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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BIKERS OF LESSER TOLERANCE ) **CASE NO.**  
(B.O.L.T.), STEVE BIANCO, )  
11 RICHARD QUIGLEY, ) **COMPLAINT FOR DECLARATORY**  
) **AND INJUNCTIVE RELIEF FOR**  
12 Plaintiffs, ) **VIOLATION OF CIVIL RIGHTS**  
)  
13 )  
)  
14 vs. )  
)  
15 LAS VEGAS METRO POLICE )  
DEPARTMENT/CITY OF LAS VEGAS, )  
16 CLARK COUNTY SHERIFF BILL )  
YOUNG, ASSISTANT SHERIFF )  
17 MICHAEL ZAGORSKI, )  
)  
18 Defendants. )

19 **JURISDICTION AND VENUE**

20 1. This action arises under the Civil Rights Act of 1871 (42 U.S.C. Sections 1983  
21 and 1988) and the Fourth and Fourteenth Amendments to the Constitution of the United  
22 States. This Court has jurisdiction of the federal claim under 28 U.S.C. Section 1331,  
23 1332, 1343(3) 1343(4), 2201, and 2202.

24 2. Venue is proper in the Southern District of California under 28 U.S.C. Section  
25 1391(b)(2).  
26

27 **PARTIES**

28 3. Plaintiff BIKERS OF LESSER TOLERANCE (hereafter "BOLT") is an

1 unincorporated Wisconsin-based national association of California motorcycle riders,  
2 motorcycle enthusiasts, and motorcycle rights activists who have come together for the  
3 purpose of protecting the constitutional rights of motorcyclists and challenging state and  
4 federal laws, regulations and enforcement activities which undermine their rights. .

5           4. Plaintiff STEVE BIANCO (hereafter “BIANCO”) is, and at all relevant times  
6 herein was, a member of BOLT, a member of the Board of Directors of BOLT, licensed as  
7 a motorcycle rider by the California Department of Motor Vehicles, and a resident of the  
8 State of California, County of San Diego, who frequently travels by motorcycle in, to, and  
9 through the jurisdiction of LVMPD for pleasure and to attend organized gatherings of  
10 motorcyclists.

11           5. Plaintiff RICHARD QUIGLEY (hereinafter “QUIGLEY”) is, and at all relevant  
12 times herein was, a member of BOL, State Director of BOLT of California, licensed as a  
13 motorcycle rider by the California Department of Motor Vehicles, and a resident of the  
14 County of Santa Cruz, State of California who frequently travels by motorcycle in, to, and  
15 through the jurisdiction of LVMPD for pleasure and to attend organized gatherings of  
16 motorcyclists. QUIGLEY has, in the past, been cited for violation of the Nevada Helmet  
17 Law for “not wearing a DOT approved helmet”.<sup>1</sup>

18           6. Defendant LAS VEGAS METRO POLICE DEPARTMENT/CITY OF LAS  
19 VEGAS/CLARK COUNTY (hereafter “LVMPD”) are political subdivisions of the State of  
20 Nevada and the LVMPD is vested with the responsibility of enforcing Nevada State Law in  
21 the City of Las Vegas and Clark County, Nevada.

22           7. Defendant SHERIFF BILL YOUNG, (hereinafter “YOUNG”) is the chief officer  
23 of the LVMPD and is charged with enforcing the laws of the state of Nevada and further  
24 charged with knowledge and protection of all citizens’ constitutional rights while enforcing  
25 the law. YOUNG is sued herein in his individual and official capacities for performing  
26 and/or threatening to perform the unlawful acts hereinafter mentioned, under color of the

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27  
28 <sup>1</sup>The DOT does not approve or disapprove motorcycle helmets.  
(Exhibit A attached and incorporated herein.)



1 **RELEVANT HISTORICAL FACTS**

2 11. In 2001, QUIGLEY was cited with a violation of the Nevada State Helmet Law,  
3 while motorcycling in Nevada. The state of Nevada declined to prosecute the citation  
4 thereby depriving QUIGLEY of the opportunity to challenge the constitutionality of the  
5 law.

6 12. Thereafter, in a series of emails between QUIGLEY and the Commander of the  
7 Nevada Highway Patrol (NHP), Colonel Hosmer, QUIGLEY expressed his confusion  
8 regarding the enforcement of the Nevada Helmet Law. As a result of such exchange,  
9 Colonel Hosmer requested an opinion from the Nevada Attorney General. In said opinion,  
10 the Nevada Attorney General determined that the law was confusing as written and  
11 recommended a legislative solution. (See Exhibit B attached and incorporated herein)  
12 After the Attorney General issued his opinion, Colonel Hosmer stated to QUIGLEY that, if  
13 the question could be brought before the Nevada legislature that he would testify that the  
14 law was “un-workable”. (Exhibit C attached and incorporated herein)

15 13. Nevada State Senator Shaffer introduced Senate Bill 274 which would have  
16 solved the problem. The Nevada State Senate Transportation Committee held a hearing on  
17 SB 274 where Colonel Hosmer testified as agreed to the problems of enforcement  
18 resulting from the vagueness of the Nevada Helmet Law. A majority of the Committee  
19 members, while agreeing that the language of the statute is unclear, perhaps even  
20 problematic, voted not to make any changes to the law. (Exhibit D attached and  
21 incorporated herein)

22 **FACTS COMMON TO CLAIMS FOR RELIEF**

23 14. In anticipation of an impending motorcycle trip through the area in Nevada  
24 patrolled by the LVMPD, and not wanting to be stranded by way of confiscation of his  
25 motorcycle hundreds of miles from home, BIANCO instructed QUIGLEY to contact  
26 LVMPD to establish what sort of headgear would be required in their jurisdiction.  
27 QUIGLEY contacted Sergeant Barela, the Public Relations Officer of the LVMPD  
28 requesting information as to the their enforcement policy regarding the Nevada Helmet

1 Law and specifically inquiring as to how he could comply with reasonable certainty with the  
2 law. Sergeant Barela informed QUIGLEY that he would be required to wear a “DOT  
3 approved” helmet. (Exhibit E attached and incorporated herein)

4 15. The Nevada Helmet Law, Nevada Revised Statute (NRS) 486.231 requires a  
5 motorcyclist and any passenger to wear safety helmets meeting the requirements of Federal  
6 Motor Vehicle Safety Standard (“FMVSS”) No. 218 which standards are incorporated into  
7 the Nevada Helmet Law under Nevada Code section 486.015. Violations of the Nevada  
8 Helmet Law are misdemeanor crimes under NRS 486.381.

9 16. FMVSS No. 218 was issued by the United States Department of Transportation  
10 (“USDOT”) pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, 15  
11 USC § 1381, et seq. (The “Safety Act”). The USDOT has the authority to issue safety  
12 standards for motorcycle helmets sold or offered for sale, **but does not actually approve**  
13 **or disapprove helmets.** ( Exhibit A). In fact, the Safety Act and FMVSS No. 218 dictate a  
14 manufacturer self-certification procedure for compliance.

15 17. The Safety Act has a supremacy clause embodied in 15 USC § 1392 (d) which  
16 reads, in pertinent part, as follows:

17 (d) Supremacy of Federal standards; allowable higher  
18 standards for vehicles used by Federal or State governments.

19 Whenever a Federal motor vehicle safety standard established  
20 under this subchapter is in effect, no State or political sub-  
21 division of a State shall have any authority either to establish,  
22 or to continue in effect, with respect to any motor vehicle or  
23 item of motor vehicle equipment any safety standard applicable  
24 to the same aspect of performance of such vehicle or item of  
25 equipment which is not identical to the Federal standard.  
26 Nothing in this section shall be construed as preventing any  
27 State from enforcing any safety standard which is identical to  
28 a Federal safety standard.

24 Although states are not required to adopt helmet laws, if they do, the standard in the  
25 state law must be identical to the standard adopted by the Safety Act which is FMVSS No.  
26 218. Nevada has, in fact, adopted FMVSS No. 218 safety standards with regards to their  
27 helmet law.

28 18. FMVSS No. 218 is a manufacturer design certification test specification and



1 (Violation of Fourteenth Amendment Due Process)

2 23. Plaintiffs refer to and incorporate herein by reference the allegations in  
3 Paragraphs 1 through 22 above.

4 24. None of the plaintiffs can determine how to comply with the Nevada Helmet  
5 Law.

6 25. In fact, compliance with the Nevada Helmet Law by persons of ordinary  
7 intelligence is a practical impossibility. NRS 486.231 requires motorcycle riders and  
8 passengers to wear helmets that comply with the standards set by the Nevada Department of  
9 Public Safety (NDPS). NDPS adopted by reference the standards set by the National  
10 Highway Traffic Safety Administration (NHTSA) in C.F.R. Section 571.218. C.F.R.  
11 Section 571.218 is the same as FMVSS No. 218 referred to herein above.

12 26. Even if the consumer, including plaintiffs herein, finds the federal regulation  
13 adopted by Nevada, there is still no way to determine what helmet complies since FMVSS  
14 No. 218 is a design certification test specification which cannot be performed by  
15 consumers. It does not define what a safety helmet is, only what technical tests it must  
16 pass.

17 27. Plaintiffs cannot determine from reading the state or federal regulations how to  
18 comply with the Nevada Helmet Law. Furthermore, there is no list of approved helmets  
19 from which plaintiffs can determine how to comply with the law.

20 28. Plaintiffs are informed and believe and allege thereon that the defendants and  
21 the LVMPD officers have announced their intention to enforce the Nevada Helmet Law  
22 against plaintiffs, despite its unconstitutional vagueness, leaving enforcement standards,  
23 which are nonexistent in the law, up to the common sense, feelings and judgment of the  
24 LVMPD officers.

25 29. Plaintiffs are further informed and believe and allege thereon that the LVMPD  
26 officers have announced their intention to impound/confiscate the helmets and  
27 motorcycles of those, including plaintiffs herein, whom they *feel* are in violation of the  
28 Nevada Helmet Law.



