayed and direct respondent court to vacate its April 16, 2007 order overruling the demurrer.

Dated: May 4, 2007

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

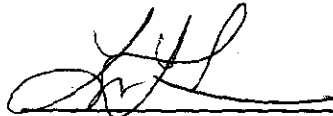
California Court of Appeal, Sixth Appellate District

Pursuant to California Rules of Court, Rules 8.204 and 8.490, I certify that all text, including footnotes, in the attached PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER EXTRAORDINARY RELIEF is proportionally spaced, uses 13 point Times New Roman font, and contains 5,485 words.

Dated: May 4, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **California Highway Patrol; Mike Brown, Commissioner; Christina Manriquez, Commander v. Superior court of the State of California, County of Santa Cruz**

No.: **Related Writ Petition Pending: Case No. H029406
(Santa Cruz County Superior Court No. CV 155682)**

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 May 4, 2007, I served the attached **PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF** by placing a true copy thereof enclosed in a sealed envelope with the **California Overnight**, addressed as follows:


LASCHER & LASCHER
Wendy Cole Lascher
605 Poli Street
Ventura, CA 93001

Superior Court of California
The Honorable Robert B. Attack, Judge
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060-4086

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 May 4, 2007, at Oakland, California.

Erica A. Panoringan

Declarant



Signature