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January 23, 2004

**SENT AS PDF DOCUMENT TO QUIG@GOT.NET**  
**(Original to follow via U.S. Mail)**

Richard J. Quigley, In Pro Per  
2860 Porter Street, pmb 12  
Soquel, CA 95073

RE: People of the State of California v. Quigley  
Case No. 3WM018538

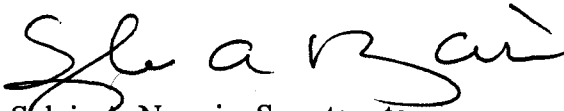
Dear Mr. Quigley:

Per our telephone conversation of today, I am sending the Opposition to Demurrer as a PDF document to your e-mail address - [Quig@got.net](mailto:Quig@got.net) since you do not have a fax number. The Opposition will also be sent via first class mail.

Thank you.

Very truly yours,

GRUNSKY, EBAY, FARRAR & HOWELL



Sylvia A. Nazario, Secretary to  
ALAN J. SMITH

AJS/san  
Enclosures  
wat117620/l-quigley012304

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10 THE CITY OF WATSONVILLE

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

13 PEOPLE OF THE STATE OF CALIFORNIA,  
14  
15 Plaintiff,  
16  
17 vs.  
18 RICHARD J. QUIGLEY,  
19 Defendant.

No. 3WM018538

**OPPOSITION TO DEMURRER TO COMPLAINT**

**DATE: February 6, 2004**

**TIME: 1:30 p.m.**

**LOCATION: Watsonville Branch, Dept. 12**  
**JUDGE: HON. HEATHER D. MORSE**

20 **I.**

21 **INTRODUCTION**

22 Defendant RICHARD J. QUIGLEY (“defendant”) has brought a demurrer challenging the  
23 charges against him on the grounds, *inter alia*, that he is unable to understand the charges against him  
24 “with sufficient clarity to enable defendant to present his defense.” *See* Penal Code § 1004. As set  
25 forth in further detail below, California’s motorcycle helmet law is not unconstitutionally vague and  
26 under any objective criteria, a baseball cap, even with a DOT sticker, does not meet the statutory  
27 requirements. Defendant’s other grounds for demurrer also lack merit and the demurrer should be  
28 overruled in its entirety.

1 II.

2 **FACTUAL BACKGROUND**

3 On July 24, 2003, Officer Michael Ridgway, an officer with the City of Watsonville Police  
4 Department, issued a citation to defendant for violations of Vehicle Code § 27803(b) and Vehicle  
5 Code § 24252(a). Defendant is not challenging the Vehicle Code § 24252(a) violation. Defendant  
6 has admitted that his was wearing a baseball cap at the time of the stop at issue. *See, e.g.,* Demur to  
7 Complaint at 9:19-21.

8 III.

9 **LEGAL ARGUMENT**

10 Defendant's demurrer raises five separate, but interrelated, challenges to the citation at issue.  
11 Defendant's challenges can be summarized as follows: (1) that the helmet law on its face is  
12 unconstitutionally vague; (2) that the stop and citation at issue was unlawful under the Fourth  
13 Amendment; (3) that the citation fails to reference a specific subsection of Vehicle Code § 40610; (4)  
14 that the citation charges more than one violation; and (5) that the citing officer used the Quik-Code.  
15 As set forth below, all such grounds are without merit and the defendant's demurrer should be  
16 overruled.

17 **A. California's Motorcycle Helmet Law is Constitutional**

18 Defendant appears to assert that Vehicle Code § 27803 is unconstitutionally vague because the  
19 word "helmet" cannot be defined by an objective standard. *See* Demur to Complaint at 14:10-23. The  
20 Court of Appeals has already rejected the argument that California's helmet law is impermissibly  
21 vague. *See Buhl v. Hannigan* (1993) 16 Cal.App.4<sup>th</sup> 1612, 1621-1623. Accordingly, defendant's  
22 demurrer based on vagueness should be overruled.

23 California law requires motorcycle drivers and passengers to wear helmets that comply with  
24 federal safety standards. *See* Vehicle Code §§ 27802 & 27803. Specifically, Vehicle Code § 27803  
25 states that "wearing a safety helmet means having a safety helmet meeting the requirements of Section  
26 27802 on the person's head that is fastened with the helmet straps and that is of a size that fits the  
27 wearing person's head securely without excessive lateral or vertical movement." Vehicle Code §  
28 27802 generally provides that the California Department of Transportation may adopt reasonable

1 regulations regarding the standards for safety helmets which shall include, but are not limited to, the  
2 requirements imposed by Federal Motor Vehicle Safety Standard No. 218 (49 C.F.R. Section  
3 571.218).

4 In *Buhl*, the appellants' made a similar challenged to the one made by defendant herein,  
5 namely, that the helmet law is unconstitutionally vague because it "prescribes a standard which cannot  
6 be understood by persons of ordinary intelligence." *Buhl, supra*, 16 Cal.App.4th at 1622. The court  
7 reviewed both the legislative history and language of Vehicle Code § 27803 for purposes of  
8 determining whether the statute was impermissibly vague. *Id.* at 1621-1623. After its review, the  
9 court determined that the statute is constitutional and that its requirements can be "objectively  
10 ascertained by reference to common experiences of mankind." *Id.* at 1623 (citation omitted). Because  
11 reasonable experience dictates that a baseball cap is not a helmet, the defendant's challenge that the  
12 statute is impermissibly vague lacks merit and should be rejected.

13 **B. The Stop and Citation at Issue Herein Did Not Violate the Fourth Amendment**

14 Defendant asserts that the issuance of the citation in this case violated the defendant's Fourth  
15 Amendment rights. See Demur to Complaint at 14:24-15:4; citing *Easyriders Freedom F.I.G.H.T. v.*  
16 *Hannigan* (9<sup>th</sup> Cir.1996) 92 F.3d 1486. Defendant's reliance on *Easyriders* is misplaced; this  
17 decision actually supports the proposition that the officer's stop and citation of defendant comports  
18 with the Fourth Amendment constitutional requirements.

19 The federal courts had an opportunity to review the issue of whether the California Highway  
20 Patrol's practice of stopping and citing motorcyclists for wearing a helmet that they subjectively  
21 determined did not meet the relevant safety standards constituted a violation of the rider's  
22 constitutional rights. The district court determined that a motorcyclist violates the law by wearing a  
23 substandard helmet under the following circumstances:

24 (1) where the helmet did not bear a certification of compliance at the time of sale *or*

25 2) where the helmet did bear a certification *but*

26 (a) the helmet has been shown not to conform with federal safety standards *and*

27 (b) the person being cited has *actual knowledge* of a showing of non-conformity with  
28 federal standards.

1 See *Easyriders Freedom F.I.G.H.T. v. Hannigan* (S.D. Cal 1995) 887 F.Supp. 240, 242.

2 After appellate review in the Ninth Circuit, which vacated and affirmed a portion of the district  
3 court's ruling, the following permanent injunction was issued against the California Highway Patrol,  
4 their officers, agents and all persons acting in concert with any of them as follows:

5 1. From citing any motorcyclist for suspected violation of Vehicle Code § 27803 unless  
6 there is probable cause to believe that:

7 (A) the helmet worn by the driver or passenger was not certified by the manufacturer at the  
8 time of sale, *or*

9 (B) the helmet was certified by the manufacturer at the time of sale *and* the person being cited  
10 has *actual knowledge* of a showing of a determination of non-conformity with federal standards.

11 See *Easyriders Freedom F.I.G.H.T. v. Hannigan* (9<sup>th</sup> Cir.1996); 92 F.3d 1486, 1502 *Easyriders*  
12 *Freedom F.I.G.H.T. v. Hannigan* (S.D. Cal 1995). 887 F.Supp. 240, 242

13 The Ninth Circuit specifically held that law enforcement officers can stop motorcyclists based  
14 on the appearance of the helmet by conducting an investigatory stop based on a reasonable suspicion  
15 that the helmet law is being violated. *Easyriders Freedom F.I.G.H.T. v. Hannigan* (9<sup>th</sup> Cir.1996) 92  
16 F.3d 1486, 1497, 1502. "[T]he CHP may stop motorcyclists based on the appearance of their  
17 helmets." *Id.* at 1502.

18 Applying the Ninth Circuit test to defendant's use of a woven cap with a bill that resembles a  
19 baseball cap, it is clear that Officer Ridgway could cite defendant for violating Vehicle Code § 27803,  
20 since such a cap lacking any helmet straps does not fit within the definition of "wearing a safety  
21 helmet." See *id.* at 1502. Because defendant's cap fails to meet the *objective* criteria for a helmet,  
22 there is no need for Officer Ridgway, or any other officer, to determine whether defendant has actual  
23 knowledge that his cap violates the helmet safety law. Even if such an actual knowledge requirement  
24 applied to defendant's case, defendant has actual knowledge that his cap is out of compliance. It is  
25 undisputed that the defendant has been cited numerous times due to his use of what appears to be a  
26 baseball cap and also found to be guilty by Santa Cruz County Superior Court for such use. Thus,  
27 Officer Ridgway had the requisite probable cause to show defendant's actual knowledge of  
28 noncompliance with the motorcycle helmet law and to issue a citation.



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**PROOF OF SERVICE**  
**[CCP §§ 1013a, 2015.5]**

I am over the age of eighteen (18) years and not a party to the within action. I am employed by the law firm of GRUNSKY, EBEL, FARRAR & HOWELL (the "firm"), and my business address is 240 Westgate Drive, Watsonville, California 95076.

On **January 23, 2004** I caused to be served the within

**OPPOSITION TO DEMURRER TO COMPLAINT**

on the parties to this action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows and delivered in the manner indicated:

**Richard J. Quigley, In Pro Per**  
**2860 Porter Street, pmb 12**  
**Soquel, CA 95073**  
**Tel: (831) 685-3108**

XXX

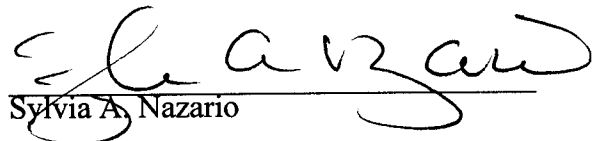
**[By Mail]:** I caused each envelope, with postage prepaid to be placed in the United States mail at Watsonville, California. I am readily familiar with the business practices of the firm regarding the collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to such business practices, and in the ordinary course of business, all correspondence is deposited with the United States Postal Service on the same day it is placed for collection and mailing.

**[By Federal Express]:** I caused each envelope to be delivered to Federal Express for overnight courier to the office(s) of the addressee(s).

**[By Hand Delivery]:** I caused each envelope to be delivered by hand on the office(s) of the addressee(s).

**[By Fax]:** On **April 2, 2003**, I served the within document on the parties in said action by facsimile transmission, pursuant to Rule 2008 of the California Rules of Court. A transmission report was properly issued by the sending facsimile machine and the transmission was reported as complete and without error.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on **January 23, 2004** at Watsonville, California.

  
Sylvia A. Nazario