Richard J. Quigley, pro. se.
2860 Porter Street, pmb 12
Soquel, CA 95073
831-685-3108

**THE SUPERIOR COURT OF CALIFORNIA**
**IN AND FOR THE COUNTY OF SANTA CRUZ**

| | |
|---|---|
| **People of the State of California**,<br>Plaintiff;<br>**vs.**<br>**Richard J. Quigley,**<br>Defendant. | **Case #: 3WMO18538**<br>**POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS** |

COMES NOW THE DEFENDANT with Points and Authorities in support of his Motion to Dismiss the allegations of violation of CVC 27803, in the above-entitled case, on two separate grounds: (1) the statute is unconstitutionally vague as written, interpreted and enforced; and (2) because the prosecution cannot make a case showing the requisite probable cause for the citing officers to have issued the at-issue citations, much less for prosecuting the case.

## I. CVC § 27803 IS UNCONSTITUTIONAL

On July 15, 1993, the 4th Appellate Court filed its (modified) ruling in the matter of *Buhl v. Hannigan* (16 CAL.APP.4TH 1612, 20 CAL.RPTR.2D 740), upholding the decision of the Superior Court to reject the constitutional challenge of California's newly enacted (Janu-

ary 1, 1992) helmet law on a myriad of grounds – Associate Justice Sonenshine writing the opinion of the Court, with Justice Sills (Presiding Justice) and Justice Moore concurring. In so doing, the court opened the door for violation of the constitutionally protected rights of hundreds of thousands of motorcyclists throughout the State of California ever since.

**A. Is the *Buhl* decision absurd?**

> "Appellants contend the helmet law is void for vagueness under the federal and state constitutions in that it 'prescribes a standard which cannot be understood by persons of ordinary intelligence.' They assert neither motorcyclists nor police officers can tell whether a particular helmet complies.
>
> "Their first claim in this respect is the law is too specific: 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. But 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." (*id.*)

As it worked out, such a reading of 27803 actually bordered on psychic. In view of the fact that at the time the appellants made the argument, the helmet law had not yet been enacted, or enforcement commenced, the appellant's proposition was virtually clairvoyant – far from absurd. (See Exhibit "V")

The whole reason the Federal Court issued the *Easyriders* injunction against the CHP and their allied agencies in 1995, was because from the time the helmet law was enacted in 1992 until the injunction issued, the CHP had issued in excess of forty thousand citations to motorcyclists wearing helmets that their officers were trained to believe were not properly fabricated – the decision of *Buhl* in 1993 didn't even slow them down. Out of the hundreds of thousands of citations issued to riders throughout California for wearing some sort of headgear the rider believed to be a helmet, it is unclear whether *any* were ever cited or convicted for anything other than a decision by the cop and the court that the helmet in question was not properly *fabricated*.

In fact, in California alone an estimated 100 tickets were issued to motorcyclists wearing helmets, 40 a day on average by the CHP alone, based on allegations of improper helmet fabrication, on the very day the *Buhl* court found the proposition that the statute would require such outcomes, absurd. Of those, virtually all resulted in convictions in the California courts.[1]

ALL of that could have been avoided if the *Buhl* court had not been so anxious to bitch-slap bikers for being bikers.[2] The decision was bad enough, but the insulting manner in which it was delivered was and is reprehensible.

/ / /

---

[1] And that's not to mention how many bikers suffered all across the United States during the same period with police following the lead of the CHP – hundreds of thousands of motorcyclists cited and convicted for wearing improperly fabricated helmets nationwide, and the *Buhl* court found the proposition that the statute would result in such an outcome, absurd?)

[2] What other excuse could their be for the decision, or the words they chose to make it? The appellant's proposition that the statute would make fabrication the main standard by which the police determine compliance with the helmet law, was "absurd"? Sheesh! They might as well have straight up said "dumb bikers!"

Although the language of the helmet law statute may not technically require the consumer or enforcement officer to decide if a helmet is properly fabricated as *Buhl* opined, for whatever reason(s) the helmet law has rarely if ever been enforced any other way.

For example: If not an indicator of proper or improper helmet fabrication, what difference does the appearance of a helmet make? Why is whether or not the surface of the defendant's helmet appears "hard" an issue, except as an indicator of proper or improper fabrication? If proper fabrication is not a requirement, what difference does it make whether a helmet looks like a baseball cap? . . . or a Dixie cup with a shoestring for that matter?

**B. The cops and the Courts disregard the *Buhl* decision.**

Having denied fabrication as a determining factor of whether or not a helmet is in compliance with the requirements of the helmet law, the *Buhl* court stated that rather:

> "When sections 27802 and 27803 are harmonized, as they must be (citations omitted), it is clear the law requires only that the consumer wear a helmet bearing a certification of compliance." (*Id.*)

That dog never did hunt.

With the introduction of the helmet law by the California Highway Patrol[3] in 1992, came a state-wide (actually a nation-wide) *training* campaign on "fake DOT stickers" being put on "fake" and "novelty" helmets, and the police and the courts moved immediately to fabrication as the operative standard for deciding guilt or innocence of the biker.

---

[3] The "department" authorized by CVC §27802 to "adopt reasonable regulations" pertaining to motorcycle helmets "sold or offered for sale."

Add to that the unbelievably common misunderstanding perpetuated by the U.S. Department of Transportation (hereinafter "D.O.T.") that the D.O.T. approves or certifies helmets, or even requires testing of helmets prior to their introduction into the market place, and all the elements are there to render the California helmet law unconstitutional – toss in a couple of brochures on how to identify "fake helmets," along with a video production by NHTSA bolstering the point;[4] and there's no way any rational person could suggest that law enforcement officers would not expect motorcyclists to wear a properly fabricated helmet, or that the courts not find them guilty of violating the helmet law if, in some police officer's subjective opinion, the helmet's fabrication was off – that the rider wasn't wearing an "approved-type helmet."

Not one word of training has ever been provided to anyone regarding how to identify a "helmet bearing a certification of compliance." Not one word has ever been presented to the people charged with enforcing the statute on how to identify a "certified helmet."

Most certainly, the courts rarely looked past the citing officer's subjective opinion as to whether a helmet was properly fabricated in making the decision as to whether or not a biker was in compliance. Time after time, helmet after helmet was found non-compliant, and the rider held criminally liable, the presence of a certification of compliance – the "DOT" emblem – the ***only*** requirement of *Buhl* notwithstanding.

---

[4] At one point, the defendant was involved in a lawsuit against NHTSA in the hopes of preventing them from televising a video aimed at assisting the police in identifying whether or not a helmet is properly fabricated. The intent of the defendant was to try to stop the spread of the misconception about what constitutes a properly constructed motorcycle safety helmet – not for the purpose of disrupting legitimate distribution of information, but to help prevent more confusion about what is required by the various helmet laws throughout the states with helmet laws. We found out that NHTSA has First Amendment rights.

The instant case is a perfect, typical example of the disregard the police and courts have for the *Buhl* court's decision. Against the appearance of the defendant's helmet, the evidence of a certification of compliance, the "DOT" emblem on the helmet, is meaningless – as in, means nothing, nada, no meaning whatsoever to the prosecution. After all, according to the prosecution, it's only a baseball cap, and there's no way a baseball cap could possibly be a properly fabricated helmet.

However, is there a way the defendant's helmet could be a properly *certified* helmet, even if it were not properly fabricated? Of course there is. It happens all the time. All a person has to do is go to the internet and take a look at the recalls posted on the NHTSA web site to realize that every day, equipment certified as compliant with Federal Standards, has failed to pass performance tests when tested. Not all of them of course; but in the case of certified helmets, on average, better than two out of three fail when tested. (See Exhibit "Y")

What about the users of those other products (like, on say, seatbelts)? Are they held criminally liable because the manufacturer's certification proved to be more optimistic than realistic? Why then the defendant? Especially in view of the fact that the compliance of the defendant's helmet has never been challenged in the proper forum – it's never been tested, at least not by anyone authorized to conduct such tests, at least not to the knowledge of the defendant.

Does the defendant's helmet meet the techical construction requirements of the Federal Standard? The defendant doesn't know that, and frankly doesn't care. He's not required to. And neither is Officer Ridgeway, if the prosecutor and the court follow the *Buhl* rule.

The defendant has asserted, and maintains, that his helmet was certified in accordance with any requirements of any Federal Standards,

and barring evidence to the contrary – evidence that a determination of noncompliance or non-conformity has been reached by someone authorized by the law to do so – he is in compliance with California's helmet law by wearing it pursuant to *Buhl*, period.

Over and above everything else, the fact is, relative to constitutional challenge on vagueness, the *Buhl* court was simply wrong. The helmet law statute is, on its face, as written, unconstitutional. The evidence of that is overwhelming. It is beyond dispute that the language of the statute does not provide clear guidelines that confine the police and the courts to only challenging the lawfulness of a motorcyclist's compliance with the statute on the basis of a certification of compliance with the Federal Standard – the criteria the *Buhl* court found *obvious* in the statute as written, but which to this day eludes those charged with its enforcement.[5]

**C. What's a "helmet"?**

The *Buhl* court was supposedly dealing with the appellant's complaint that the absence of an objective standard to define a "motorcycle safety helmet" was problematic, and that FMVSS 218 provided little by way of a description that the average person could understand. In response, the *Buhl* court wrote, in effect, "a motorcycle safety helmet is a helmet bearing a certification of compliance" – which does little to relieve the confusion, because the question remains: What's a "helmet"?

---

[5] In addition, if the *Buhl* court had some other reason than the one cited in their decision for finding the statute was not unconstitutionally vague as to its requirements for helmet compliance, one must presume they would have stated such additional reason or reasons. But they didn't. So it can only be concluded that the 4th Appellate Court only had the one reason for rejecting that portion of the constitutional challenge presented by the appellants in *Buhl* – the fact that the *only* requirement of the statute is that a motorcyclist wear a helmet bearing a certification of compliance. AND, it must be that the "DOT" emblem only be present at the time a given helmet was obtained, otherwise the biker is once again responsible for fabrication in the form of having or maintaining proper labeling required to be affixed to the helmet at the time of sale, but not after.

The first thing the prosecutors and courts want to do is run to a dictionary. But which one? *Webster's*? What's the legal authority for basing the definition underpinning a criminal statute on *Webster's Dictionary*, or any other dictionary? And who decides which dictionary?

The only reasonable indicator to define the term "helmet" is contained in the language of helmet law statutes in 27 other states (that's more than half) which require a rider to wear "protective headgear." (See Exhibit "Z")

If the *Buhl* court had attempted to understand the problem, and wanted to be clear in solving it, they might have written something along the lines of "it is clear the law requires only that a consumer wear *protective headgear* bearing a certification of compliance." That might have been some help. But a helmet is a helmet? Too many people have preconceived notions about what a helmet is for that to ever work.

"Protective headgear" comes a LOT closer to fitting the description than references to fabrication: e.g.: "A helmet must have a hard surface" without defining "hard." Or a helmet must have one inch of polystyrene (which is not in the Federal standard), or a helmet must cover a certain amount of the head (which is not in FMVSS 218 either). These are all just subjective opinions about what the statute *might* require, were it not for the fact that the *Buhl* court found otherwise.

If the prosecution is going to continue to argue that the statute is constitutional because the *Buhl* court found it so, then it would seem that the prosecution must confine their evidence to the *only* requirement set out in *Buhl* – evidence that the defendant's headgear was not certified as compliant with the Federal Standards – and abandon their subjective opinions about whether or not the claimant's protective headgear's fabrication meets the complex Federal Standards complained

of by the appellants in *Buhl*. And, it would seem, that the court is similarly required to limit the evidence put on by the prosecutor to the *Buhl* court's *only* specified requirement as well – that the helmet bear evidence of a certification of compliance.

To do otherwise just goes to prove that the statute *is* unconstitutional, both as written and applied. If the statute is so poorly written, as it appears to be, that even with an explanation from the *Buhl* court, those charged with the responsibility of enforcing it still cannot comprehend what is required, isn't that evidence enough that it is unconstitutionally vague?

**D. The *Bianco* court's contribution only confused the issue more.**

Steve Bianco, a truck driver from Vista, California area, was plenty angry when he was stopped and cited for wearing a helmet that bore a certification of compliance, not just once, but several times, following the *Buhl* decision. And when he got to court, the court had no more regard for the limitations noted by the *Buhl* court than most other California courts.

Bianco filed a Petition for Writ of Mandate in an attempt to force the CHP to adjust their enforcement policies such that only riders that did not have evidence of a certification of compliance on their helmets, could be cited or convicted for wearing a helmet under the helmet law.

Judge Murphy, of the San Diego Superior Court, decided that Bianco knew his helmet was not properly fabricated. It wasn't true, but Judge Murphy made the finding just the same, and concluded that therefore, the *Buhl* decision didn't apply to Bianco's situation.

When Bianco appealed, the 4th Appellate Court – Justice Work wrote the (modified) opinion, Justices Todd and Kremer (PJ) concurring – upheld the Superior Court's opinion in its entirety, adding the finding

that a letter received by Bianco, from NHTSA, provided Bianco with "actual knowledge" that his helmet was no longer *certified*.

However, the letter Mr. Bianco introduced into evidence, stated that helmets similar, but not identical, to his helmet had been recalled by the manufacturer. The letter also indicated that although the manufacturer of his helmet had done a voluntary recall to inspect some of the models they had manufactured, that that did NOT mean that NHTSA had made a formal determination of noncompliance on Bianco's helmet.

The *Bianco* court created a whole new element for those charged with compliance or enforcement with the helmet law to deal with – the "actual knowledge of a determination of noncompliance" exception to the *only* requirement in *Buhl*. In short, the *Bianco* court didn't like the *Buhl* court's decision either, so they just tried to write their way around it.[6]

To this day, the obvious disparities between the *Buhl* and *Bianco* decisions remain unaddressed – the *"only"* requirement called for in *Buhl* against the exception presented in *Bianco*; neither of which, incidentally, are evidenced by the current enforcement practices and policies of police agencies throughout California.

*Buhl* and *Bianco* are made up of the same stuff, for the same reasons, and therefore deserve either full regard or complete disregard.

If the court is going to abide by case law, then it must apply the reasoning set out in both *Buhl* and *Bianco*, which would mean that the defendant, in that his headgear bears a certification of compliance, is entitled to the rebuttable presumption that his helmet is certified, barring

---

[6] Interestingly, when one seeks to determine just exactly what constitutes "actual knowledge of a determination of noncompliance," they have to realize that to the defendant's knowledge, no one but Bianco has ever received any letter similar to the letter used by the 4th Appellate Court in *Bianco v. CHP* to conclude Mr. Bianco had "actual knowledge." Since that was the criteria used against Mr. Bianco, how does that translate into notice to the better than half million other motorcyclists in California? How would they receive "actual knowledge" of their helmet's non-conformity?

competent objective evidence to the contrary – evidence that does not rely on any element of fabrication; because neither the statute, nor the *Buhl* or *Bianco* courts, have ruled that a consumer can be held responsible to meet a manufacturer's standard for proper helmet fabrication.

**E. Section 27803 is void for vagueness – unenforceable.**

Until now, the defendant has resigned himself to concede that the helmet law statute is constitutional as written, focusing his challenge on unconstitutional enforcement. But it has become apparent to the defendant that if the statute were not written as it is, it would not lend itself to unconstitutional enforcement.

Since it appears that conceding one element, inevitably concedes the other, it is no longer possible or practical for the defendant to ignore the defects of either. When and where ever the distinction between the constitutionality of a statute as written or as enforced was made, such a distinction clearly has no application here, and justice is not served by pretending it does.

The best evidence of that vagueness defect resides in the District Court's decision in *Easyriders*, combined with the statement from Deputy Attorney General Armour, arguing prior to the injunction being upheld, that if it were to be upheld, in full or in part by the 9th Circuit Court on appeal: "(R)ealistically, the injunction prevents the enforcement of California's helmet law" (see Exhibit "X" page 5)[7] – which it undoubtedly would have, ***if*** law enforcement had abided by the terms of the injunction as upheld – because the statute is unenforceably vague.

---

[7] If Ms Armour believed what she was saying, when the 9th Circuit Court of Appeals found against her and upheld the injunction, why didn't Ms Armour and the Attorney General's Office put an end to the helmet law's enforcement? If the injunction prevented enforcement of the statute, because it could not continue to be enforced without violating the 4th Amendment rights of motorcyclists; why was nothing done to stop the attempts? And, if she didn't believe what she was saying, what's that about?

Moreover, whether or not the statute can be constitutionally enforced is best evidenced by the fact that it hasn't, at least certainly insofar as it has been, and is being, applied to the defendant.

What's worse is that there is no repair. The enforcement practices and policies of the various agencies throughout the state, combined with the vague nature of the statute, are so ingrained that the requirements of the statute have been distorted beyond repair.

For example: The Police Officers Standards and Training (hereinafter "POST") program teaches *all* police officers that "helmets must be an approved type."[8] (Exhibit "B") What with the police being, and for over a decade having been, taught to believe that someone actually "approves" helmets, how can anything short of an injunction against enforcement ever hope to clear the slate of such misconceptions.

How else would the court hope to overcome the effect of the initial training that came out of the Department of the California Highway Patrol? Officer Ridgeway is most certainly affected in his perception of what the helmet law requires from helmet law enforcement training dating back 12 years – the very training that, when acted on by the CHP itself, led to the injunction from the Federal Courts.[9]

Captain Michael Card, of the Capitola Police Department, would make an even better witness to the long-term effects of the original CHP enforcement policies on today's enforcement practices and policies. Card's been around through the whole thing, and to this day believes he and his officers can cite motorcyclists based on an enforcement officer's subjective opinion of a helmet's fabrication.

---

[8] When the defendant attempted to bring the error of their curriculum, and the effect it was having on enforcement of the helmet law, POST virtually declared that nothing short of a court order would cause them to bring their curriculum in line with the state of the law.

[9] In their 75-year history, no other enforcement policy has ever been enjoined, and the injunction upheld, by the Federal Courts.

Nowhere in any enforcement policy available to the defendant, are there instructions consistent with the state of the helmet law as interpreted by the California or Federal courts – only training on how to identify an "illegal" or "fake" helmet based on fabrication of the helmet.

**E. The answer to the question regarding compliance.**

The defendant has been led to believe that in dealing in matters of law, one never asks a question to which they do not know the answer.

The defendant has asked repeatedly:

> **"Do you have any suggestions as to how a motorcyclist can comply, with certainty, with the provisions of CVC §27803(b)?"** (See Exhibit "W")

The reason the defendant has repeatedly asked this question was not because he did not know the answer, but to help the person faced with responding to the question, find the answer.

The answer, according to CVC §§ 27802 and 27803 ("when harmonized as they must be") is: "Wear a certified helmet."

The answer, according to *Buhl* is: "Wear a helmet bearing a certification of compliance," which means, "Wear a certified helmet."

And the answer, according to *Bianco* is ultimately the same: "Wear a certified helmet" – adding that the certification only serves as evidence of compliance with the statute until the certification is found to be mistaken, because the helmet has been tested and found non-compliant, and the defendant can be shown to have notice of that fact.

Sure, the language in *Buhl* – " ...it is clear the law requires only that the consumer wear a helmet (protective headgear) bearing a certification of compliance" – may be a bit confusing to some; but by setting aside preconceived notions, the requirement of CVC §27803 is uncommonly clear: **"Wear a certified helmet."**

Notably, any holding that common sense ("common objective experience") somehow changes that answer, is absurd. According to *Buhl*, if headgear resembling a baseball cap cannot be a compliant helmet, it cannot be a compliant helmet because it is not properly *certified*, NOT because it is not properly *fabricate*d, common sense aside.

If the prosecution has evidence that the defendant's headgear was not certified at the time he obtained it, then they need to break that evidence out, or leave the defendant alone. Otherwise, what the prosecution is saying is that "the *Buhl* decision is absurd" – they just won't write that down and sign it.

**F. One final point.**

The *Buhl* court wrote in their conclusion:

> "We do not stand alone or act in a vacuum. The courts of other jurisdictions have upheld mandatory motorcycle helmet laws against numerous constitutional challenges, rejecting all of the arguments raised by appellants here."

That statement is not consistent with reality. It is ***not true*** that "all of the arguments raised" by the appellants in *Buhl* were raised and rejected in other jurisdictions. Nowhere in the cases cited in support of their statement will you find the vagueness challenge brought by the appellants in *Buhl*. In fact, to the knowledge of the defendant, the only other time the issue of whether or not it was "constitutional" to hold a consumer liable for complying with the only helmet law standard that can be lawfully appled, FMVSS 218, was raised in a court of record, the Appellate Court in the State of Washington found that because their statute (at the time) required motorcyclists to wear helmet meeting the requirements of FMVSS 218, that their statute was unconstitutionally

vague. (See Exhibit "T",*Washington v. Maxwell*)

The *Buhl* court's additional diatribe in their conclusion about how the ends justify the means, does nothing to restore their loss of credibility from that one misrepresentation alone.

**G. Vague Statutes are Unconstitutional.**

The United States Supreme Court has clearly enunciated the constitutional principle that statutes which do not give fair notice of prohibited conduct are unconstitutionally vague and unenforceable pursuant to substantive due process principles under the Fourteenth Amendment. In *Grayned v. City of Rockford* 408 U.S. 104, 108 (1971), the Court stated the basic principle of due process:

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."

The U.S. Supreme Court has taken a strong position in voiding statutes that are penal in nature[11] involving individuals as defendants.

---

[11] It is clear under the California statutory scheme that a vehicle code violation, as we have in the instant case, results in an arrest and is penal in nature. In California, "a public offense" is synonymous with "a crime" as described in P.C. §15 and §16. Burns v. United States 287 F.2d 117 (9th Cir. 1961). Since 1968, infractions have been crimes in California. (PC §§ 15 & 16.) A violation of the vehicle code is an infraction. (VC §40000.1.) A person cited for a violation of the vehicle code is arrested for an infraction and issued a notice to appear. (VC §40302, PC §853.5, §853.6.) Three vehicle code infractions in a twelve month period can result in a misdemeanor charge. (VC §40000.28.)

The Court has even gone so far as to block the enforcement of a statute that required any person convicted of a felony in California to register with the police if they were going to be present in the city of Los Angeles. *Lambert v. California* 355 U.S. 225 (1957). The Court struck down the law because there was no showing of probability that a convicted felon would acquire actual knowledge of the registration requirement and, therefore, would not have sufficient notice of the imposed registration duty.[12]

The Court has struck down statutes on vagueness grounds in numerous contexts where men of common intelligence must necessarily guess at the statutes meaning. Cases illustrative of the Supreme Court's approach on vagueness issues include *Connally v. General Const. Co.* 385 U.S. 391 (1926) (wage law struck down because operative words in the statute had no common meaning that men of ordinary intelligence could understand); *Papachristou v. City of Jacksonville* 405 U.S. 156 (1971) (vagrancy laws declared void because of lack of notice to potential offender and discretion afforded police); and *Lanzetta v. New Jersey* 306 U.S. 451 (1939) (invalidated statute for vagueness relating to uncertainty as to what a gangster is and what a gang is.)[13]

The leading Ninth Circuit case is *Lawson v. Kolender* 658 F.2d 1362 (1981) affirmed by the U.S. Supreme Court in *Kolender v. Lawson* 461 U.S. 352 (1983). *Lawson* concerned the validity of a California vagrancy statute. In affirming the Ninth Circuit, Justice O'Connor

---

[12] *Lambert* has particular significance to this case in that the statute ruled unconstitutional in *Lambert* was definitive in nature. The statute therein described conduct that must be adhered to by all persons of a particular classification to avoid criminal liability as is the situation in the instant case. Most criminal statutes prohibit specific conduct but do not direct everyone to do a particular act or face criminal liability.

[13] Cases relating to the regulation of businesses and business licensing have been much more liberal in upholding statutes. See as example *Hoffman Estates v. Flipside, Hoffman Estates* 455 U.S. 489 (1982). Because the instant case does not involve business regulation, that line of cases will not be addressed.

made clear the requirements of the void for vagueness doctrine at 461 U.S. 357:

> "As generally stated the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." (cites omitted).

The Court went on to analyze the California vagrancy statute and determined it was void for vagueness because the ordinary person could not determine how to comply and insufficient standards were established for enforcement.

There is no question that a penal statute must give fair notice of prohibited conduct sufficient for both the individual who must comply and for the police so that enforcement is not arbitrary. In the instant case, California Vehicle Code §27803 is clearly vague so as to make it unconstitutional as discussed above.

## II. THE PROSECUTION LACKS PROBABLE CAUSE

The citing officers either did not have the requisite probable cause to issue the citations, or the officers did have the requisite probable cause to issue the citations and have not produced it in discovery, and/or the probable cause requirements of the statute, as written and interpreted by the *Buhl*, *Bianco*, and *Easyriders* courts, are so vague as to render them unintelligible to the prosecution (and the defendant).

The 9th Circuit Court of Appeals in *Easyriders* upheld the portion of the injunction issued by the District Court as follows:

> "The terms of the injunction are as follows: Maurice Hannigan, as Commissioner of the California Highway Patrol, Dwight Helmick, as Deputy Commissioner of the California Highway Patrol, and

> their officers, agents, servants, employees, attorneys, or any of them, and all persons acting in concert with any of the foregoing, are hereby permanently enjoined:
>
> (1) (N/A – overturned on appeal)
>
> (2) From citing any motorcyclist for suspected violation of Vehicle Code § 27803 unless there is ***probable cause*** to believe that
>
> (A) the helmet worn by the driver or passenger was not certified by the manufacturer at the time of sale, or
>
> (B) the helmet was certified by the manufacturer at the time of sale and
>
> (i) the person being cited has actual knowledge of a showing of a determination of non-conformity with federal standards." *Easyriders v. Hannigan*, (***emphasis*** added)

The "determinatioin of non-conformity" serves as evidence that the consumer can no longer rely on the *certification* of a helmet required by the statute, not that the consumer can be held responsible for improper helmet *fabrication* – that remains the manufacturer's liability.

The *Easyriders* court continued:

> "For the purposes of this injunction, a determination of non-conformity with federal standards is defined as one or more of the following:
>
> (1) a determination of non-compliance issued by the National Highway Transportation Safety Administration or
> (2) a manufacturer recall of a helmet because of non-compliance with FMVSS 218 or
> (3) other competent objective evidence from independent laboratory testing that the helmet does not meet FMVSS 218." *Easyriders v. Hannigan*

That all seems pretty clear. What part of these due process, probable cause requirements does the prosecution not understand?

Relying on the language of the statute and ruling court decisions, the defendant has made a helmet choice that satisfies the law, yet does not substantially limit him in his ability to safely use his motorcycle.

The defendant's headgear bears a certification of compliance. He is entitled to the rebuttable presumption that his helmet was and is certified as compliant with the Federal Standards.

The prosecution has not provided, because they cannot provide, any evidence in discovery that would indicate that there has been a determination of nonconformity with the Federal Standards to set aside the rebuttable presumption of certification of compliance, by any of the entities specified in *Bianco* or *Easyriders.*

And, the prosecution has not shown, and cannot show, that the probable cause requirements set out in the *Easyriders* injunction do not apply to the citing officers in this case . . . because they do.

## III. CONCLUSION

WHEREFORE, for the foregoing reasons, the defendant moves the court to dismiss the charges against the defendant on either or both of two separate grounds:

1. That the helmet law statute is unconstitutional, as written and interpreted by three appellate courts, and as enforced, because its requirements are so vague and unitelligible that no one can make sense of them; and/or
2. That the prosecution has failed to meet, and/or otherwise cannot meet, the probable cause requirements set out in *Easyriders v Hannigan* pursuant to *Buhl* and *Bianco.*

Submitted May 24, 2004, by

_____

Richard Quigley, defendant, pro se

## VERIFICATION

I, Richard Quigley, the defendant in the above-captioned matter, do swear under penalty of perjury that the forgoing is true and correct, except to those things offered on information and belief, and as to those things, I believe them to be true.

Richard Quigley, defendant, pro. se.