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

People of the State of California, Plaintiff; **vs.** **Richard J. Quigley,** Defendant.	**Case #: 3WMO18538** **REPLY TO OPPOSITION TO DEMUR TO COMPLAINT** **DATE: February 6, 2004** **TIME: 1:30 p.m.** **PLACE: Dept. 12**

RESPONSE TO OPPOSITION TO DEMUR

Shyster chicanery. With great respect, that's exactly what the prosecution's "Opposition to Demur to Complaint" typifies – lies, half-truths, smoke and mirrors; i.e: shyster chicanery. Move to strike!

LIE #1:

In opposition, the prosecution says the defendant "admitted that he was wearing a baseball cap at the time of the stop at issue" on page 9, lines 19-21, of the demur. (Opposition at 2:5-7) That's a lie!

Instead, in noting the absence of an objective standard, what the defendant actually wrote was: "For certain, nothing in the statute says anything that would support the legal contention that a helmet cannot look like a 'baseball cap,' even exactly like a 'baseball cap.'" (Demur at 9:19-21)

If defendant had made the same reference to a welder's cap, rather than a baseball cap, would he then have *admitted* that he was wearing a welder's cap? Because, as a matter of fact, there is nothing in the statute(s) that says anything that would support the legal contention that a helmet cannot look like a welder's cap either. Or a stocking cap. Or a truckers' cap. Or a bowling ball for that matter. Nothing.

There is absolutely no way that anyone can *prove* that any headgear is in compliance with the statute, or not – except and unless the rules of evidence do not apply to alleged violations of CVC 27803(b).

Rather than deal with the *truth* of that inescapable fact, the prosecution attempts to distract the court with an alleged *admission* not made.

If the prosecution is going to oppose defendant's demur, it seems they should be made to address the issues raised, directly.

Defendant asserts that counsel for Plaintiff should be faced with contempt, or other sanctions, if they cannot *prove* that the defendant's headgear is not in compliance with the statute by applying whatever objective standard they argue exists, or, God forbid, by otherwise following the law.

To date, no one has dared contend, directly, that a motorcyclist is required to prove that their headgear is in compliance with the helmet law statute – in other words, the defendant has no affirmative duty to prove anything.

The prosecution, on the other hand, is contending that the defendant's headgear does not meet some objective criteria, based solely on their bald assertion (subjective opinion) that the headgear is a baseball cap. Not that it *looks* like a baseball cap. But because it actually *is* a baseball cap, with no proof.

The defendant was not wearing a baseball uniform, baseball shoes, or carrying a baseball bat, ball or glove. Nor was the defendant anywhere near a baseball field. The logo on the front of the headgear is that of "Bikers Of Lesser Tolerance" (BOLT) – which, to the defendant's knowledge, is not a baseball team. What objective evidence supports the prosecution's contention that the defendant was wearing a baseball cap? Their stretch at an admission by the defendant?

Or does appearance alone belie the need for objective evidence? There's no need to have an objective standard because anyone can tell, just by looking, what a "motorcycle safety helmet" is? That's what the prosecution wants. They just can't find it in the statute(s), so they mis-state the demur and mis-cite the law.

LIE #2

On page 2, starting at lines 11-12, the prosecution "summarizes" the defendant's constitutional challenge thus: "that the helmet law on its face is unconstitutionally vague." That is a lie. The defendant argued no such of a thing.

Defendant is fully aware, and stated so in the demur (at 11:20-22), that the *Buhl* court found that the statute *as written* – which one must presume means "on its face" – was NOT unconstitutional. So no, the defendant did not challenge the statute "on its face." Only *as enforced.*

Which brings us to . . .

LIE #3

The prosecutor, further *summarizing* the defendant's challenge, asserted that the defendant claimed: "(2) That the stop and citation at issue was unlawful under the Fourth Amendment."

Again, not true. Defendant did not claim, state, assert, allege or in any other way attempt to encourage the court reach the conclusion that

there was anything whatever "unlawful" about the at-issue traffic stop. In fact, the traffic stop is not in any direct way at issue. As of the date of this writing, the 9th Circuit Court of Appeals has sanctioned such stops (although based on an error of fact).

What defendant did assert, then and now, is that, according to the process delineated in *Easyriders*, Officer Ridgway violated the defendant's Fourth Amendment Rights by *issuing the at-issue citation* without the requisite evidence of either a determination of noncompliance or/*and* evidence that the defendant had actual knowledge of such determination.

The defendant is fully aware that such criteria may very well render the statute unenforceable, but that's no more the defendant's *fault* than is California's socialized medicine scheme.

The prosecutor needs to take their objections with the statute up with the Legislature, or the higher Courts. They're the ones who wrote, or interpreted, the statute(s).

LIE #4

According to the prosecution's Opposition (at 3:9-10), the *Buhl* court dealt with the objection that the statute does not adequately define the *term* "helmet" by ruling that the requirements can be "objectively ascertained by reference to the common experience of mankind."

That's a lie! That is ***not*** what the *Buhl* court wrote relative to the requirements for the term "helmet."

The "common experience of mankind" reference had to do with the language contained in CVC §27803(e) – requiring that a helmet fits securely. The defendant is not charged with violating CVC §27803(e). Therefore, the reference to that portion of the *Buhl* decision serves no other purpose than to distract the court from the issue at bar.

Relative to CVC §27803(b), what the *Buhl* court wrote, relative to whether or not an objective standard existed (assuming one uses the actual language from the actual opinion in *Buhl*, on point), was "the proposition that the statute would require the consumer or enforcement officer to decide if a helmet is properly fabricated" was "absurd" – which means to the defendant that the prosecution's contention that "a woven cap with a bill that resembles a baseball cap" (Opposition at 4:18-19) is not a properly fabricated helmet, is absurd – never mind the subsequent objection to the "lacking of helmet straps" (Opposition at 4:20) which is ***absolutely not a requirement*** in any case.

Next thing you know the prosecution is going to claim that use of terms such as "woven," and references to "lacking helmet straps," are not fabrication related.

"The proposition that the statute would require the consumer or enforcement officer to decide if a helmet is properly fabricated . . . is absurd." *Buhl v. Hannigan*

If the statute doesn't require the consumer to decide if a helmet is properly fabricated, what is the defendant doing in this court over this issue? The plaintiff's whole complaint has to do with improper fabrication, which the prosecution appears to claim can be "objectively ascertained by reference to the common experience of mankind."

The reason the *Buhl* court found the statute constitutional, as they clearly explained, is that an enforcement officer (and one must presume the prosecutors and courts) would not feel compelled by the statute, as a matter of law, to decide if a helmet is properly fabricated. They found the possibility, or at least they said they found the *proposition*, that a case such as this would be filed, absurd. They said ***nothing*** that would indicate the application of "common objective experience" or "common

experience of mankind," for deciding helmet compliance with a complex Federal standard, much less with the helmet law.

What's most amazing is the number of such cases that have resulted in convictions – even and long after the conduct was ruled on in *Buhl*, then ultimately prohibited by injunction from the Federal Court.

The point is that the plaintiff's attorney cannot face the decision of the *Buhl* court because it will not suit their goal – to convict a citizen – to win no matter how. That's perverse. One has to wonder why they would invite the court to participate in mis-applying the *Buhl* case?

If a statute is found constitutional based on certain conditions, reason dictates that those specified conditions have to be applied to, or imposed on, enforcement practices. And the *Buhl* court specified why the fabrication requirements of helmet compliance were not a problem – because the statue does not require a consumer or enforcement officer to decide if a helmet is properly fabricated. That is what they said.

To find otherwise is to ignore precedent case law, and with great respect, this court simply doesn't have the authority to go there.

There is no doubt that the statute is unconstitutional as it is being applied to this defendant – the *Buhl* decision absolutely with standing.

HALF-TRUTH #1

On page 4, starting at line 18, of their opposition to defendant's demur, the prosecution explained how they decided that the defendant's headgear was not properly fabricated, and then made a giant leap, arguing that therefore the protections of the law do not apply to the defendant:

> "Because the defendant's cap fails to meet the *objective* criteria for a helmet, there is no need for Officer Ridgway, or any other officer, to determine whether defendant has actual knowledge that his cap violates the helmet safety law." (Opposition at 4:21-23)

Prosecution's bald assertion that the defendant's headgear did not "meet the *objective* criteria" might have legs, if they had some sort of *objective* criteria. Their belief that they are inherently superior to the defendant does not raise the prosecutor's subjective opinion of what's a "helmet" to a level even bordering on "*objective* criteria."

The *Bianco* court highlighted the requirement that, in order to violate the statute by wearing a helmet, a motorcyclist must have "actual knowledge" that his helmet does not meet a complex Federal Standard (that the *Buhl* court indicated did not apply directly to consumers).

That's when the ***smoke and mirrors*** comes in. All that talk about baseball caps. It's nothing to do with anything, but the prosecutor makes it their one main argument — "But your Honor, it's a baseball cap!"

So what? Even if it were, so what?

The prosecution needs to either show the court where the statute says anything that would support the legal contention that a helmet cannot look like a "baseball cap," even exactly like a "baseball cap," or shut up about it!

In fact, what the prosecution really needs to do is find somebody to make a determination of noncompliance, authorized to make a determination of noncompliance, on the defendant's helmet, and quit trying to do it themselves. There's no authority in law for a City Attorney, or a police officer, or a Superior Court, or anyone other than the manufacturer or one of two testing laboratories approved by the Federal government, to make a determination of noncompliance on a motorcycle safety helmet – to make a legally binding determination of noncompliance.

In the absence of an objective standard that proves otherwise, even a baseball cap *could easily* be considered a motorcycle safety helmet as a matter of law in California. Easily, if the courts followed the law.

HALF-TRUTH #2

Having concluded to their own satisfaction that the defendant's headgear was not properly fabricated, the prosecutor set out to mislead the court again – skewing facts to suit their needs.

On page 4, at line 20, the prosecution wrote: "Even if such an actual knowledge requirement applied to defendant's case, defendant has actual knowledge that his cap is out of compliance."

The defendant won't even go into why they say the "actual knowledge" requirement should not apply to him. Clearly the prosecution has decided that the best way to win is to take away the protections of the constitution by suggesting that they not be applied to certain defendants. (What's their *objective* criteria for deciding which defendants?)

The underlying, false claim by the prosecution is that "defendant has actual knowledge that his cap is out of compliance."

Based on what evidence?

All the evidence shows is that the defendant doesn't even have "actual knowledge" that his headgear is a "cap"; never mind whether or not it is "out of compliance" with some mythical "*objective* criteria for a helmet"

This court has a right, the defendant hopes an obligation, to question any assertion made without proof. If the prosecution claims to have *objective* criteria that can be applied to this situation, they should break it out. And if not, switch sides.

What "*objective* criteria"?

(NOTE: On the off chance that the court decides to overrule defendant's demur; at the 1538.5 Motion Hearing, the defendant is going to insist that the prosecution prove the existence of a "*objective* criteria for a helmet"– the *probable cause* element of the complaint – or move that the matter be dismissed, again, with prejudice, again.)

HALF-TRUTH #3

Then the prosecution reported, as if evidence: "It is undisputed that the defendant has been cited numerous times due to his use of what appears to be a baseball cap and also found to be guilty by Santa Cruz County Superior Court for such use." (Opposition at 4:24-26)

Not true. Especially not the "due to" part. And not relevant.

Yes, the defendant has been cited numerous times – 25, to be exact. However, the reason the defendant been cited many times is mostly ***due to*** the failure of the various police agencies to properly train their officers, together with a serious predisposition of the California Courts to ignore the defects, and effects of the defects, in the helmet law statutes, in conjunction with the appearance of the defendant's headgear. That's what makes up the *actual knowledge* this defendant has acquired *due to* helmet tickets.

It is only half true, yet clearly inferred by plaintiff's attorney, that the defendant knew he was violating the helmet law by wearing his helmet choice, primarily because he had been cited and "found to be guilty" by the Superior Court. But just look at those court *decisions*:

1. Three "no contest" pleas entered in *one case* as a device to get a an opinion from the 6th Appellate Court that could resolve the issue (see Exhibit "F" – the Order After Hearing a Certification of Questions for Appeal). A failed attempt by this defendant to try to have the matter settled years ago – by the 6th, who refused to hear it – does not constitute *actual knowledge* of anything to do with helmet compliance.
2. Six findings of "guilty" in the *second case* in which the certified record on appeal (See Exhibit "G") clearly states there was no trial, based on an unprecedented theory of a "common ob-

jective experience" standard for what constitutes a properly fabricated motorcycle helmet, which doesn't stand as a shining example of imparting actual knowledge about helmets or the helmet law, either. "Common objective experience" is not an objective standard – it's an absurdity; inconsistent with obvious truth, reason, or sound judgment. (See Exhibit "H" [upheld on appeal]) It's a fiction, upheld on appeal, created by a court that refused to acknowledge that there is no *objective* criteria by which to define "helmet" as used in the statute.

In reaching those 9 "convictions" for violating the statute, not one person has yet presented, or been required to present, anything even bordering on an objective standard for proving when a motorcyclist is in compliance with the statute, or not.

Further, the prosecution contends that against those 9 so-called "convictions," the remaining 15 citations that were dismissed have no standing. The defendant has 15 wins against 9 losses (in three separate court cases) and that means the defendant has actual knowledge he is not wearing proper headgear? How does that work?

(NOTE: For every citation that was issued to the defendant, the defendant is prepared to testify, under oath, that he has been stopped at least 5 times. So, in the grand scheme of things, the defendant is actually 100+ wins against 9 losses, and that lesson is what?)

Oh, that's right . . . "(t)hus, Officer Ridgway had the requisite probable cause to show defendant's actual knowledge of noncompliance with the helmet law and to issue a citation." (Opposition at 4:26-28)

They insult not only the defendant, but the court, with such ridiculous claims.

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HALF-TRUTH #4

In their Opposition, starting on page 5, line 2, the prosecution further asserts that the reason the provisions of CVC §40610 do not apply to the defendant's citation, is that the disqualifying conditions of CVC §40510(b) exist – alleging "persistent neglect," and that "the violation constitutes an immediate safety hazard." (Opposition at 5:2-11)

Plaintiff asserts that CVC §40610(1)(a) empowers the citing officer to make an allegation relating to a disqualifying condition, arbitrarily decide guilt or innocence at the scene, and hand out sanctions – the denial of the defendant's right to attempt to have the matter corrected and signed off like any other equipment violation – without a trace of due process; and the prosecutor sees nothing wrong with that?

If there's even a remote possibility that the defendant could successfully defend against allegations of "persistent neglect," or charges that his conduct "constitutes an immediate safety hazard," then the defendant has an absolute due-process right to demand to see the evidence and face his accuser, in other words, to be charged with the offense in advance of punishment. . . . you know, all that "due process" stuff.

To prove the "immediate safety hazard" thing, they're going to have to explain how the fact that the defendant has worn basically the same helmet style for over 5 years without incident, and as such, how that qualifies as an immediate safety hazard.

And the "persistent neglect" allegation relies on that false assertion that the defendant admitted that he was wearing a baseball cap. If so charged, the defendant is fairly confident that he can beat that lie.

If there's a price to pay, a punishment handed out, and there is – the defendant is instead required to defend the citation as a violation ($77), rather than a fix-it ticket ($10) – then the demur should be sus-

tained on the grounds, alone, that the charging document is incomplete and insufficient in that it does not specify the alleged disqualifying condition of CVC §40610(b) being applied to the defendant.

Besides, if the demur were only partially sustained, and the citation were ultimately amended to be a correctable equipment violation, then the defendant will finally be able to put this whole matter to rest. The defendant will simply get a copy of the City of Watsonville's "*objective* criteria for a helmet," take in something that meets that criteria, have a Watsonville Police Officer sign the proof of correction (in effect, certifying the helmet's compliance with the statute), turn in proof of correction, pay $10 and be on his way. (Is the City of Watsonville self-insured?)

CONCLUSION

Why the plaintiff's attorney fought for the opportunity to lodge opposition to a demur they had not legitimate chance to defeat, is beyond belief. It's all just a frivolous waste of everybody's time.

Granted, the matter is somewhat confusing.

The helmet law has found its way to being one of the uncommon "specific intent" statutes in the Vehicle Code – a principally "strict liability" scheme. Plaintiff's attorney is taking advantage of the natural predisposition to treat the matter as if it were *strict liability*. The standards of evidence in prosecuting a *strict liability* statute are minimal – with subjective opinions given some weight. But this is a *specific intent* statute case, requiring more than just a prosecutor's opinion that an "*objective* criteria for a helmet" exists, without showing the criteria.

It's got to be clear by now that if the plaintiff's attorney had anything even bordering on an "*objective* criteria for defining a helmet," it would have been included in or attached to their brief. It's not there. They are wasting everybody's time.

The law supports sustaining defendant's demur on the grounds cited therein, and again here. The failure of the plaintiff's attorney to demonstrate any legitimate basis for overruling the demur and proceeding to prosecute the defendant in their Opposition, speaks loud and clear – there is no legitimate basis. Just lies, half-truths, smoke and mirrors, and wishful thinking.

PRAYER

WHEREFORE defendant, relying on this court's reputation for following the law over politics and for regarding truth over sophistry, and in full reliance on the precedent decisions of the higher courts and the rule of law, respectfully requests:

1. that defendant's demurrer be sustained on the grounds cited therein, and that this matter be discharged with prejudice;
2. that the defendant be granted a Declaration of Factual Innocence;
3. reasonable sanctions for the frivolous actions by plaintiff's attorneys;
4. and for whatever other sanctions, orders and/or writs as the Court finds necessary, just and proper.

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Submitted this 29th day of January, 2004, by:

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Richard Quigley, defendant, pro se