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

10 **In Re Richard Quigley,**) **Case #: 3WMO18538**
11)
12 **Petitioner/Defendant**) **NOTICE OF HEARING**
13) **AND PETITION FOR**
14 **Respondent:**) **WRIT OF MANDAMUS**
15 **City of Watsonville, et. al.**) **OR PROHIBITION**
) **DATE: May 14, 2004**
) **TIME: 1:30 p.m.**
) **PLACE: Dept. 12**

16 **PETITION FOR WRIT OF MANDAMUS/PROHIBITION**

17 1. Petitioner, Richard James Quigley, is a Person — one of the People
18 of the State of California described in Article I, Section 7(a), of the Con-
19 stitution of California; and a Citizen of the United States as defined in
20 Article IV, Section 2, of the Constitution of the United States — who is
21 thereby to be afforded all the protections provided by such Constitutions,
22 specifically, but not limited to, the 4th, 5th and 14th Amendments thereto.
23 2. Respondents, and all of them, are public servants, employed by the
24 City of Watsonville, bound by their Oath of Office to support and defend
25 the Constitution of California and the Constitution of the United States —
26 a responsibility that carries with it the requirement that they apply any and
27 all authority vested upon taking of that Oath of Office, in a manner that
28 does not offend the rights, privileges and/or immunities of the Petitioner.

STATEMENT OF FACTS

3. On July 24, 2004, Watsonville Police Officer Michael Ridgeway stopped and cited the petitioner for an alleged violation of California Vehicle Code (CVC) §27803, without the requisite probable cause to issue the citation pursuant to an Injunction issued by the Honorable Judge Napoleon Jones the United States District Court, *Easyriders v. Hannigan*, 887 F. Supp. 240 (S.D. Cal. 1995), upheld in pertinent part by the 9th Circuit Court of Appeals (92 F3d 1486, 1996).

4. Relative to the portion of the injunction upheld by them, the 9th Circuit Court of Appeals wrote: “...**the second half of the district court’s injunction,¹ requiring the CHP to have probable cause to believe that the motorcyclists wearing helmets that were certified at the time of purchase have actual knowledge of the helmet’s non-compliance with Standard 218, was appropriate in this case.**”

¹ IV. TERMS OF THE INJUNCTION

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) ...(overturned on appeal)

(2) From citing any motorcyclist for suspected violation of Vehicle Code s 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. (upheld on appeal)

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.

Maurice Hannigan, as Commissioner of the California Highway Patrol and Dwight Helmick, as Deputy Commissioner of the California Highway Patrol, are further directed to file with the Court and serve on plaintiffs, within fifteen (15) days after the date of entry of this Permanent Injunction, a report in writing and under oath with the full name and address of each enforcement agency that has been previously instructed or informed on the CHP enforcement methods to enable plaintiffs to serve such agencies with copies of this injunction.

This injunction shall remain permanently in force until such time as Vehicle Code sections 27802 or 27803 or the regulations promulgated thereunder are amended or modified to include additional or revised provisions related to helmet compliance or enforcement standards, or until such time as a decision of the California appellate courts establishes additional or revised standards related to helmet compliance or enforcement standards.

1 **Because the Fourth Amendment violations were a result of a CHP**
2 **citation policy followed by other law enforcement entities in Califor-**
3 **nia, the scope of the injunction is necessary to afford the plaintiffs**
4 **the relief to which they are entitled.”**

5 5. The Federal Injunction was necessitated because the various law
6 enforcement agencies throughout the State were not confining them-
7 selves to enforcing the helmet law as it had been interpreted by the State
8 courts, adding nothing to what had already been written by the State
9 courts, except the injunction – seemingly because the defendants in
10 *Easyriders* could not confine themselves to enforcing the statute as
11 written, and interpreted by the California Courts, without help.

12 6. The *Buhl* court laid out their reasoning why the statute was consti-
13 tutional, as written – dismissing the appellant’s “proposition that the
14 statute would require the consumer or enforcement officer to decide if a
15 helmet if properly fabricated” as “absurd.” 16 Cal. App. 4th 1612(1993)

16 7. However, the *Buhl* decision (although they elsewhere said they did
17 not make the decision in a vacuum) was absolutely in err against reality,
18 because at the time the court filed the opinion, every day in California,
19 some police officer was citing individuals (who were wearing helmets)
20 based on the citing officers opinion that the helmet was not properly
21 fabricated – most relying on an enforcement Bulletin (#34) put out by
22 the CHP which did, because they were the “department” referred to in
23 CVC §27802, in fact authorize officers to decide if a helmet was prop-
24 erly fabricated, and hold the rider responsible accordingly . . . with the
25 blessing of the various traffic courts throughout California, tens of thou-
26 sands of citations were issued and the defendants found guilty.

27 8. If issuing a citation without the elements required by the injunction,
28 violates a rider’s 4th Amendment rights, as indicated by the District

1 Court, then it follows that issuance of a citation to the defendant absent
2 those same elements, violates (at the very least) the 4th Amendment
3 Rights of the petitioner here.

4 9. To make matters worse, while the first citation was working its way
5 through the process, Officer Ridgeway issued a second citation based on
6 (or absent) the same criteria – his subjective opinion that the petitioner’s
7 helmet is not properly fabricated – which constitutes and constituted a
8 second violation of the petitioner’s 4th Amendment rights.

9 10. And then, when leaving the court at his last appearance, the peti-
10 tioner was cited once again, based on the subjective opinion by the cit-
11 ing officer that his helmet was not properly fabricated.

12 CONCLUSION

13 11. When the *Buhl* court decided that the statute did not require either
14 the consumer or enforcement officer to decide if a helmet is properly
15 fabricated, they established a standard which is itself absurd – which
16 cannot be used against the petitioner.

17 12. In fact, there is no way for either a consumer or enforcement officer
18 to decide, as a matter of law, whether or not a given piece of headgear
19 complies with the helmet law, except and unless they refer to the only
20 objective standard offered by the statute, FMVSS-218 – the *Buhl* deci-
21 sion notwithstanding.

22 13. According to *Buhl*, AS WRITTEN: “When sections 27802 and
23 27803 are harmonized, as they must be (cites omitted), it is clear the law
24 requires *only* that the consumer wear a helmet bearing a certification of
25 compliance.”² (*Buhl v. Hannigan* – *emphasis* added.)

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28 ² The “certification of compliance” – elsewhere and later defined as the letters “D-O-T” – is or are not required to remain on the headgear past the time of purchase.

1 14. The statute was found constitutional because it *only* requires the
2 consumer to wear a helmet bearing a certification, not one that is prop-
3 erly fabricated – except to the extent that the manufacturer’s certifica-
4 tion assures proper fabrication.

5 15. Then the *Bianco* court wrote: “ We conclude the statement in *Buhl*
6 that consumer compliance with the state law only requires the consumer
7 to wear a helmet bearing the DOT self-certification sticker does not
8 apply when a helmet has been shown not to conform with federal stan-
9 dards and the consumer has actual knowledge of this fact.” *Bianco v.*
10 *CHP*, 24 Cal. App. 4th 1113, 29 Cal. Rptr. 2d 711 (1994)

11 16. The court continued: “ As we have previously pointed out, the state-
12 ment in *Buhl* does not apply to situations in which there has been a de-
13 termination of noncompliance with the federal standards and the con-
14 sumer has actual knowledge of such determination.” (*Ibid.*)

15 17. No other court has addressed the question of criteria for compli-
16 ance, except for the Federal Court, on appeal to the 9th Circuit in
17 *Easyriders v. Hannigan* – and all that court did (or attempted to do) was
18 interpret *Buhl* and *Bianco* and find:

19 “The district court found that under the California helmet law as
20 interpreted by *Buhl* and *Bianco*, a motorcyclist wearing a helmet
21 that does not comply with Standard 218 violates the helmet law in
two situations:

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

24 (2) where the helmet did bear a certification but

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

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

1 18. The criteria is not only strict, but as the court pointed out, absolute:

2 “(I)f the requirement that a motorcyclist wearing a helmet that was
3 certified at the time of purchase have actual knowledge of the
4 helmet’s non-conformity to violate the helmet law is a specific
5 intent requirement, the CHP³⁾ must have specific probable cause
6 to believe that a motorcyclist has actual knowledge of a helmet’s
7 non-compliance to cite that motorcyclist for violating the helmet
law.”

8 19. If the rider’s headgear bears the letters “D-O-T,” following
9 *Easyriders*, to write the ticket, the citing officer must have articulable
10 facts that show that the rider’s headgear was not certified by the manu-
11 facturer at the time he obtained it OR that the headgear was certified
12 when he obtained it but it had been subsequently found not to conform
13 with federal safety standards AND the person being cited has actual
14 knowledge of such showing of non-conformity with federal standards.⁴

15 20. To date, two Watsonville Police Officers that have issued three cita-
16 tions to the petitioner, have done so without regard to the plain language
17 of the statute, or to the requirements imposed by the injunction issued
18 by the Federal Court in *Easyriders*, and threaten to do so again.

19 21. The conduct of the citing officers has been reported to their supervi-
20 sors with the Watsonville Police Department, and complained of to the
21 City Attorney, without relief.

22 22. Petitioner is seemingly unable to protect his right in any other way
23 except by petitioning this court for relief by extraordinary writ.

24 ³ This reference applies to any agency enforc-
25 ing the statute, in that the issue concerns a
26 practice that violates constitutional rights, what
27 applies to the CHP enforcement policy, applies
28 to all law enforcement agencies.

⁴ If the letters “D-O-T” have been re-
moved, or worn or fallen off (in that CHP
policy acknowledges that a rider is not
required to maintain the labels – offer to
prove), then the best evidence of the rebut-
table presumption that the helmet bore the
certification of compliance when it was
obtained, is the testimony of the consumer.

1 **PRAYER FOR RELIEF**

2 23. WHEREFORE, petitioner prays that this court issue an alternate
3 Writ of Mandamus/Prohibition, which requires that the respondents
4 either limit themselves to enforcing CVC §27803 against the petitioner
5 (or anyone similarly situated) in strict adherence with the terms and
6 conditions laid out in the Injunction issued against the CHP in
7 *Easyriders v. CHP*, or show cause why the protections provided therein
8 should not be made available to the petitioner.

9 24. And that the current charges pending against the petitioner, in the
10 above-entitled action, be dismissed, with prejudice.

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12 Submitted this 9th day of April, 2004, by:

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16 Richard Quigley, Petitioner/Defendant, pro se
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